AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

3–23–06 Thursday
Vol. 71 No. 56 Mar. 23, 2006

Pages 14629–14794

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Printed on recycled paper.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD01

Deposit Insurance Regulations; Inflation Index; Certain Retirement Accounts and Employee Benefit Plan Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is amending its deposit insurance regulations to implement applicable revisions to the Federal Deposit Insurance Act made by the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. The interim rule: Provides for consideration of inflation adjustments to increase the current standard maximum deposit insurance amount of $100,000 on a five-year cycle beginning in 2010; increases the deposit insurance limit for certain retirement accounts from $100,000 to $250,000, also subject to inflation adjustments; and provides per-participant insurance coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits.

DATES: The interim rule is effective on April 1, 2006. Written comments must be received by the FDIC on or before May 22, 2006.

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

- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments.
- *E-mail: comments@fdic.gov*.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, Virginia 22226, between 9 a.m. and 5 p.m. on business days.
- *Internet Posting:* Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, (202) 898–7349, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Deposit Insurance Reform Act of 2005 (''Reform Act'') (Pub. L. 109–171) made three substantive changes to the insurance coverage provisions of the Federal Deposit Insurance Act (12 U.S.C. 1813–1835a). First, section 2103(a) of the legislation provides for an inflation index to be applied to the current maximum deposit insurance amount of $100,000, defined in the Reform Act as the ''standard maximum deposit insurance amount'' (''SMDIA''). Beginning April 1, 2010, and every succeeding five years, subject to approval by the Board of Directors of the FDIC and the National Credit Union Administration Board (''NCUA''), the current SMDIA could be increased by a cost-of-living adjustment. This adjustment is to be calculated according to the Personal Consumption Expenditures Chain-type Index published by the Department of Commerce and rounded down to the nearest $10,000. The statute requires the FDIC and the NCUA to consider certain factors in determining whether to increase the SMDIA. If the agencies determine that an increase is warranted, the FDIC and the NCUA are required to publish the new SMDIA in the **Federal Register** and provide a corresponding report to Congress by April 5, 2010, and every succeeding fifth year. Thereafter, the approved adjustment will automatically occur unless a Congressional act provides otherwise and will take effect on January 1st of the year immediately succeeding the year in which the new amount is calculated.

Second, section 2103(c) of the Reform Act increases the deposit insurance limit for certain retirement accounts from $100,000 to $250,000, also subject to inflation adjustments, as described above. The types of accounts within this category of coverage continue to be comprised of: Individual retirement accounts (''IRAs'') described in section 408(a) of the Internal Revenue Code (''IRC'') (26 U.S.C. 408(a)); eligible deferred compensation plan accounts described in section 457 of the IRC (26 U.S.C. 457); and individual account plan accounts defined in section 3(34) of the Employee Retirement Income Security Act (''ERISA'') (29 U.S.C. 1002) and any plan described in section 401(d) of the IRC, to the extent that participants and beneficiaries under such plans have a right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

Third, section 2103(b) of the Reform Act provides per-participant coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits. This coverage is referred to as ''pass-through'' coverage because the insurance *passes through* the employee benefit plan administrator to each of the participants in the plan. As discussed below, the Reform Act eliminates the former requirement that an insured depository institution meet prescribed capital requirements before employee benefit plan deposits accepted by that institution would be eligible for pass-through coverage. As a result of the legislation, pass-through coverage for employee benefit deposits is no longer dependent on the capital level of the institution where such deposits are placed.

Also, the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. 109–173) (''Conforming Amendments Act'') created the term ''government depositor'' in connection with public funds described in and insured pursuant to section 11(a)(2) of the FDI Act. 12 U.S.C. 1821(a)(2). The Conforming Amendments Act provides that the deposits of a government depositor shall be insured in an amount

up to the SMDIA, subject to the inflation adjustment described above.

The purpose of this rulemaking is to implement by regulation the deposit insurance coverage revisions made by the Reform Act and the Conforming Amendments Act. The interim rule amends the applicable provisions of Part 330 of the FDIC's regulations, entitled *Deposit Insurance Regulations* (12 CFR part 330).

II. The Interim Rule

A. The SMDIA

The interim rule adds a definition of ''standard maximum deposit insurance amount'' to section 330.1 of the FDIC's regulations (12 CFR 330.1). Tracking the language of the Reform Act, the definition is ''$100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821 (a)(1)(F)).'' The revised subparagraph (F) of section 11(a)(1) of the FDI Act provides the details of how, every five years, the FDIC and the NCUA will consider and calculate the inflation adjustment to the SMDIA. The new definition in section 330.1 also indicates that the current SMDIA is $100,000 and that the acronym ''SMDIA'' is used in Part 330 for the SMDIA. In addition, the definition notes that all the examples of deposit insurance coverage in Part 330 use the current SMDIA of $100,000.

In accordance with the addition of this definition, all references in Part 330 to the current insurance amount of $100,000 are replaced by the acronym ''SMDIA.'' This will avoid having to change the actual SMDIA in each provision of the regulation whenever the SMDIA is adjusted for inflation.

B. Retirement and Employee Benefit Plan Accounts

Section 330.14 is amended to reflect that pass-through coverage for employee benefit plan accounts no longer hinges on the capital level of the depository institution where such deposits are placed. Under the former law, pass-through coverage for employee benefit plan deposits was not available if the deposits were placed with an institution not permitted to accept brokered deposits. Under section 29 of the FDI Act (12 U.S.C. 1831f), only institutions that meet prescribed capital requirements may accept brokered deposits. The Reform Act takes a different approach. It prohibits insured institutions that are not ''well capitalized'' or ''adequately capitalized'' from accepting employee benefit plan deposits. But, under the Reform Act, employee benefit plan deposits accepted by any insured depository institution, even those prohibited from accepting such deposits, are nonetheless eligible for pass-through deposit insurance coverage.

This change in the deposit insurance rules will apply to all employee benefit plan deposits, including employee benefit plan deposits placed before the effective date of the interim rule and irrespective of whether such deposits would have been eligible for pass-through coverage under the former statute and rules. The other requirements in section 330.14 of the FDIC's rules on the eligibility of employee benefit plan deposits for pass-through insurance coverage continue to apply. In particular, only the ''non-contingent'' interests of plan participants in an applicable plan are eligible for pass-through coverage. A ''non-contingent'' interest is an interest that can be determined without the evaluation of contingencies other than life expectancy.

Section 330.14 also is amended to indicate that the maximum coverage for certain retirement accounts is now $250,000. These retirement accounts continue to be comprised of IRAs (both traditional IRAs and Roth IRAs); section 457 deferred compensation plan accounts; ''self-directed'' Keogh plan accounts (or ''HR 10'' accounts); and ''self-directed'' defined contribution plan accounts, which are primarily 401(k) plan accounts. The term ''self-directed'' continues to mean that the plan participants have the right to direct how their funds are invested, including the ability to direct that the funds be deposited at an FDIC-insured institution.

The regulatory burden associated with the capital-status information requirements in Part 330 (section 330.14(h)) has been eliminated because the insurance coverage of employee benefit plan deposits no longer hinges on a depository institution's capital level.

C. Technical Revisions

The heading for section 330.15 has been changed from ''Public unit accounts'' to ''Accounts held by government depositors'' to reflect the technical change to the corresponding statutory provision made by the Conforming Amendments Act (12 U.S.C. 1821(a)(2)). No substantive changes are made to section 330.15.

Section 330.16 of Part 330 provides effective dates for past revisions to Part 330. Although unrelated to the deposit insurance reform legislation, section 330.16 is deleted because it is obsolete.

III. Rationale for Interim Rulemaking

The changes to the deposit insurance rules implemented by this rulemaking will benefit depositors by increasing coverage for retirement accounts and removing a limitation on the availability of pass-through insurance coverage for employee benefit plan accounts. As such, the FDIC wishes to amend its regulations to effect these changes as soon as possible. Thus, the FDIC has determined that the public notice and participation that ordinarily are required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the FDIC desires to have the benefit of public comment before adopting a permanent final rule and thus invites interested parties to submit comments during a 60-day comment period. In adopting a final regulation, the FDIC will revise the interim rule, if appropriate, in light of the comments received on the interim rule.

IV. Paperwork Reduction Act

The interim rule will implement statutory changes to the FDIC's deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when an agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). Because the revisions to Part 330 are published in interim final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the interim rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the interim rule is

not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

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

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. Section 330.1 paragraphs (n), (o) and (p) are redesignated as (o), (p) and (q), respectively, and a new paragraph (n) is added to read as follows:

§ 330.1 Definitions.

* * * * *

(n) Standard maximum deposit insurance amount, referred to as ''the SMDIA'' hereafter, means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)). The current SMDIA is $100,000. All the examples in this regulation use the current SMDIA of $100,000.

§ 330.6 [Amended]

■ 3. Section 330.6 paragraphs (a), (b), (c) and (d) are amended by removing ''$100,000'' in each paragraph and adding in its place ''the SMDIA''.

§ 330.7 [Amended]

■ 4. Section 330.7 paragraph (e) is amended by removing ''$100,000'' and adding in its place ''the SMDIA''.

§ 330.8 [Amended]

■ 5. Section 330.8 paragraph (a) is amended by removing ''$100,000'' and adding in its place ''the SMDIA''.

■ 6. Section 330.9 paragraph (a) is amended by removing ''$200,000'' and adding in its place ''twice the SMDIA'', and the first sentence in paragraph (b) is revised to read as follows:

§ 330.9 Joint ownership accounts.

* * * * *

(b) Determination of insurance coverage. The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMDIA. * * *

* * * * *

§ 330.10 [Amended]

■ 7. Section 330.10 paragraphs (a), (c), (d) and (f)(3) are amended by removing ''$100,000'' and adding in its place ''the SMDIA''.

§ 330.11 [Amended]

■ 8. Section 330.11 is amended by removing ''$100,000'' in the four places it appears and adding in its place ''the SMDIA''.

§ 330.12 [Amended]

■ 9. In Section 330.12 paragraph (a) is amended by removing ''$100,000'' and adding in its place ''the SMDIA'', the reference to ''§ 330.1(o)'' in paragraph (a) is removed and ''§ 330.1(p)'' is added in its place, and the reference in paragraph (b)(1) to ''§ 330.1(n)'' is removed and ''§ 330.1(o)'' is added in its place.

§ 330.13 [Amended]

■ 10. Section 330.13 is amended by removing ''$100,000'' in the three places it appears and adding in its place ''the SMDIA'' and the reference in paragraph (a) to ''§ 330.1(p)'' is removed and ''§ 330.1(q)'' is added in its place.

■ 11. In § 330.14 paragraph (a) is revised, paragraphs (b) and (h) are removed, and paragraphs (c), (d), (e), (f) and (g) are redesignated, respectively, as (b), (c), (d), (e) and (f); newly designated paragraphs (d) and (e) are amended by removing ''$100,000'' and adding in its place ''the SMDIA''; the reference to ''(c)(2)'' in newly designated paragraph (c)(3) is removed and ''(b)(2)'' is added in its place; and newly designated paragraph (b)(2) is revised.

The revisions read as follows:

§ 330.14 Retirement and other employee benefit plan accounts.

(a) ''Pass-through'' insurance. Any deposits of an employee benefit plan or any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a ''pass-through'' basis, in the amount of up to the SMDIA for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied.

(b) * * *

(2) Certain retirement accounts. Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $250,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a)):

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (12 U.S.C. 457); and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

* * * * *

§ 330.15 [Amended]

■ 12. Section 330.15 is amended by removing the heading ''Public unit accounts'' and adding in its place ''Accounts held by government depositors''; and ''$100,000'' is removed in the thirteen places it appears and ''the SMDIA'' is added in its place.

§ 330.16 [Removed]

■ 13. Section 330.16 is removed.

By order of the Board of Directors.

Dated at Washington DC, this 14th day of March, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–2779 Filed 3–22–06; 8:45 am]

BILLING CODE 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133–AD18

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its share insurance rules to implement amendments to the Federal Credit Union Act (FCU Act) made by the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Conforming Amendments Act). In this regard, the

interim final rule: Defines the ''standard maximum share insurance amount'' as $100,000 and provides that beginning in 2010, and in each subsequent 5-year period thereafter, NCUA and the Federal Deposit Insurance Corporation (FDIC) will jointly consider if an inflation adjustment is appropriate to increase that amount; increases the share insurance limit for certain retirement accounts from $100,000 to $250,000, subject to the above inflation adjustments; and provides pass-through coverage to each participant of an employee benefit plan, but limits the acceptance of shares in employee benefit plans to insured credit unions that are well capitalized or adequately capitalized. Additionally, NCUA is amending its share insurance rules to clarify insurance coverage for qualified tuition programs, commonly referred to as 529 plans, and share accounts denominated in foreign currencies.

DATES: This interim final rule is effective April 1, 2006. Comments must be received by NCUA on or before May 22, 2006.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail: Address to regcomments@ncua.gov.* Include ''[Your name] Comments on Interim Final Part 745'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, or Moisette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Federal Deposit Insurance Reform Act of 2005 and Federal Deposit Insurance Reform Conforming Amendments Act of 2005

The Reform Act and Conforming Amendments Act, (Pub. L. 109–171) and (Pub. L. 109–173), amended the share insurance provisions of the FCU Act in a number of ways. 12 U.S.C. 1781–1790d. Specifically, Section 2103(a) of the Reform Act provides that beginning April 1, 2010, and each subsequent 5-year period thereafter, NCUA and the FDIC will jointly consider if an inflation adjustment is appropriate to increase the NCUA's current ''standard maximum share insurance amount'' (SMSIA), which is defined in 12 U.S.C. 1787(k) as $100,000, and the ''standard maximum deposit insurance amount'' (SMDIA), the FDIC equivalent. Any increase to the SMSIA or SMDIA will be calculated using a formula comparing, over time, the published annual values of the Personal Consumption Expenditures Chain-Type Price Index, published by the Department of Commerce, and rounded down to the nearest $10,000. The Reform Act also requires NCUA and FDIC to consider certain other factors in determining whether to increase the SMSIA and SMDIA. Additionally, if an adjustment is warranted, NCUA and FDIC are required to publish information in this regard in the **Federal Register** and provide a corresponding report to Congress by April 5, 2010, and every succeeding fifth year. Subsequently, under those circumstances, an inflation adjustment will take effect on January 1st of the year immediately succeeding the year in which the adjustment is calculated unless an Act of Congress provides otherwise.

Section 2(d)(1)(C) of the Conforming Amendments Act mandates that NCUA provide ''pass-through'' share insurance coverage for shares in any employee benefit plan account on a per-participant basis. This type of coverage is called ''pass-through'' because it passes through the employee benefit plan administrator to each of the participants in the plan. The employee benefit plans this section refers to includes those described in: (1) Section 3(3) of the Employee Retirement Income Security Act of 1974; (2) section 401(d) of the Internal Revenue Code (IRC); and (3) section 457 of the IRC. This section, however, limits the acceptance of employee benefit plan shares only by insured credit unions that are ''well capitalized'' or ''adequately capitalized'' as those terms are defined in Section 216(c) of the FCU Act. 12 U.S.C. 1790d(c).

Section 2(d)(2) of the Conforming Amendments Act amended 12 U.S.C. 1787(k)(3) of the FCU Act to increase the share insurance limit for certain retirement accounts from $100,000 to $250,000. The increased limit is also subject to the inflation adjustments discussed above. The types of accounts within this category of coverage include those specifically enumerated in 12 U.S.C. 1787(k)(3): Individual retirement accounts (''IRAs'') described in section 408(a) of the IRC and any plan described in section 401(d) of the IRC (Keogh accounts).

Additionally, the Conforming Amendments Act created the term ''Government Depositor'' in connection with public funds described in and insured under 12 U.S.C. 1787(k)(2). It also provides that the shares of a government depositor are insured in an amount up to the SMSIA, subject to the inflation adjustment described above. The below amendments to NCUA's share insurance rules in part 745 implement the share insurance coverage revisions made by the Reform Act and the Conforming Amendments Act.

B. Standard Maximum Share Insurance Amount

The interim final rule adds a definition of SMSIA to section 745.1, the definitions section of the share insurance rules. 12 CFR 745.1. The definition of SMSIA tracks the language of the Conforming Amendments Act and reads ''$100,000, adjusted as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act.'' 12 U.S.C. 1821 (a)(1)(F). Revised section 11(a)(1)(F) of the Federal Deposit Insurance Act details how every five years, the NCUA and FDIC will consider and calculate the inflation adjustment to the SMSIA and SMDIA, as discussed in more detail above. Also, the definition of SMSIA notes: (1) The current SMSIA is $100,000; (2) the acronym SMSIA is used throughout the regulatory text of part 745; and (3) all examples of share insurance coverage in part 745 use the current SMSIA of $100,000, unless a higher limit is presented and specifically noted. Accordingly, all references to the current insurance amount of $100,000 in the appendix to part 745, except for the examples in the appendix, are replaced by the acronym SMSIA. Examples in the appendix to part 745, which NCUA believes are helpful in illustrating a member's insurance coverage, will continue to provide the dollar amount of insurance for the particular example so members can calculate and know the insurance available on their accounts. The use of the acronym SMSIA throughout the regulatory text of part 745, instead of an actual number, will allow NCUA to avoid having to change the numerical limit of share insurance throughout the rule each time the SMSIA is adjusted for inflation.

C. Retirement and Other Employee Benefit Plan Accounts

The interim final rule consolidates §§ 745.9–2 and 745.9–3, which address share insurance coverage for IRA/Keogh accounts and deferred compensation accounts, in implementing amendments to the FCU Act by the Conforming Amendments Act. As discussed in more detail in Section A above, this includes establishing pass-through insurance coverage for employee benefit plan accounts and increased share insurance coverage to $250,000 for certain retirement accounts.

Although the Conforming Amendments Act prohibits insured credit unions that are not ''well capitalized'' or ''adequately capitalized'' from accepting employee benefit plan shares, pass-through coverage will be granted even to shares in employee benefit plan accounts accepted by insured credit unions prohibited from accepting them due to their capital levels. This applies to all employee benefit plan shares, including those placed before the effective date of this rule.

Generally, full share insurance coverage in an employee benefit plan, such as a deferred compensation account, has been limited to plan participants who are also members of the credit union in which the account is maintained. NCUA intends to insure employee benefit plan participants in accordance with the example for retirement funds currently provided in the appendix to NCUA's insurance rule. 12 CFR Appendix A, Part G, Example 3 and 3(a). This means participants in an employee benefit plan who are credit union members receive up to $100,000 as to their determinable interest and member interests not capable of evaluation and non-member interests are added together and are insured up to $100,000 in the aggregate. The language of the Conforming Amendments Act suggests greater NCUA authority to provide pass-through coverage on a per-participant basis, regardless of membership status. Specifically, the Conforming Amendments Act defines pass-through insurance as ''insurance coverage based on the interest of each participant'' without including any limitations or qualifications requiring the membership status of each participant. Federal Deposit Insurance Reform Conforming Amendments Act of 2005, Public. Law. 109–173. Also, while not conclusive, the legislative history of the Reform Act evidences congressional intent to advance a national priority of enhancing retirement security for all Americans. H.R. Rep. No. 109–67 at 22 (2005). On those bases, NCUA believes it may be appropriate to extend full coverage to all participants in an employee benefit plan if a plan trustee or the employer sponsoring the plan is a member or if some percentage of plan participants are members, for example, 25%. NCUA further believes extending full coverage to all participants, regardless of membership status, is both fair and reasonable for two reasons. First, it is extremely likely that employers or trustees will only establish employment benefit plans at a credit union if there is already some membership connection, for example, the employee group is within the field of membership of the credit union. Second, participants may not be able to control or readily determine where their interests in an employee benefit plan are maintained and, therefore, as a matter of fairness to participants, all should be assured of full, pass-through coverage.

Accordingly, NCUA seeks comment on whether this pass-through coverage should be: (1) Provided as it is currently, meaning non-member interests will have limited aggregate insurance; (2) extended to provide full coverage to non-member participants; or (3) extended to provide full coverage to non-member participants as long as there is a membership connection such as the employer or trustee is a member or if some percentage of plan participants are members.

D. Public Unit Accounts

The interim final rule changes the heading of § 745.10 from ''Public Unit Accounts'' to ''Accounts Held By Government Depositors'' to reflect the amendments to 12 U.S.C. 1787(k)(2) by the Conforming Amendments Act. The interim rule does not make any substantive changes to § 745.10 other than replacing references to $100,000 with references to the SMSIA.

E. 529 Plans

Section 529 of the IRC provides tax benefits for qualified tuition programs (529 programs). 26 U.S.C. 529(a). These programs include prepaid tuition programs, which educational institutions may create, as well as tuition savings programs that states or public instrumentalities sponsor. 26 U.S.C. 529(b)(1). Section 529 defines a tuition savings program as a program under which a person ''may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account,'' and which meets certain requirements. 26 U.S.C. 529(b)(1)(A)(ii). A participant in a 529 program acquires an interest in a state trust and does not directly deposit funds with a financial institution. Assuming that the assets of a 529 program include deposits with a credit union, the state investment trust could be viewed as the custodian of the deposits. While the National Credit Union Share Insurance Fund could insure a state investment trust as a public unit account, treating 529 program accounts as public unit accounts leads to an undesired result. Under the NCUA's insurance regulation, public units are insured in the aggregate up to $100,000 per custodian for regular share accounts and share certificates. See 12 CFR 745.10.

In April 2005, a state contacted NCUA about share insurance coverage for its tuition savings plan established under section 529 of the IRC. 26 U.S.C. 529. The state asked NCUA to adopt a rule similar to the FDIC's interim final rule to allow pass-through coverage for participants in the 529 program. 70 FR 33689 (June 9, 2005). The FDIC's interim final rule provided pass-through coverage to each participant aggregated with the participant's other single ownership accounts at the same financial institution up to $100,000, provided that each deposit may be traced to one or more particular investors and the FDIC's disclosure rules for pass-through coverage had been satisfied. 70 FR at 33691.

NCUA's Office of General Counsel (OGC) issued a legal opinion concluding that NCUA's insurance rules provide pass-through coverage to a 529 program participant if the participant is a member of the federally insured credit union where the 529 program account is maintained and if the account is properly titled. OGC Legal Opinion 05–0630 (July 1, 2005). This interpretation of the NCUA rule reached the same result in terms of coverage and maintained parity with the account insurance provided by the FDIC in its interim rule, although on a slightly different basis. The legal opinion also noted that NCUA would consider amending its insurance rule when FDIC issued a final one. *Id.* In October 2005, FDIC finalized its interim rule without any substantive changes. Thus, NCUA is incorporating OGC Legal Opinion 05–0630 into part 745 to clarify that share insurance coverage is available for 529 program participants.

In 529 programs of which NCUA is aware, the state holds 529 program funds as an agent for the participants. Accordingly, these accounts are insured as single ownership accounts under NCUA's share insurance rule covering

accounts held by agents or nominees. 12 CFR 745.3(a)(2).

Agent or nominee accounts are insured as individual accounts and are aggregated with all other individual accounts a participant has at the same credit union up to the SMSIA. To be fully insured, the participant's interest must be ascertainable from the credit union's or state's records. 12 CFR 745.2(c)(2). Therefore, careful titling of the accounts and proper records are necessary to ensure each participant receives individual account coverage. NCUA insurance regulations require a participant to be a member of the credit union or otherwise eligible to maintain an insured account in the credit union. 12 CFR 745.0.

F. Share Accounts Denominated in a Foreign Currency

The FCU Act authorizes the NCUA Board to limit the type of share payments a credit union may accept and to determine the types of funds that will be insured. 12 U.S.C. 1766, 1782, 1782(h)(3). If NCUA permits federal credit unions (FCUs) to accept member accounts denominated in a foreign currency, then NCUA must insure them. 12 U.S.C. 1781(a). Under the FCU Act's nondiscrimination provision, NCUA must provide the same coverage for member accounts of state-chartered credit unions that comply with the FCU Act and NCUA regulations. *Id.*; 12 U.S.C. 1790.

Under the incidental powers rule, FCUs can provide monetary instrument services that enable members to purchase, sell, or exchange various currencies. 12 CFR 721.3(i). FCUs can use their accounts in foreign financial institutions to facilitate transfers and negotiations of members' share drafts denominated in foreign currencies or engage in monetary transfer services. FCU funds deposited in a foreign financial institution are not insured by NCUA and may not be insured by the foreign country. Consequently, NCUA has highlighted the need for FCUs to exercise due diligence to ensure the foreign financial institutions with which it has accounts are financially sound, suitably regulated, and authorized to accept its transactions before opening any accounts. OGC Legal Opinion 99–1031 (December 9, 1999). FCUs assume the risk of currency fluctuations when they maintain an account in a foreign financial institution. NCUA recognized this risk and, before adopting § 721.3(i), had recommended FCUs either purchase or deposit only the amount of foreign currency needed to satisfy immediate short-term needs of their members. OGC Legal Opinions 99–1031 (December 9, 1999); 90–0637 (June 29, 1990).

While the FCU Act does not prohibit FCUs from accepting foreign-denominated shares, potential safety and soundness concerns associated with currency fluctuations have kept FCUs from offering these accounts. Accordingly, NCUA has only permitted FCUs to provide foreign currency services as an incidental powers activity rather than allowing FCUs to maintain shares in foreign currency. *See* OGC Legal Opinions 89–0822 (September 15, 1989); 89–0613 (July 31, 1989). Simply accepting shares denominated in a foreign currency presents little risk, if any, to credit unions. NCUA believes federally insured credit unions can effectively manage the risks associated with accepting shares denominated in foreign currency and is issuing a rule similar to the FDIC. Lending or investing funds in foreign currency still presents an increased risk to credit unions due to currency fluctuations that cannot be easily ameliorated, so this rule does not permit lending or investing funds denominated in a foreign currency.

Before now, NCUA has not expressly addressed the insurability of member accounts denominated in foreign currency except in the foreign branching regulation, where NCUA has limited the insurability of member accounts at foreign branches of an insured credit union to accounts denominated in U.S. dollars. 12 CFR 741.11(e). This rule provides share insurance coverage for shares denominated in a foreign currency and for conversion of foreign currency to U.S. dollars before an insurance payout in the event a credit union is liquidated similarly to the FDIC.

The FDIC provides insurance coverage for deposits at insured banks denominated in a foreign currency equal to the amount of U.S. dollars equivalent in value to the amount of the deposit denominated in the foreign currency up to the SMDIA. 12 CFR 330.3(c). Under the FDIC rule, if an insured bank is liquidated, the value of the foreign currency deposit is determined using the rate of exchange quoted by the Federal Reserve Bank of New York at noon on the day the bank defaults, unless the deposit agreement states otherwise. *Id.* Deposits payable solely outside of the U.S. and its territories are not insurable deposits. 12 CFR 330.3(e).

As noted above, accepting shares denominated in a foreign currency presents little risk. If a credit union is able to fund an operation that is fully integrated and supportable in foreign currency, it will have minimized its exposure to risk of loss due to currency fluctuation. Actually, the risk would shift to the members who deposit and withdraw funds denominated in the foreign currency.

This interim final rule permits credit unions to accept shares denominated in foreign currency and provides share insurance coverage of those shares. By accepting shares denominated in foreign currencies, credit unions can better serve members who, for example, receive payments in foreign currencies. Additionally, members who deposit shares denominated in a foreign currency will have the same share insurance coverage that is available for share accounts denominated in U.S. dollars. Credit unions must carefully consider any risk associated with maintaining members' shares denominated in foreign currencies before offering this service to their members. Federally insured credit unions that maintain members' shares denominated in a foreign currency will receive instructions on how to report these deposits on 5300 call reports.

This rule does not permit insured credit unions to make loans or invest funds denominated in foreign currencies. These transactions may require credit unions to participate in trading currency, also called hedging or currency swaps, to manage the risk of potential loss due to currency fluctuations. While hedging may help credit unions protect against risks associated with changing currency rates, NCUA rules currently prohibit natural person FCUs from investing in derivatives like currency swaps. 12 CFR 703.16(a). FCUs that wish to engage in swaps to hedge against currency fluctuation must apply for NCUA approval as a part of a properly designed investment pilot program. 12 CFR 703.19.

G. Interim Final Rule

The NCUA Board is issuing this rule as an interim final rule because there is a strong public interest in having in place advantageous and consumer oriented share insurance rules that enhance share insurance coverage for members, clarify legal positions already taken by NCUA, and maintain parity with the FDIC. This interim final rule is consistent with the regulatory changes FDIC must make under the Reform Act and Conforming Amendments Act. Additionally, this rule clarifies and incorporates prior interpretations of the share insurance rules that provide coverage for 529 programs and share accounts denominated in foreign currencies. Accordingly, for good cause, the Board finds that, pursuant to 5

U.S.C. 553(b)(3), notice and public procedures do not apply or are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule will be effective April 1, 2006, which is less time than the ordinarily required 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective on April 1, 2006, the NCUA Board encourages interested parties to submit comments.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule only clarifies and improves the share insurance coverage available to credit union members, without imposing any regulatory burden. The interim final amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the interim final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The interim final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this interim final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

List of Subjects in 12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board on March 16, 2006.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 2. Section 745.1 is amended by adding a new paragraph (e) to read as follows:

§ 745.1 Definitions.

* * * * *

(e) The term ''standard maximum share insurance amount'' or ''SMSIA'' means $100,000, adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)). The current SMSIA is $100,000. All examples in this regulation (12 CFR part 745) and appendix, unless otherwise noted, use the current SMSIA of $100,000.

§ 745.2 [Amended]

■ 3. Section 745.2(d)(2) is amended by removing ''basic insured amount of $100,000'' and adding in its place ''SMSIA.''

■ 4. Section 745.3(a) and (b) are amended by removing ''$100,000'' each time it appears and adding in its place ''the SMSIA'', and paragraph (a)(2) is amended by adding a sentence to the end to read as follows:

§ 745.3 Single Ownership Accounts.

(a) * * *

(2) * * * This applies to interests created in qualified tuition savings programs established in connection with section 529 of the Internal Revenue Code (26 U.S.C. 529).

* * * * *

§ 745.4 [Amended]

■ 5.Section 745.4 is amended as follows:

■ a. Paragraph (b) is amended by removing ''$100,000'' and adding in its place ''the SMSIA''.

■ b. Paragraph (c) is amended by removing ''$100,000'' and adding in its place ''the SMSIA'' and by removing ''$200,000'' and adding in its place ''twice the SMSIA''.

■ c. Paragraph (e) is amended by removing ''$100,000'' and adding in its place ''the SMSIA''.

■ d. Paragraph (f) is amended by removing ''$100,000'' and adding in its place ''the SMSIA''.

§ 745.5 [Amended]

■ 6. Section 745.5 is amended by removing ''$100,000'' and adding in its place ''the SMSIA''.

§ 745.6 [Amended]

■ 7. Section 745.6 is amended by removing ''$100,000'' each time it appears and adding in its place ''the SMSIA''.

■ 8. Section 745.7 is added to read as follows:

§ 745.7 Shares accepted in a foreign currency.

An insured credit union may accept shares denominated in a foreign currency. Shares denominated in a foreign currency will be insured in accordance with this part to the same extent as shares denominated in U.S. dollars. Insurance for shares denominated in foreign currency will be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the shares denominated in the foreign currency as of close of business on the date of default of the insured credit union. The exchange rates to be used for such conversions are the 12 p.m. rates (the ''noon buying rates for cable transfers'') quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured credit union, unless the share agreement provides that some other widely recognized exchange rates are to be used for all purposes under that agreement.

§ 745.8 [Amended]

■ 9. Section 745.8 is amended by removing ''$100,000'' each time it appears and adding in its place ''the SMSIA''.

§ 745.9–1 [Amended]

■ 10. Section 745.9–1 is amended by removing ''$100,000'' and adding in its place ''the SMSIA''.

■ 11. Section 745.9–2 is revised to read as follows:

§ 745.9–2 Retirement and other employee benefit plan accounts.

(a) *Pass-through share insurance.* Any shares of an employee benefit plan in an insured credit union shall be insured on a ''pass-through'' basis, in the amount of up to the SMSIA for the non-contingent interest of each plan participant, in accordance with § 745.2 of this part. An insured credit union that is not ''well capitalized'' or ''adequately capitalized'', as those terms are defined in 12 U.S.C. 1790d(c), may not accept employee benefit plan deposits. The terms ''employee benefit plan'' and ''pass-through share insurance'' are given the same meaning in this section as in 12 U.S.C. 1787(k)(4).

(b) *Treatment of contingent interests.* In the event that participants' interests in an employee benefit plan are not capable of evaluation in accordance with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the NCUA with respect to all such interests shall not exceed the SMSIA in the aggregate.

(c)(1) *Certain retirement accounts.* Shares in an insured credit union made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $250,000 (which amount shall be subject to inflation adjustments as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act, except that $250,000 shall be substituted for $100,000 wherever such term appears in such section) per account:

(i) Any individual retirement account described in section 408(a) (IRA) of the Internal Revenue Code (26 U.S.C. 408(a)) or similar provisions of law applicable to a U.S. territory or possession;

(ii) Any individual retirement account described in section 408A (Roth IRA) of the Internal Revenue Code (26 U.S.C. 408A) or similar provisions of law applicable to a U.S. territory or possession; and

(iii) Any plan described in section 401(d) (Keogh account) of the Internal Revenue Code (26 U.S.C. 401(d)) or similar provisions of law applicable to a U.S. territory or possession.

(2) Insurance coverage for the accounts enumerated in paragraph (c)(1) of this section is based on the present vested ascertainable interest of a participant or designated beneficiary. For insurance purposes, IRA and Roth IRA accounts will be combined together and insured in the aggregate up to $250,000 (which amount shall be subject to inflation adjustments as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act, except that $250,000 shall be substituted for $100,000 wherever such term appears in such section). A Keogh account will be separately insured from an IRA account, Roth IRA account or, where applicable, aggregated IRA and Roth IRA accounts.

§ 745.9–3 [Removed]

■ 12. Section 745.9–3 is removed.

■ 13. Section 745.10 is amended by revising the section heading as set forth below and by removing ''$100,000'' each time it appears and adding in its place ''the SMSIA''.

§ 745.10 Accounts held by government depositors.

* * * * *

■ 14. The Appendix to Part 745 is amended as follows:

■ a. Section E is amended by removing the heading ''How are Public Unit Accounts Insured?'' and adding in its place ''How are Accounts Held by Government Depositors Insured?''

■ b. The last sentence of the second paragraph of Section G is amended by removing the words ''the basic insured amount of''.

■ c. The seventh paragraph of Section G is amended by removing ''$100,000'' and adding in its place ''$250,000''.

■ d. Example 3(a) of Section G is amended by removing ''(§ 745.9–1)'' and adding in its place ''(§ 745.9–2)''.

■ e. Example 3(b) of Section G is amended by removing ''(§ 745.9–1)'' and adding in its place ''(§ 745.9–2)''.

■ f. Example 4 of Section G is revised to read as follows:

Appendix to Part 745—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

* * * * *

G. How are Trust Accounts and Retirement Accounts Insured?

* * * * *

Example 4

Question: Member A has an individual account of $100,000 and establishes an IRA account and accumulates $250,000 in that account. Subsequently, A becomes self-employed and establishes a Keogh account in the same credit union and accumulates $250,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured as follows: The individual account for $100,000, the maximum for that type of account; the IRA account for $250,000, the maximum for that type of account; and the Keogh account for $250,000, the maximum for that type of account. (§§ 745.3(a)(1) and 745.9–2).

* * * * *

[FR Doc. 06–2754 Filed 3–22–06; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22364; Directorate Identifier 2005–NE–26–AD; Amendment 39–14526; AD 2006–06–17]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1B, 1D, and 1D1 Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Arriel 1B, 1D, and 1D1 turboshaft engines. This AD requires inspecting the 2nd stage nozzle guide vanes (NGV2) for wall thickness. This AD results from one instance of a fractured 2nd stage turbine blade followed by an uncommanded engine shutdown. We are issuing this AD to detect and prevent perforation of the NGV2 that could cause fracture of a turbine blade that could result in an uncommanded engine in-flight shutdown on a single-engine helicopter.

DATES: This AD becomes effective April 27, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 27, 2006.

ADDRESSES: You can get the service information identified in this AD from Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Turbomeca Arriel 1B, 1D, and 1D1 turboshaft engines. We published the proposed AD in the **Federal Register** on November 4, 2005 (70 FR 67099). That action proposed to require inspecting the NGV2 for wall thickness.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

Request To Include an End Date

One commenter requests that we include an end date in the AD, of December 31, 2006. This end date would help manage the risk of failure, while causing the least amount of disruption in the form of helicopter grounding.

We agree. We changed compliance paragraph (e) to read ''You are responsible for having the actions required by this AD performed at the next shop visit or the next accessibility of the NGV2 after the effective date of this AD, whichever occurs first, but no later than December 31, 2006, unless the actions have already been done.''

Clarification of Unsafe Condition

For clarification that the AD is applicable to only single-engine installations, we changed the unsafe condition in the AD to read ''We are issuing this AD to detect and prevent perforation of the 2nd stage nozzle guide vanes (NGV2) that could cause fracture of a turbine blade that could result in an uncommanded engine in-flight shutdown on a single-engine helicopter.''

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 571 engines installed on helicopters of U.S. registry. We also estimate that it will take about 0.5 work hours per engine to perform the actions, and that the average labor rate is $65 per work hour. No parts are required. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $18,558.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–06–17 Turbomeca: Amendment 39–14526. Docket No. FAA–2005–22364; Directorate Identifier. 2005–NE–26–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 1B, 1D, and 1D1 certain turboshaft engines, modified to the TU 202 standard. These engines are installed on, but not limited to, Eurocopter France AS350BA, AS350B, AS350B1, and AS350B2 helicopters.

Unsafe Condition

(d) This AD results from one instance of a fractured 2nd stage turbine blade followed by an uncommanded engine shutdown. We are issuing this AD to detect and prevent perforation of the 2nd stage nozzle guide vanes (NGV2) that could cause fracture of a turbine blade that could result in an uncommanded engine in-flight shutdown on a single-engine helicopter.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next shop visit or the next accessibility of the NGV2 after the effective date of this AD, whichever occurs first, but no later than December 31, 2006, unless the actions have already been done.

Inspect NGV2

(f) Inspect the thickness of the material on each NGV2 using the Instructions to be Incorporated of Turbomeca Mandatory Service Bulletin (MSB) No. A292 72 0231, Update No. 5, dated July 22, 2004. Replace the NGV2 if the vane thickness is below the defined criteria.

(g) Inspections carried out before the effective date of this AD, using an earlier update of MSB No. A292 72 0231, are acceptable alternatives to the requirements of this AD.

(h) Information regarding NGV2s that have already had the actions required by this AD done and are exempt from the inspections using paragraph (e) of this AD can be found in MSB No. A292 72 0231, Update No. 5, dated July 22, 2004.

Definitions

(i) For the purposes of this AD the following definitions apply:

(1) A shop visit is defined as introduction of the engine into a shop for the purposes of deep maintenance and the separation of a major mating flange.

(2) Accessibility of the NGV2 is defined as removal of the NGV2 from the engine regardless of the location or reason for removal.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) DGAC airworthiness directive No. F–2004–088 R1 also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Turbomeca Mandatory Service Bulletin No. A292 72 0231, Update No. 5, dated July 22, 2004, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15 for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on March 16, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–2760 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23269; Directorate Identifier 2005–NE–50–AD; Amendment 39–14525; AD 2006–06–16]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines (Formerly Textron Lycoming) AEIO–360, IO–360, O–360, LIO–360, and LO–360 Series Reciprocating Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Lycoming Engines (formerly Textron Lycoming) AEIO–360, IO–360, O–360, LIO–360, and LO–360 series reciprocating engines. This AD requires replacing certain crankshafts. This AD results from a crankshaft failure in a Lycoming LO–360–A1H6 reciprocating engine. We are issuing this AD to prevent failure of the crankshaft, which could result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

DATES: This AD becomes effective April 27, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 27, 2006.

ADDRESSES: You can get the service information identified in this AD from Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or on the Internet at *http://www.Lycoming.Textron.com.*

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7337; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain Lycoming Engines (formerly Textron Lycoming) AEIO–360, IO–360, O–360, LIO–360, and LO–360 series reciprocating engines. We published the proposed AD in the **Federal Register** on December 27, 2005 (70 FR 76431). That action proposed to require replacing certain crankshafts within 50 hours time-in-service or 6 months after the effective date of this AD, whichever is earlier.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 282 engines installed on aircraft of U.S. registry. We estimate that it will take the following work hours to perform the inspection and crankshaft replacement:

Type of application	Work-hours per engine	Number of engines affected
Constant-Speed Propeller	86	251
Fixed-Pitch Propeller	84.5	31

We estimate the average labor rate is $65 per work hour and that required parts for each engine will cost about $15,300. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $5,887,957. Lycoming Engines informed us that they intend to supply the new parts at no charge and reimburse labor costs when authorized, for engine removal and reinstallation, using the current revision of Lycoming's Removal and Installation Labor Allowance Guidebook. These actions would substantially reduce the estimated cost of this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–06–16 Lycoming Engines (Formerly Textron Lycoming): Amendment 39–14525. Docket No. FAA–2005–23269; Directorate Identifier 2005-NE–50-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Lycoming Engines AEIO–360, IO–360, O–360, LIO–360, and LO–360 series reciprocating engines, manufactured new or rebuilt, overhauled, or that had a crankshaft installed after March 1, 1999. These engines are installed on, but not limited to, the following aircraft:

Engine model	Manufacturer	Aircraft model
AEIO–360–A1B6	Moravan	Z242L Zlin
	Scottish Avia	Bulldog
	Valmet	L–70 Vinka
AEIO–360–A1E6	Integrated Systems	Omega
IO–360–A1B6	Aircraft Manufacturing Factory	Mushshak
	Beech	C–24R Sierra or 200 Sierra
	Cessna	R–G Cardinal
	Korean Air	Chang Gong–91
	Lake	LA–4–200 Buccaneer
	Mooney	M–20–J
	Partenavia	P–68 Series Observer
	Saab	MFI–15 Safari or MFI–17 Supporter
	Scottish Avia	Bulldog
	Socata	TB–200
IO–360–A1B6D	Cessna	R–G Cardinal
	Mooney	M–201
	Siai Marchetti	S–205
IO–360–A3B6	Mooney	M–201
	Mod Works	Trophy 212 Conversion
IO–360–A3B6D	Mooney	M20J–201
IO–360–C1C6	Piper	PA–28R–201 Arrow
	Ruschmeyer	MF–85
IO–360–B1G6	American	Blimp
IO–360–C1G6	Zeppelin	Blimp
IO–360–C1E6	Piper	PA–34–200 Seneca I
LO–360–A1G6D	Beech	76 Duchess
LO–360–A1H6	Piper	PA–44–180 Seminole
O–360–A1F6	Cessna	177 Cardinal

Engine model	Manufacturer	Aircraft model
O–360–A1F6D	Cessna	177 Cardinal
O–360–A1G6D	Beech	76 Duchess
O–360–A1H6	Piper	PA–44–180
O–360–E1A6D	Piper	PA–44–180
O–360–F1A6	Cessna	C–172RG Cutlass RG
IO–360–C1D6	Sold as a spare engine.	
LIO–360–C1E6	Sold as a spare engine.	
LO–360–E1A6d	Sold as a spare engine.	
LIO–360–C1D6	Sold as a spare engine.	

Unsafe Condition

(d) This AD results from a crankshaft failure in a Lycoming LO–360–A1H6 reciprocating engine. We are issuing this AD to prevent failure of the crankshaft, which could result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

Compliance

(e) You are responsible for having the actions required by this AD performed within 50 hours time-in-service or 6 months after the effective date of this AD, whichever is earlier, unless the actions have already been done.

(f) If Lycoming Engines manufactured new, rebuilt, overhauled, or replaced the crankshaft in your engine before March 1, 1999, and you haven't had the crankshaft replaced, no further action is required.

(g) If Table 1 of Supplement No. 1 to Lycoming Mandatory Service Bulletin (MSB) No. 566, dated November 30, 2005, lists your engine serial number (SN), use Table 2 of Supplement No. 1 to verify if your crankshaft SN is listed.

(h) If Table 1 of Supplement No. 1 to Lycoming MSB No. 566, dated November 30, 2005, does not list your engine SN, use Table 2 of Supplement No. 1 to verify if your crankshaft SN is listed, if an affected crankshaft was installed as a replacement.

(i) If Table 2 of Supplement No. 1 to Lycoming Engines MSB No. 566, dated November 30, 2005, lists your crankshaft SN, replace the crankshaft with a crankshaft that is not listed in Table 2 of Supplement No. 1 to Lycoming MSB No. 566, dated July 11, 2005.

(j) The engine and crankshaft SNs listed in Table 1 and Table 2 of Supplement No.1 to Lycoming Engines MSB No. 566 are different from the engine and crankshaft SNs affected by Lycoming MSBs No. 552, No. 553 and No. 566; and ADs 2002–19–03 and 2005–19–11.

Prohibition Against Installing Certain Crankshafts

(k) After the effective date of this AD, do not install any crankshaft that has a SN listed in Table 2 of Supplement No. 1 to Lycoming MSB No. 566, dated November 30, 2005, into any engine.

Alternative Methods of Compliance

(l) The Manager, New York Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) None.

Material Incorporated by Reference

(n) You must use Lycoming Engines Supplement No. 1 to Mandatory Service Bulletin No. 566, dated November 30, 2005, to perform the crankshaft replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or go on the Internet at *http://www.Lycoming.Textron.com* for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on March 15, 2006.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–2759 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM05–33–001]

Revision of Rules of Practice and Procedure Regarding Issue Identification

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations regarding pleadings. The regulations are revised to eliminate, in all pleadings except requests for rehearing, a recent formatting requirement that the pleadings contain a section entitled ''Statement of Issues.''

DATES: *Effective Date:* The rule will become effective March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, GC–10, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–8521.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Order No. 663–A; Final Rule; Issued March 17, 2006

1. The Federal Energy Regulatory Commission (Commission) is revising its rules of practice and procedure to eliminate for all pleadings, except requests for rehearing, a recent change in Order No. 663 requiring that any issues a filer wishes the Commission to address be clearly set forth in a section of the pleading entitled ''Statement of

Issues'' and that ''any issue not so listed will be deemed waived.''[1] Several months of experience under the new rule has indicated that it is not necessary in the context of all pleadings; however the Commission is retaining the requirement as it applies to Rule 713, request for rehearing.

2. In Order No. 663, the Commission stated that it believed the changes to 18 CFR 385.203(a)(7) and 385.713 would benefit both the Commission and participants by providing certainty with respect to issues being raised. In the meantime, the requirement for a ''Statement of Issues'' section has not proven particularly helpful for a number of common pleadings, and has led to confusion on the part of filers. For instance, many motions to intervene do not contest specific issues in the pleadings. Filers in those types of situations have puzzled over what information, if any, belongs in a Statement of Issues for their motion to intervene. To eliminate this confusion and simplify the pleadings format, the requirement for a separate Statement of Issues section is being eliminated from Rule 203. Parties will not be prejudiced by this formatting change, given that § 385.203(a)(7) will maintain its original requirement that pleadings include, as appropriate, ''[t]he position taken by the participant filing any pleading, to the extent known when the pleading is filed, and the basis in fact and law for such position. * * *'' This will provide adequate notice for the issues raised in the pleadings. This rule deletes the following language from § 385.203(a)(7): ''including a separate section entitled ''Statement of Issues,'' listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying; any issue not so listed will be deemed waived.''

3. However, the Commission finds that a ''Statement of Issues'' requirement is necessary in the context of requests for rehearing. Requiring the party seeking rehearing to specify each issue being raised in a separate paragraph benefits the Commission by clarifying the issues it needs to address on rehearing. More importantly, it benefits parties seeking rehearing. As noted in Order No. 663, both the Natural Gas Act and Federal Power Act mandate that issues be raised on rehearing as a jurisdictional prerequisite to obtaining judicial review of a Commission order.[2] Order No. 663 at P 4. Courts have found no jurisdiction to address issues that were not raised on rehearing.[3] Therefore, the requirement for a separate section specifically enumerating issues raised on rehearing benefits parties seeking rehearing because it prevents them from having cases denied on appeal for failure to clearly raise the issue at the administrative level.

4. Moreover, requiring all issues to be set forth with specificity in separately enumerated paragraphs helps to ensure that the Commission will adequately address the issues raised in the rehearing request for purposes of judicial review. As noted in Order No. 663, there are numerous instances where appeals were denied because the court found that a petitioner's position was not clearly articulated before the Commission.[4]

5. This final rule also amends the language in Rule 713 to account for the now-eliminated requirement in Rule 203(a) to include a ''Statement of Issues'' section. Current Rule 713 states that requests for rehearing must ''[c]onform to the requirements in Rule 203(a), which are applicable to pleadings, including, but not limited to, the requirement for a separate section entitled 'Statement of Issues,' listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; and * * *.''[5] This section is being revised to state that requests for rehearing must ''[c]onform to the requirements in Rule 203(a), which are applicable to pleadings, and, in addition, include a separate section entitled 'Statement of Issues,' listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and * * *.''

6. The rehearing rule at § 385.713(c)(2) continues to specify that issues not so raised will be deemed to have been waived. As noted in Order No. 663 at P 7, this is consistent with existing Rule 2001, which states that filings that fail to meet applicable statutes, rules or orders may be rejected in full or all or part of the filing may be stricken.[6]

7. The revisions adopted in this rule are more appropriately characterized as a clarification of the Commission's rules rather than a change in Commission policy or a significant revision of the existing rules of practice and procedure. Rule 713, prior to the enactment of Order No. 663, required parties filing for rehearing to ''state concisely the alleged error in the final decision or final order.'' However, Rule 713 was neither adhered to uniformly nor applied in pleadings consistently. Therefore, we are requiring that all rehearing requests include a separately designated section and an itemized and enumerated Statement of Issues, which will help eliminate ambiguities among parties, the Commission, and the reviewing courts, as discussed above.

8. The changes that are made in this rule eliminate one requirement in Rule 203(a)(7) and make necessary amendments to Rule 713(c)(2) to reflect the change in Rule 203(a)(7).

[1] *Revision of Rules of Practice and Procedure Regarding Issue Identification,* Order No. 663, 70 FR 55723 at P 5 (September 23, 2005), III FERC Stats. & Regs. ¶ 31,193 (September 16, 2005).

[2] Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b), states that ''No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure to do so.'' Section 313(a) of the Federal Power Act, 16 U.S.C. 825l(a) states that ''The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. * * * No proceeding to review any orders of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.''

[3] *See DTE Energy Co.* v. *FERC,* 394 F.3d 954, 960 (DC Cir. 2005) (finding petitioner's failure to seek rehearing ''fatal'' to its court challenge, noting that ''[t]he mandatory requirement of filing a petition for rehearing is designed to afford the Commission an opportunity to invoke its expertise or to correct any errors prior to judicial review''); *Fuel Safe Washington* v. *FERC,* 389 F.3d 1313 (10th Cir. 2004) (''the presentation of a ground of objection in an application for rehearing by the Commission is an indispensable prerequisite to the exercise of power of judicial review of the order on such ground,'' quoting *Pan Am Petroleum Corp.* v. *FPC,* 268 F.2d 827, 830 (10th Cir. 1959)).

[4] *See, e.g., Intermountain Municipal Gas* v. *FERC,* 326 F.3d 1282 at 1285 (DC Cir. 2003) (finding no jurisdiction because ''so general and vague a statement'' in a petition for rehearing fails to meet the requirement in section 19(b) of the Natural Gas Act, which requires that objections be '''specifically urged,''' quoting *Louisiana Interstate Gas Corp.* v. *FERC,* 962 F.2d 37, 41 (DC Cir. 1992)); *California Dep't of Water Resources* v. *FERC,* 341 F.3d 906, 911 (9th Cir. 2003) (issue not preserved for review where petitioner ''raised the issue in a single sentence at the end of an unrelated section of its request for rehearing, without citing the statutory language it now urges [the court] to consider''), *reh'g en banc denied,* 361 F.3d 517 (2004); *California Dep't of Water* v. *FERC,* 306 F.3d 1121, 1126 (DC Cir. 2002) (court dismisses petition for judicial review because issue raised in a footnote ''does not properly present, and thus does not preserve, the issue the intervenors wish to argue''); and *Coalition for the Fair and Equitable Regulation of Docks on the Lake of the Ozarks* v. *FERC,* 297 F.3d 771, 777 (8th Cir. 2002) (declining to find jurisdiction where petitioner's ''brief does not show that it raised the * * * arguments in any recognizable form''), *reh'g en banc denied,* 2002 U.S. App. LEXIS 21769 (8th Cir. Oct. 17, 2002), *cert. denied,* 538 U.S. 960 (2003).

[5] 18 CFR 385.713(c)(2), as modified by Order No. 663, P 6.

[6] 18 CFR 385.2001(b)(2005).

Information Collection Statement

9. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12 (2005). This Final Rule contains no additional information reporting requirements, and is not subject to OMB approval.

Environmental Analysis

10. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[7] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural that do not substantially change the effect of the regulations being amended. This rule is procedural in nature and, therefore, falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

11. The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if a rule would not have such an effect. The Commission certifies that this rule will not have such an impact on small entities as it merely clarifies existing requirements. An analysis under the RFA, therefore, is not required.

Document Availability

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

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

14. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3673 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

Effective Date

15. These regulations are effective immediately upon publication in the **Federal Register**. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately upon publication. It concerns only a matter of procedure eliminating a requirement affecting formatting of filings.

16. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

17. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only a clarification of a matter of agency procedure and will not significantly affect regulated entities or the general public.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 385, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z; 3301–3432; 16 U.S.C. 791a–825r; 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1085 (1988).

■ 2. Section 385.203 is amended by revising paragraph (a)(7) to read as follows:

§ 385.203 Content of pleadings and tariff or rate filings (Rule 203).

(a) * * *

(7) The position taken by the participant filing any pleading, to the extent known when the pleading is filed, and the basis in fact and law for such position;

* * * * *

■ 3. Section 385.713 is amended by revising paragraph (c)(2) to read as follows:

§ 385.713 Request for rehearing (Rule 713).

* * * * *

(c) * * *

(2) Conform to the requirements in Rule 203(a), which are applicable to pleadings, and, in addition, include a separate section entitled ''Statement of Issues,'' listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and

* * * * *

[FR Doc. 06–2800 Filed 3–22–06; 8:45 am]

BILLING CODE 6717–01–P

[7] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (December 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[8] 5 U.S.C. 601–612 (1994).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Orbifloxacin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for revised animal safety labeling for orbifloxacin tablets used in dogs and cats for the management of diseases associated with susceptible bacteria.

DATES: This rule is effective March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 556 Morris Ave., Summit, NJ 07901, filed a supplement to NADA 141–081 for the veterinary prescription use of ORBAX (orbifloxacin) Tablets for management of diseases in dogs and cats associated with bacteria susceptible to orbifloxacin. The supplemental NADA provides for revised animal safety labeling, specifically, the addition of postapproval adverse drug experience information and fluoroquinolone class statements regarding retinal toxicity in cats. The supplemental NADA is approved as of March 3, 2006, and the regulations are amended in 21 CFR 520.1616 to reflect a current format. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Revise § 520.1616 to read as follows:

§ 520.1616 Orbifloxacin.

(a) *Specifications*. Each tablet contains 5.7, 22.7, or 68 milligrams (mg) orbifloxacin.

(b) *Sponsor*. See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount*. 2.5 to 7.5 mg per kilogram body weight once daily.

(2) *Indications for use*. For management of diseases associated with bacteria susceptible to orbifloxacin.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food producing animals.

Dated: March 14, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 06–2791 Filed 3–22–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–033–FOR]

Wyoming Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Wyoming abandoned mine land reclamation (AMLR) plan (hereinafter referred to as the ''Wyoming Plan'' or ''Plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed revisions and additions to its abandoned mine land (AML) Plan by removing phrases concerning liens for reclamation on private lands and by removing and adding words concerning contract eligibility. Wyoming intended to revise its Plan in accordance with the amendments required by OSM to make it consistent with SMCRA.

DATES: *Effective Date:* March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Richard W. Buckley, Acting Field Office Director, Telephone: 307/261–6550; E-mail address: *RBuckley@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Plan
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Wyoming Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On February 14, 1983, the Secretary of the Interior approved the Wyoming Plan. You can find general background information on the Wyoming Plan, including the Secretary's findings and the disposition of comments, in the February 14, 1983, **Federal Register** (48 FR 6536). You can also find later actions concerning Wyoming's Plan and plan amendments at 30 CFR 950.35 and outstanding required amendments at 30 CFR 950.36.

II. Submission of the Proposed Amendment

By letter dated September 1, 2005, Wyoming sent us an amendment to its Plan (Administrative Record No. WY–038–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to the required plan amendments at 30 CFR 950.36(a) and (b) to make its Plan consistent with SMCRA.

The provisions of the Wyoming Plan that it proposed to add to or revise were: Wyoming Statute (W.S.) 35–11–1206(a) and (b), liens for reclamation on private lands; and W.S. 35–11–1209, contract eligibility.

We announced receipt of the proposed amendment in the November 29, 2005, **Federal Register** (70 FR 71444). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. WY–038–4). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 29, 2005. We did not receive any comments.

III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment.

A. Revisions to Wyoming's Statute That Have the Same Meaning as the Corresponding Provisions of SMCRA

Wyoming proposed revisions to the following sections of its Plan to make it the same as, or similar to, the corresponding sections of SMCRA. These revisions are listed as a required amendment at 30 CFR 950.36(a):

1. W.S. 35–11–1206(a), remove language, ''not to exceed the cost of reclamation work or'' and ''whichever is less'' [sections 408(a) and (b) of SMCRA and the Federal regulations at 30 CFR part 882].
2. W.S. 35–11–1206(b), remove the language, ''of but not exceeding the cost of reclamation'' [see sections 408(a) and (b) of SMCRA and the Federal regulations at 30 CFR part 882].

Because these revisions in this Wyoming Statute make it substantively identical to SMCRA, no analysis is necessary. These revisions satisfy the required amendment at 30 CFR 950.36(a).

B. Revisions to Wyoming's Statute With No Corresponding Federal Regulations or Statute

1. W.S. 35–11–1209(a), remove the reference to ''professional'' and ''construction'' when referring to contractors.
2. W.S. 35–11–1209(a)(vii), added to read, ''Unresolved notice of violation.''

The Federal regulations at 30 CFR 874.16 and 875.20 indicate that bidder eligibility must be confirmed by OSM's Applicant Violator System (AVS) for each contract to be awarded. The existing version of W.S. 35–11–1209 did not include provisions for Wyoming to verify through AVS a contractor's eligibility; therefore we asked that Wyoming revise W.S. 35–11–1209 to indicate that any construction contractor or professional services contractor be confirmed through AVS as eligible to receive an AMLR contract prior to receiving the award. Wyoming is proposing here to not only add a reference to AVS' ''unresolved notices of violation,'' but also to remove ''professional'' and ''construction'' when referring to contractors so that W.S. 35–11–1209 refers to all contractors.

These revisions therefore satisfy the required amendment at 30 CFR 950.36(b)(1) and (2).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. WY–038–03), but did not receive any.

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming Plan (Administrative Record No. WY–038–03). We received no comments from any Federal agency.

V. OSM's Decision

Based on the above findings, we approve Wyoming's September 1, 2005, proposed amendment to the following statutory provisions as discussed herein:

W.S. 35–11–1206(a), and
W.S. 35–11–1206(b), and
W.S. 35–11–1209(a), and
W.S. 35–11–1209(a)(vii).

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof because each plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR part 884.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy

Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. 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.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 950

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 2006.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 950—WYOMING ABANDONED MINE LAND RECLAMATION PROGRAMS

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

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 950.35 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
September 1, 2005	March 23, 2006	W.S. 35–11–1206(a). W.S. 35–11–1206(b). W.S. 35–11–1209. W.S. 35–11–1209(vii).

■ 3. Amend § 950.36 by removing the text and revising the section heading as follows:

§ 950.36 Required abandoned mine land plan amendments. [Reserved]

[FR Doc. 06–2757 Filed 3–22–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 06–008]

RIN 1625–AA87

Security Zone; San Francisco Bay-Brooklyn Basin, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed security zone surrounding a portion of Coast Guard Island within the navigable waters of the Brooklyn Basin during an official change of command ceremony. This security zone is needed for national security reasons to protect the ceremony participants and guests from potential subversive acts. Entry into this security zone is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

DATES: This rule is effective from 8:30 a.m. on March 31, 2006 to 12 p.m. on March 31, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco 06–008 and are available for inspection or copying at the Waterways Safety Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ian Callander, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco at (415) 556–2950 extension 142, or the 24 hour Command Center at (415) 399–3547.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Based on the military function exception to the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking under 5 U.S.C. 553(b) and an effective date of 30 days after publication under 5 U.S.C. 553(d) are not required for this temporary final rule.

Background and Purpose

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

High ranking Coast Guard and government officials will be conducting and attending an official change of command ceremony on Coast Guard Island. Therefore, to address the aforementioned security concerns, and to take steps to prevent subversive acts against Coast Guard facilities, personnel, and high ranking government officials, the Coast Guard is establishing a security zone around a portion of Coast Guard Island during the ceremony. Due to these heightened security concerns, and the catastrophic impact an attack would have on the Coast Guard facilities, personnel, and its mission, establishment of a security zone for this event is a prudent action.

Discussion of Rule

The security zone will encompass all waters, extending from the surface to the sea floor, from 37°46′53″ N, 122°15′05″ W southward to 37°46′51″ N, 122°15′07″ W, thence westward to 37°47′00″ N, 122°15′21″ W, thence northward to 37°47′07″ N, 122°15′13″ W, thence eastward along the shoreline of Coast Guard Island back to the beginning. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port, or his designated representative. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to a portion of navigable waters, the effect of this regulation will not be significant because: (i) The zone encompasses only a small portion of the waterway; (ii) vessels are able to pass safely around the zone; and (iii) vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for Coast Guard facilities, personnel, and government officials attending the ceremony. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

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

We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by this security zone. This security zone will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and recreational fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Ian Callander, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco at (415) 556–2950 extension 142, or the 24 hour Command Center at (415) 399–3547.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where located under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–073, to read as follows:

§ 165.T11–073 Security Zone; San Francisco Bay-Brooklyn Basin, California.

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

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector San Francisco.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector San Francisco with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Locations.* The following area is a security zone:

(1) *San Francisco Bay.* All waters extending from the surface to the sea floor, from 37°46′53″ N, 122°15′05″ W southward to 37°46′51″ N, 122°15′07″ W, thence westward to 37°47′00″ N, 122°15′21″ W, thence northward to 37°47′07″ N, 122°15′13″ W, thence eastward along the shoreline of Coast Guard Island back to the beginning.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this security zone is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

(2) Persons desiring to transit the area of a security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, or his designated representative.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall

proceed as directed. The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by local law enforcement as necessary.

(e) *Effective period.* This section becomes effective at 8:30 a.m. on March 31, 2006, and will terminate at 12 p.m. on March 31, 2006.

Dated: March 10, 2006.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco, California.

[FR Doc. 06–2783 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[EPA–HQ–OPPT–2006–0118; FRL–7760–4]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment updates the table that lists the Office of Management and Budget (OMB) control numbers issued under PRA for information collection requirements contained in EPA's regulations that are promulgated in title 40 of the Code of Federal Regulations (CFR). This technical amendment adds new approvals published in the **Federal Register** since July 1, 2003, and removes expired and terminated approvals.

DATES: This rule is effective March 23, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0118. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.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 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: Melissa L. Chun, Regulatory Coordination Staff (7101M), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1605; e-mail address: *chun.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about OMB approval for information collections required by EPA regulations. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. Why is this Technical Amendment Being Issued?

This document updates the OMB control numbers listed in 40 CFR part 9 for various actions published in the **Federal Register** since July 1, 2003, and issued under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136), and the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 408). Under PRA, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are codified in title 40 of the CFR, after appearing in the preamble of the final rule. These numbers are listed in 40 CFR part 9, displayed in a subsequent publication in the **Federal Register**, or displayed by other appropriate means, such as on a related collection instrument or form, or as part of the instructions to respondents. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. In addition to displaying the applicable OMB control number in the final rule and on the applicable collection instruments, the Office of Prevention, Pesticides and Toxic Substances (OPPTS) has also typically listed the OMB control number in the table at 40 CFR 9.1 for regulations it has issued under TSCA, FIFRA, and FFDCA. With this technical amendment, OPPTS is updating the table in 40 CFR 9.1 to list the OMB control number assigned to several final rules that have published since its last update.

B. Why is this Technical Amendment Issued as a Final Rule?

The information collection activities referenced in this document were previously subject to public notice and comment as part of the rulemaking process, and this action does not in any way affect the referenced information collection activities or rulemakings. This action only amends the table at 40 CFR 9.1 to update the list of OMB control numbers listed there. Due to the technical nature of the table, EPA finds that further notice and comment about amending the table is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

C. What Specific Changes are Being Made?

Since July 1, 2003, EPA has taken several actions related to significant new use rules (SNURs) promulgated under TSCA section 5(a)(2). The paperwork burden associated with a new chemical SNUR is approved under OMB control number 2070–0012 (EPA ICR No. 0574), and under OMB control number 2070–0038 (EPA ICR No. 1188) when related to existing chemicals. These ICRs were first approved in the late 1980s and have been renewed every 3 years, with the latest approval for these ICRs published in the **Federal Register** on January 21, 2005 (70 FR 3195) (FRL–7862–6) for OMB control number 2070–0012, and on February 3, 2003 (68 FR 5288) (FRL–7446–7) for OMB control number 2070–0038. For futher information on this ICR, please refer to the docket.

EPA is removing several entries because the SNURs have been revoked. Since these provisions no longer exist, the corresponding listing in the table should be removed as well. EPA is adding several entries to reflect the promulgation of new SNURs. The table is amended to list these new sections, along with their corresponding OMB control number as identified in the final rule.

III. Statutory and Executive Order Reviews

This final rule implements technical amendments to 40 CFR part 9 to reflect

changes to OMB approvals under PRA. It does not otherwise impose or amend any requirements. As such, this action does not require review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). Nor does it impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal Government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. As such, it will not have any ''federalism implications'' as described by Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) or ''tribal implications'' as described by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), environmental justice-related issues that would require consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or otherwise involve anything that would have any adverse effect on the supply, distribution, or use of energy that would require consideration under Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

In addition, since this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

IV. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 of CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of March 23, 2006. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 16, 2006.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, the table is amended by removing under the undesignated center heading ''Significant New Uses of Chemical Substances'' § § 721.1710, 721.4200, 721.4240, and 721.4466.

■ 3. In § 9.1, the table is amended by adding the following sections under the undesignated center heading ''Significant New Uses of Chemical Substances'' and further amended by adding in numerical order by CFR designation a new undesignated center heading ''Reporting Requirements and Review Processes for Microorganisms'' and its entry § 725.1075 to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * *	* *
Significant New Uses of Chemical Substances	
* * *	* *
721.304	2070–0012
* * *	* *
721.330	2070–0012
* * *	* *
721.535	2070–0012
* * *	* *
721.647	2070–0012
* * *	* *
721.983	2070–0012
* * *	* *
721.1070	2070–0012
* * *	* *
721.1620	2070–0012
* * *	* *
721.1648	2070–0012
* * *	* *
721.1680	2070–0012
* * *	* *
721.1747	2070–0012
* * *	* *
721.2060	2070–0012
* * *	* *
721.2076	2070–0012
* * *	* *
721.2098	2070–0012
* * *	* *
721.2685	2070–0012
* * *	* *
721.2752	2070–0012
* * *	* *
721.3062	2070–0012
* * *	* *
721.3110	2070–0012
721.3130	2070–0012
721.3135	2070–0012
* * *	* *
721.3438	2070–0012
* * *	* *
721.3835	2070–0012
* * *	* *
721.4096	2070–0012
* * *	* *
721.4258	2070–0012
* * *	* *
721.5252	2070–0012
721.5253	2070–0012
* * *	* *
721.5288	2070–0012
* * *	* *
721.5293	2070–0012
* * *	* *
721.5315	2070–0012
* * *	* *
721.5340	2070–0012
* * *	* *
721.5358	2070–0012
* * *	* *
721.5546	2070–0012

40 CFR citation	OMB control No.
* * *	* *
721.5560	2070–0012
* * *	* *
721.5713	2070–0012
721.5718	2070–0012
* * *	* *
721.5762	2070–0012
* * *	* *
721.5905	2070–0012
721.5908	2070–0012
* * *	* *
721.5917	2070–0012
* * *	* *
721.5935	2070–0012
* * *	* *
721.6167	2070–0012
* * *	* *
721.7250	2070–0012
721.7255	2070–0012
* * *	* *
721.7270	2070–0012
* * *	* *
721.7290	2070–0012
* * *	* *
721.8130	2070–0012
721.8140	2070–0012
721.8145	2070–0012
* * *	* *
721.8340	2070–0012
* * *	* *
721.8485	2070–0012
* * *	* *
721.8940	2070–0012
721.8950	2070–0012
* * *	* *
721.9078	2070–0012
721.9079	2070–0012
* * *	* *
721.9501	2070–0012
* * *	* *
721.9506	2070–0012
* * *	* *
721.9511	2070–0012
* * *	* *
721.9572	2070–0012
* * *	* *
721.9640	2070–0012
* * *	* *
721.9674	2070–0012
* * *	* *
721.9929	2070–0012
* * *	* *
721.9959	2070–0012
* * *	* *
Reporting Requirements and Review Processes for Microorganisms	
725.1075	2070–0012
* * *	* *

[FR Doc. 06–2816 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0125; FRL–8047–1]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation No. 1; Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado on April 12, 2004. This revision makes a minor change to Colorado Regulation No. 1. The intended effect of this action is to make federally enforceable those provisions that EPA is approving. The EPA is taking this action under section 110 of the Clean Air Act (Act).

DATES: This rule is effective on May 22, 2006 without further notice, unless EPA receives adverse comment by April 24, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0125, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *webster.daniel@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0125. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.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 *http://www.regulations.gov* or e-mail. The *http://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 *http://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 additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Webster, Air and Radiation Program, Mail code 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6446, *webster.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. State of Colorado's April 12, 2004 Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. State of Colorado's April 12, 2004 Submittal

On April 12, 2004 the State of Colorado submitted a formal revision to its SIP. The SIP revision contains an amendment to section VIII.A of the Colorado Air Quality Control Commission Regulation No. 1. The amendment corrects a clerical error. Previously section VIII.A incorrectly referred to the Denver area's PM10 designation status as ''nonattainment'' even though the area had been redesignated to attainment. The state's SIP revision corrects the reference to read, ''the Denver PM10 Attainment/Maintenance Area.'' We are approving this change to section VIII.A. The Colorado Air Quality Control Commission adopted the amendment on June 19, 2003.

III. Final Action

EPA is approving a revision to Regulation No. 1, Section VIII.A adopted on June 19, 2003 and effective on August 30, 2003.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Colorado SIP revision that is the subject of this document does not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act. The April 12, 2004 submittal merely makes a clerical change to Colorado Regulation No. 1. Therefore, section 110(l) requirements are satisfied.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are merely approving a clerical change to Colorado's air rules. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective May 22, 2006 without further notice unless the Agency receives adverse comments by April 24, 2006. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 13, 2006.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(110) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(110) A Revision to the State Implementation Plan was submitted by the State of Colorado on April 12, 2004. The revision corrects a clerical error in Section VIII.A of Regulation No. 1.

(i) Incorporation by reference.

(A) Colorado Regulation No. 1, 5CCR 1001–3, Section VIII.A, adopted June 19, 2003, effective August 31, 2003.

[FR Doc. 06–2812 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–0556a; FRL–8046–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from components at petroleum refineries, chemical plants, light crude oil production facilities, and natural gas production and processing facilities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on May 22, 2006 without further notice, unless EPA receives adverse comments by April 24, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2005–0556a, by one of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov.* Follow the online instructions.
2. E-mail: *steckel.andrew@epa.gov.*
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in

either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the date that they were adopted by the SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4403	Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities.	04/20/05	07/15/05
SJVUAPCD	4409	Components at Light Crude Oil Production Facilities, Natural Gas Production Facilities, and Natural Gas Processing Facilities.	04/20/05	07/15/05
SJVUAPCD	4451	Valves, Pressure Relief Valves, Flanges, Threaded Connections, and Process Drains at Petroleum Refineries and Chemical Plants.	04/20/05	07/15/05
SJVUAPCD	4452	Pump and Compressor Seals at Petroleum Refineries and Chemical Plants	04/20/05	07/15/05
SJVUAPCD	4455	Components at Petroleum Refineries, Gas Liquids Processing Facilities, and Chemical Plants.	04/20/05	07/15/05

On August 18, 2005, we found these rule submittals met the completeness criteria in 40 CFR part 51, appendix V. The State must meet these criteria before formal EPA review may begin.

B. Are there other versions of these rules?

There are previous versions of Rules 4403 and 4452 in the SIP. We last acted on Rules 4403 and 4452 on February 1, 1996 (see 61 **Federal Register** (FR) 3579) and November 16, 2001 (see 66 FR 57666), respectively. Since our actions, CARB has made no intervening submittals of these rules. Rule 4451 was adopted on April 11, 1991 and revised subsequently, but SJVUAPCD has not submitted the rule to EPA for SIP incorporation until now. Finally, Rules 4409 and 4455 are newly adopted and submitted rules; consequently, there are no previous versions of these rules in the SIP.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. The submitted rules concern fugitive emissions from various components at petroleum refineries, chemical plants, crude oil production facilities, and natural gas production and processing facilities. The general purpose of these rules is to reduce the number and severity of leaking components by regular inspection, repair, and replacement requirements, as well as mandating violations and penalties above a certain leak threshold. SJVUAPCD has amended Rules 4403, 4451, and 4452 causing them to expire by April 20, 2006. In turn, Rules 4409 and 4455, consistent with their compliance schedules, will replace Rules 4403, 4451, and 4452. Specifically, Rule 4409 is to replace Rule 4403 and Rule 4455 is to replace Rule 4451 and Rule 4452.

EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates a 1-hour ozone nonattainment area (see 40 CFR part 81), so Rules 4403, 4409, 4451, 4452, and 4455 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. Issues Relating to VOC Regulation Cut-points, Deficiencies, and Deviations, EPA, May 25, 1988 (the Bluebook).
3. Guidance Document for Correcting Common VOC & Other Rule Deficiencies, EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control Technique Guideline on Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants,'' USEPA–450/3–83–007, December 1983.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. As we pointed out earlier, SJVUAPCD has amended Rules 4403, 4451, and 4452 causing them to expire by April 20, 2006. In turn, Rule 4409 is to replace Rule 4403 and Rule 4455 is to replace Rule 4451 and Rule 4452. These substitutions raise concerns about SIP relaxations. However, after our review, we find that Rules 4409 and 4455 have more stringent leak criteria, leak rates, and shorter repair periods than Rules 4403, 4451 and 4452. Also, Rules 4409 and 4455 have retrofit and repair requirements not found in the rules they replace. Finally, Rules 4409 and 4455 have updated test methods and recordkeeping requirements for determining compliance. In sum, Rules 4409 and 4455 either make more stringent, or maintain the requirements in the rules they will replace.

The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

We have no recommendations for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 24, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 22, 2006. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submittal, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds

Dated: February 16, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(337)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(337) * * *

(i) * * *

(A) * * *

(*2*) Rule 4403, adopted on April 11, 1991 and revised on April 20, 2005; Rule 4409 adopted on April 20, 2005; Rule 4451 adopted on April 11, 1991 and revised on April 20, 2005; Rule 4452 adopted on April 11, 1991 and revised on April 20, 2005; and, Rule 4455 adopted on April 20, 2005.

* * * * *

[FR Doc. 06–2814 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8047–7]

RIN 2050–AG29

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative stay.

SUMMARY: Pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA), EPA is issuing an administrative stay of one requirement of the national emissions standards for hazardous air pollutants (NESHAP) for hazardous waste combustors that were issued October 12, 2005, under section 112 of the CAA. EPA is staying the effective date of the standard for particulate matter for new cement kilns that burn hazardous waste while EPA reconsiders this provision. The length of the stay is three months, until June 23, 2006. During the period the stay is in effect, new cement kilns are subject to the particulate matter standard that was applicable prior to promulgation of the standard.

DATES: This final rule is effective on March 23, 2006. Section 63.1220(b)(7)(i) is stayed from March 23, 2006 until June 23, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0022. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially affected are those industrial facilities that manufacture Portland cement. Portland cement manufacturing is classified under Standard Industrial Classification (SIC) code 3241 and the North American Industry Classification System (NAICS) code is 327310. Other types of entities could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1200. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Administrative Stay

As proposed elsewhere in today's **Federal Register**, EPA is granting the petition of Ash Grove Cement Company and the petition of the Cement Kiln Recycling Coalition, Continental Cement Company, and Giant Cement Holding, Inc. to reconsider the new source standard for particulate matter for cement kilns that burn hazardous waste. That standard is 0.0023 gr/dscf corrected to 7 percent oxygen. 40 CFR 63.1220(b)(7)(i) (70 FR at 59573 (October 12, 2005)).[1] As set out in that notice, EPA is proposing this action because it appears that the promulgated standard is overly stringent in that it does not fully reflect the variability of the best performing source over time. Additional performance data from the source whose performance was the basis for the standard supports this conclusion.

EPA also has decided to stay the effective date of the new source standard, pursuant to section 307(d)(7)(B) of the CAA. The duration of this stay is consequently three months (''the rule may be stayed during such reconsideration * * * by the Administrator * * * for a period not to exceed three months''). We believe this administrative stay is justified not only because the petitions for reconsideration appear to have merit, but also because if the standard remains in place, new cement kilns (and there are several contemplated) could decide not to burn hazardous waste because they are unable to achieve the promulgated standard. The kilns would then be subject to the less stringent standard for particulate matter applicable to Portland cement kilns that do not burn hazardous waste. 40 CFR 63.1343(c)(1). There is, thus, a potential environmental detriment associated with the current standard.

Accordingly, the effective date of 40 CFR 63.1220(b)(7)(i) is stayed until June 23, 2006.[2] In this action we are revising 40 CFR 63.1220(b)(7)(i) to reflect the dates that the administrative stay will remain in effect. In addition, we are adding a new provision requiring that new cement kiln sources must instead comply with the particulate matter standard specified in 40 CFR 63.1204(b)(7) during the period of the administrative stay. See 40 CFR 63.1220(b)(7)(iii). We want to emphasize that all new sources will be subject to the particulate matter standard of 40 CFR 63.1220(b)(7), whether or not it is revised after EPA completes the reconsideration process for this standard.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 15, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 63.1220 is amended by revising paragraph (b)(7) to read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

* * * * *

(b) * * *

[1] The new source standard also contains an opacity requirement. 40 CFR 63.1220(b)(7)(ii). EPA is not reconsidering or staying that provision.

[2] The opacity standard specified in 40 CFR 63.1220(b)(7)(ii) is not affected by this stay and remains in effect as promulgated.

(7) For particulate matter:

(i) Except as provided by paragraph (b)(7)(iii) of this section, particulate matter emissions in excess of 0.0023 gr/dscf corrected to 7 percent oxygen.

(ii) Opacity greater than 20 percent, unless your source is equipped with a bag leak detection system under § 63.1206(c)(8) or a particulate matter detection system under § 63.1206(c)(9).

(iii) The particulate matter standard specified in paragraph (b)(7)(i) of this section is stayed from March 23, 2006 to June 23, 2006. During the period that this stay is in effect, you must not emit particulate matter in excess of 0.15 kg/Mg dry feed, as determined according to the requirements under § 63.1204(b)(7)(i) through (iii).

* * * * *

[FR Doc. 06–2702 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 71, No. 56

Thursday, March 23, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0125; FRL–8047–2]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation No. 1; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado on April 12, 2004. This revision makes a minor change to Colorado Regulation No. 1. The intended effect of this action is to make federally enforceable those provisions that EPA is approving. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before April 24, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0125, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *webster.daniel@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Dan Webster, Air and Radiation Program, Mail code 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6446, *webster.daniel@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 13, 2006.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 06–2811 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–0556b; FRL–8046–7]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from components at petroleum refineries, chemical plants, light crude oil production facilities, and natural gas production and processing facilities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 24, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2005–0556b, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov*.
3. Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail

directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses SJVUAPCD Rules 4403, 4409, 4451, 4452, and 4455. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 16, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 06–2813 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–MS–0001–200606; FRL–8048–9]

Approval and Promulgation of Implementation Plans; Mississippi Prevention of Significant Deterioration and New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mississippi State Implementation Plan (SIP) to include changes made to Mississippi regulations entitled, ''Permit Regulations for the Construction and Operation of Air Emissions Equipment'' and ''Regulations for the Prevention of Significant Deterioration of Air Quality.'' The proposed revisions amend the State permitting rules in order to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002 (67 FR 80186) and reconsidered with minor changes on November 7, 2003 (68 FR 63021) (collectively, these two final actions are called the ''2002 NSR Reform Rules''). EPA's 2002 NSR Reform Rules, proposed for inclusion in the Mississippi SIP, contain provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plant-wide applicability limits, and recordkeeping and reporting requirements. The proposed revisions also include changes made to the NSR program for minor stationary sources, including a new provision allowing construction to commence on certain minor sources prior to the applicant receiving a final permit to construct.

DATES: Comments must be received on or before April 24, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–MS–0001, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. E-mail: *fortin.kelly@epa.gov.*
3. Fax: 404–562–9019.
4. Mail: (Docket ID No. EPA–R04–OAR–2005–MS–0001), Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery: Deliver your comments to: Ms. Kelly Fortin, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2005–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.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 *http://www.regulations.gov* or e-mail. The *http://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 *http://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.*

Docket: All documents in the docket are listed in the *http://www.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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://*

www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official business hours are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Mississippi SIP, contact Ms. Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9140; e-mail address: *ward.nacosta@epa.gov.* For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562–9117; e-mail address: *fortin.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references to ''EPA,'' ''we,'' ''us,'' or ''our,'' are intended to mean the U.S. Environmental Protection Agency. The supplementary information is arranged as follows:

I. What Action Is EPA Proposing to Take?
II. What Is the Background for This Action?
III. What Is EPA's Analysis of Mississippi's NSR Rule Revisions?
A. Requirements for the Prevention of Significant Deterioration of Air Quality
B. General Permitting Requirements
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing to Take?

On August 10, 2005, the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), submitted revisions to the Mississippi State Implementation Plan (SIP). The SIP submittal consists of revisions to the Mississippi Administrative Code (MAC) regarding Regulations for the Prevention, Abatement, and Control of Air Contaminants. Specifically, the proposed SIP revisions include changes to MDEQ regulations entitled, ''Permit Regulations for the Construction and Operation of Air Emissions Equipment,'' Air Pollution Control Section 2 (APC–S–2), found at MAC 08–034–002, and ''Regulations for the Prevention of Significant Deterioration of Air Quality,'' Air Pollution Control Section 5 (APC–S–5), found at MAC 08–034–005. MDEQ submitted its revision to APC–S–5 in response to EPA's December 31, 2002, revisions to the federal NSR program. EPA is proposing to approve the submitted SIP revisions to APC–S–2 and APC–S–5.

II. What Is the Background for This Action?

On December 31, 2002, EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. 67 FR 80186. On November 7, 2003, EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. 68 FR 63021. In that November 7th final action, EPA added the definition of ''replacement unit,'' and clarified an issue regarding plant-wide applicability limitations (PALs). The December 31, 2002, and the November 7, 2003, final actions, are collectively referred to as the ''2002 NSR Reform Rules.'' The purpose of today's action is to propose to approve the SIP submittal from the State of Mississippi, which includes the provisions of EPA's 2002 NSR Reform Rules, and a change to Mississippi's minor source NSR program.

The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of title I of the Clean Air Act (CAA or Act), 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—''attainment'' areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—''unclassifiable'' areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—''nonattainment'' areas. Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to ensure that the NAAQS are achieved and maintained, to protect areas of clean air, to protect air quality related values (such as visibility) in national parks and other areas, to ensure that appropriate emissions controls are applied, to maximize opportunities for economic development consistent with the preservation of clean air resources, and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 NSR Reform Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' On November 7, 2003, EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules (68 FR 63021), which added a definition for ''replacement unit'' and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr.*

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. New York v. United States, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit

Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, e.g. 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. EPA has not yet responded to the Court's remand regarding the recordkeeping provisions. Today's action is consistent with the decision of the D.C. Circuit Court because Mississippi's submittal does not include any portions of the 2002 NSR Reform Rules that were vacated as part of the June 2005, decision.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within 3 years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to demonstrate that its existing program is at least as stringent as the federal program. In adopting changes to federal law, a state may write the federal requirements into the state rules or the state may incorporate the federal rule by referencing the citation of the federal rule. As is discussed in greater detail below, with regard to the present revision, Mississippi primarily incorporated the federal rule by reference.

On August 10, 2005, the State of Mississippi submitted a SIP revision for the purpose of revising the State's NSR permitting provisions for both major and minor stationary sources. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules. The submittal also contains revisions to the State's general regulations for the construction and operation of sources of air pollution. These changes are discussed below. EPA believes the revisions contained in the Mississippi submittal are approvable for inclusion into the Mississippi SIP.

III. What Is EPA's Analysis of Mississippi's NSR Rule Revisions?

Mississippi currently has a SIP-approved NSR program for new and modified stationary sources. Today, EPA is proposing to approve revisions to Mississippi's existing NSR program in the SIP. These proposed revisions were submitted to EPA on August 10, 2005, and became state-effective on August 27, 2005. Copies of the revised rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the ''Docket'' section above. A discussion of the specific changes to Mississippi's rules, proposed for inclusion in the SIP, follows.

A. Requirements for Prevention of Significant Deterioration of Air Quality

Incorporation by reference of 40 CFR 52.21, 51.166(f), and 51.166(q). The State of Mississippi's PSD program incorporates by reference the federal requirements, found at 40 CFR 52.21, into the State's major source PSD program, found at APC–S–5 (MAC 08–034–005). The original incorporation by reference was adopted on June 28, 1990, and amended in 1991, 1993, and 1996. The current revision to APC–S–5, which EPA is now proposing to approve into the SIP, incorporates by reference the provisions of 40 CFR 52.21, as amended and promulgated on July 1, 2004. In addition, the federal provisions at 40 CFR 51.166(f), ''Exclusions from Increment Consumption,'' and 40 CFR 51.166(q), ''Public Participation,'' are also incorporated by reference into the Mississippi rule. In summary, the revisions update Mississippi's existing incorporation by reference of the federal NSR program to include the 2002 NSR Reform Rules plus subsequent revisions to the federal program made through July 1, 2004.

Mississippi did not adopt those sections of the federal rules that do not apply to state activities or are reserved for the Administrator of the EPA, such as the ''delegation of authority,'' and ''plan disapproval'' sections found in 40 CFR 52.21. The Mississippi incorporation by reference properly clarified the circumstances in which the term ''Administrator,'' found throughout the federal rules, was to remain Administrator, and when it was intended to refer to the ''Mississippi Environmental Quality Board,'' instead. The Mississippi rule does not incorporate the portions of the federal rules that were recently stayed or vacated, including the clean unit provisions, the PCP exclusion, and the equipment replacement provision which was promulgated shortly after the 2002 NSR Reform Rules.

The revised Mississippi rule includes the recordkeeping provisions set forth in the federal rules at 40 CFR 52.21(r)(6). However, Mississippi chose to exclude the phrase, ''reasonable possibility.'' This phrase in the federal rule limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a ''reasonable possibility'' of resulting in a significant emissions increase. The Mississippi rule, therefore, requires all modifications that use the actual-to-future-actual methodology to meet the recordkeeping requirements. Mississippi's minor source permitting regulations already contain recordkeeping requirements for modifications, so there is limited practical effect of this difference in Mississippi. As noted earlier, EPA has not yet responded to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. As a result, EPA's final decision with regard to the remand may require EPA to take further action on this portion of Mississippi's rules. At this time, however, Mississippi's recordkeeping provisions are at least as stringent as the federal requirements, and are therefore, approvable.

The requirements included in Mississippi's PSD program are substantively the same as the federal provisions, due to Mississippi's incorporation of the federal rules by reference. EPA has, therefore, determined that the proposed revisions are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166, and are approvable as part of the Mississippi SIP.

B. General Permitting Requirements

Minor Source Program Rule Revisions. Mississippi's general permitting requirements, including permit requirements for minor sources, are contained in the State rule entitled, ''Permit Regulations for the Construction and/or Operation of Air Emissions Equipment,'' (APC–S–2), found at MAC 08–034–002. Today's action proposes to approve recent changes to this rule. EPA has reviewed the proposed revisions and finds them to be consistent with the requirements of EPA's regulations for minor NSR programs found at 40 CFR 51.160 through 51.164.

On May 2, 1995 (60 FR 21443), EPA approved APC–S–2 as meeting the criteria necessary to allow the State of Mississippi to issue federally enforceable state operating permits (FESOPs). The provisions in APC–S–2 that were relied upon for the approval of the FESOP program have not changed with this latest revision of that rule.

Therefore, the FESOP program approval remains effective.

Mississippi's minor source permit regulations do contain a new provision. APC–S–2, Section XV.B., entitled ''Optional Pre-Permit Construction,'' allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. EPA approved this approach to minor source permitting for the State of Idaho's permit to construct regulations, which were approved into the Idaho SIP in 2003. 68 FR 2217 (January 16, 2003). As discussed below, Mississippi's new provision is consistent with the requirements of section 110(a)(2)(C) of the CAA and federal regulations found at 40 CFR 51.160 through 51.164, including 40 CFR 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS.

Mississippi's Optional Pre-Permit Construction provision includes requirements and safeguards to ensure that no major source or major modification would be allowed to commence construction prior to receiving a final permit to construct. For example, the provision does not allow new major stationary sources, major modifications, medical waste incinerators, hazardous waste incinerators, any modification involving medical waste incineration or hazardous waste incineration, or new stationary sources or modifications requiring a case-by-case Maximum Achievable Control Technology determination, to commence construction prior to receiving a final permit to construct. Furthermore, no source, including minor sources, can begin actual construction unless the source has received approval from the State in the form of either a written approval described in the rule, or an actual permit to construct.

Mississippi's Optional Pre-Permit Construction provision also includes requirements that limit its applicability to only sources that have sufficiently demonstrated that they will be able to comply with all requirements, and therefore, will receive a final permit to construct. These requirements include: submittal of a comprehensive permit application, public notice of the application for pre-permit construction approval, and written approval from the Permit Board before a source can commence construction. Additionally, the permit application must include the request for pre-permit construction, certification that construction is at the applicant's risk, certification that the applicant will not contest the final permit on the basis that construction has begun, and certification that the applicant will comply with any restrictions being sought to limit potential to emit, including applicable monitoring and recordkeeping requirements.

Furthermore, the Optional Pre-Permit Construction provision precludes any actual operation of the new or modified source until the final permit to construct is issued. Regardless of the status of the construction, the Permit Board may deny the pre-permit construction approval application, or revoke an existing pre-permit construction approval, for any reason it deems valid, including objections from the public. The Mississippi Optional Pre-Permit Construction provision also allows a source with a valid CAA title V operating permit to incorporate the preconstruction modification provisions into the title V permit, rather than obtaining a separate permit to construct.

Section 110(a)(2)(C) of the CAA requires that state SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are achieved. Federal regulations require that the SIP include a procedure to prevent the construction of a source or modification that would violate a SIP control strategy or interfere with attainment or maintenance of the NAAQS. As discussed above, the Mississippi Optional Pre-Permit Construction provision includes enforceable procedures to prevent the construction of any source or modification that would violate SIP requirements or the NAAQS. Although the Mississippi provision is somewhat different than traditional minor NSR programs in other states, the Mississippi program is consistent with the requirements of the CAA and EPA's regulations, and is therefore approvable as part of the SIP.

IV. What Action Is EPA Proposing To Take?

EPA is proposing to approve revisions to the Mississippi SIP submitted by MDEQ on August 10, 2005. The submittal consists of revisions to the State ''Permit Regulations for the Construction and Operation of Air Emissions Equipment,'' APC–S–2, and ''Regulations for the Prevention of Significant Deterioration of Air Quality,'' APC–S–5.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the

State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 16, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E6–4199 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2006–0091; FRL–8048–4]

Outer Continental Shelf Air Regulations Consistency Update for California

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

ACTION: Proposed rule—consistency update.

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

DATES: Any comments must arrive by April 24, 2006.

ADDRESSES: Submit comments, identified by docket number OAR–2006–0091, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov.*
3. Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

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

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Why Is EPA Taking This Action?

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

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

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act.

Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the

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

same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

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

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

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

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

Rule No.	Name	Adoption or amended date
42	Permit Fees	04/12/05
72	New Source Performance Standards (NSPS)	09/13/05
73	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	09/13/05
74.9	Stationary Internal Combustion Engines	11/08/05

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

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

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

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132, Federalism

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

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

State and local officials early in the process of developing the proposed regulation.

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

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

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

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

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

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

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

I. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 55

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

Dated: March 3, 2006.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 55—[AMENDED]

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

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

2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(H) to read as follows:

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

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 2: Definitions (Adopted 4/13/04)
Rule 5: Effective Date (Adopted 4/13/04)
Rule 6: Severability (Adopted 11/21/78)
Rule 7: Zone Boundaries (Adopted 6/14/77)
Rule 10: Permits Required (Adopted 4/13/04)
Rule 11: Definition for Regulation II (Adopted 6/13/95)
Rule 12: Application for Permits (Adopted 6/13/95)
Rule 13: Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14: Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1: Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16: BACT Certification (Adopted 6/13/95)
Rule 19: Posting of Permits (Adopted 5/23/72)
Rule 20: Transfer of Permit (Adopted 5/23/72)
Rule 23: Exemptions from Permits (Revised 4/13/04)
Rule 24: Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26: New Source Review (Adopted 10/22/91)
Rule 26.1: New Source Review—Definitions (Adopted 5/14/02)
Rule 26.2: New Source Review—Requirements (Adopted 5/14/02)
Rule 26.3: New Source Review—Exemptions (Adopted 5/14/02)
Rule 26.6: New Source Review—Calculations (Adopted 5/14/02)
Rule 26.8: New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10: New Source Review—PSD (Adopted 1/13/98)
Rule 26.11: New Source Review—ERC Evaluation At Time of Use (Adopted 5/14/02)
Rule 28: Revocation of Permits (Adopted 7/18/72)
Rule 29: Conditions on Permits (Adopted 10/22/91)
Rule 30: Permit Renewal (Adopted 4/13/04)
Rule 32: Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)

Rule 33: Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1: Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2: Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3: Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4: Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5: Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6: Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7: Part 70 Permits—Notification (Adopted 4/10/01)
Rule 33.8: Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9: Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10: Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34: Acid Deposition Control (Adopted 3/14/95)
Rule 35: Elective Emission Limits (Adopted 11/12/96)
Rule 36: New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42: Permit Fees (Adopted 4/12/05)
Rule 44: Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45: Plan Fees (Adopted 6/19/90)
Rule 45.2: Asbestos Removal Fees (Adopted 8/4/92)
Rule 47: Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 50: Opacity (Adopted 4/13/04)
Rule 52: Particulate Matter-Concentration (Adopted 4/13/04)
Rule 53: Particulate Matter-Process Weight (Adopted 4/13/04)
Rule 54: Sulfur Compounds (Adopted 6/14/94)
Rule 56: Open Burning (Revised 11/11/03)
Rule 57: Incinerators (Adopted 1/11/05)
Rule 57.1: Particulate Matter Emissions From Fuel Burning Equipment (Adopted 1/11/05)
Rule 62.7: Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63: Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64: Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67: Vacuum Producing Devices (Adopted 7/5/83)
Rule 68: Carbon Monoxide (Adopted 4/13/04)
Rule 71: Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1: Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2: Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3: Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4: Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5: Glycol Dehydrators (Adopted 12/13/94)
Rule 72: New Source Performance Standards (NSPS) (Adopted 9/13/05)
Rule 73: National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 9/13/05)
Rule 74: Specific Source Standards (Adopted 7/6/76)
Rule 74.1: Abrasive Blasting (Adopted 11/12/91)
Rule 74.2: Architectural Coatings (Adopted 11/13/01)
Rule 74.6: Surface Cleaning and Degreasing (Revised 11/11/03—effective 7/1/04)
Rule 74.6.1: Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 7/1/04)
Rule 74.7: Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8: Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9: Stationary Internal Combustion Engines (Adopted 11/8/05)
Rule 74.10: Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/98)
Rule 74.11: Natural Gas-Fired Residential Water Heaters—Control of NO_X (Adopted 4/9/85)
Rule 74.11.1: Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12: Surface Coating of Metal Parts and Products (Adopted 11/11/03)
Rule 74.15: Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1: Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16: Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20: Adhesives and Sealants (Adopted 1/11/05)
Rule 74.23: Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24: Marine Coating Operations (Revised 11/11/03)
Rule 74.24.1: Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 1/08/02)
Rule 74.26: Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27: Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
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Rule 158: Source Abatement Plans (Adopted 9/17/91)
Rule 159: Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220: General Conformity (Adopted 5/9/95)
Rule 230: Notice to Comply (Adopted 11/9/99)

* * * * *

[FR Doc. E6–4204 Filed 3–22–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8047–6]

RIN 2050–AG29

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 12, 2005, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing hazardous waste combustors. Subsequently, the Administrator received four petitions for reconsideration of the final rule. In this proposed rule, EPA is granting reconsideration of one issue in the petitions submitted by Ash Grove Cement Company and the Cement Kiln Recycling Coalition: The new source standard for particulate matter (PM) for cement kilns that burn hazardous waste. We are requesting comment on a revised new source particulate matter standard for cement kilns. We are also requesting comment on corresponding changes to the new source particulate matter standards for incinerators and liquid fuel boilers.

DATES: Comments. Written comments must be received by April 24, 2006, unless a public hearing is requested by April 3, 2006. If a hearing is requested, written comments must be received by May 8, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by April 3, 2006, we will hold a public hearing on April 7, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0022, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: 202–566–1741.
- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200

Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

• Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which 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* 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 *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*. We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this reconsideration action identify the relevant information by docket entry numbers and page numbers.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. A reasonable fee may be charged for copying docket materials.

Public Hearing. If a public hearing is requested, it will be held at 10 a.m. at EPA's Crystal Station office building, 2800 Crystal Drive, Arlington, Virginia, or at an alternate site in the Washington DC metropolitan area. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. Frank Behan, EPA, at telephone number (703) 308–8476 or at e-mail address: *behan.frank@epa.gov*, at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing also must call Mr. Behan to verify the time, date, and location of the hearing.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW at *http://www.epa.gov/hwcmact*.

Submitting CBI. Do not submit this information to EPA through *www.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.

Tips for Preparing Your Comments. When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• 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.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

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I. National Technology Transfer and Advancement Act

I. General Information

A. What Is the Source of Authority for the Reconsideration Action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)). This action also is subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

B. What Entities Are Potentially Affected by the Reconsideration Action?

Categories and entities potentially affected by this action include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that combusts hazardous waste as defined in the final rule.	562211	4953	Incinerator, hazardous waste.
	327310	3241	Cement manufacturing, clinker production.
	327992	3295	Ground or treated mineral and earth manufacturing.
	325	28	Chemical Manufacturers.
	324	29	Petroleum Refiners.
	331	33	Primary Aluminum.
	333	38	Photographic equipment and supplies.
	488, 561, 562	49	Sanitary Services, N.E.C.
	421	50	Scrap and waste materials.
	422	51	Chemical and Allied Products, N.E.C.
	512, 541, 561,	73	Business Services, N.E.C.
	812	89	Services, N.E.C.
	512, 514, 541, 711 924	95	Air, Water and Solid Waste Management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Section 112 of the CAA requires that we establish NESHAP for the control of hazardous air pollutants (HAP) from both new and existing major sources. Major sources of HAP are those stationary sources or groups of stationary that are located within a contiguous area under common control that emit or have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any one HAP or 25 tpy or more of any combination of HAP. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT (for Maximum Achievable Control Technology).

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (where there are 30 or more sources in a category or subcategory).

In developing MACT standards, we also must consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements. We call these standards beyond-the-floor standards.

We proposed NESHAP for hazardous waste combustors on April 20, 2004 (69 FR 21198), and we published the final rule on October 12, 2005 (70 FR 59402). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We received over 75 public comment letters on the proposed hazardous waste combustor rule. Comments were submitted by industry trade associations, owners and operators of hazardous waste combustors, environmental groups, and State regulatory agencies and their representatives. We summarized the major public comments on the proposed rule and our responses to public comments in the preamble to the final rule and in a separate, supporting ''response to comments'' document. See 70 FR at 59426 and docket items EPA–HQ–OAR–2004–0022–0437 through 0445.

Following promulgation of the hazardous waste combustor final rule, the Administrator received four petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from Ash Grove Cement Company, the Cement Kiln Recycling Coalition (CKRC), the Coalition for Responsible Waste Incineration (CRWI), and the Sierra Club.[1] Under this section of the

[1] These petitions are included in the docket supporting this proposal. See items EPA–HQ–OAR–2004–0022–0516 thru 0519. EPA also received petitions from Ash Grove Cement Company and the CKRC, Continental Cement Company, and Giant Cement Holding, Inc. requesting that we stay the effective date of the particulate matter standard for new cement kilns. See items EPA–HQ–OAR–2004–

Continued

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

Ash Grove Cement Company and CKRC both are requesting that EPA reconsider the same three issues: The particulate matter standard for new cement kilns, references to Performance Specification 11 and Procedure 2 of Appendix B to 40 CFR part 60 in the particulate matter detector system provisions, and preamble statements concerning burning for energy recovery. The CRWI is requesting that EPA reconsider the procedure used to identify the MACT floor for mercury and low volatile metals for new source incinerators where there was a tie in ranking sources to determine the best performing source.

Sierra Club is requesting that EPA reconsider several aspects of the final rule. They include our decisions to subcategorize incinerators with and without dry air pollution control devices, subcategorize the liquid fuel boiler source category, base the mercury standard for cement kilns on industry-submitted data, correct total chlorine data to address potential bias in the stack measurement method, use particulate matter as a surrogate for the nonenumerated HAP metals (*i.e.*, antimony, cobalt, manganese, nickel, and selenium), use carbon monoxide and hydrocarbons as surrogates both for dioxin/furans and for non-dioxin/furan organic HAPs, and use variability factors in identifying MACT floors. Sierra Club also requests that EPA reconsider the dioxin/furan MACT floor for cement kilns and incinerators, several beyond-the-floor analyses, and the health-based compliance alternatives for total chlorine.

III. Today's Action

Today, we are granting reconsideration of one issue—the particulate matter standard for new cement kilns—raised in the petitions both of Ash Grove Cement Company and CKRC. We agree that it was impracticable for interested parties to raise concerns about one aspect of the particulate matter standard for new cement kilns until after the public comment period when the particulate matter standard was promulgated. Although we believe we provided adequate notice and opportunity to comment on the methodology used to determine the particulate matter analysis and the approach used to quantify test-to-test variability for fabric filters (baghouses) using a universal variability factor (see 69 FR at 21225; 70 FR at 59437, 59447–59450), it appears that there was legitimate confusion regarding whether we would base the new source standard on data from Ash Grove Cement's Chanute, Kansas facility.

Moreover, we also agree that it appears that the promulgated new source standard for particulate matter for cement kilns is overly stringent in that it does not fully reflect the variability of the best performing source over time (the ''emission control that is achieved in practice,'' using the language of section 112(d)(3)). Additional performance data submitted by the petitioners for Ash Grove Cement's Chanute, Kansas facility [2] support this conclusion. The specific point of contention is our use of particulate matter emissions data from this source as the basis of the new source standard for cement kilns (*i.e.*, the single best performing source). The petitioners state that EPA used emissions data from this source that were not representative of the source's performance over time (as evidenced by their additional data submission).

For the reasons set out in the following section of this preamble, we believe it is appropriate to grant reconsideration to provide the public with the opportunity to comment on a revised particulate matter standard for new cement kilns, and on corresponding revisions to the particulate matter standards for new incinerators and liquid fuel boilers.

We are not addressing at this time the two remaining issues in the petitions of Ash Grove Cement Company and CKRC or any of the issues in the petitions for reconsideration of CRWI and Sierra Club. We will notify petitioners by letter or in a future **Federal Register** notice of our decision whether to grant or deny the remaining issues raised by these petitions. We are consequently not accepting comments at this time on the remaining petition for reconsideration issues.

IV. Reconsideration of Particulate Matter Standards

A. Background on the Particulate Matter Floor

In the notice of proposed rulemaking, we described methodologies used to determine MACT floors for HAP, including the air pollution control technology approach used specifically for particulate matter (which is a surrogate for HAP metal). 69 FR at 21223–233. We discussed how we selected representative data for each source so that we could identify the best performing sources for existing sources (and the single best performing source for new sources) and how we calculated the MACT floor levels for each HAP for each source category. We also described how emissions variability was accounted for by the proposed floor methodology. This included a universal variability factor (UVF) that was used only for the particulate matter standard to address long-term variability in particulate matter emissions of sources using fabric filters.[3] After identifying floor levels, we considered beyond-the-floor standards for each HAP. The results of considering control options that are more stringent than the floor level are discussed in Part Four, Sections VII–XII of the proposed rule. For example, the beyond-the-floor discussion for particulate matter for cement kilns can be found at 69 FR at 21254.

We also briefly discussed available particulate matter data from Ash Grove Cement's Chanute, Kansas kiln in the proposed rule. In the context of our discussion on whether it is appropriate to use emissions data from sources that tested after retrofitting their emission control systems to meet the emission standards promulgated in September 1999 (and since vacated and replaced by the February 2002 Interim Standards), we stated that ''we did not consider emissions data from Ash Grove Cement Company'' and that ''[w]e judged these data are inappropriate for consideration for the floor analysis for existing sources.'' 69 FR at 21217 n. 35. While the proposal was thus clear that available data from Ash Grove Cement would not be used in the floor analysis for existing sources, we did not state whether or not these data would be

0022–0521 and 0523. As published elsewhere in today's **Federal Register**, EPA is issuing an administrative stay of this standard for three months while we reconsider the issue. In addition, five petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by the following entities: Ash Grove Cement Company, CKRC, CRWI, the Environmental Technology Council, and the Sierra Club.

[2] All references in this notice to emissions data from Ash Grove Cement Company pertain to the cement plant located in Chanute, Kansas.

[3] It is important to note that the UVF relationship is not developed for each source category, but is based on relevant data from all hazardous waste combustor source categories. 70 FR at 59459–450 and ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' September 2005, Sections 5.3 and 7.4. Therefore, changes in the data underlying the UVF relationship can result in changes to the particulate matter standards for all source categories.

evaluated in the new source floor analysis. We in fact did not use the emissions data from Ash Grove Cement in the proposal for either the existing source or new source floor analyses.[4]

In the final rule, we adopted the same floor methodology to determine floor levels for particulate matter. The preamble to the final rule also presented a summary of our response to significant comments regarding the methodology we used to ascertain floor levels for the particulate matter standards (termed the 'air pollution control technology methodology'). 70 FR at 59447. The emissions data from Ash Grove Cement were considered when calculating the particulate matter MACT floors for new cement kilns, but were not used in calculating the existing source particulate matter MACT floor. 70 FR at 59419. As explained in the response to comments document, this is because we concluded that the cement kiln operated by Ash Grove Cement meets the definition of a new source under CAA section 112(a)(10).[5]

The petitioners explain that the data EPA used (*i.e.*, Ash Grove Cement's Chanute, Kansas data) in the analysis were obtained when the baghouse and filter bags were new and not representative of the source's performance over time. Petitioners present more recent data documenting that, in fact, the source's performance has degraded as expected from initial operations. As a result, the petitioners claim that the promulgated particulate matter standard for new sources—0.0023 gr/dscf—is unachievable once a kiln with a new baghouse system operates for any appreciable time, even for kilns equipped with the best controls and employing the best maintenance procedures in the cement industry. This unique situation—the use of data from a facility when both the fabric filter bags and baghouse structure were new—produced performance data that cannot be achieved when the filter bags and baghouse are not new (*e.g.*, after the first year or so). The petitioners submitted additional particulate matter performance data from Ash Grove Cement taken after the initial ''break-in period'' that they claim supports their position. These data are shown in Table 1 below.

TABLE 1.—PARTICULATE MATTER PERFORMANCE DATA OF ASH GROVE CEMENT AFTER FIRST YEAR OF OPERATION[6]

Test date	PM emissions (gr/dscf)
December 4, 2003	0.0051
December 5, 2003	0.0072
September 8, 2004	0.0022
September 9, 2004	0.0007
November 15, 2005	0.0074
November 15, 2005	0.0080
November 15, 2005	0.0026
November 16, 2005	0.0042
November 16, 2005	0.0031
November 16, 2005	0.0032
November 17, 2005	0.0025
November 17, 2005	0.0010
November 17, 2005	0.0016

The petitioners claim that these data show that the promulgated particulate matter standard of 0.0023 gr/dscf is unachievable when the fabric filter bags and baghouse structure are not new.[7] Table 1 shows that Ash Grove Cement—the single best performing source and basis of the new source particulate matter standard in the final rule—would only achieve the emissions standard in four of the 13 runs measured after the initial break-in period. The petition documents that the source was properly operating the emission control equipment when these subsequent tests were conducted. We also regard the operating conditions of the new data to be comparable to those under which the initial tests were done because fabric filter particulate matter reduction is relatively independent of inlet loadings to the fabric filter.[8] Thus, the levels of ash in the hazardous waste and the feedrate of raw materials do not significantly affect particulate matter emissions from cement kilns equipped with baghouses because these control devices are not sensitive to particulate matter inlet loadings.

B. What Changes Are Being Proposed to the Particulate Matter Standard?

We agree with the petitioners that it appears that the promulgated standard of 0.0023 gr/dscf is overly stringent for cement kilns in that it does not fully reflect the variability of the best performing source over time once fabric filters and baghouse structures are no longer in a new condition.[9] The data submitted by the petitioner appear to better represent ''the emission control achieved in practice'' (section 112(d)(3) of the CAA). See Mossville Environmental Action Now v. EPA, 370 F. 3d 1232, 1242 (D.C. Cir. 2004). As a result, we are proposing to substitute the data submitted by the petitioner for Ash Grove Cement for the particulate matter data used in the final rule. This would lead to this source's performance for particulate matter (i.e., the upper 99th percentile prediction limit) being 0.0075 gr/dscf, derived using the air pollution control device approach and a revised universal variability factor relationship (i.e., to account for the new Ash Grove Cement data) to model particulate matter performance and fabric filter variability.[10] This performance is actually slightly worse than that achieved by two other cement kilns, Giant Cement Holding, Inc. (Giant Cement) in Harleyville, South Carolina, and Lafarge North America in Paulding, Ohio. As a result, the Ash Grove Chanute kiln is no longer the single best performing source, and we would instead base the particulate matter floor standard for new cement kilns on the performance of Giant Cement, which achieved an upper 99th percentile prediction limit of 0.0069 gr/dscf.[11]

As just noted, our methodology for calculating floors for particulate matter involves use of a universal variability factor (UVF), obtained by relating the test-to-test variability (i.e., standard deviation) of the best performing fabric filters to emission concentration.[12] In the final rule, data from the Ash Grove Cement kiln, as one of the best performing kilns, were used as part of this pool of data from best performing sources. Because Ash Grove's fabric filter remains one of the best performing fabric filters after its performance is

[4] See USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' March 2004, Appendix F (APCD Approach Results Tables), Table APCD–CK–PM, docket item EPA–HQ–OAR–2004–0022–0039.

[5] See USEPA, ''Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume I: MACT Issues,'' September 2005, Section 1.3.3, docket item EPA–HQ–OAR–0022–0440.

[6] For an evaluation of the additional data submitted by the petitioners, see USEPA, ''Draft Technical Support Document for HWC MACT Standards—Reconsideration of the New Source Particulate Matter Standard for Cement Kilns,'' March 2006.

[7] Note that the 0.0023 gr/dscf standard is based on average emissions of 0.0010 gr/dscf obtained during the first year of operation.

[8] USEPA, ''Technical Support Document for the HWC MACT Standards, Volume I: Description of Source Categories,'' September 2005, Section 3.2.2.

[9] Based on available information, we believe that the data from Ash Grove Cement are the only instance in our emissions data base where we had a source in a completely new condition. Thus, we do not believe this precise issue arises for other standards.

[10] USEPA, ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' September 2005, Sections 5.3 and 7.4, docket item EPA–HQ–OAR–2004–0022–0453.

[11] USEPA, ''Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Particulate Matter Standard,'' January 2006, Section 4.0.

[12] The floor methodology used for particulate matter is explained in ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' September 2005, Sections 5.3 and 7.4, docket item EPA–HQ–OAR–2004–0022–0453.

recalculated, we have used the data submitted by the petitioner in the UVF data pool even though it technically is no longer a MACT pool fabric filter.[13] Nonetheless, the recalculated level of performance (and the variability in the new data used to calculate that level) would result in a slight change to the UVF which in turn would result in slight changes to two other particulate matter floors since the UVF was used for all particulate matter standards. The revised floor analysis results for particulate matter are presented in Table 2 below.[14] As shown in the table, only three floor levels would change from levels presented in the final rule. The replacement of the unrepresentative Ash Grove Cement data with the petitioner-submitted data not only changes the particulate matter standard for new cement kilns, but also would result in minor changes to the new source incinerator and new source liquid fuel boiler particulate matter floor levels. We request comment on the revised floor results for particulate matter.

TABLE 2.—REVISED PARTICULATE MATTER FLOOR LEVELS (GR/DSCF AT 7% OXYGEN)

Source category	October 2005 final rule floor level	Proposed floor level
Incinerators:		
Existing sources	0.013	0.013
New sources	0.0015	0.0016
Cement kilns:		
Existing source	0.028	0.028
New sources	0.0023	0.0069
Lightweight aggregate kilns:		
Existing sources [1]	0.025	0.025
New sources	0.0098	0.0098
Solid fuel boilers: [2]		
Existing sources	0.073	0.073
New sources	0.061	0.061
Liquid fuel boilers:		
Existing sources	0.035	0.035
New sources	0.0087	0.0088

[1] The calculated floor levels in both cases are 0.029 gr/dscf. For reasons discussed in the final rule, we capped calculated floor levels exceeding the Interim Standard at the Interim Standard, which in this case is 0.025 gr/dscf. 70 FR at 59457. Given that the calculated floor level with the revised UVF (i.e., 0.029 gr/dscf) again slightly exceeds the Interim Standard, we likewise propose to cap the calculated floor level at 0.025 gr/dscf.

[2] Note that we adopted more stringent beyond-the-floor standards for existing and new sources in the final rule. See docket item EPA–HQ–OAR–2004–0022–0457, Section 14.

For the three calculated new source floor levels that would change from the level promulgated in the final rule, we considered establishing beyond-the-floor standards based on the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements. A complete presentation of the results can be found in the background document supporting this proposal.[15] After considering costs and nonair quality health and environmental impacts and energy effects, we are proposing not to adopt a beyond-the-floor standard based on improved particulate matter control for new source cement kilns, new source incinerators, and new source liquid fuel boilers.

Therefore, we are proposing to revise three of the particulate matter standards as reflected in Table 3 below. We are also proposing accompanying regulatory text changes to 40 CFR 63.1217(b)(7), 63.1219(b)(7), and 63.1220(b)(7)(i).

TABLE 3.—PROPOSED REVISED PARTICULATE MATTER STANDARDS (GR/DSCF AT 7% OXYGEN)

Source category	Source type	Proposed standard
Cement kilns	New sources	0.0069
Incinerators	New sources	0.0016
Liquid fuel boilers	New sources	0.0088

[13] We note that two other MACT pool sources with fabric filters achieve emission levels comparable to Ash Grove Chanute but have a higher standard deviation. Thus, Ash Grove's fabric filter performs like a MACT pool fabric filter and should be retained in the UVF analysis. Ash Grove Chanute has an emission average of 0.0038 gr/dscf and a standard deviation of 0.0025, while another cement kiln has an emission average of 0.0034 gr/dscf and a standard deviation of 0.0028, and a liquid fuel boiler has an emission average of 0.0037 gr/dscf and a standard deviation of 0.0043. If we were to delete Ash Grove Chanute from the UVF pool nonetheless, the UVF would change slightly and would result in one additional change to the particulate matter floors—the existing source standard for liquid fuel boilers would change from 0.035 gr/dscf to 0.034 gr/dscf. See USEPA, ''Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Particulate Matter Standard,'' January 2006, Section 4.3.

[14] For a discussion of how the UVF relationship would be altered and for a presentation of the floor results, see USEPA, ''Draft Technical Support Document for HWC MACT Standards—Reconsideration of the New Source Particulate Matter Standard for Cement Kilns,'' March 2006, Section 4.0.

[15] USEPA, ''Draft Technical Support Document for HWC MACT Standards—Reconsideration of the New Source Particulate Matter Standard for Cement Kilns,'' March 2006.

C. What Changes to the Compliance Date Provisions Are Being Proposed for the Revised Standards?

We are proposing to revise the compliance date requirements under 40 CFR 63.1206 to require that new cement kilns (i.e., sources that commenced construction or reconstruction after April 20, 2004, the date of the rule proposing the full set of MACT standards for hazardous waste burning cement kilns) comply with the proposed particulate matter standard by the later of the date of publication of the final rule in the **Federal Register** or the date the source starts operations. We note, however, that if we promulgate a particulate matter standard that is more stringent than the proposed standard, the final rule will allow you three years from the date of publication of the final rule to comply with the standard, if you comply with the proposed standard by the later of the date of publication of the final rule in the **Federal Register** or the date the source starts operations. These timelines are consistent with the current compliance date requirements under 40 CFR 63.1206.

Although we are proposing to slightly revise the particulate matter standards for incinerators and liquid fuel boilers that are new sources (i.e., sources that commenced construction or reconstruction after April 20, 2004), we are not proposing to revise the compliance date requirements for those sources. The revised particulate matter standards would be less stringent by only 0.22 mg/dscm (0.0001 gr/dscf), and new sources would be allowed to begin complying with them on the date of publication of the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed rule constitutes a ''significant regulatory action'' because this action raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because there is no additional burden on the industry as a result of the proposed rule, and the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in the field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the notice imposes no additional regulatory requirements on owners or operators of affected sources. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal

governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Although our best estimate of total social costs of the final rule was $22.6 million per year, today's notice does not add new requirements that would increase this cost. See 70 FR at 59532. Thus, today's notice of reconsideration is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the notice of reconsideration contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Thus, today's proposed rule is not subject to the requirements of section 203.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule, as proposed, is not projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur at selected States and/or EPA regional offices if these entities experience increased administrative needs or information requests. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This notice of reconsideration does not have tribal implications, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this notice of reconsideration.

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

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

Today's proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined under point one of the Order, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

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

I. National Technology Transfer and Advancement Act

As described in the October 2005 final rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (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 otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified the following consensus standards that were considered practical alternatives to the specified EPA test methods: (1) American Society for Testing and Materials (ASTM) D6735–01, ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method,'' and (2) American Society of Mechanical Engineers (ASME) standard QHO–1–2004, ''Standard for the Qualification and Certification of Hazardous Waste Incineration Operators.'' Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this notice.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 15, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.1206 is amended by revising the first sentence of paragraph (a)(1)(ii)(B)(*1*) and adding paragraph (a)(1)(ii)(B)(*3*) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(1) * * *

(ii) * * *

(B) * * * (*1*) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards under §§ 63.1219, 63.1220, and 63.1221 and the other requirements of this subpart by the later of October 12, 2005 or the date the source starts operations, except as provided by paragraphs (a)(1)(ii)(B)(*2*) through (*3*) of this section. * * *

* * * * *

(*3*) If you commenced construction or reconstruction of a cement kiln after April 20, 2004, you must comply with the new source emission standard for particulate matter under § 63.1220(b)(7)(i) by the later of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or the date the source starts operations.

* * * * *

3. Section 63.1217 is amended by revising paragraph (b)(7) to read as follows:

§ 63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?

* * * * *

(b) * * *

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 20 mg/dscm (0.0088 gr/dscf) corrected to 7 percent oxygen.

* * * * *

4. Section 63.1219 is amended by revising paragraph (b)(7) to read as follows:

§ 63.1219 What are the replacement standards for hazardous waste incinerators?

(b) * * *

(7) Except as provided by paragraph (e) of this section, particulate emissions in excess of 3.7 mg/dscm (0.0016 gr/dscf) corrected to 7 percent oxygen.

* * * * *

5. Section 63.1220 is amended by revising paragraph (b)(7)(i) to read as follows:

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

(b) * * *

(7) * * *

(i) Emissions in excess of 15.8 mg/dscm (0.0069 gr/dscf) corrected to 7 percent oxygen; and

* * * * *

[FR Doc. 06–2703 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–118

[FMR Case 2005–102–5]

RIN 3090–AI14

Federal Management Regulation; Transportation Payment and Audit—Use of SF 1113, Public Voucher for Transportation Charges; Correction

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule; correction.

SUMMARY: The General Services Administration is issuing corrections to the proposed rule issued as FMR Case 2005–102–5, Transportation Payment and Audit—Use of SF 1113, Public Voucher for Transportation Charges.

EFFECTIVE DATE: March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Laurieann Duarte at (202) 208–7312, General Services Administration, Regulatory Secretariat, Washington, DC 20405.

Corrections

In the proposed rule document appearing at 71 FR 13063, March 14, 2006—

1. On page 13064, under the heading A. Background, second column, first paragraph, the third line is corrected by adding ''and payment'' after the word ''billing''.

2. On page 13064, third column, § 102–118.130 is corrected to read as follows:

§ 102–118.130 Must my agency use a GBL for express, courier, or small package shipments?

No, however, all shipments must be subject to the terms and conditions set forth in the bill of lading. Any other contracts or agreements between the transportation service provider (TSP) and your agency for transportation services remain binding. When you use GSA's schedule for small package express delivery, the terms and conditions of that contract are binding.

3. On page 13064, third column, § 102–118.195 is corrected to read as follows:

§ 102–118.195 What documents must a transportation service provider (TSP) send to receive payment for a transportation billing?

The transportation service provider (TSP) must submit a bill of lading or an original properly certified International Government bill of lading (GBL). The TSP must submit this package and all supporting documents to the agency paying office.

§ 102–118.560 [Corrected]

4. On page 13064, in the third column, § 102–118.560 is corrected in the fourth line by removing ''manner'' and adding ''format'' in its place.

Dated: March 17, 2006.

Laurieann Duarte,

Supervisor, Regulatory Secretariat, General Services Administration.

[FR Doc. E6–4189 Filed 3–22–06; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[U.S. DOT Docket Number NHTSA–2005–22655]

Federal Motor Vehicle Safety Standards; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: On July 28, 2004, NHTSA received a petition for rulemaking from Honda Motor Company Ltd. requesting that the agency amend the applicability of Federal Motor Vehicle Safety Standard (FMVSS) No. 204, ''Steering control rearward displacement.'' Specifically, it petitioned to exempt vehicles that already comply with the unbelted frontal barrier crash requirements of FMVSS No. 208, ''Occupant crash protection.'' This notice denies this petition for rulemaking.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Christopher Wiacek, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4801. Fax: (202) 493–2290.

For legal issues: Christopher Calamita, Office of Chief Counsel, NCC–112,

National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of FMVSS No. 204 is to reduce driver injuries and fatalities by limiting the rearward motion of the steering column in frontal crashes. FMVSS No. 204 requires that the upper end of the steering column and shaft in the vehicle shall not be displaced more than 127 mm in a horizontal rearward direction parallel to the longitudinal axis of the vehicle after a 48 km/h perpendicular impact into a fixed collision barrier. The standard applies to passenger cars and trucks, buses or multipurpose vehicles with a gross vehicle weight rating of 4,536 kg or less and an unloaded vehicle weight of 2,495 kg or less.

On July 20, 1987, Mitsubishi Motors America Inc., submitted a petition for rulemaking requesting that the agency amend FMVSS No. 204 to exclude vehicles that comply with the frontal barrier crash test requirements of FMVSS No. 208, ''Occupant crash protection,'' by means other than safety belts. The petition stated that FMVSS No. 204 is directed at reducing the likelihood of chest, neck and head injuries, which the petitioner said unnecessarily duplicates the protection provided by air bags. In response, NHTSA denied the petition on January 13, 1988 (53 FR 780), stating, ''The agency does not agree that the protection provided by Standard No. 204 is unnecessary for vehicles equipped with air bags. The standard essentially requires hardware to disconnect steering gear movement from the steering column under crash conditions. NHTSA further believes that, in the absence of Standard No. 204, it is possible for a steering assembly to displace more than five inches in a situation where the injury criteria of Standard No. 208 were met. Thus, although the driver's impact with the assembly fell within the injury criteria of the latter standard, the rearward motion of the assembly might entrap the driver or make escape from the vehicle more difficult.'' Consequently, no amendment to the standard was made.

Several years later, NHTSA had undertaken a review of its regulations and directives pursuant to the March 4, 1995, Regulatory Reinvention Initiative by the President. During the course of the review, the agency identified several regulations that were potential candidates for rescission or amendment. One of these regulations was FMVSS No. 204. On November 16, 1995, the agency issued a notice of proposed rulemaking (NPRM) (60 FR 221) to exclude certain vehicles from the application of the standard, such as passenger cars and other light vehicles that complied with the frontal barrier crash test requirements S5.1 of FMVSS No. 208. The agency stated, the engineering considerations that go into designing a vehicle with air bags would ensure that the vehicle would have the same performance for steering control rearward displacement as is currently required by the regulation.

In response to the NPRM, the agency received six comments. Four of the commenters, the Insurance Institute for Highway Safety (IIHS), Mitsubishi Motors of America, Volkswagen and the American Automobile Manufacturers Association (AAMA), concurred with the proposed exemptions. The IIHS stated that the current dynamic test in FMVSS No. 208 with an unbelted dummy is more than sufficient to limit excessive steering control rearward displacement. Mitsubishi supported the exemptions based upon the reasons cited in its July 20, 1987 petition. Volkswagen stated it would reduce testing burden and vehicle cost. The AAMA concurred with the exemptions by stating that for an air bag-equipped vehicle, the steering column location must remain relatively stable during a FMVSS No. 208 barrier test to consistently meet the test requirements.

Two commenters, the Advocates for Highway and Auto Safety (Advocates) and LAS–KDS, Inc. opposed the exemptions. The Advocates stated without the standard, the steering column would move rearward, even closer to the driver, prior to air bag deployment. If this occurred, there would be a very forceful impact of the air bag on the driver because the driver would be closer to the steering wheel. LAS–KDS, Inc. agreed that vehicles will continue to meet the requirements of FMVSS No. 208, but said that in more severe crashes the exclusion from the FMVSS No. 204 requirements will remove an important safety margin and reintroduce the hazard or injuries associated with the ''spear-like'' qualities from the rearward travel of the steering column.

On July 20, 1998, NHTSA terminated rulemaking on FMVSS No. 204 (63 FR 38799) since the agency temporarily allowed manufacturers to certify vehicles to the occupant protection standard based upon an unbelted sled test and a belted barrier test. The capability of the steering column to provide a stable platform for the air bag was not tested in a FMVSS No. 208 sled test option for unbelted occupants since no structural deformation of the vehicle structure occurred.

On May 12, 2000, NHTSA amended FMVSS No. 208 to require that future air bags be designed to create less risk of serious air bag induced injuries, particularly for small women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology (65 FR 30680; advanced air bag rule). To achieve these goals, it added a variety of new test requirements, test procedures and injury criteria, using an assortment of new dummies. Among the requirements, it replaced both the unbelted sled test option and the original 0–48 km/h unbelted barrier crash test option with a single 32–40 km/h unbelted barrier crash test for assessing the protection of unbelted occupants. This amendment to the standard will be fully effective September 1, 2006.

II. The Petition

On July 28, 2004, Honda Motor Company Ltd. (Honda) submitted a petition for rulemaking requesting that NHTSA amend the applicability of FMVSS No. 204 to include the words ''However, it does not apply to vehicles that conform to the frontal barrier crash requirements of (S5.1) of Standard No. 208 (49 CFR 571.208) by means of other than seat belt assemblies.'' The petitioner stated that after September 1, 2006, the advanced air bag requirements of FMVSS No. 208 would be applicable to all light vehicles. After that date, the unbelted sled test option will not be allowed and frontal barrier crash tests with restrained and unrestrained dummies will be required. Honda believes that the FMVSS No. 208 injury criteria could be used as a measure for excessive contact or movement of the steering controls, which are consistent with FMVSS No. 204. Honda stated that the proposed amendment would eliminate redundancy between FMVSS Nos. 204 and 208.

III. Analysis of Petition

In support of its petition, Honda relied on the fact that the agency published a NPRM in 1995 proposing to exclude certain vehicles from complying with FMVSS No. 204. It suggested that circumstances now warrant NHTSA's re-examination of the necessity of FMVSS No. 204 as it relates to the advanced air bag requirements. However, NHTSA disagrees with the petitioner's rationale for two reasons. First, FMVSS No. 208 no longer requires a 0–48 km/h unbelted barrier crash test, as it had in 1995. The advanced air bag

final rule amended FMVSS No. 208 such that the maximum unbelted barrier crash test speed is lower and the range is more narrowly defined as 32–40 km/h. Second, vehicle structures and their air bag systems have changed considerably since 1995. The petitioner provided no data to support a re-examination of how FMVSS No. 204 relates to vehicles certified to the advanced air bag requirements. Thus, the agency is not persuaded that protection provided by FMVSS No. 204 is unnecessary or redundant for vehicles equipped with advanced air bags solely based on the past proposal. Furthermore, the petitioner provided no data to support its assertion that FMVSS No. 208 injury criteria could be used as a measure for excessive contact or movement of the steering controls during frontal barrier crash tests.

In the absence of the standard, we do not know what would happen to frontal crash protection. We are also not sure if minimizing the steering column rearward displacement would remain an industry practice. The agency continues to believe that a stable steering column for air bag deployment is a fundamental building block for frontal occupant protection while the decoupling of the steering wheel also minimizes the possible risk of intrusion in real world crashes beyond those representing a rigid barrier. Therefore, we believe that FMVSS No. 204 has contributed to air bags that perform well in the field. We are also unaware that the current standard is prohibiting the implementation of new technologies that may improve frontal occupant protection. We do plan to conduct a regulatory review of FMVSS No. 204, to determine if emerging technologies or injury patterns warrant a closer look at the need for revisions to the standard.

For these reasons discussed above, we are denying Honda's petition for rulemaking. In accordance with 49 CFR part 552, this completes the agency's review of the petition for rulemaking.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Issued on: March 20, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 06–2836 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2006–23996]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. James E. Hofferberth, to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' to require automobile manufacturers to place an advisory placard in all passenger automobiles manufactured with both inflatable restraints and seat belts, advising that the seat belts should not be used by pregnant women. We are denying the petition because the requested placard would provide advice that is contrary to the safety of both the mother and the unborn baby.

FOR FURTHER INFORMATION CONTACT:

For Non-Legal Issues: Ms. Carla Cuentas, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–4583, Facsimile: (202) 366–1740.

For Legal Issues: Mr. Chris Calamita, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–2992, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Agency Advice: Pregnant Women Should Wear Their Seat Belt

NHTSA recommends that pregnant women wear their seat belts. The American College of Obstetricians and Gynecologists (ACOG) [1] and the Centers for Disease Control and Prevention [2] also recommend that pregnant women wear seat belts. NHTSA publishes a brochure,[3] developed in conjunction with ACOG and the National Healthy Mothers, Healthy Babies Coalition, that addresses this issue. The brochure explains that doctors recommend that pregnant women wear their seat belt and that, in a crash, seat belts are the best protection for both the pregnant woman and her unborn child. The brochure explains that even if a vehicle has air bags, a pregnant woman still needs to buckle up. Air bags are designed to work with seat belts, not replace them. Moreover, seat belts provide protection in types of crashes, including rollovers, in which air bags provide little or no protection. This is why, even though there have been many advancements in air bags, it is vital that occupants continue to use their seat belts.

II. Petition

On June 1, 2005, Mr. James E. Hofferberth petitioned NHTSA to amend FMVSS No. 208, ''Occupant crash protection,'' to require automobile manufacturers to place an advisory placard in all passenger automobiles manufactured with both inflatable restraints and seat belts, that the seat belts should not be used by pregnant women. He has also requested that NHTSA establish an official position and associated press release on this matter so as to preempt and negate any state or local requirements that require seat belt usage by pregnant women.

Mr. Hofferberth stated his beliefs that seat belts can cause serious injury or death to a pregnant woman and/or her unborn fetus in both crash impact and non-impact situations. He stated that in the presence of inflatable restraint systems, seat belts provide very limited additional injury prevention capacity to a pregnant woman. He did not submit any data in support of his petition.

III. Analysis of Petition

In his petition, Mr. Hofferberth expressed his concern that seat belts can cause serious injury to a pregnant woman in both crash impact and non-impact situations. While pregnant women, like other occupants, can sustain belt injuries in certain crash impact situations, the 1999–2004 National Accident Sampling System (NASS) Crashworthiness Data System (CDS) data show the reduction in serious injury associated with belt use is approximately 76 percent for pregnant women.[4] In addition to this finding, the

[1] American College of Obstetricians and Gynecologists. Car safety for you and your baby. May 1999. Patient Education: AP018.

[2] Centers for Disease Control and Prevention. Pregnancy Risk Assessment Monitoring System 1999 Report. Issued in 2003.

[3] NHTSA publication entitled ''Should pregnant women wear seat belts?'' dated September 2002. *http://www.nhtsa.dot.gov/people/injury/airbags/buckleplan/Internet_Services_Group/ISG-Restricted/Buckle-Up%20America/pregnancybrochure/BUA_PregnancyNHTSAchange.pdf.*

[4] ''Supplemental Analyses of Crash Investigation Data'', Docket No. NHTSA–2006–23996. We note that the agency's regulatory impact analysis

Continued

data also show that the reduction in fatalities associated with belt use is approximately 90 percent for pregnant women. Therefore NHTSA considers this concern unwarranted by the facts. We are also not aware of any serious injuries to pregnant women caused by seat belts in non-impact situations.

Mr. Hofferberth also stated that in the presence of inflatable restraint systems, seat belts provide very limited additional injury prevention capacity to a pregnant woman. NHTSA does not concur with this statement. Seat belts alone are very effective in preventing fatalities in rollover crashes (74 percent fatality reduction in passenger cars and 80 percent for light trucks).[5] Approximately 10,000 people per year are killed in rollover crashes. Inflatable restraints that are designed for frontal impacts provide little injury prevention in side or rollover crash impacts. Thus, we do not agree that inflatable restraints alone would provide optimal protection to pregnant occupants under all crash circumstances, particularly rollover events.

Mr. Hofferberth also stated that seat belts are a known hazard to a fetus and that they are likely to cause serious injury or death in crash impact situations. The 1999–2004 NASS CDS data actually suggest that seat belt usage is advantageous for a fetus, because the estimated reduction in fatalities associated with belt use is approximately 89 percent for fetuses. We also examined the 30 sampled cases involving fetal death in the 1999–2004 data. (We note that this number includes some for whom the crash report explicitly reported fetal death plus nine other fetuses for whom we inferred death based on the pregnancy term and the death of the mother.) National estimates based on these cases suggest that an average of 180 fetal deaths in crashes per year involved unbelted women, 73 involved belted women, and seven involved women for whom belt use could not be determined. Thus, an estimated 71 percent of the identified fetal deaths were associated with pregnant women who were not using their seat belts at the time of the crash.

Other evidence also supports the use of a properly positioned seat belt during pregnancy. Several research studies support our analyses that seat belts reduce the risk of fetal injury and have shown that pregnant women in crashes in which the mother wore her seat belt were not significantly more at risk for adverse fetal outcomes. The University of Utah undertook a study in 2003 on the effects of crashes on fetal outcomes and reported that pregnant women who did not wear seat belts during a crash were twice as likely to experience maternal bleeding and 2.8 times more likely to experience a fetal death than belted pregnant women in crashes.[6] Pearlman *et al.* reported that in 42 investigations involving pregnant occupants, an improperly restrained or unrestrained mother suffered an adverse fetal outcome 62 percent of the time, whereas a properly restrained mother only suffered an adverse fetal outcome 27 percent of the time.[7] This suggested that unrestrained pregnant women were at a higher risk of suffering an adverse fetal outcome than restrained mothers for the same crash severity. An additional paper by Pearlman, M., and Viano, D. found that when seat belts were placed in the position recommended by NHTSA on the pregnant crash test dummy, the outcome resulted in the lowest recorded readings of the force transmission to the uterus and fetal head acceleration.[8] It further found that the abdominal force and fetal head acceleration were highest for the unrestrained pregnant occupant.

IV. Conclusion

Based on our analysis of the aforementioned information, NHTSA finds no basis to amend FMVSS No. 208 to require automobile manufacturers to place an advisory placard in all passenger automobiles manufactured with both inflatable restraints and seat belts advising pregnant women not to use their seat belt. The available information shows that seat belts are beneficial to both the mother and her unborn baby. Therefore, the requested placard would provide advice that is contrary to the safety of both the mother and the unborn baby.

Subsequent to his initial petition, an additional letter from Mr. Hofferberth was received on September 8, 2005, requesting that NHTSA recall our publication that advocates belt usage by all pregnant women, because he believes it displays improper belt placement. Specifically, he believes the illustration could be interpreted as depicting improper positioning of the lap belt. His request to modify the illustration is denied. The illustration shows the lap belt positioned below the pregnant woman's belly and specifically states that the pregnant woman must ''adjust the lap belt across your hips/pelvis, and below your belly.'' NHTSA may consider whether the illustration or other aspects of the brochure can be improved in future revisions, but the agency is not making any changes at this time.

Based on the foregoing, the agency is denying Mr. Hofferberth's petition to amend FMVSS No. 208, ''Occupant crash protection,'' in accordance with 49 CFR part 552. This completes the agency's review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: March 20, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 06–2835 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–59–P

conducted in 1984 entitled, ''Final Regulatory Impact Analysis Amendment to FMVSS No. 208. Passenger Car Front Seat Occupant Protection'', estimated that manual 3-point safety belts, when used by drivers or right-front passengers of cars, reduce fatality risk by 40 to 50 percent relative to the unrestrained occupant. The percent reductions calculated above are higher than agency's overall safety belt effectiveness estimates because they do not account for confounding factors. Confounding factors include age, gender, speed limit, and occupant misinterpretation of belt use. Self-selection is another confounding factor, which suggests that a driver who is wearing a seat belt or who is pregnant will have a tendency to practice safer driving habits than an unbelted or non-pregnant driver.

[5] Based on NHTSA study of 1986–99 FARS data, ''Initiatives to Address the Mitigation of Vehicle Rollover,'' June 2003.

[6] Hyde, Lisa K. et al., entitled ''Effect of Motor Vehicle Crashes on Adverse Fetal Outcomes,'' dated 2003. This research was partially supported by the Health Resources and Services Administration, Maternal and Child Health Bureau, NHTSA, and the Centers for Disease Control and Prevention.

[7] Pearlman, M. et al., entitled ''A comprehensive program to improve safety for pregnant women and fetuses in motor vehicle crashes: A Preliminary Report,'' dated October 1999. This work was supported by General Motors Corporation, pursuant to an agreement with the U.S. Department of Transportation.

[8] Pearlman, M., and Viano, D., ''Automobile crash simulation with the first pregnant crash test dummy,'' dated October 1996. This work was funded in part through the U.S. Department of Transportation, NHTSA grant DTNH22–95H–07157.

Notices

Federal Register
Vol. 71, No. 56
Thursday, March 23, 2006

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

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of a petition for trade adjustment assistance (TAA) that was by a group of Concord juice grape producers in New York, Pennsylvania, and Ohio. New York, Pennsylvania, and Ohio Concord juice grape producers are no longer eligible for TAA benefits in fiscal year 2006.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. imports of grape juice & must, unfermented, not concentrated, in 2004/05 declined 39 percent compared to the base year 2003/04. Therefore, imports were no longer a contributing factor for program eligibility—a requirement for TAA program eligibility and therefore insufficient grounds to re-certify this petition.

FOR FURTHER INFORMATION, CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: March 9, 2006.

Elen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–4142 Filed 3–22–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), approved a petition for trade adjustment assistance (TAA) that was filed on February 21, 2006, by the National Grape Cooperative Association representing Michigan Concord juice grape producers. The certification date is March 15, 2006. Beginning on March 27, 2006, Michigan Concord juice grape producers will be eligible to apply for fiscal year 2006 benefits during an application period ending June 26, 2006.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of grape juice & must, non-concentrated and concentrated (frozen and not frozen) contributed importantly to a decline in producer prices of Concord juice grapes in Michigan by 27 percent during August 2004 through July 2005, when compared with the previous 5-year average.

Eligible producers must apply to the Farm Service Agency for benefits. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and may receive an adjustment assistance payment, if certain program criteria are satisfied. Applicants must obtain the technical assistance from the Extension Service by September 29, 2006, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Michigan.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: March 15, 2006.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–4144 Filed 3–22–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of a petition for trade adjustment assistance (TAA) that was filed by the Potato Growers of Idaho, Blackfoot, Idaho. Idaho potato producers are no longer eligible for TAA benefits in fiscal year 2006.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. imports of frozen French fry potatoes fell by 12 percent. Therefore, imports were no longer a contributing factor for program eligibility—a requirement for TAA program eligibility and therefore insufficient grounds to re-certify this petition.

FOR FURTHER INFORMATION, CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: March 15, 2006.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–4143 Filed 3–22–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

''Cayuga Project'', Chequamegon-Nicolet National Forest; WI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the environmental impact statement.

SUMMARY: The Forest intends to supplement the May 2003 ''Cayuga Project'' Final Environmental Impact

Statement. The supplement would clarify and add more detail to the cumulative effects analysis regarding certain Regional Forester Sensitive Species that may be affected by the actions considered in the original Environmental Impact Statement.

DATES: Comments concerning the scope of the analysis must be received by May 15, 2006 in order to be fully considered in preparing this supplemental statement. The draft supplemental environmental impact statement is expected July, 2006 and the final supplemental environmental impact statement is expected September, 2006.

ADDRESSES: Send written comments to Anne F. Archie, Forest Supervisor, Chequamegon-Nicolet National Forest, 1170 4th Avenue S, Park Galls, WI 54552.

FOR FURTHER INFORMATION CONTACT: Brian Quinn, Forest Environmental Coordinator, (see address above).

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the Cayuga Project is to move the structure and cover of the existing forest closer to desired conditions described in the 2004 Nicolet National Forest Plan. A concurrent purpose is to eliminate unneeded roads and manage needed roads in a more efficient and effective way.

Proposed Action: The major actions would use commercial timber harvest, non-commercial vegetation management, road closure and road decommissioning to achieve the purpose and need.

Responsible Official: Anne F. Archie, Forest Supervisor, Chequamegon-Nicolet National Forest, is the responsible official.

Nature of Decision To Be Made: The decision will be limited to determining whether to revise, amend or reassert; the original Cayuga Record of Decision (May 7, 2003).

Scoping Process: A scoping package will be mailed to all parties who previously were mailed the original draft environmental impact statement, and to those who request a copy.

Comment Requested: This notice of intent initiates the scoping process which guides the development of the supplemental environmental impact statement. Specifically, the supplement will fully consider cumulative effects of timber harvest to goshawk, red-shouldered hawk, American marten, spruce grouse and black-backed woodpecker that occur in the Cayuga project area.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft supplement to the environmental impact statement will be prepared for comment. The comment period on the draft statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplemental environmental impact statement stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and address of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 151.7 and 1508.22; Forest Service Handbook 1909.15, Section 20

Dated: March 16, 2006.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forest.

[FR Doc. 06–2796 Filed 3–22–06; 8:45am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on April 5, 2006, in Downieville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held Wednesday, April 5, 2006 at 10 a.m.

ADDRESSES: The meeting will be held at the Community Hall, Downieville, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St, Nevada City, CA, 95959, (530) 478–6205, e-mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and announcements; (2) Status of previously approved projects; and (3) Review of and decisions on new projects proposals for current year. The meeting was previously scheduled for February 28, but due to winter weather was cancelled. It is open to the public and the public will have an opportunity to comment at the meeting. This meeting will be rescheduled if weather conditions warrant.

Dated: March 17, 2006.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 06–2795 Filed 3–22–06; 8:45am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by May 22, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: 7 CFR 1744–C, Advance and Disbursement of Funds—Telecommunications.

OMB Control Number: 0572–0023.

Type of Request: Revision of a currently approved information collection package.

Abstract: USDA Rural Development, through the Rural Utilities Service, manages the Telecommunications loan program in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 et seq., as amended, and as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

In addition, the Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171) amended the RE Act to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. USDA Rural Development therefore requires Telecommunications and Broadband borrowers to submit Form 481, Financial Requirement Statement. This form implements certain provisions of the standard Rural Utilities Service loan documents by setting forth requirements and procedures to be followed by borrowers in obtaining advances and making disbursements of loan funds.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1 hour per response.

Respondents: Business or other for profit, Not-for-profit institutions.

Estimated Number of Respondents: 177.

Estimated Number of Responses per Respondent: 6.3.

Estimated Total Annual Burden on Respondents: 1,223 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis at (202) 720–0812. FAX: (202) 720–8435. 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.

Dated: March 15, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–4169 Filed 3–22–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed–Circumstances Review

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

SUMMARY: In response to a petition for an expedited changed–circumstances review from Koyo Seiko Co., Ltd., and Koyo Corporation of U.S.A., the Department of Commerce is initiating a changed–circumstances review of the antidumping duty order on ball bearings and parts thereof from Japan. We have preliminarily concluded that JTEKT Corporation is the successor–in-interest to Koyo Seiko Co., Ltd., and, as a result, should be accorded the same treatment previously accorded to Koyo Seiko Co., Ltd., with regard to the antidumping duty order on ball bearings and parts thereof from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Edythe Artman at (202) 482–3931 or Richard Rimlinger at (202) 482–4477, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published antidumping duty orders on ball bearings, cylindrical roller bearings, and spherical plain bearings and parts thereof from Japan on May 15, 1989. See *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof from Japan*, 54 FR 20904 (May 15, 1989). The orders on cylindrical roller bearings and spherical plain bearings and parts thereof from Japan were revoked, effective January 1, 2000. See *Revocation of Antidumping Duty Orders on Certain Bearings From Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom*, 65 FR 42667 (July 11, 2000). Koyo Seiko Co., Ltd., and Koyo Corporation of U.S.A. (collectively Koyo) have participated in numerous administrative reviews of the order on ball bearings and parts thereof from Japan. On February 3, 2006, Koyo informed the Department that Koyo

Seiko Co., Ltd. (Koyo Seiko), had changed its name to JTEKT Corporation (JTEKT) and petitioned the Department to conduct a changed–circumstances review to confirm that JTEKT is the successor–in-interest to Koyo Seiko for purposes of determining antidumping–duty liabilities subject to this order.[1] Koyo also requested that the Department conduct a changed–circumstances review on an expedited basis, pursuant to 19 CFR 351.221(c)(3)(ii). We did not receive any other comments.

Scope of the Order

For a listing of scope determinations which pertain to the order on ball bearings and parts thereof, see the Scope Determination Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated March 2, 2006. The Scope Memorandum is on file in the Central Records Unit (CRU), main Commerce building, Room B–099, in the General Issues record (A–100–001) for the 2004/2005 administrative reviews of the orders on antifriction bearings.

Initiation of Changed–Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 (2005), the Department will conduct a changed–circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Koyo claiming that JTEKT is the successor–in-interest to Koyo Seiko demonstrates changed circumstances sufficient to warrant such a review. See 19 CFR 351.216(d).

In accordance with the above–referenced regulation, the Department is initiating a changed–circumstances review to determine whether JTEKT is the successor–in-interest to Koyo Seiko. In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base. See *Industrial Phosphoric Acid From Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Although no single or even several of these factors will necessarily provide a dispositive indication of succession, generally the Department will consider one company to be a successor to another company if its resulting operation is similar to that of its predecessor. *See Brass Sheet and Strip from Canada; Notice of Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992), at Comment 1 (''generally, in the case of an asset acquisition, the Department will consider the acquiring company to be a successor to the company covered by the antidumping duty order, and thus subject to its duty deposit rate, if the resulting operation is essentially similar to that existing before the acquisition''). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash–deposit rate of its predecessor. *Id.; Notice of Final Results of Changed Circumstances Antidumping Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2002); see also Circular Welded Non–Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review, 63 FR 20572 (April 27, 1998), where the Department found successorship where the company only changed its name and did not change its operations.In its February 3, 2006, submission, Koyo provided information to demonstrate that JTEKT is the successor–in-interest to Koyo Seiko. Koyo submitted a press release announcing the start of JTEKT due to the merger of Koyo Seiko and another company, Toyoda Machine Works, Ltd. (Toyoda), on January 1, 2006. See exhibit A of Koyo's February 3, 2006, submission. Koyo also submitted the certification of JTEKT's history that is recorded in the registration book maintained by the local government authority and shows the merger between Koyo Seiko and Toyoda. See exhibit B of the February 3, 2006, submission.

Additional information in Koyo's February 3, 2006, submission shows that JTEKT's management, production facilities, suppliers, and customer base are consistent with those of Koyo Seiko. With respect to management prior to and following the name change, the press release discloses that 21 of Koyo Seiko's 28 officers and directors have retained their positions in the new company. The press release also shows that Koyo Seiko's production facilities have been placed within a distinct bearings division of JTEKT and JTEKT's corporate guide, that appears in exhibit D of the February 3, 2006, submission, lists the four primary product lines of JTEKT, one of which is bearings. Furthermore, Koyo submitted information from JTEKT's website that shows that Koyo Seiko's production facilities are listed as domestic plants of JTEKT. See exhibit E of Koyo's February 3, 2006, submission. Thus, based on the documentation provided by Koyo, we find that the use of Koyo Seiko's production facilities has remained the same since the name change.

Koyo stated in its February 3, 2006, submission that, because Toyoda had not produced or sold bearing products, production and sale of subject merchandise would continue under JTEKT in the same manner as performed by Koyo Seiko and Koyo did not anticipate any changes in supplier relationships or customer base from that of Koyo Seiko. In exhibit F of its submission, Koyo provided copies of the letters that it sent to its customers at the time of the merger in order to document JTEKT's intent to retain Koyo Seiko's customers. In addition, Koyo submitted photographs of JTEKT's packaging in order to show that Koyo's trademark will continue to figure prominently in sales of bearings formerly produced by Koyo Seiko because of the strong reputation and goodwill associated with the Koyo brand. See exhibit G of the February 3, 2006, submission. Koyo observed that its trademark also appears in JTEKT's corporate guide, as can be seen in exhibit D. Thus, based on the information provided in Koyo's submission, we find that it is JTEKT's intent to maintain the suppliers and customer base of Koyo Seiko.

Therefore, we conclude that Koyo's petition for a changed–circumstances review demonstrates that no major changes have occurred with respect to Koyo Seiko's management, production facilities, suppliers, or customer base as a result of its merger with Toyoda and name change to JTEKT.

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a changed–circumstances review concurrently. See 19 CFR 351.221(c)(3)(ii). See also *Canned Pineapple Fruit from Thailand; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 69 FR 30878 (June 1, 2004). Based on the information on the record, we have determined that expedition of this changed–circumstances review is warranted. In this case, we preliminarily find that JTEKT is the successor–in-interest to Koyo Seiko and, as such, is entitled to

[1] Koyo clarified in its February 3, 2006, submission that the name of Koyo Corporation of U.S.A. will remain unchanged at this time.

Koyo Seiko's cash–deposit rate with respect to entries of subject merchandise.

Should our final results remain the same as these preliminary results, effective the date of publication of the final results we will instruct U.S. Customs and Border Protection to assign entries of merchandise produced or exported by JTEKT the antidumping duty cash–deposit rate applicable to Koyo Seiko.

Public Comment

Any interested party may request a hearing within 14 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 28 days after the date of publication of this notice or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 21 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this changed–circumstances review 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. Consistent with 19 CFR 351.216(e), we will issue the final results of this changed–circumstances review no later than 270 days after the date on which this review was initiated or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: March 16, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–4224 Filed 3–22–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Fresh Garlic from the People's Republic of China

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

EFFECTIVE DATE: March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Katharine Huang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone; (202) 482–1271.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''The Department'') published the preliminary results of the administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China covering the period November 1, 2003, through October 31, 2004, on November 18, 2005. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942 (November 18, 2005) (''*Preliminary Results*'').

Extension of Time Limits for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the antidumping duty order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days. We have determined that it is not practicable to complete these reviews by March 18, 2006.[1] Several significant issues were raised in the briefs which warrant further analysis, including the ''intermediate–product valuation methodology,'' which we applied in the *Preliminary Results*, and the surrogate value for garlic bulbs (*i.e.*, the intermediate product). For these reasons, the Department is extending the time limit for the completion of these final results by 30 days until no later than Monday, April 17, 2006, which is 150 days from the date on which the notice of the *Preliminary Results* was published.

This notice is issued and published in accordance with section 751(a)(3)(A) and 777(i) of the Act.

Dated: March 16, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–4214 Filed 3–22–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Initiation of New Shipper Review

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

EFFECTIVE DATE: March 23, 2006.

SUMMARY: The Department of Commerce (''Department'') has determined that a request to conduct a new shipper review of the antidumping duty order on frozen warmwater shrimp from the People's Republic of China (''PRC''), received on February 22, 2006, meets the statutory and regulatory requirements for initiation. Therefore, in accordance with 19 CFR 351.214(d), we are initiating a new shipper review for Hai Li Aquatic Co., Ltd. Zhao An, Fujian (also known as Haili Aquatic Co. Ltd. Zhaoan, Fujian) (''Hai Li''). The period of review (''POR'') for this new shipper review is July 16, 2004, through January 31, 2006.[1]

[1] As noted in the *Preliminary Results*, the two new shipper respondents and the petitioners agreed to waive the time limits applicable to the new shipper reviews and to permit the Department to conduct the new shipper reviews concurrently with the administrative review.

[1] The antidumping duty order for certain frozen warmwater shrimp from PRC was published on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of*

Continued

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Scot Fullerton, AD/CVD Operations, Import Administration, Office 9, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3441 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on certain frozen warmwater shrimp from the PRC was published on February 1, 2005. *See PRC Shrimp Order*. The Department received a timely request from Hai Li on February 22, 2006, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on frozen warmwater shrimp from the PRC.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(I), Hai Li certified that it did not export frozen warmwater shrimp 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), Hai Li certified that, since the initiation of the investigation, it has never been affiliated with any Chinese exporter or producer who exported frozen warmwater shrimp 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), Hai Li also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Hai Li submitted documentation establishing the following: (1) the date on which it first shipped frozen warmwater shrimp for export to the United States and the date on which the frozen warmwater shrimp was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment (and certification of no subsequent shipments); and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted customs database queries to confirm that Hai Li's shipment of subject merchandise during the POR had entered the United States for consumption and had been suspended for antidumping duties.

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 request made by Hai Li, a producer and exporter, meets the threshold requirements for the initiation of a new shipper review for the shipment of frozen warmwater shrimp from the PRC. *See* Memorandum to the File through James C. Doyle, Director, AD/CVD Operations, Office 9, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9: *New Shipper Initiation Checklist*, dated March 17, 2006).

The POR for this new shipper review is July 16, 2004, through January 31, 2006. See 19 CFR 351.214(g)(1)(ii)(A). We intend to issue preliminary results of this review no later than 180 days from the date of initiation, and final results of this review no later than 270 days from the date of initiation. *See* section 751 (a)(2)(B)(iv) of the Act.

Because Hai Li has certified that it produced and exported the frozen and warmwater shrimp on which it based its request 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 frozen warmwater shimp that was both produced and exported by Hai Li until the completion of the new shipper review, pursuant to section 751(a)(2)(B)(iii) of the Act.

Interested parties needing access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214(d).

Dated: March 17, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–4221 Filed 3–22–06; 8:45 am]

BILLING CODE 3510–DS–S

China, 70 FR 5149 (February 1, 2005) (''*PRC Shrimp Order*''). Therefore, a request for a new shipper review based on the anniversary month, February, was due to the Department by the final day of February 2006. *See* 19 CFR 351.214(d)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

DATES: *Effective Date:* March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, 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) 482–0193.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (''hot-rolled steel'') from Thailand covering the period November 1, 2003, through October 31, 2004. *See Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke and Rescind in Part*, 70 FR 73197 (December 9, 2005). The final results for the antidumping duty administrative review of hot-rolled steel from Thailand are currently due no later than April 10, 2006.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within 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.

Due to the complexity of the revocation issue present in this administrative review, as well as the

demands of other proceedings handled by the office administering this review, the Department has determined that it is not practicable to complete this review within the original time period. Accordingly, the Department is extending the time for completion of the final results until no later than May 10, 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 15, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–2778 Filed 3–22–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904; NAFTA Panel Reviews; Notice of Panel Decision

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Panel Decision.

SUMMARY: On March 17, 2006, the binational panel issued its decision in the review of the final results of the countervailing duty determination made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–03) affirmed the re-determination on remand of the Department of Commerce. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision: On March 17, 2006, the Binational Panel affirmed the Department of Commerce's re-determination on remand.

The Secretariat will issue a notice of final panel action in this matter on the 11th day after the issuance of this decision (March 28, 2006).

Dated: March 17, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–4172 Filed 3–22–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 060317074–6074–01; I.D. No. 031306A]

Endangered and Threatened Species: 90–Day Finding on Petition to Redefine the Southern Extent of the Central California Coho Salmon Evolutionarily Significant Unit

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

ACTION: Notification of 90–day petition finding.

SUMMARY: We, the National Marine Fisheries Service (NMFS), have received a petition to redefine the southern boundary of the Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU) to exclude coho salmon populations in the counties (Santa Cruz County and coastal San Mateo County) south of San Francisco Bay, California. Coho salmon populations south of San Francisco Bay are part of the CCC coho salmon ESU, which is listed as an endangered species under the Endangered Species Act of 1973, as amended (ESA). The petition fails to present substantial scientific or commercial information indicating that the petitioned action may be warranted. Furthermore, after reviewing the best available scientific and other information, NMFS finds the petitioned action is not warranted.

DATES: The finding announced in this document is effective March 23, 2006.

ADDRESSES: Comments or questions concerning this petition finding should be submitted to the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 5200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980–4021, or Marta Nammack, NMFS, Office of Protected Resources, (301)713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 2(b) of the ESA outlines the purposes of the statute which are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (2)(a).

Section 4(a) of the ESA directs the Secretary to determine whether a species is endangered or threatened solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation, to protect such species.

The ESA authorizes the listing, delisting, or reclassification of a species, subspecies, or distinct population segment of a vertebrate species (DPS) (16 U.S.C. 1533(4)(a)). We have determined that DPSs are represented by Evolutionarily Significant Units (ESUs) for Pacific salmon, and we treat ESUs as ''species'' under the ESA (Salmonid ESU Policy, 56 FR 58612; November 20, 1991). Under the Salmonid ESU policy, a stock of Pacific salmon is considered a distinct population, and hence a ''species'' under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. A stock must satisfy two criteria to be considered an ESU: (1) It must be substantially reproductively isolated from other conspecific population units; and (2) It must represent an important component in the evolutionary legacy of the species.

Coho salmon populations that occupy coastal streams in Santa Cruz and San Mateo counties south of San Francisco Bay are currently considered part of the larger CCC coho salmon ESU. This ESU was originally listed as a threatened

species on October 31, 1996 (61 FR 56138), but has recently been reclassified as an endangered species (70 FR 37160; June 28, 2005). While the ESA authorizes the listing, delisting, or reclassification of a species, subspecies, or DPS of a vertebrate species, it does not authorize the listing or delisting of a subset or portion of a listed species, subspecies, or DPS (16 U.S.C. 1533(4); 50 CFR 424.11(d)).

Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition for delisting, the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. The ESA implementing regulations for NMFS define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In evaluating a petitioned action, the Secretary must consider whether such a petition: (1) clearly indicates the recommended administrative measure and the species involved; (2) contains a detailed narrative justification for the recommended measure, describing past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by appropriate supporting documentation (50 CFR 424.14(b)(2)).

The Petition

On November 12, 2003, we received a petition from Mr. Homer T. McCrary (petitioner) to redefine the southern extent of the CCC coho salmon ESU boundary by excluding coho salmon populations occupying watersheds in Santa Cruz and coastal San Mateo counties, California, from the ESU. We received a petition addendum from the petitioner on February 9, 2004, that provided additional information clarifying the original petition and responding to new information regarding coho salmon museum specimens. On July 16, 2004, our Southwest Fisheries Science Center (Science Center) provided a scientific evaluation of the petition which was forwarded to the petitioner. On October 18 and 25, 2004, respectively, the petitioner responded to the Science Center's evaluation with a critique and supplemental information. The Science Center provided a second scientific evaluation of the petition and of the October 2004 information on March 17, 2005, which was subsequently forwarded to the petitioner. The petitioner responded to the Science Center's second evaluation on May 10, 2005. On October 11, 2005, and December 5, 2005, the petitioner further questioned the Science Center's conclusions and the listing of these populations south of San Francisco pursuant to NMFS' Salmonid ESU policy (56 FR 58612; November 20, 1991). NMFS' Southwest Region and Science Center staff met with the petitioner and his representatives on November 30, 2005, to discuss information contained in the petition and supplementary information provided by the petitioner, the Science Center's evaluations of the petition, and NMFS' Salmonid ESU policy.

The petition and supplemental information and correspondence from the petitioner assert that coho salmon populations south of San Francisco Bay do not meet NMFS' criteria for protection as a threatened (or endangered) species, pursuant to the ESA. The petitioner's assertions are based on the following: (1) geographic range descriptions for coho salmon in the early scientific literature and old newspaper accounts that the petitioner asserts document San Francisco as the southern boundary for the species; (2) the absence of coho salmon remains in the refuse sites (i.e., middens) of the native people; (3) the physical characteristics (i.e., climate, geology, and hydrology) of streams originating in the Santa Cruz mountains, which are inhospitable to coho salmon; (4) the absence of self-sustaining, natural populations of coho salmon in streams south of San Francisco Bay prior to 1906 when exotic (out-of-ESU) stocks were artificially introduced, and the resulting conflict of NMFS' ESU policy for Pacific salmon with protecting these populations; and (5) the ephemeral, artificially maintained (i.e., through hatchery production) nature of the extant coho salmon in streams south of San Francisco that precludes them from constituting an important component in the evolutionary legacy of the species. Based on these arguments, the petitioner has requested that we redefine the southern boundary of the CCC coho salmon ESU to include only those populations north of San Francisco Bay.

To inform our decision on whether the petition presents substantial information indicating that the petitioned action may be warranted, we requested the Southwest Fisheries Science Center Laboratory in Santa Cruz to review the petition and all supplemental information to assess its scientific credibility. In addition, we reviewed the information in the petition and supplemental documents to see if it provided any rationale for why including the southern populations in the CCC coho ESU did not comport with NMFS' Salmonid ESU Policy (56 FR 58612; November 20, 1991).

Early Scientific Accounts

The petition asserts that there is no valid historic (including accounts from local newspapers) or scientific source which documents the presence of coho salmon south of San Francisco prior to 1912. Because the scientific documentation published prior to 1906, primarily by early ichthyologist David Starr Jordan (Jordan, 1892; Jordan and Gilbert, 1876–1919; Jordan, Gilbert, and Hubbs, 1882; Jordan and Everman, 1902; Jordan, 1904a; Jordan, 1904b; etc.), referenced coho salmon as occurring north of San Francisco, the petitioner concludes coho salmon were absent south of San Francisco. We disagree with the petitioner's claim. Jordan was describing the North American distribution of coho salmon in a general ichthyofaunal reference, and his use of commonly used phraseology that a species is abundant up to, or from, a geographical landmark does not mean that the species was absent in areas beyond the referenced landmark. Jordan also wrote, ''This species (coho salmon) is not common south of the Columbia, but is sometimes taken in California'' (Jordan, 1894). Coho salmon were more abundant in Oregon and California than indicated by this statement, further highlighting the problematic nature of relying on general ichthyofaunal references for precise species distribution information. Regarding the various excerpts from early newspaper articles, we view these as non-scientific reports of already depressed salmonid populations rather than as definitive scientific proof that these fish were unquestionably absent from the area.

We also disagree with the petitioner's claim that coho salmon are not native to streams south of the San Francisco Bay. In fact, coho salmon specimens collected from San Mateo and Santa Cruz county streams in 1895 and currently held in the California Academy of Science's (CAS) Ichthyological Collection (CAS, 2004) represent clear evidence that coho salmon were native to, and present in, streams south of San Francisco Bay prior to 1906. The CAS maintains four samples (jars) of specimens that authenticate the collection of 11 native coho salmon from Waddell Creek and four from Scott Creek in Santa Cruz County on June 5, 1895, by the party of Rutter, Scofield, Seale, and Pierson (CAS, 2004). Also, two coho salmon

specimens were collected from San Vicente Creek in Santa Cruz County and one from Gazos Creek in San Mateo County by the same party of investigators. Although the collection of these latter specimens is not dated, they can reasonably be assumed to have been collected during the same period. Coho salmon continue to persist in these four streams today.

In correspondence the petitioner submitted to us following submission of the petition, the petitioner questioned the validity of these coho salmon specimens based on an assumption there were lapses in their chain of custody. The petitioner also suggested that, even if the coho salmon specimens were valid, they represent nothing more than evidence of ephemeral colonies of coho salmon in the streams south of San Francisco Bay. The petitioner's questions regarding the validity of these specimens focus on three points: (1) damage suffered to the ichthyological collection as a result of the 1906 San Francisco earthquake when it was housed at Stanford University in Palo Alto, California; (2) one of the four jars of specimens is missing; and (3) the original misidentification of the specimens as chum and Chinook salmon and their subsequent corrected identification as coho salmon by an unknown individual at an unknown date.

In a letter to us dated October 25, 2004, the petitioner cited an excerpt from the Stanford Ichthyological Bulletin (Bohlke, 1953), describing damage to the University's fish collections. The excerpt from Bohlke (1953) states that ''(m)ore than 1,000 jars and bottles were broken although the majority survived intact;'' however, ''much [specimens from broken containers] was saved although there were numerous instances in which the material had to be discarded. Nonetheless, some doubt regarding some specimens and their origin inevitably occurred * * * and labels stating that the original containers were lost during the earthquake.'' (Bohlke, 1953). We believe it is improbable that all 1,895 specimens had their original containers broken, ended up on the floor, were misidentified from their original labels, and had their 'earthquake' labels removed. According to the Senior Collections Manager for the CAS Ichthyological Collection (Spence, pers. comm., 2004), there is no evidence to suggest that the fish in the collection jars are not coho salmon, or that the specimens are not the same fish collected by Rutter, Scofield, Seale, and Pierson in 1895. In addition, the Collections Manager added that the appearance of the specimens is consistent with collection and preservation protocols used in the late 1800's (Spence, pers. comm., 2004). Prior to the early 1900s, specimens were preserved directly in alcohol, whereas in subsequent years, fish were initially ''fixed'' in a diluted formaldehyde solution (formalin) and then transferred to alcohol. The lens of the fish eye turns white in fish preserved directly in alcohol, but appears darker in those fixed in formalin. The Collections Manager stated that, although not a definitive test, ''the eyes of all the specimens in question are consistent with direct alcohol preservation (no formalin)'' (Spence, pers. comm., 2004).

Regarding the one missing specimen jar, the Collections Manager indicated that it evidently was misplaced because the CAS was preparing to move to another location, but the jar has since been relocated (Spence, pers. comm., 2004) . With regard to the issue of misidentification, the Collections Manager confirmed that, when these specimens were originally entered into the Stanford University ledger, they were misidentified as chum and Chinook salmon rather than coho salmon (NMFS, 2005a, unpublished memorandum). However, the specimens were subsequently re-identified as coho salmon while still in the possession of Stanford University before the ichthyological collection was transferred to the CAS. When the CAS entered the Stanford University ichthyological collection into an electronic database in the 1990s, it initially used the original Stanford University ledgers as the source for species identifications and incorrectly entered the species identifications (NMFS, 2005a, unpublished memorandum). The database entries were corrected in 1999 when the original collection jars were examined and the re-identifications were once again discovered. These specimens were recently re-examined by CAS museum curators Dr. McCosker and Dr. Iwamoto, who concluded all but one of the specimens are coho salmon (Spence, pers. comm., 2004). The fact that these specimens were misidentified when originally catalogued is not particularly surprising, given the era in which they were collected. Prior to 1900, the taxonomy and nomenclature of salmonids was far from settled and not much was known about the early life history of the five Pacific salmon species. Based on the available information and our investigation, we find no reason to doubt that these fish are in fact the coho salmon collected from streams in San Mateo and Santa Cruz counties in 1895. Tissues from the 1895 specimens were provided by the petitioner to the Santa Cruz Laboratory for genetic analysis; however, the laboratory was not able to obtain any useable material for genetic analysis (Adams, pers. comm., 2006).

Finally, we disagree with the petitioner's claim that, even if verified, the coho salmon specimens are only evidence of an ephemeral colony resulting from favorable ocean conditions rather than evidence of a native population. Metapopulation dynamics characterized by local extinction and recolonization, and reinforcement by straying, is typical for coho salmon in California (NMFS, 2005a, unpublished memorandum). Accordingly, it would be natural for coho salmon populations at the southern end of the species range to be founded and continually reinforced by straying migrants from elsewhere in the species range. NMFS believes these coho salmon populations south of San Francisco are part of the CCC coho salmon ESU, which functions as a metapopulation, and their inclusion in this ESU is consistent with the agency's ESU Salmonid policy (56 FR 58612).

Archeological Excavations

The petitioner argues that the failure of Gobalet *et al.* (2004) to identify the remains of coho salmon in the 1,238 fish bones found in Native American middens in Santa Cruz and coastal San Mateo counties is another line of evidence that the species is not native to the area. NMFS disagrees with the petitioner's claim. Gobalet *et al.* (2004) wrote ''(t)he samples from the eight archaeological sites in San Mateo and Santa Cruz counties and the two sites previously reported by Gobalet and Jones (1995) were limited, did not include sites on Pescadero and San Gregorio Creeks (San Mateo County), and yielded 1,156 diagnostic elements, of which only five (0.4 percent) were salmonids (all steelhead which are the more abundant species in the area).'' The low number of salmonid remains discovered is likely due to the fact that salmonid bones do not preserve well due to higher porosity and are generally thinner than other bony fish (Gobalet et al., 2004). In fact, coho salmon have rarely been documented in archeological excavations within their known range in California, according to Gobalet *et al.* (2004). Coho salmon were only documented at archaeological sites in the eastern San Francisco Bay area and Del Norte county, despite the fact that the species is known to be native to streams in Marin, Sonoma,

Mendocino, and Humboldt counties. Due to the paucity of material collected in San Mateo and Santa Cruz counties, much more extensive sampling would be needed to use archaeological excavation findings as definitive evidence for establishing the presence or absence of coho salmon in the area. If coho salmon material exists in the archaeological excavations of the San Mateo and Santa Cruz County coasts at the same frequency as in the San Francisco Bay area (14 of 105,000 elements), then at least 7,506 elements would have to be recovered and analyzed before a single coho salmon could be expected to be found (Gobalet *et al.*, 2004).

Local Physical Conditions

The petitioner also argues that the hydrologic, geologic, and climatic environments are so extreme in the streams south of San Francisco Bay that they preclude the long-term persistence of coho salmon because of the species' rigid 3–year life history. The available evidence does not support this argument. In fact, our Science Center has recently published an analysis predicting the potential for stream reaches within the geographic range of the CCC coho salmon ESU to exhibit habitat characteristics suitable for coho salmon during spawning or juvenile rearing as a function of the underlying geomorphological and hydrological characteristics of the landscape (NMFS, 2005b). This analysis, based on widely accepted fish-habitat relationships, uses indicators of geology, hydrology, precipitation, and climate (ambient air temperature) to express habitat conditions favorable to coho salmon. The analysis concludes that coastal streams south of San Francisco exhibit conditions favorable to coho salmon.

While some localized habitat differences may exist between watersheds north and south of San Francisco Bay, we are unaware of any conclusive scientific evidence, and the petition does not offer any, that would lead one to conclude that these habitat differences are significant enough to preclude coho salmon presence south of San Francisco. While climatic conditions, erosive geology, and variable hydrology can be detrimental to coho salmon, these conditions are not unique to the area south of San Francisco and also occur in other portions of the geographic range of this ESU where coho salmon are acknowledged to be native and persistent.

Artificial Introduction

The petition contends that coho salmon were first introduced to streams south of San Francisco Bay with the delivery of 50,000 coho salmon eggs from Baker Lake, Washington, to the Brookdale Hatchery on the San Lorenzo River in Santa Cruz county in 1906 (Bowers, 1906). The petition asserts that this introduction was the beginning of an effort to establish a coho salmon fishery which continues today and founded the coho salmon populations in San Mateo and Santa Cruz counties. The petition is correct in stating that coho salmon fry from sources outside of California have been planted in the streams south of San Francisco; however, coho salmon fry from sources within California and also from local watersheds have also been planted in these streams. Available evidence does not support the hypothesis that the out-of-state Baker Lake introductions founded the coho salmon populations south of San Francisco Bay. In fact, juvenile coho salmon specimens were collected in 1895 from San Mateo and Santa Cruz counties and are currently housed in the CAS Ichthyological Collection (CAS, 2004). As discussed previously, we do not question the authenticity of these specimens. These collections occurred 11 years prior to the coho salmon egg deliveries from Baker Lake to the Brookdale Hatchery on the San Lorenzo River, and therefore, demonstrate coho presence in the area prior to any introductions from other areas.

Available records of out-of-area coho salmon plantings prior to 1911 indicate a total of 400,000 eggs were transferred over 5 years from Baker Lake to the Brookdale Hatchery and planted in unspecified Santa Cruz County stream locations between 1905 and 1910 (Bowers, 1906, 1907, 1908, 1909, 1910). The number of Baker Lake eggs is relatively small and is not likely to have contributed to the coho salmon populations observed by Gilbert in 1910 (Smith, 1914). The Baker Lake coho salmon eggs were almost certainly planted as fry, which was the early practice of most hatcheries throughout California, including three plantings in Scott Creek from 1913 to 1930. This practice is no longer used by hatcheries because of the extremely poor survival rate of planted fry. Thus, it is likely that few if any of these planted fish survived to reproduce as adults, much less establish a new population in the area.

Recent genetic evidence supports this point (NMFS, 2005a, unpublished memorandum). Molecular genetic data assembled and analyzed by the Southwest Fisheries Science Center's Santa Cruz Laboratory indicate coho salmon south of San Francisco Bay represent a historic part of the CCC coho salmon ESU (NMFS, 2005b) and are not the result of anthropogenic introductions (NMFS, 2005a, unpublished memorandum). These data are from two studies of genetic variation for 18 microsatellite genes in coho salmon populations from the entire range of the species in California. These two studies include genotypes from more than 5,500 fish, an examination of the genetics of fish from various life stages and brood years, and systematic sampling to remove temporal and age-class variation. The 18 microsatellite genes are highly variable, with a total of almost 500 alleles, and provide sufficient information content to detect isolation between populations and insight into biogeographic patterns at multiple scales (NMFS, 2005a, unpublished memorandum). Within this ESU, the studies found that all coho salmon populations south of San Francisco Bay are more closely related to each other than to any others, and their closest relatives are found in the populations just to the north of San Francisco Bay in Marin county. In some cases, alleles in coho salmon from San Mateo and Santa Cruz counties do not appear to be present in any other populations within the ESU. More generally, genetic structure within the CCC coho salmon ESU is one of isolation by distance, with genetic distance highly correlated with geographic distance. This is an equilibrium pattern that exists when populations are structured by adaptation-drift and distance-dependent migration acting together. The results are not consistent with the petitioner's claim that anthropogenic outplantings replaced lineages in the southern part of the range, or that these populations are non-native introductions (NMFS, 2005a, unpublished memorandum).

These results suggest that, while coho salmon south of San Francisco have unique genetic characteristics, they nonetheless are clearly part of the CCC coho salmon ESU. These findings do not rule out the possibility that coho salmon populations in San Mateo and Santa Cruz counties may have received some genetic signals from the introduction of out-of-state or out-of-ESU fish; however, the number of unique alleles in the southern populations clearly demonstrates the genetic attributes of a native species at the edge of its range (NMFS, 2005a, unpublished memorandum).

South of San Francisco Bay Populations and NMFS' Salmonid ESU Policy

The original petition argued that the inclusion of coho populations south of San Francisco Bay in the listed CCC coho salmon ESU did not comport with NMFS' Salmonid ESU policy (56 FR 58612) because coho salmon in the area south of San Francisco were of exotic origin (i.e., originated from out-of-state or -ESU hatchery plantings), and, therefore, could not represent an important evolutionary legacy of the species. In recent correspondence to us, the petitioner advocated delisting the southernmost coho salmon populations (i.e., those south of San Francisco) based on the argument that these populations (even if native) are not evolutionarily significant to the CCC coho salmon ESU as a whole because they do not exhibit any unique phenotypic or life history traits or contribute to the ESU as a whole because they are biological sinks for the ESU. Based on these arguments, the petitioner has asserted that including these southern populations in the ESU is not consistent with NMFS' Salmonid ESU Policy (56 FR 58612), and that if the policy was properly applied, they would be excluded from the CCC coho salmon ESU. We believe the southern populations are of native origin based on the reasons discussed earlier and disagree with the petitioner's rationale and interpretation of our Salmonid ESU Policy. Much of the discussion in Waples (1991), the paper that NMFS' Salmonid ESU Policy was based on, is concerned with whether to designate a population or group of populations as an ESU and not, as advocated by the petitioner's representatives, whether or not to include or exclude a population that is part of an ESU. Waples (1991) argued that ephemeral populations should not be considered ESUs by themselves but should be included within the context of larger populations that will persist over evolutionary time frames. Using this rationale, every population of coho salmon needs to be included in some coho salmon ESU. We believe coho salmon south of San Francisco are part of the CCC coho salmon ESU, which represents an important component in the evolutionary legacy of the species. While it is uncertain as to whether or not all the populations in this area are dependent (sink) or independent (source) populations, their inclusion in the CCC coho salmon ESU is clearly in accordance with our Salmonid ESU policy.

The petitioner has argued that sink populations contribute nothing to the ESU as a whole. We disagree with this assertion. A sink population is one that produces fewer recruits than spawners and receives more immigrants than the migrants it produces. Being a sink, however, is not the same as being a biological black hole which simply absorbs migrants and contributes nothing to the population. We believe inclusion of these southern populations (even if historically smaller relative to other populations within the ESU) in the CCC coho salmon ESU is appropriate because they are native populations within the species' historic range and contribute to the ESU as a whole. Finally, we believe protection and restoration of the coho salmon populations south of San Francisco Bay are essential to the conservation of this ESU as a whole because this geographic area is at the southernmost edge of the species distribution in North America and is likely to be a source of evolutionary innovation for the species.

Petition Finding

After reviewing the information contained in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. In any case, even if the information presented by the petitioner were to have been considered to warrant further review, a review of additional scientific and commercial information regarding the description of the CCC coho salmon ESU indicates that the petitioned action is not warranted.

References

Copies of the petition and related materials are available on the Internet at *http://www.swr.noaa.gov*, or upon request (see **ADDRESSES** section above)

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

Dated: March 17, 2006.

James W. Balsiger,

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

[FR Doc. E6–4192 Filed 3–22–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032006B]

Fisheries of the Exclusive Economic Zone Off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit.

SUMMARY: This notice announces receipt of an application for an exempted fishing permit (EFP) from the Alaska Longline Fishermen's Association (ALFA). If granted, the EFP would support a project to develop hook-and-line, troll, and jig techniques specific to the harvest of several rockfish species in the Gulf of Alaska (GOA), Southeast Outside District (SEO). This project is intended to promote the objectives of the Fishery Management Plan for Groundfish of the GOA by improving utilization of the rockfish resources in the SEO. The project also would provide important biological information about rockfish in the SEO.

ADDRESSES: Copies of the EFP application and the environmental assessment (EA) are available by writing to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh. The EA also is available from the Alaska Region, NMFS website at *http://www.fakr.noaa.gov/index/analyses/analyses.asp*.

FOR FURTHER INFORMATION CONTACT: Jason Gasper, 907–586–7228 or *jason.gasper@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the GOA under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 679.6 and § 600.745(b) authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received an EFP application from the ALFA in February 2006. The proposed EFP would allow for the testing of unbaited artificial lures (shrimp flies) to target rockfish in the SEO. Prior to a ban on trawling in the SEO on March 23, 1998 (63 FR 8356, February 19,1998), trawl gear was used in the SEO to target the following rockfish species: Pacific Ocean perch (POP), pelagic shelf rockfish (PSR), and other slope rockfish (OSR). The goal of this project is to improve the utilization of rockfish species in the SEO using

methods that are consistent with Magnuson-Stevens Act National Standard 1, which directs that conservation and management measures must achieve optimum yield from each fishery, and National Standard 5, which seeks to promote efficiency in the utilization of fishery resources.

This project has been developed in cooperation with scientists at the NMFS Alaska Fisheries Science Center (AFSC). The proposed EFP has the following three objectives: (1) collect demographic and growth information for rockfish species that have little baseline biological information; (2) document the fishing characteristics of a new type of gear (shrimp flies), including the calculation of bycatch rates for halibut, sablefish, and other non-target species; and (3) refine gear and fishing techniques to efficiently harvest POP, PSR, and OSR with minimal bycatch. The time period of the project is May 15, 2006, through May 15, 2009. Continuation of the project in 2007 and 2008 is contingent on approval from the AFSC.

The proposed EFP exempts the applicant from certain fishery closures and prohibited species catch (PSC) limits. The exemptions are necessary to allow the permit holder to efficiently conduct the proposed project while minimizing impacts to the SEO hook-and-line fishery. The EFP provides exemptions from (1) hook-and-line fishery closures under § 679.7(a)(2) due to reasons other than overfishing concerns; (2) PSC limits for halibut under the GOA annual harvest specifications (71 FR 10870, March 3, 2006) and § 679.21(d)(4)(iii)(C); and (3) maximum retainable amounts for rockfish fisheries under § 679.20(e); and (4) sablefish retention requirements at § 679.7(f)(8)(iii)(11). The total amount of groundfish allowed to be harvested is 189 metric tons (mt), including a 10 mt mortality limit on sablefish. Because sufficient total allowable catch (TAC) amounts are available in the SEO for the rockfish species likely to be taken during the project, all groundfish except sablefish will be deducted from the annual TAC amounts specified in the annual harvest specifications (71 FR 10870, March 3, 2006). Because sablefish is fully allocated in the hook-and-line fishery, and managed under the individual fishing quota (IFQ) program pursuant to § 679.40, no sablefish will be retained during the project nor counted against the annual sablefish TAC. Halibut mortality is limited to 2 mt.

Fishing contrary to notification of inseason actions, closures, or adjustments under §§ 679.20, 679.21, and 679.25 is prohibited by § 679.7(a)(2). The applicant would be exempt from this prohibition to allow the project to proceed without interruption. The PSC limit for halibut may be reached during the project time period, requiring the closure of the hook-and-line fisheries in accordance with § 679.25. Because the amounts of halibut bycatch in the hook-and-line Pacific cod fishery has caused the closure of all hook-and-line fisheries (except demersal shelf rockfish) GOA-wide in the spring of 1999, 2000, and 2001, and in the fall of 2003 and 2004, the closure of the hook-and-line fisheries in the GOA may occur. The halibut mortality during the project would not be counted against the PSC limit so that other hook-and-line fisheries will not be impacted by the project.

The proposed EFP allows the retention and sale of all groundfish species (except sablefish) taken while fishing under the EFP to offset some of the costs of the project. The applicant will be exempt from the maximum retainable amounts specified in Table 10 of 50 CFR part 679 for rockfish fisheries. Because demersal shelf rockfish (DSR) are managed by the State of Alaska, which has special provisions for the retention and sale of DSR, the EFP would not relieve the applicant from compliance with the State's DSR regulations at 5 Alaska Administrative Code 28.171. These regulations require full retention of DSR but limit the numbers of DSR that may be sold for revenue by the harvester.

Because the applicant will be required to discard all sablefish caught, the proposed permit exempts the applicant from the retention requirement of § 679.7(f)(11) for sablefish only. Under this regulation, all halibut and sablefish are required to be retained if a person on the vessel has IFQ available for halibut or sablefish for that class of vessel. Recruiting qualified individuals for the project could be difficult if the IFQ retention requirement is applied for sablefish because the project does not provide an efficient use of sablefish IFQ. Because qualified participants are likely to be sablefish IFQ holders who would not want to use their IFQ during the project, the applicant is exempted from the sablefish retention requirements. Furthermore, the primary gear used in the EFP will be troll and jig gear, neither of which is legal gear for the harvest of sablefish in the SEO. The proposed EFP requires that all sablefish caught be returned to the sea with minimal injury. Halibut catch would not be exempt from § 679.7(f)(11) and would be subject to all applicable Federal regulations.

All fishing under the proposed EFP would stop if the groundfish or halibut mortality limits in the EFP are reached. The Regional Administrator may modify the EFP to allow continuation of the project after consideration of the following factors: (1) the present amount of harvest of groundfish species by the groundfish fisheries compared to the annual TACs, (2) the progress of the project to date, and (3) the potential impacts of any modification of the EFP.

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the Council by forwarding the application to the Council. The Council will consider the EFP application during its April 3–11, 2006 meeting. The applicant has been invited to appear in support of the application. Interested persons may comment on the application at the Council meeting during public testimony. Information regarding the April 2006 Council meeting is available at the Council's website at *http://www.fakr.noaa.gov/npfmc/council.htm*.

Copies of the application and EA are available for review from NMFS (see **ADDRESSES**).

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

Dated: March 20, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–4205 Filed 3–22–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting on the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at Defense Acquisition University, Fort Belvoir, VA. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: April 26, 2006 from 0900–1500.

ADDRESSES: Packard Conference Center, Defense Acquisition University, Bldg. 184, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cizmadia at 703–805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to

attend the meeting should call Ms. Patricia Cizmadia at 703–805–5134.

March 17, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–2799 Filed 3–22–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Committee Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Open Meeting Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held on May 5, 2006, from 8 a.m. to 5 p.m. The meeting will be held at the Hotel Oranien Wiesbaden, Platter Strasse 2, 65193 Wiesbaden, Germany. The purpose of the ACDE is to recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The meeting emphases will be the current operational qualities of schools and the institutionalized school improvement processes, as well as other educational matters. For further information contact Mr. Jim Jarrard at 703–588–3121, or at *James.Jarrar@hq.dodea.edu.*

Dated: March 15, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DOD.

[FR Doc. 06–2798 Filed 3–22–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Transformation Advisory Group Meeting of the U.S. Joint Forces Command

AGENCY: Department of Defense.

ACTION: Notice of Closed Meeting.

SUMMARY: The Transformation Advisory Group (TAG) will meet in closed session on 17–18 April 2006. The establishment date was already published in the **Federal Register** on 28 May 2003, in accordance with 41 CFR part 102–3.150. The mission of the TAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander, U.S. Joint Forces Command as he developes and executes the DOD transformation strategy. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated 17 April 1995, as amended March 2003. Access to the information must be strictly limited to personnel having the requisite clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the TAG meetings could cause serious damage to our national defense. The meeting will be closed for security reasons, pursuant to 5 U.S.C. 552, Exemption (b)1, Protection of National Security, and Exemption (b)3 regarding information protected under the Homeland Security Act of 2002. In accordance with Section 10d of the Federal Advisory Committee Act and 41 CFR 102–3.155 this meeting will be closed.

DATES: 17–18 April 2006.

Location: National Defense University, Fort McNair, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Boyd, Executive Director, (757) 836–2832.

For Supplementary Information: Mr. Jerry Mahar, Joint Staff, (703) 614–6465.

March 17, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–2797 Filed 3–22–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from October 1, 2005 through December 31, 2005.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7468.

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 a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2005 through December 31, 2005. Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Individualized Education Programs

- Letter dated October 25, 2005 to Mississippi State Department of Education Bureau Director Melody Bounds, regarding challenges faced by Mississippi in providing special education and related services to students with disabilities displaced by Hurricane Katrina, application of the requirements in Part B of the IDEA relating to individualized education programs (IEPs) for transfer students, and issues relating to waiver of other applicable requirements in Part B of IDEA; and informing Mississippi of a specific extension of the timeline for submission of its State performance plan (SPP) granted pursuant to the Secretary's transition authority in section 303 of the Individuals with Disabilities Education Improvement Act of 2004.

• Letter dated October 25, 2005 to Louisiana State Department of Education Assistant Superintendent Dr. Robin Jarvis, regarding challenges faced by Louisiana in providing special education and related services to students with disabilities displaced by Hurricane Katrina, the flexibility that Louisiana has to establish State timelines for evaluating these students, and application of the requirements in Part B of IDEA relating to IEPs for transfer students; and informing Louisiana of specific extensions of the timelines for submission of documentation relating to its Federal Fiscal Year 2003 Annual Performance Report under Part B of IDEA and its SPP granted under the Secretary's transition authority in section 303 of the Individuals with Disabilities Education Improvement Act of 2004.

Topic Addressed: Confidentiality of Education Records

• Letter dated October 12, 2005 to Iowa Department of Education Program Consultant-Medicaid Dann Stevens from Family Policy Compliance Office Director LeRoy S. Rooker, regarding the disclosure of education records to the Medicaid agency for reimbursement purposes and clarifying that prior written consent is required under the Family Educational Rights and Privacy Act (FERPA) and Part B of IDEA in order for an educational agency or institution to disclose personally identifiable information about students with disabilities to a State Medicaid agency.

• Letter dated September 13, 2005 to Carroll Independent School District (Grapevine, Texas) Superintendent Gary S. Mathews, from Family Policy Compliance Office Director LeRoy S. Rooker, regarding provisions in Part B of IDEA that apply to the destruction of records and clarifying when test protocols are considered education records.

Part C—Infants and Toddlers With Disabilities

Section 636—Individualized Family Service Plan

Topic Addressed: Early Intervention Programs

• Letters dated November 4, 2005 to Florida State Department of Health Bureau Chief for Early Interventions Janice Kane, Louisiana Office of Public Health Children's Special Health Services Program Manager Linda Pippins, and Mississippi Department of Health First Steps Early Intervention Program Coordinator Danita Munday, regarding challenges faced by these States in meeting the early intervention needs of infants and toddlers with disabilities and their families in the wake of Hurricane Katrina, clarifying the parent consent, interim individualized family service plan, residency, natural environments, and personnel standards requirements under Part C of IDEA; and informing these States of a specific extension of the timeline for submission of the SPP granted pursuant to the Secretary's transition authority in section 303 of the Individuals with Disabilities Education Improvement Act of 2004.

Title III—Miscellaneous Provisions

Section 303—Secretary's Transition Authority

Topic Addressed: Smooth Transition to the Implementation of the 2004 Amendments To the Idea

• Letter dated October 25, 2005 to Texas Education Agency Idea Coordinator Kathy Clayton, regarding requests for waivers of certain IDEA requirements and extensions of required timelines for submission of the SPP in the wake of Hurricane Katrina.

Other Letters That Do Not Interpret the Idea But May Be of Interest to Readers

Topic Addressed: No Child Left Behind Act of 2001

• Letter dated October 21, 2005 to Chief State School Officers, regarding the highly qualified teacher (HQT) provisions of the No Child Left Behind Act of 2001 (NCLB) and the elements the Department will use in determining if a State is implementing the law and making a good faith effort to reach the HQT goal.

• Letter dated December 14, 2005 to Chief State School Officers, permitting States to develop assessments under NCLB based on modified achievement standards that are aligned with grade-level content standards for a second year in order to determine adequate yearly progress for students with disabilities under Title I of the Elementary and Secondary Education Act of 1965, as Amended.

Topic Addressed: Protection of Education Records

• Letter dated October 7, 2005 to Virginia Attorney B. Alan McGraw, Esq., from Family Policy Compliance Office Director LeRoy S. Rooker, clarifying that FERPA would not permit unauthorized individuals to access a student records management system.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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

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

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: March 16, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–4215 Filed 3–22–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Discontinuance of the Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report''

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Discontinuance of the Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report.''

SUMMARY: The Energy Information Administration (EIA) is discontinuing the collection of data on the Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report.''

DATES: Data collection on Forms EIA–182 and EIA–856 will discontinue after the July 2006 data collection.

ADDRESSES: Inquiries about the decision to discontinue Forms EIA–182 and EIA–856 should be directed to Susan Harris at the Energy Information Administration, EI–42, Forrestal Building, Mail Stop: 2E–050, U.S. Department of Energy, Washington, DC 20585, telephone: (202) 586–8384, e-mail address: *susan.harris@eia.doe.gov* or fax number: (202) 586–1076.

FOR FURTHER INFORMATION CONTACT: Requests for additional information

should be directed to Susan Harris at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

EIA must adapt its energy data and information program to reflect changing energy markets. To do this, EIA must work within a budget that has not increased at levels necessary to fully maintain a high quality information program, including increased activities in select areas (e.g., a new weekly underground gas storage survey initiated in 2002, a new monthly natural gas production survey initiated in 2005, and upcoming requirements for additional information on renewable transportation fuels). While EIA has undertaken activities to improve efficiency (e.g., increased collection of information using the Internet), the efficiency savings have not completely offset additional resources required to satisfy the increasing information demands on EIA. As a result EIA has identified selected surveys and programs that must be eliminated to ensure the overall success of EIA's high quality energy data and information program. In 2004, EIA eliminated Form EIA–412, ''Annual Electric Industry Financial Report.'' After collection of data for July 2006, EIA will discontinue Forms EIA–182 and EIA–856.

The Form EIA–182, ''Domestic Crude Oil First Purchase Report,'' is designed to collect data on both the average cost and volume associated with the physical and financial transfer of domestic crude oil off the property on which it was produced. The monthly reported data represent the initial market value and volume of domestic crude oil production. The primary statistic is the weighted average wellhead price for selected domestic crude oil streams aggregated by State. First purchase volumes are used in generating estimates of domestic crude oil production and in reviewing the supply, demand, quality, and price changes of crude oil.

The Form EIA–856, ''Monthly Foreign Crude Oil Acquisition Report,'' is used to collect data on the cost and quantities of foreign crude oil acquired for importation into the United States, including U.S. territories and possessions. Data are used by the Department of Energy, the International Energy Agency, other Federal agencies, and industry analysts for forecasting and analytical purposes.

II. Current Actions

EIA will eliminate the surveys, Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report,'' effective after the July 2006 reference period.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, March 17, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–4216 Filed 3–22–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2005–0002; FRL–8049–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Monthly Progress Reports (Renewal), EPA ICR Number 1039.11, OMB Control Number 2030–0005

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 24, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2005–0002 for Monthly Progress Reports, EPA ICR Number 1039.11, OMB Control Number 2030–0005, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket (OEI), Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nikki Burley, Policy and Oversight Service Center, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9723; fax number: (202) 565–2552; e-mail address: *burley.nikki@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 20, 2005 (70 FR 61124), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public dockets for this ICR under Docket ID number EPA–HQ–OARM–2005–0002, which is available for public viewing at the OEI 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 8:30 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 OEI Docket is 202–566–1752. An electronic version of the public docket is available for online viewing at *http://www.regulations.gov.*

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at www.regulations.gov as EPA receives them and without change, unless the comment contains

copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Monthly Progress Reports (Renewal).

ICR numbers: EPA ICR No. 1039.11, OMB Control No. 2030–0005.

ICR Status: This ICR is scheduled to expire on March 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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, are 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: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractors' progress under the contract. Responses to the information collection are mandatory for contractors, and are required for the contractors to receive monthly payments. Information submitted is protected from public release in accordance with Agency's confidentiality regulations, 40 CFR 2.201 *et seq.* An agency many 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 40 CFR are listed in 40 CFR part 9.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 28 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; 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.

Respondents/Affected Entities: The majority of respondents fall into one of the following NAICS codes: 511210 for prepackaged computer software, 541511 for computer processing services, 54170 for computer-related services, 541620 for environmental consulting services, and 339 for miscellaneous services.

Estimated Number of Respondents: 363.

Frequency of Response: Monthly.

Estimated Total Annual Hour Burden: 121,968.

Estimated Total Annual Cost: $8,562,000, which includes $0 annual capital/startup costs, $44,000 annual O&M costs, and, $8,518,000 annual labor costs.

Changes in the Estimates: There is a decrease of 18,972 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Collection activity hours have decreased since the last clearance due mainly to improved tracking software and increasing familiarity with EPA reporting requirements.

Dated: March 14, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–4200 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8048–8]

Dale Hollow Lake No Discharge Zone Determination

The Environmental Protection Agency (EPA) Region 4 Regional Administrator concurs with the determinations of the Army Corps of Engineers (ACOE), State of Kentucky, and State of Tennessee that adequate and reasonably available pumpout facilities exist on Dale Hollow Lake. A petition was received from the ACOE requesting a determination by the Regional Administrator, EPA, pursuant to Section 312 (f) (3) of Pub. L. 92–500 as amended by Pub. L. 95–217 and Pub. L. 100–4, that adequate facilities for the safe and sanitary removal of sewage from all vessels are reasonably available for the waters of Dale Hollow Lake to qualify as a No Discharge Zone. Two drinking water intakes (the City of Byrdstown, TN; and Trooper Island) are also located on Dale Hollow Lake. This action is taken under Section 312 (f) (3) of the Clean Water Act which states: ''After the effective date of the initial standards and regulations promulgated under this Section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such waters to which such prohibition would apply.''

EPA's action allows prohibition regarding discharge from vessels to be applied by the states of Kentucky and Tennessee for Dale Hollow Lake. EPA found the following existing facilities available for pumping out vessel holding tanks on Dale Hollow Lake. Their address, telephone number, hours of operation, and draft are as follows:

(A) Cedar Hill Marina; 2371 Cedar Hill Road, Celina, TN 38551, 931–243–3201, 8 a.m.–4 p.m. 7 days/week, 8′ draft.

(B) Dale Hollow Marina; 99 Arlon Webb Dr., Celina, TN 38551, 931–243–2211, 7 a.m.–5 p.m. 7 days/week, floating barge—mobile pumpout.

(C) Holly Creek Marina; 7855 Holly Creek Road, Celina, TN 38551, 931–243–2116, 7 a.m.–8 p.m. 7 days/week, floating barge—mobile pumpout.

(D) Sulpher Creek Marina; 3498 Sulpher Creek Road, Burkesville, KY 42717, 270–433–7272, 24 hours daily (self service), 10′ draft.

(E) Hendricks Creek Marina; 945 Hendricks Creek Road, Burkesville, KY 42717, 270–433–7172, 8 a.m.–5 p.m. 7 days/week, 10′ draft.

(F) Wisdom Marina; Rt. 2, Box 220, Albany, KY, 42602, 606–387–5841, 8 a.m.–5 p.m. 7 days/week, floating barge—mobile pumpout.

(G) Wolf River Marina; Rt. 2, Box 751, Albany, KY, 42602, 606–387–5841, 7 a.m.–7 p.m. weekdays, 7 a.m.–9 p.m. weekends, 25′ draft.

(H) Eagle's Cove Marina; 5899 Eagle Cove Road, Byrdstown, TN, 38549, 931–864–3456, 7 a.m.–8 p.m. 7 days/week, 15′ draft.

(I) Star Point Marina; 4490 Star Point Road, Byrdstown, TN, 38549, 931–864–3115, 6 a.m.–6 p.m. 7 days/week, 15′ draft.

(J) Sunset Marina; 2040 Sunset Dock Road, Hwy 111, Byrdstown, TN, 38549,

931–864–3146, 6 a.m.–p.m. 7 days/week, 40′ draft.

(K) East Port Marina; 5652 East Port Road, Alpine, TN, 38543, 931–879–7511, 7 a.m.–8 p.m. 7 days/week, 11′ draft.

(L) Willow Grove Marina; 9990 Willow Grove Hwy., Allons, TN, 38541, 931–823–6616, 7 a.m.–8 p.m. 7 days/week, 15′ draft and mobile barge.

(M) Livingston Marina; 1260 Livingston Boat Dock Road, Allons, TN, 38541, 931–823–6666, 8 a.m.–5 p.m. 7 days/week, floating barge—mobile pumpout.

(N) Horse Creek Marina; 1150 Horse Creek Road, Celina, TN, 38551, 931–243–2125, 24 hours daily, seven days weekly (self service), 10′ draft.

(O) Dale Hollow Lake State Resort Park; 6371 State Park Road, Burkesville, KY, 42717, 270–433–7431, 8 a.m.–6 p.m. weekdays, 8 a.m.–8 p.m.weekends, 24′ draft.

All vessel pumpout facilities that are described either discharge into State approved and regulated septic tanks or State approved on-site waste treatment plants, or the waste is collected into a large holding tank for transport to a sewage treatment plant. Thus, all vessel sewage will be treated to meet existing standards for secondary treatment.

Estimates based on a survey conducted of Dale Hollow Lake marina managers and owners in regard to the number of boats equipped with U.S. Coast Guard-approved marine sanitation devices (MSD) result in 68 boats. This would result in a ratio of 4.5 boats with MSDs per pumpout facility. Dale Hollow Lake's shoreline management plan does not permit private docks. Altogether, there are a total of 2,663 boat slips located at the 15 Dale Hollow Lake marinas. Of that overall total, 453 are houseboat slips, and 385 of these are houseboats which have holding tanks (subtracting the 68 boats mentioned above, which have MSDs). This results in a ratio of 26 boats with holding tanks per pumpout facility.

Comments concerning this action may be filed April 24, 2006. Such communications should be addressed to Wesley B. Crum, Chief, Coastal Section, USEPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street

SW. Atlanta, Georgia, 30303–3104. Telephone 404–562–9352.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E6–4203 Filed 3–22–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–580]

Announcement of Next Meeting Date and Agenda of Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; announcement of meeting.

SUMMARY: This document announces the next meeting date and agenda of the Consumer Advisory Committee. The purpose of the Committee is to make recommendations to the Federal Communications Commission (''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on Friday, April 7, 2006, from 9 a.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW. Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, (202) 418–2809 (voice), (202) 418–0179 (TTY) or e-mail: *scott.marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *By Public Notice* DA 06–580 released March 14, 2006. The Commission announced the next meeting date and meeting agenda of its Consumer Advisory Committee.

Purpose and Functions

The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

Meeting Agenda

At its April 7, 2006 meeting, the Committee will (1) Receive briefings by FCC staff regarding Agency activities; (2) receive a report and recommendations from its TRS Working Group regarding speech-to-speech call standards, captioned telephony, IP and VRS provider certification, and description of VRS service; (2) receive a report and recommendation from its Media Working Group regarding media ownership rules; (3) receive a report and recommendations from its Advanced Technologies Working Group regarding capabilities of digital-to-analog set-top boxes, closed captioning related to digital television and multicast channels, and a proposed consumer/disability impact statement for inclusion in FCC proceedings; and (4) receive reports from its Consumer Affairs and Rural Working Groups regarding their activities. The full Committee may take action on any or all of these agenda items.

A copy of the March 14, 2006, public notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac.* Meeting minutes will be available for public inspection at the FCC headquarters building.

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible format; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will be webcast with open captioning at *http://www.fcc.gov/cgb/cac.* Request other reasonable accommodations for people with disabilities as early as possible; please allow at least 14 days advance notice. 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. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Thomas Wyatt,

Deputy Bureau Chief, Outreach and Intergovernmental Affairs, Consumer & Governmental Affairs Bureau.

[FR Doc. 06–2828 Filed 3–22–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

Previously Scheduled Date & Time: Thursday, March 30, 2006, Meeting Open to The Public. This Meeting Was Rescheduled For Wednesday, March 29, 2006.

DATES AND TIME: Wednesday, March 29, 2006 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This Meeting Will Be Open To The Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 2006–04:
Representative Tancredo and Tancredo for Congress Committee, Inc., by Jon Ponder, Treasurer.
Final Rules on Coordinated Communications.
Routine Administrative Matters.

* * * * *

DATE AND TIME: Tuesday, April 4, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed To The Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

FOR MORE INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–2895 Filed 3–21–06; 3:19 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

[Docket No. OP–1164]

Federal Reserve Currency Recirculation Policy

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final policy.

SUMMARY: The Board is revising the Federal Reserve's cash services policy to reduce depository institutions' overuse of Federal Reserve Bank currency processing services, which could affect approximately 150 to 225 depository institutions with high-volume currency operations. The Board is adding two elements to the policy: (1) A custodial inventory program that provides an incentive to depository institutions to hold $10 and $20 notes in their vaults to meet customers' demand, and (2) a fee to depository institutions that deposit fit $10 or $20 notes at a Reserve Bank and order the same denomination, above a *de minimis* amount, during the same business week. In general, the Federal Reserve expects depository institutions to recirculate to their customers fit currency deposited with them and to deposit only excess or unfit currency with Reserve Banks. The Reserve Banks will amend section 3.3 of Operating Circular 2 to implement the provisions of the final policy.

DATES: *Implementation Timeframe:* Reserve Banks expect to begin accepting requests to participate in the custodial inventory program in May 2006, with program operations beginning in July 2006. Reserve Banks expect to begin assessing recirculation fees in July 2007. Reserve Banks' Cash Product Office will provide notice of the specific dates at least sixty days in advance on the Federal Reserve Financial Services Web site at *http://www.frbservices.org*.

FOR FURTHER INFORMATION CONTACT: Eugenie E. Foster, Manager (202/736–5603) or John D. Sparrow, Jr., Senior Financial Services Analyst (202/452–3597), Cash Section, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of the Telecommunications Device for the Deaf (TDD) only, (202/263–4869).

SUPPLEMENTARY INFORMATION:

I. Background

The Problem

The Federal Reserve Banks (Reserve Banks) supply genuine (new and fit) currency and coin to depository institutions to meet the public's cash demand.[1] Historically, Reserve Banks also removed unfit notes from circulation and served as intermediaries among depository institutions, accepting deposits from those with a surplus of fit notes and providing currency to those with a shortfall. Depository institutions, in turn, acted as intermediaries among their customers, recirculating currency from merchant customers, for example, to meet the currency demands of households and other customers.

These traditional patterns have been changing as depository institutions have used fewer fit notes deposited by their customers to fill other customers' orders. Today, depository institutions often order currency directly from Reserve Banks to stock automated teller machines (ATMs) and fill customer orders, depositing notes received from their customers directly with Reserve Banks.

Further, actions taken by many depository institutions to reduce their required reserves have allowed them to reduce their holdings of vault cash.[2] Depository institutions with vault cash in excess of that needed to satisfy reserve requirements have an incentive to economize on holdings of currency in their vaults.[3] Efforts to economize on holdings of currency have led some depository institutions to increase the size and frequency of their deposits of currency to and orders of currency from Reserve Banks.

Reserve Banks' order and deposit activity during 2004 shows that deposits of 7.2 billion fit $10 and $20 notes were followed or preceded by orders of the same denomination by the same institution in the same business week in the same geographic area.[4] This pattern suggests that some depository institutions are relying on Reserve Banks to process a substantial amount of currency that the depository institutions should normally have recirculated to their customers. Further, this activity is concentrated primarily in approximately 40 depository institutions with large currency businesses.[5] Underpinning depository institutions' decisions to use—and overuse—Reserve Bank currency processing services is the fact that Reserve Banks offer basic currency processing services without charge. The Board believes that to minimize the societal cost of providing currency to the public, depository institutions should resume their traditional role of supplying fit currency from their customers' deposits to meet other customers' needs before turning to Reserve Banks to obtain currency.

Current Policy

The Federal Reserve's current cross-shipping policy is described in the

[1] Fit notes are of acceptable quality for circulation, whereas unfit notes are unacceptable. For example, unfit notes are often soiled, torn, or defaced. New notes are previously uncirculated notes that Reserve Banks issue.

[2] Depository institutions can satisfy their reserve requirements with vault cash, or with reserve balances held at a Reserve Bank either directly or through a pass-through correspondent. Since the mid-1990s, however, many depository institutions have sharply reduced their reserve requirements by sweeping balances held by retail customers in deposit accounts that are reservable into accounts that are not reservable. For some institutions, the reduction in required reserves left them with more vault cash than necessary to meet requirements.

[3] Vault cash holdings do not earn interest. If, however, an institution deposits currency with a Reserve Bank, it receives credit to its account at the Federal Reserve. The depository institution can then earn a positive return on those funds by lending them to another institution, such as in the federal funds market.

[4] This amounts to approximately 39 percent of notes deposited in these denominations, or approximately 19 percent of total deposits to Reserve Banks in 2004.

[5] Approximately 40 of the Reserve Banks' more than 8,000 currency customers are responsible for approximately 90 percent of cross-shipping activity.

Reserve Banks' Operating Circular 2, *Cash Services*, which states:

> If you deposit fit currency with us, you may not order currency of the same denomination within five business days prior to or following the deposit of that denomination. This practice, known as ''cross-shipping,'' is not permitted at the depositing office level. When practicable, cross-shipping should be minimized or eliminated at the depositing institution level.[6]

The current policy has proven ineffective in reducing or preventing cross-shipping. For example, this policy does not provide sufficient guidance to depository institutions or Reserve Banks with respect to the circumstances under which cross-shipping should not occur. More fundamentally, the only tool that Reserve Banks currently have to enforce the policy is to deny currency services to depository institutions that do not comply with the operating circular requirement. Denial of service would be highly disruptive to the businesses of both the depository institutions and their customers. Also, in the past, Reserve Banks did not have systematic tools for monitoring the quality of specific currency deposits, making the process of identifying cross-shipping cumbersome and costly.

2003 Proposed Recirculation Policy

To provide incentives for depository institutions to adopt, from a societal point of view, the least costly means of recirculating currency to their customers, in October 2003 the Board proposed revising the current policy by adding two inter-related components: A custodial inventory program, and a fee that would be assessed on deposits of cross-shipped currency (''2003 proposed policy'').[7]

To mitigate the costs associated with holding currency long enough to facilitate its recirculation, the Board proposed allowing depository institutions to transfer to a custodial inventory no more than 25 percent of the value of their total holdings in the $5 through $20 denominations.[8] To be eligible to hold a custodial inventory, the 2003 proposed policy required a depository institution to be capable of recirculating at least 200 bundles of currency in the eligible denominations per week in a Reserve Bank zone or sub-zone, in order to justify the administrative costs and the risks to Reserve Banks of allowing depository institutions to hold Reserve Bank currency in their vaults.[9]

To provide further incentive for depository institutions to recirculate currency, the Board also proposed establishing a recirculation fee. The fee would reflect Reserve Banks' costs that vary with the quantity of currency processed. The 2003 proposal indicated that, based on Reserve Banks' costs at the time, the fee would be $5 to $6 per bundle of cross-shipped currency. Depository institutions would pay the fee if they cross-ship $5, $10, and $20 notes above a *de minimis* exemption level of 1,000 bundles of currency cross-shipped per quarter.[10]

Summary and Analysis of Public Comments

Twenty-four entities provided comments on the 2003 proposed policy, including twenty financial institutions and organizations representing financial institutions; two armored carriers; a currency processing equipment manufacturer; and a member of Congress. Several broad themes emerged from the comments. The most frequent comment, made in various ways by fourteen commenters, reflected concern that the policy would lead to deterioration in the quality of currency in circulation. Thirteen commenters asserted that the policy favored depository institutions with certain types of operations or currency volumes over others. Twelve commenters expressed concern that the policy would increase their costs; seven commenters expected that depository institutions would pass these costs on to customers. Nine commenters responded negatively to various aspects of including one-dollar notes in the policy. Nine commenters sought more information about the requirements of the custodial inventory program.

Quality

Many commenters expressed concern that the 2003 proposed policy would adversely affect the quality of currency in circulation because the fee would create an incentive to reduce cross-shipping, but would not necessarily cause the depository institutions to sort fit from unfit notes before paying them to customers.[11] Depository institutions, therefore, could choose to recirculate unfit notes to their customers to avoid the risk of incurring fees in the event that they deposit fit notes with Reserve Banks. Reserve Banks, however, believe that many depository institutions have or will invest in automated fitness-sorting equipment, particularly for processing $20 notes, to ensure proper functioning of their ATMs.

Nonetheless, some depository institutions may recirculate unfit notes, leading to a decline in the overall quality of notes in circulation. Consequently, the final policy requires Reserve Banks to adopt and implement a currency quality policy before the recirculation fee takes effect. The quality policy will define the threshold level of quality for each denomination that is ''fit for commerce;'' identify a framework for monitoring quality; and specify actions Reserve Banks would take to adjust the quality of currency in circulation to avoid significant inconvenience to the public, or increased risk of recirculating counterfeit notes.

The ''fit-for-commerce'' standard will have two components, which may differ by denomination: (1) A minimum fitness threshold based on consumer acceptance and the technical tolerances of machines that handle currency, and (2) a maximum allowable incidence of below-threshold notes remaining in circulation. The goals of the standard will be the following:

- The public remains confident that currency supplied by depository institutions and merchants is genuine and readily usable in subsequent transactions.
- Currency in circulation is of sufficiently good condition that users can determine it is genuine by using the currency's security features.[12]

[6] Federal Reserve Operating Circular 2, January 2, 1998, section 3.3. *http://www.frbservices.org/Cash/index.cfm*.

[7] See 68 FR 59176, October 14, 2003.

[8] A custodial inventory is currency owned by a Reserve Bank but located within a depository institution's secured facility and segregated from the depository institution's currency.

[9] A bundle of currency is a standard package of 1,000 notes. A zone is the area to which a Reserve Bank office provides currency services. Under the 2003 proposed policy, Reserve Banks could establish sub-zones for large metropolitan areas that are located a significant distance from the nearest Reserve Bank office. Deposits and orders by institutions with branches and vaults in a sub-zone would have been assessed cross-shipping fees separately from the institutions' activities in the rest of the zone.

[10] The 2003 proposed policy initially excluded $1 notes while Reserve Banks worked with the banking industry with the goal of achieving net savings comparable to those that Reserve Banks could realize by including $1 notes in the policy. If this collaborative effort failed to yield comparable savings, the 2003 proposal would have then included $1 notes in the policy.

[11] One commenter from the automatic merchandising industry noted that ''[i]f the recirculation policy degrades the quality of currency so that a mere ½ of 1% of the industry's estimated $30 billion of annual sales are lost, the result will be $150 million of lost sales.''

[12] The public's ability to recognize the security features of currency can diminish if notes are heavily soiled, torn, worn, or crumpled.

• Currency in circulation is usable in automated currency handling equipment.[13]

• There is an appropriate balance between the public's note handling costs and Reserve Banks' costs to maintain the fit-for-commerce standard.

Some commenters mentioned the need for a clear and useable standard for fit notes. To assist depository institutions with the standard, Reserve Banks published guidelines in 2004 for distinguishing between notes that are fit and unfit for further circulation.[14] Over time, the Federal Reserve expects to continue to refine these guidelines to reflect changing industry practices, technology, and the overall quality of currency in circulation.

Equity

Some commenters expressed concern that the 2003 proposed policy would favor depository institutions with certain currency volumes over others. The most frequent comment came from institutions with high-volume currency operations that suggested the *de minimis* exemption would favor institutions with low-volume currency operations because the latter's activity is likely to fall below the exemption threshold. These respondents argued that the *de minimis* exemption would allow institutions with low-volume currency operations to obtain fit and new currency less expensively from Reserve Banks than from correspondent depository institutions, putting the correspondent institutions at a competitive disadvantage. Institutions with medium-volume currency operations argued that they were likely to be most disadvantaged by the policy because (1) their activity exceeds the exemption threshold; (2) they do not have the economies of scale to invest in high-speed processing equipment as depository institutions with large currency volumes do; and (3) they do not have sufficient volume to qualify for the custodial inventory program. Institutions with low-volume currency operations stated that although their activity generally does not exceed the exemption threshold, the policy would nonetheless have a negative effect on them through the increased costs their correspondent banks would pass along to them. Several respondents also commented on the disproportionate effect of the 2003 proposed policy on depository institutions that have a number of relatively small vaults widely dispersed across a Federal Reserve service zone. Transportation costs, they argued, as well as the complexities of managing multiple inventories, would be more burdensome for depository institutions in this position than for those that have fewer, more centralized vaults.

The Board has structured the elements of the final policy, including the custodial inventory program and the recirculation fee, to balance the goal of providing incentives to curtail overuse of Reserve Bank services while minimizing the administrative burden of enforcing the policy on institutions with *de minimis* cross-shipping activity. The custodial inventory proof-of-concept program, discussed later in this notice, demonstrated that a depository institution vault with as little as $5 million in daily average vault cash might qualify for the program. Under the final policy, a depository institution can meet the eligibility threshold for the custodial inventory program based on either cross-shipping volume or evidence of internal recirculation, or a combination of the two.[15] Data provided by the depository institutions that participated in the proof-of-concept program suggest that some depository institutions may recirculate significant volumes of currency in normal circumstances. If depository institutions satisfy half of their customer orders with currency from internal sources, such as deposits from other customers, Reserve Banks estimate that, under the final policy, only thirteen depository institutions would incur fees greater than $5,000 per year and the largest fee that any affected depository institution would incur would be less than $15,000 per year. If depository institutions satisfy two-thirds of their customer orders with currency from internal sources, Reserve Banks estimate that all depository institutions either would recirculate enough currency to meet the minimum recirculation requirement for a custodial inventory or would incur no fees because they would not exceed the *de minimis* exemption. Depository institutions with highly dispersed inventories may decide to consolidate some operations or manage their inventories more effectively under the policy, in order to minimize costs.

Increased Costs to Depository Institutions

Many commenters asserted that the 2003 proposed policy would increase their costs, but provided almost no information on specific costs that depository institutions might incur. Some commenters indicated that the proposed policy would affect profit margins for their currency businesses and that it would increase expenses for high-speed sorting equipment, third-party vendor arrangements, new software, and transportation. Reserve Banks projected additional expenses that depository institutions might incur to comply with the policy, including the purchase of new currency processing equipment and the associated labor and maintenance costs, and concluded that the Reserve Bank savings from processing a lower volume of currency will exceed the increased costs to depository institutions.

Commenters also asserted that the 2003 proposed policy did not address the root cause of cross-shipping—the opportunity costs associated with holding additional currency in their vaults long enough to facilitate its recirculation. In response, the Board adjusted the custodial inventory cap in the final policy as described below.

Custodial Inventory Program

A number of commenters sought more information about the requirements of the custodial inventory program. Following the notice of the 2003 proposed policy, but before the implementation of the proof-of-concept program, Reserve Banks published more detailed information about the custodial inventory program, including an executive summary, a manual of procedures, and a uniform agreement.[16]

Five commenters expressed concern that the inventory cap in the 2003 proposed policy was too restrictive. Most of the custodial inventory proof-of-concept participants agreed, finding that the cap limited their ability to hold enough currency in the custodial inventory to satisfy customer orders. As a result, the participants were able to reduce, but not fully eliminate, cross-shipping. Accordingly, as described below, the Board has adjusted the inventory cap in the final policy.

Custodial Inventory Proof-of-Concept Program

Before undertaking a permanent custodial inventory program, the Board authorized Reserve Banks to implement a proof-of-concept program. This

[13] Automated currency handling equipment includes, for example, vending machines, fare card machines, and currency sorting machines.

[14] See *http://www.frbservices.org/Cash/pdf/FRB_Fitness_Standards.pdf.*

[15] A depository institution can meet the threshold for a custodial inventory site by providing deposit and payment records demonstrating that it currently recirculates at least 200 bundles of currency weekly among its customers. ''Internal recirculation'' refers to satisfying customer orders with currency from internal sources, such as deposits from other customers, rather than cross-shipping.

[16] See *http://www.frbservices.org/Cash/CustodialInventoryProgram.html.*

program allowed depository institutions to transfer into a custodial inventory no more than 25 percent of average closing balances of currency at the location in the $5 through $20 denominations. The purpose of the proof-of-concept program was to allow Reserve Banks to evaluate how custodial inventories influence depository institutions' patterns of depositing and withdrawing currency, while allowing depository institutions to assess the costs and benefits of participating in the program. Consistent with these objectives, the Board indicated that it would review the following:

- The extent to which participants significantly reduce cross-shipping or recirculate significant amounts of currency.
- The extent to which deposits received from participants contain a higher proportion of unfit notes than the average for all deposits in the same zones.
- The appropriate inventory cap formula.
- The appropriate eligibility threshold for participation in the custodial inventory program.

Six depository institutions participated in the proof-of-concept program. Several institutions participated at more than one location; consequently, the program included eleven custodial inventory sites. The participants found benefit in the program and expressed an interest in continuing their participation. Likewise, Reserve Banks found that the program had a measurable effect on the participants' depositing and ordering patterns with their respective Reserve Bank offices. In total, the eleven participating sites experienced a 34 percent reduction in cross-shipping volume in the first quarter of 2005 as compared with the first quarter of 2004, although results varied from site to site. There was no discernible increase in the proportion of unfit notes deposited because the custodial inventory sites generally chose not to make investments to fitness-sort their currency over the short duration of the program. Many participants indicated to Reserve Banks that if the program were made permanent, they would invest in automated fitness-sorting capability, at least for $20 notes, because they need notes of acceptable quality to ensure that their ATMs do not malfunction.

The proof-of-concept program also allowed Reserve Banks to evaluate the proposed inventory cap formula. The program demonstrated that the proposed formula does not accommodate intra-week depository institution currency flows and, therefore, does not provide effective relief from increased opportunity costs that depository institutions could incur if they held additional inventory to recirculate to their customers. Program participants found that the inventory cap was inflexible in accommodating incoming deposits that they otherwise could have used to satisfy customer orders. As a result, depository institutions reduced but did not fully eliminate cross-shipping.

II. Final Recirculation Policy

Highlights of Changes From the 2003 Proposed Policy

As a result of the information obtained from public comments and through the proof-of-concept program, the Board determined to revise its cash services policy. The final policy differs from the 2003 proposed policy in the following ways:

- It excludes $1 and $5 notes.
- It requires custodial inventory participants to hold one day of average daily payments on their own books, but allows them to transfer up to the equivalent of four days of average daily payments to the custodial inventory, to be held on the books of Reserve Banks.
- The Reserve Banks will determine the average fitness rate of an institution's deposits on a monthly, rather than quarterly, basis and will apply the rate to the institution's weekly deposits for the month in which the fitness rate was observed, not prospectively.
- It reduces the *de minimis* cross-shipping exemption from 1,000 bundles to 875 bundles of notes per quarter, consistent with the Board's decision to exclude the $5 note from this policy.

The Reserve Banks will amend section 3.3 of Operating Circular 2 to implement the provisions of this final policy.

Elements of the Final Policy

Denominations Subject to the Policy

The final policy applies only to $10 and $20 notes. In its 2003 proposal, the Board initially excluded $1 notes, pending the outcome of a collaborative effort between the Reserve Banks and the banking industry to find a means of achieving net savings comparable with those that Reserve Banks could realize by including $1 notes in the policy. Because of the relatively low incidence of counterfeiting and the low value of $1 notes, depository institutions handle them differently from higher denominations to minimize their costs. Many depository institutions do not piece-count a substantial proportion of the $1 notes they receive today; thus, the additional costs to comply with a recirculation policy for $1 notes would be significantly greater than the costs for higher denomination notes. Reserve Banks worked with depository institutions to consider a variety of options, such as extending the cross-shipping restriction for $1 notes from one to four weeks or providing an exchange program to allow depository institutions to trade fit $1 notes with each other within geographic markets. After thorough analysis, however, the Reserve Banks concluded that none of the options would increase depository institution recirculation of $1 notes without unwarranted societal costs. The Board concluded that including $1 notes in the final policy also would likely lead to a significant decline in the quality of these notes in circulation. The final policy, therefore, excludes $1 notes.

Reserve Banks have also learned that it is unlikely that depository institutions would fitness-sort or authenticate $5 notes before recirculating them because of the relatively low incidence of counterfeiting and the low value of this denomination. Therefore, the quality of $5 notes in circulation would likely decline if these notes were included in the policy. Thus, as with the $1 note, the Board concluded that the options to increase depository institutions' recirculation of $5 notes would result in unwarranted societal costs. The final recirculation policy, therefore, also excludes $5 notes.

Finally, the final policy excludes $50 and $100 notes because of the risk that depository institutions might recirculate high-denomination counterfeit notes. These notes are a relatively minor component of cross-shipped currency.

Custodial Inventory

Inventory Cap

Reserve Banks analyzed three alternative formulas for the final custodial inventory cap: Increasing the cap from 25 percent to 70 percent of average closing balances of eligible denominations during the previous week; imposing an end-of-week inventory cap with no cap on intra-week deposits; or requiring a depository institution to hold a minimum amount of currency on its own books before it could deposit notes into a custodial inventory. Each of these cap methodologies would allow depository institutions to reduce significantly (and theoretically eliminate) cross-shipping, while mitigating the opportunity costs they would incur by holding currency long enough to recirculate it. Reserve Banks concluded, however, that the

formula requiring a participating depository institution to hold one day of average daily payments on its own books would cause the least disruption to Reserve Banks' internal currency operations. The final policy, therefore, requires each participant to hold on its own books one day of average daily payments in $10 and $20 notes, representing the amount needed by the depository institution to satisfy normal business needs for those denominations.[17] To enhance the incentive to recirculate currency during the week, the final policy allows each participant to hold additional currency for recirculation as follows. After satisfying the one-day requirement, a participant may transfer up to the equivalent of four days of average daily payments in $10 and $20 notes from its own vault to the custodial inventory.

Minimum Recirculation Requirement

The Board determined that depository institutions must demonstrate, initially and periodically thereafter, that each vault in which they seek to operate a custodial inventory can recirculate a minimum of 200 bundles of $10 and $20 notes per week in a Reserve Bank zone or sub-zone to qualify for a custodial inventory.[18] An institution can meet this requirement in the following ways:

(1) An institution that cross-ships at least 200 bundles of $10 and $20 notes per week in a zone or sub-zone would meet the recirculation threshold and, therefore, qualify for a custodial inventory, provided that each vault in which the institution seeks to operate a custodial inventory will be able to recirculate at least 200 bundles of $10 and $20 notes per week.

(2) An institution can show for the prospective custodial inventory vault that it recirculates among its customers at least 200 bundles of $10 and $20 notes weekly in the zone or sub-zone.

(3) An institution can also meet the threshold through a combination of cross-shipping activity and recirculation among its customers, totaling at least 200 bundles of $10 and $20 notes in the zone or sub-zone.

Reserve Banks will review annually the minimum bundles required to support a custodial inventory. Reserve Banks estimate that between 150 and 225 depository institution sites may meet the criteria to participate in the custodial inventory program.

Recirculation Fee

Fee Level

Because the Board expects that custodial inventories alone would not substantially increase recirculation and reduce cross-shipping, it is approving a recirculation fee to provide further incentive for depository institutions to recirculate currency. The fee will be standard nationally and will reflect Reserve Banks' costs that vary with the quantity of currency received, processed, and paid out. Reserve Banks will review the changes to those costs annually and will adjust the fee accordingly. Based on current levels of Reserve Bank costs, the fee would be approximately $5 per bundle of cross-shipped currency. Reserve Banks will assess the fee to depository institutions that deposit fit $10 and $20 notes and order the same denomination within the same business week in a Reserve Bank zone or sub-zone.[19] The fee will not be assessed on deposits of unfit or surplus fit currency.[20] Under certain unusual circumstances, such as the release of a new note design, Reserve Banks may waive the fee.

The recirculation fee is not subject to the pricing requirements of the Monetary Control Act (MCA). The MCA applies to ancillary currency and coin services such as transportation and coin wrapping, but not to services ''of a governmental nature, such as the disbursement and receipt of new or fit coin and currency.''[21] Only the Reserve Banks can issue and ultimately redeem currency. The Board determined, in the development of its principles for priced services, that ''currency and coin processing (paying, receiving, and verifying both coin and currency, and issuing, processing, canceling, and destroying currency) are governmental functions and would not be considered priced services subject to MCA.''[22] The recirculation fee is a recovery of costs incurred by the Reserve Banks resulting from overuse of governmental services by certain institutions. The recirculation fee also should lower the overall societal costs of currency processing and distribution.

Average Fitness Rate Calculation

The Board has revised the average fitness rate calculation, used in determining the amount of currency cross-shipped, so that Reserve Banks will apply a contemporaneous fitness rate to each institution's deposits.[23] Under the final policy, Reserve Banks will determine the average fitness rate of an institution's deposits on a monthly, rather than quarterly, basis and will apply the rate to the institution's weekly deposits for the month in which the fitness rate was observed, not prospectively. For example, if the notes processed from an institution's deposits in a zone or sub-zone in January include 80 percent fit currency, the Reserve Bank would multiply that institution's weekly deposits during January by 80 percent to determine how much fit currency the institution deposited each week of the month. The Reserve Bank would then compare the institution's weekly deposits of fit currency to their weekly orders in the zone or sub-zone to determine the amount of currency the institution cross-shipped. At the end of each quarter, the Reserve Bank will assess the recirculation fee for each bundle of currency cross-shipped above the *de minimis* exemption.

De minimis Exemption

The final policy exempts *de minimis* levels of cross-shipped currency from the recirculation fee. Consistent with the Board's decision to exclude the $5 note, the final policy reduces the *de minimis* exemption to 875 bundles of notes per quarter from the level of 1,000 bundles per quarter in the 2003 proposed policy. Reserve Banks will review annually the number of bundles for the *de minimis* exemption.

Using the initial *de minimis* amount, depository institutions will not pay a recirculation fee for the first 875 bundles of $10 and $20 notes crossed-shipped in a zone or sub-zone each quarter. The *de minimis* exemption has

[17] Average daily payments is defined as the total dollar amount of $10 and $20 notes that the depository institution paid to its customers during an appropriate, previous five-busines-day period in the zone of a custodial inventory site, divided by five. Reserve Banks will perform this calculation on a weekly basis, based on data from the most recent, appropriate period.

[18] Because the expected increase in recirculation from reducing the minimum requirement would be insignificant while the cost to administer the program would increase appreciably, the Board did not adjust the minimum recirculation requirement to reflect the exclusion of the $5 note from the final policy.

[19] Reserve Banks will compare each institution's weekly deposits of fit currently in a zone or sub-zone with their weekly orders to determine the amount of currency the institution cross-shipped. The lesser of fit deposits and orders is the amount cross-shipped. For example, if an institution deposited to a Reserve Bank 1,250 bundles of fit $20 notes in a week and ordered 1,000 bundles of $20 notes the same week, the amount cross-shipped is 1,000 bundles.

[20] Surplus fit currency is defined as fit currency that is not needed by the depository institution within the business week of its deposit.

[21] 126 Cong. Rec. S3168 (March 27, 1980) (statement of Senator Proxmire).

[22] 45 FR 56893 (Sept. 4, 1980).

[23] Under the 2003 proposed policy, Reserve Banks would have determined the number of fit notes deposited as a percentage of total notes deposited during each quarter and then applied the average quarterly fitness rate by zone or sub-zone to an institution's deposits during the following quarter to determine how much currency it cross-shipped.

three purposes. First, the exemption compensates for minor differences between currency fitness determinations made by depository institutions and Reserve Banks in processing these notes.[24] Second, the exemption limits the effect of the policy on institutions whose small scale of currency operations may not justify investments in sorting equipment. Third, the exemption allows depository institutions that experience unanticipated swings in customer demand to order or deposit currency without incurring a fee. The exemption will not have a material effect on Reserve Bank processing volumes, but will reduce or eliminate the cost of the policy for a large number of depository institutions.

A Reserve Bank will apply the *de minimis* exemption to currency that a depository institution cross-ships in a zone or sub-zone during each quarter.[25] All or part of an exemption that a depository institution did not use during a quarter will expire at the end of that quarter. Reserve Banks will apply the exemption against depository institutions' total volumes of cross-shipped $10 and $20 notes within a zone or sub-zone, not against each individual denomination. Because of the *de minimis* exemption, Reserve Banks estimate that only between 100 and 150 depository institutions may be subject to the recirculation fee.

Cost-Benefit Analysis of the Final Recirculation Policy

Estimate of Avoided Reserve Bank Costs

During 2004, Reserve Banks processed 36.2 billion notes, with total costs of approximately $344 million. This number includes 17.8 billion $10 and $20 notes, 7.2 billion of which depository institutions cross-shipped. Curtailing current cross-shipping and its expected future growth would reduce Reserve Banks' expenses by enabling them to scale down currency processing operations and delay future capital investments in equipment and facilities. Reserve Banks estimate that by implementing the final recirculation policy, they could avoid currency processing costs of approximately $250 million over the next ten years on a net present value basis.[26]

Estimate of Reserve Banks' and Depository Institutions' Costs

Reserve Banks would incur approximately $1 million per year in operating costs to administer the custodial inventory program, including managing the overall program and auditing the custodial inventories. Reserve Banks estimate that during the first year of the program their costs would total approximately $2.5 million because of expenses for training and site inspections. The net present value of these costs over the next ten years is approximately $10 million.

Depository institutions will likely incur some costs to operate custodial inventories. For example, depository institutions may have to modify their facilities to segregate Reserve Bank currency or to enhance their physical security, perhaps by installing surveillance equipment. They may also have to enhance physical- and procedural-access controls and engage in additional sorting and other handling of the notes held in a custodial inventory. While depository institutions provided no specific cost estimates, Reserve Banks project these costs to be minimal.

Reserve Banks believe that many depository institutions have made or plan to make the capital investments necessary to reduce or eliminate cross-shipping. Reserve Banks estimate that the depository institutions' costs to comply with the recirculation policy, including labor costs, would be approximately $10–15 million per year over the next ten years, assuming that depository institutions fitness-sort $10 and $20 notes and make the majority of their remaining compliance expenditures in the first two years of the program. Over a ten-year horizon, the estimated net present value of these depository institution costs is approximately $100 million.

Conclusion

Reserve Banks estimate that the final recirculation policy could result in a net societal benefit of approximately $140 million over the next ten years on a net present value basis. Both Reserve Banks and depository institutions would incur some costs under the policy; however, Reserve Banks estimate that any costs incurred by depository institutions will be significantly less than the costs that Reserve Banks will avoid if the institutions reduce or cease cross-shipping currency.

III. Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the Board's policy, ''The Federal Reserve in the Payments System.''[27] Under this policy, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the proposed change has such an effect, the Board must evaluate it further to assess whether its benefits—such as contributions to payments system efficiency, payment system integrity, or other Board objectives—can be retained while reducing hindrances to competition. As noted above, only Reserve Banks can issue and ultimately redeem currency; these are governmental functions that private-sector entities cannot perform. Private-sector entities do, however, provide currency deposit, withdrawal, and related services to depository institutions that might otherwise deal directly with a Reserve Bank. Therefore, the Board has considered the potential competitive effects of the policy on private-sector currency service providers.

Under the recirculation policy, some correspondent banks will incur increased operational costs, or pay recirculation fees. The fees that correspondent banks charge to respondent banks could increase to reflect those costs. While it might be less costly for the respondent banks to obtain currency services directly from Reserve Banks because they would likely benefit from the *de minimis* exemption, the Board understands that respondent banks generally choose a correspondent to provide a package of services, not exclusively for currency services. In that event, depository institutions might retain their correspondent relationships despite an

[24] Because Reserve Banks will assess the recirculation fee for all fit notes cross-shipped above the *de minimis* exemption, depository institutions will have an incentive to ensure that their fitness determinations are comparable with those of Reserve Banks.

[25] *De minimis* exemptions may not be transferred from one zone or sub-zone to another.

[26] Reserve Banks estimated the net present value based on 2004 expense data, using a discount rate of 3.9 percent, as advised by OMB Circular No. A–94, Appendix C, to approximate the nominal interest rate. The estimate includes costs that vary with the volume of currency processed, including labor, materials, and equipment. The amount by which Reserve Banks are able to reduce costs would depend on the actual decline in volumes because of the recirculation policy. This decline would depend on the extent to which (1) depository institutions elect to pay the fee instead of recirculating; (2) depository institutions take full advantage of the *de minimis* exemption; and (3) depository institutions alter their handling of denominations that are not covered by the policy.

[27] Federal Reserve Regulatory Service 9–1558.

increase in costs caused by this recirculation policy.

Overall, the Board believes that while private-sector currency service providers cannot duplicate the entire range of Reserve Bank cash functions, they can count, sort, and process currency. In addition, private-sector service providers offer an array of value-added cash services that Reserve Banks do not provide. For example, some private-sector service providers maintain automated teller machines for depository institutions and offer specific retail services for the depository institutions' customers. This policy is unlikely to result in any significant shift of business from private-sector providers to Reserve Banks. Indeed, the policy may shift some currency processing business to private-sector providers. In order to minimize the potential effect of recirculation fees, some depository institutions may choose to fitness-sort their customers' deposits themselves or through a service provider rather than continuing to rely on the Reserve Bank to fitness-sort their currency. Armored carriers or local consortia of depository institutions might offer less costly alternatives because the fitness sorting can be performed as an adjunct to deposit processing services they already perform for their customers. The currency recirculation policy, therefore, is not likely to adversely affect the ability of depository institutions or other service providers to compete with Reserve Banks to provide cash services.

IV. Federal Reserve Currency Recirculation Policy

The Board has adopted the following policy to promote depository institutions' recirculation of fit $10 and $20 Federal Reserve notes.[28]

Custodial Inventory Program

The custodial inventory program promotes recirculation of fit $10 and $20 notes by reducing depository institutions' opportunity costs for holding currency. Participants in the custodial inventory program may hold, in their vaults, currency on the books of Reserve Banks that they otherwise might have shipped to, and then ordered from, Reserve Banks during the same business week.

Requirements[29]

(1) Only depository institutions are eligible to participate in the custodial inventory program. Depository institutions that outsource operation of their currency vault(s) would be eligible if the other requirements are met.

(2) A depository institution must be able to recirculate among its customers a substantial volume of $10 and $20 notes in the zone or sub-zone of a custodial inventory site. At the outset of the program, each vault in which a depository institution seeks to operate a custodial inventory must be able to recirculate 200 bundles of $10 and $20 notes on a regular weekly basis to qualify for the program. Reserve Banks will review annually the minimum bundles required for depository institution participation in the custodial inventory program.

(3) A depository institution must hold on its own books no less than one day of average payments, defined as the total dollar amount of $10 and $20 notes that the depository institution paid to its customers during an appropriate, previous five-business-day period in the zone or sub-zone of a custodial inventory site, divided by five.[30]

(4) A depository institution may transfer into the custodial inventory no more than four days of average payments, defined as the total dollar amount of $10 and $20 notes that the depository institution paid to its customers during an appropriate, previous five-business-day period in the zone or sub-zone of a custodial inventory site, divided by five and multiplied by four.

(5) Depository institutions may deposit currency into or withdraw currency from custodial inventories at any time during the local Reserve Bank's business day.

(6) A depository institution may operate a custodial inventory only under the following conditions:

(a) The depository institution will indemnify the Reserve Bank against theft or loss of Reserve Bank currency.

(b) It will comply with Reserve Bank physical security guidelines for vaults, access control, and camera coverage.

(c) It will operate its facility in accordance with Reserve Bank guidelines for access and control.

(d) It will segregate Reserve Bank currency from other currency.

(e) It will allow full access by Reserve Banks, the Board, the Government Accountability Office, and their agents for unannounced audits of any aspect of the custodial inventory operation.

(f) It is operating in a safe and sound manner, as determined by its Administrative Reserve Bank.

(7) Any depository institution that uses a custodial inventory, in the judgment of Reserve Banks, to circumvent the intent of the recirculation policy will lose its eligibility to participate in the program.

Recirculation Fee

(1) Reserve Banks will monitor currency orders and deposits for all endpoints of each depository institution in each Reserve Bank office service area (''zone'') for cross-shipping. Reserve Bank zones with large metropolitan areas located at a significant distance from a Reserve Bank office may be divided into smaller service areas (''sub-zones''). The criteria for establishing sub-zones will balance the population of a metropolitan area against its distance from the Reserve Bank office. Reserve Banks will review sub-zone criteria annually. Customers may choose the zone or sub-zone in which to include border endpoints. Reserve Banks will monitor the deposits and orders of endpoints located in and near a sub-zone. Reserve Banks will monitor endpoints in other parts of a zone as a group separate from the endpoints in the sub-zone.[31]

(2) Reserve Banks will assess recirculation fees when a depository institution deposits fit $10 or $20 notes and orders the same denomination during the same business week, within a Reserve Bank zone or sub-zone.[32]

(3) Reserve Banks will set a standard national recirculation fee based on those Reserve Bank costs that vary with the quantity of currency received, processed, and paid to depository institutions. Reserve Banks will review the changes to those costs annually and will adjust the fee accordingly. Such costs include personnel, materials, and equipment. The fee will not include overhead costs such as facilities, legal, business development, audit, and protection services that Reserve Banks incur to meet their central bank currency services responsibilities.

[28] By May 2006, Reserve Banks expect to revise Reserve Bank Operating Circular 2 to provide additional guidance on the recirculation policy. For additional information, see *http://www.frbservices.org/Cash/index.html.*

[29] Failure to comply with any of these requirements could result in the loss of eligibility to participate in the program.

[30] For requirements 3 and 4, the five-business-day period consists of Monday through Friday. Reserve Banks will perform this calculation on a weekly basis, based on data from the most recent, appropriate period. If a Federal holiday falls within the period, the other four business days will constitute the period and the total dollar amount of $10 and $20 notes that a depository institution paid to its customers in a zone or sub-zone of a custodial inventory site during that period will be divided by four.

[31] Reserve Bank sub-zones will be published on the Web at *http://www.frbservices.org.*

[32] Reserve Banks will not assess fees for deposits or orders of $1, $2, $5, $50, and $100 notes.

(4) Reserve Banks will allocate recirculation *de minimis* exemptions to depository institutions for each zone or sub-zone where they do business. Reserve Banks will apply the exemptions to depository institutions' total cross-shipped volume.[33] *De minimis* exemptions may not be transferred from one zone or sub-zone to another. Unused *de minimis* exemptions will expire at the end of each quarter. Initially, the *de minimis* exemption will be 875 bundles per quarter. Reserve Banks will review the level of the *de minimis* exemption annually.

(5) Reserve Banks will monitor depository institutions' order and deposit activity weekly for cross-shipping. For the purposes of monitoring cross-shipping activity, a week includes consecutive days from Monday through Friday. If, in the judgment of Reserve Banks, a depository institution circumvents the recirculation policy by reducing its cross-shipping volume without increasing recirculation, such as would be the case if it alternated the weeks in which it orders and deposits currency, Reserve Banks will apply the recirculation fee to fit notes in such deposits.

(6) Reserve Banks will determine the number of fit notes processed from each institution's deposits as a percentage of total notes deposited by that institution during each month. Reserve Banks will then apply this monthly average fitness rate by zone or sub-zone to an institution's weekly deposits during that month to determine how much currency it cross-shipped.[34]

(7) Reserve Banks publish currency fitness and equipment guidelines at *http://www.frbservices.org/Cash/pdf/FRB_Fitness_Standards.pdf.*

Phased Implementation

The Reserve Banks will implement the recirculation policy in two phases. The first phase will expand the custodial inventory program to all eligible participants. One year later, in the second phase, the Reserve Banks will begin assessing the recirculation fee, provided however, that they have implemented a currency quality policy.

[33] Exemptions will not be denomination-specific.

[34] For example, if the notes processed from an institution's deposits in a zone or sub-zone included 80 percent fit currency in January, the Reserve Bank would multiply that institution's weekly deposits during January by 80 percent to determine how much fit currency the institution deposited each week of the month. The Reserve Bank will then compare that institution's weekly deposits of fit currency with their weekly orders in the zone or sub-zone to determine the amount of currency the institution cross-shipped. At the end of the quarter, the Reserve Bank will assess fees for each bundle of currency cross-shipped above the *de minimis* exemption.

By order of the Board of Governors of the Federal Reserve System, March 17, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–2790 Filed 3–22–06; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for the National Centers of Excellence in Women's Health (CoE) and the National Community Centers of Excellence in Women's Health (CCOE)—Ambassadors for Change Program

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

Funding Opportunity Title: Request for Applications for the National Centers of Excellence in Women's Health (CoE) and the National Community Centers of Excellence in Women's Health (CCOE)—Ambassadors for Change Program.

Announcement Type: Competitive Cooperative Agreement—FY 2006—Initial Announcement.

Funding Opportunity Number: Not applicable.

Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance number is 93.013.

DATES: To receive consideration applications must be received by the Office of Grants Management, Office of Public Health and Science (OPHS), Department of Health and Human Services (DHHS), no later than 5 p.m. Eastern Time on May 22, 2006.

Authority: This program is authorized by 42 U.S.C. 300u–2(a).

SUMMARY: The National Centers of Excellence in Women's Health and the National Community Centers of Excellence in Women's Health programs provide funding to academic health centers and community-based organizations to enhance their women's health programs through the integration of these components: (1) Leadership development for women, (2) training for lay, allied health, and professional health care providers, (3) public education and outreach with special emphasis on outreach to minority women, (4) comprehensive health service delivery that includes gender and age-appropriate preventive services and allied health professionals as members of the comprehensive care team, and (5) basic science, clinical and community-based research. In addition, the community centers must replicate their National Community Center of Excellence in Women's Health (CCOE) model in another organization or community.

I. Funding Opportunity Description

The goals of the Ambassador for Change program are to:

1. Increase the number of health professionals, including allied health professionals, trained to work with underserved and diverse women and to increase their leadership and advocacy skills.
2. Increase the number of women, including American Indian or Alaska Native, Black or African American, Hispanic or Latino, Asian, or Native Hawaiian or Other Pacific Islander, who pursue health careers and increase the leadership skills and opportunities for women in the community and for women faculty in academic settings.
3. Eliminate health disparities for women who are underserved due to age, gender, race/ethnicity, education, income, or disabilities.
4. Reduce the fragmentation of women's health services and access barriers by using a framework that coordinates and integrates comprehensive health services. Comprehensive health services include gender and age-appropriate preventive services and allied health professionals on the service delivery team.
5. Increase the women's health knowledge base by conducting gender-based research and/or by involving the community in identifying and conducting research related to and responsive to the health needs and issues of concern to underserved and minority women in the target community.
6. Empower women, especially underserved and minority women, as health care consumers and decision-makers.

The Ambassadors for Change must continue to: (1) Develop and/or strengthen a framework to bring together a comprehensive array of services for women; (2) train a cadre of diverse health care providers that include allied health professionals and community health workers; (3) promote leadership/career development for diverse women in the health professions, including allied health professions and community health workers, and women/girls in the community; (4) enhance public education and outreach activities in women's health with an emphasis on gender-specific and age-appropriate prevention and/or reduction of illness or injuries that appear controllable through increased

knowledge that leads to a modification of behavior; (5) participate in any national evaluation of the CoE and/or CCOE program; (6) conduct basic, clinical and/or community-based research in women's health; and (7) provide advice and guidance to other organizations interested in learning more about the OWH CoE and CCOE programs.

At a minimum, each Ambassador for Change awardee must maintain a physically-identifiable clinical care center for the delivery of comprehensive, interdisciplinary health care that includes gender and age-appropriate preventive services for women. The clinical care center must have permanent signage that identifies it as a National Center of Excellence in Women's Health or a National Community Center of Excellence in Women's Health supported by the U.S. Department of Health and Human Services. The clinical care center must be devoted to women-friendly, women-centered, women-relevant care delivered from a multidisciplinary, holistic, and culturally and linguistically appropriate perspective. The clinical care center must also have a women's health clinical intake form, referral and tracking system, and procedures for identifying and counting the women served by the program and for tracking the cost of services provided to women who receive interdisciplinary care through the program. Sites must be able to differentiate the services provided to women counted as CoE or CCOE patients compared to other patients.

II. Award Information

The CoE/CCOE—Ambassadors for Change program will be supported through the cooperative agreement mechanism. The OWH anticipates making up to 12 new 1-year awards in FY 2006. The anticipated start date for new awards is September 1, 2006, and the anticipated period of performance is September 1, 2006, through August 31, 2007. Approximately $400,000 is available to make awards between $25,000–$50,000 total cost (direct and indirect) for a 12-month budget period. The total amount that may be requested by academic health centers is $25,000 and the total amount that may be requested by community-based organizations is $50,000.

CoE/CCOE—Ambassadors for Change programs will continue to be recognized by the OWH as National Centers of Excellence in Women's Health and National Community Centers of Excellence in Women's Health with all the privileges granted these programs by the OWH. As such, the Ambassadors for Change will continue to attend the CoE/CCOE Center Directors' meetings, have the opportunity to participate in joint projects initiated and funded by the OWH, remain on the list serve to continue to have access to information and funding opportunities, be a full-participating member of the CoE/CCOE Research Coordinating Center (if applicable), be site visited as needed, be listed on the OWH Web site with links to their CoE/CCOE Web site, and have their products/activities listed on the virtual resource center.

The eight CoEs whose options years were renewed through September 2006 are eligible to apply for this award.

The OWH will provide the technical assistance and oversight necessary for the implementation, conduct, and assessment of the Ambassador for Change program activities.

The applicant shall:

1. Implement the program described in the application.
2. Participate in and pay for attendance at the two annual meetings of the CoE and CCOE Center Directors and the joint CoE/CCOE Center Directors' meetings.
3. Participate in any national evaluations of the CoE and CCOE programs following the guidance provided by the OWH contractor.
4. Maintain the CoE or CCOE Web site.
5. Display permanent signage designating the facility as a National Center of Excellence in Women's Health or National Community Center of Excellence in Women's Health.
6. Participate in special meetings (*i.e.*, CoE/CCOE Working Group meetings) and projects/funding opportunities identified and/or offered by the OWH.
7. Adhere to all program requirements specified in the Notice of Grant Award.
8. Submit required annual progress and financial reports by the due dates stated in this announcement and the Notice of Grant Award.
9. Participate in the projects of the Research Coordinating Center (if applicable).

The Federal Government will:

1. Participate in at least two annual meetings with the CoE/CCOE Center Directors and/or Program Coordinators.
2. Participate in a national evaluation of the CoE or CCOE programs using guidance provided by the OWH contractor.
3. Review and decide on requested project modifications.
4. Site visit CoE/CCOE facilities, as needed.
5. Review all reports submitted by the grantees.
6. Facilitate review and clearance of all Center publications to insure adherence to DHHS policies.

The DHHS is committed to achieving the health promotion and disease prevention Objectives of Healthy People 2010 and the Healthy U.S. Initiative. Emphasis will be placed on aligning the CoE/CCOE—Ambassadors for Change activities and programs with the DHHS Secretary's four priority areas—heart disease, cancer, diabetes, and HIV/AIDS with an increased emphasis on adolescents, elderly women, mental health, and violence against women—and with the Healthy People 2010: Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, or living in rural localities. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople*. Another reference is the *Healthy People 2000 Review—1998–99.* One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 458–4636 [DHHS Publication No. (PHS) 99–1256]. This document may also be downloaded from the NCHS Web site: *http://www.cdc.gov/nchs.* Also, *Steps to a HealthierUS*, a program of the Department to help implement the Healthy U.S. initiative, advances the goal of helping Americans live longer, better, and healthier lives. It lays out DHHS priorities and programs for *Steps to a HealthierUS*, focusing attention on the importance of prevention and promising approaches for promoting healthy environments.

III. Eligibility Information

1. *Eligible Applicants.* Eligible applicants are OWH funded National Centers of Excellence in Women's Health (CoE) whose funding ends in September 2006 without remaining option years and National Community Centers of Excellence in Women's Health (CCOE) programs whose funding ends in September 2006. The purpose of this award is to continue, at a reduced level of effort, those CoEs or CCOEs that were funded by the DHHS Office on Women's Health (OWH). The program is monitored by OWH program staff to ensure the establishment of a comprehensive, integrated, holistic system of care for women across the life span. In addition the program shall be evaluated by the OWH. As such, this competition is limited to the organizations specified above since they are the only ones that meet the eligibility criteria.

2. *Cost Sharing or Matching Funds.* Cost sharing, matching funds, and cost participation is not a requirement of this grant.

IV. Application and Submission Information

1. *Address to Request Application Package:* Application kits may be requested by calling (240) 453–8822 or writing to the Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20852. Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the applications kit at (240) 453–8823. Applications must be prepared using Form OPHS–1.

2. *Content and Form of Application and Submission:* At a minimum, each application for a cooperative agreement grant funded under this announcement must:

Present a plan to continue integrating all components of the program. The CCOEs are not required to continue the replication component but preference will be given to programs that plan to continue to provide technical assistance to their replication site. Additionally, CCOEs that actively participate in the Research Coordinating Center (RCC) projects will be considered as fulfilling the requirements for the research component. A statement of willingness to participate in the RCC activities must be included in the application, if applicable. Discuss a plan to continue the involvement of the CoE or CCOE advisory board and their role as it relates to the Ambassadors for Change program.

Be a sustainable organization capable of providing coordinated and integrated women's health services in the targeted community. The applicant will need to define the components of comprehensive, multi-disciplinary care, demonstrate that they are culturally, linguistically, and gender and age appropriate, and show that they have a clear and sustainable framework for providing those services.

Describe how support, advice, and guidance will be provided to CoEs, CCOEs, and the Demonstration CoEs, through a variety of opportunities, such as the ELAM program, promotoras trainings, discussions at Center Directors' meetings, etc. These activities may be supported by outside funding or sponsors in keeping with the government partnership ethics guidance.

The applicant must indicate their willingness to participate in a national evaluation of the program to be conducted under the leadership of the OWH contractor.

The Project Narrative must not exceed a total of 20 *double-spaced* pages, excluding the appendices. All pages must be numbered clearly and sequentially. The application must be typed *double-spaced* on one side of plain 8½″ x 11″ white paper, using at least a 12 point font, and contain 1″ margins all around. The application should be organized in accordance with the format presented in the Program Guidelines. An outline for the minimum information to be included in the ''Project Narrative'' section is presented below.

Applications submitted via hard copy must be stapled and/or otherwise securely bound. Applicants are required to submit an original ink-signed and dated application and two photocopies. All applicants must pay particular attention to structuring the narrative to respond clearly and fully to each review Factor and associated review criteria.

I. Background

A. Overview of CoE/CCOE program.

B. Goal and purpose of the CoE or CCOE AFC program, including population to be served.

C. Primary area(s) of expertise to serve as a Technical Consultant (provide a list the AFC services at the beginning of this section).

II. Implementation Plan

A. Describe the level of effort to be maintained for each AFC CoE or CCOE program component.

B. Describe how the components will continue to be integrated.

C. The applicant must discuss/describe the resources available to support each component, plans for maintaining components. In addition, describe the relationship of each integrated component to the overall goals and objectives of the CoE/CCOE Ambassador for Change program.

D. Describe how support, advice, and guidance will be provided to the CoEs, CCOEs, and Demonstration CoEs.

E. Describe plans to develop and maintain partnerships and include in the appendix signed partnership agreements that specify the services the partner will provide and the contact information for the person serving as the main liaison for the partnering organization.

F. State willingness to participate in any CoE or CCOE national evaluation.

III. Management Plan

A. Key project staff and their resumes for budgeted staff affiliated with the new CoE/CCOE Ambassador for Change program

B. Staff responsibilities

C. CoE or CCOE Advisory Board

Appendices

A. Required Forms (Assurance of Compliance Form, etc.)

B. Key Staff Resumes

C. AFC Program Staff Chart

D. Institutional Letters of Support

E. Signed partnership agreements

F. Other attachments

3. *Submission Dates and Times.* To be considered for review, applications must be received by the Office of Grants Management, Office of Public Health and Science, by 5:00 p.m. Eastern Time on May 22, 2006. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date requirement in this announcement supercedes the instructions in the OPHS–1.

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the SUBMISSION DATES AND TIMES section of the announcement using one of the electronic submission mechanisms specified below. All required hard copy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the SUBMISSION DATES AND TIMES section of the announcement.

Applications will not be considered valid until all electronic application components, hard copy original signatures, and mail-in items are received by the OPHS Office of Grants

Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions Via the Grants.gov Web Site Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must be received by the due date requirements specified above. Mail-in items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hard copy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal. Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions Via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-in items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hard copy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the SUBMISSION DATES AND TIME section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

Applications will be screened upon receipt. Those that are judged to be incomplete or arrive after the deadline will not be reviewed. Applications that exceed the specified amount for a twelve-month budget period may also not be reviewed. Applications that are judged to be in compliance will be reviewed for technical merit in accordance with DHHS policies. Applications will be evaluated by a technical review panel composed of experts in the fields of program management, service delivery, outreach, health education, research, leadership development and evaluation. Consideration for award will be given to applicants that best demonstrate progress and/or plausible strategies for eliminating health disparities through the integration of training, leadership/career development, public education and outreach, comprehensive services that include gender and age-appropriate preventive services, and research. Applicants are advised to pay close attention to the specific program guidelines and general instructions in the application kit.

4. *Intergovernmental Review:* This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHIS). Applicants shall submit a copy of the application face page (SF–424) and a one page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate state or local health agencies. Copies of the letters forwarding the PHIS to these authorities must be contained in the application materials submitted to the OWH.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOC may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html* The due date for State process recommendations is 60 days after the application deadline. The OWH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

5. *Funding Restrictions:* A majority of the funds must be used to support staff (direct labor) and efforts aimed at coordinating and integrating the components of the program and travel to the two Center Directors' Meetings held each year . The senior person responsible for the program shall continue to devote the maximum effort needed to maintain program excellence. Funds may also be used for program related travel.

Funds may *not* be used for construction, building alterations, equipment, printing, food, and medical treatment. All budget requests must be justified fully in terms of the proposed goals and objectives and include an itemized computational explanation/breakout of how costs were determined.

The CoE and CCOE Center Directors meet twice a year. A portion of these meetings will be devoted to the Ambassadors for Change program. The budget should include a request for funds to pay for the travel, lodging, and meals for the two Center Directors' meetings. The first meeting is usually held between mid-November and mid-December and the second Center Directors' meeting is usually held in May. This year the joint Center Directors' meetings will be held December 4, 2006. CCOE Center Directors are encouraged to bring the person with primary responsibility for the day-to-day management of the Ambassador for Change program to these meetings and should include their travel cost in the budget.

6. *Other Submission Requirements:* Beginning October 1, 2003, all applicants are required to obtain a Data Universal Numbering System (DUNS) number as preparation for doing business electronically with the Federal Government. The DUNS number must be obtained prior to applying for OWH funds. The DUNS number is a nine-character identification code provided by the commercial company Dun & Bradstreet, and serves as a unique identifier of business entities. There is no charge for requesting a DUNS number, and you may register and obtain a DUNS number by either of the following methods:

Telephone: 1–866–705–5711.

Web site: *http://www.dnb.com/product/eupdate/requestOptions.html.* Be sure to click on the link that reads, ''DUNS Number Only'' at the right hand, bottom corner of the screen to access the free registration page. Please note that registration via the Web site may take up to 30 business days to complete.

V. Application Review Information

1. *Criteria:* The technical review of applications will consider the following factors:

Factor 1: Level of Integration of the Components and Gender-Based Medicine at the Institution (30%)

The CoE/CCOE Ambassadors for Change Program model shall include: (a) Training for professional, allied health, and lay health care workers serving underserved diverse women, (b) leadership/career development for women providers and underserved women/girls in the community, including American Indian or Alaska Native, Black or African American, Hispanic or Latino, Asian, and Native Hawaiian or Other Pacific Islander women/girls, (c) outreach and public education, (d) comprehensive multi-disciplinary women's health services that include gender and age-appropriate preventive services, (e) gender-based research originating at the institution and/or involved with the CoE/CCOE Research Coordinating Center. All components shall be in place/operational and integrated with one another at the time the application is submitted. The applicant must discuss/describe the resources available to support each component, plans for maintaining components, and the relationship of each integrated component to the overall goals and objectives of the CoE/CCOE Ambassador

for Change program. In addition the applicant must state a willingness to participate in any CoE or CCOE national evaluation.

Factor 2: Degree of Self-Sustainment at the Parent Institution (30%)

Applicant organization's capability to manage the project as determined by the qualifications of the proposed staff; proposed staff level of effort; management experience of the staff; and the experience, resources and role of each partner organization as it relates to the needs and programs/activities of the CoE/CCOE Ambassador for Change program; integration of allied health professionals into the CoE/CCOE AFC program; and integration of the CoE/CCOE AFC advisory board into the program's activities. Detailed position descriptions, resumes of key staff, an AFC staffing chart, and letter of support from key institutional administrator that demonstrate a commitment to the AFC program (form letters are discouraged) should be included in the appendix. The AFC Program Staff chart shall include the name, degrees earned, position, FTE equivalent, race/ethnicity and gender of each person/partner working on the AFC program. This chart shall provide information to identify the number of people involved in the program and to identify trends in demographics. The management plan should also describe succession planning for key personnel and cross training of responsibilities. Thoughtful succession planning and cross training of responsibilities should contribute to the sustainability of the program and provide promotion potential.

Factor 3: Agreement To Serve as a Technical Consultant to Other Sites on Your Most Successful Component (30%)

A clear statement of willingness to provide technical consultation to other academic health centers interest in the CoE model or other community-based organizations interested in the CCOE model could include work with the Executive Leadership in Academic Medicine Program, a promotoras training program, presentations at CoE and CCOE Center Directors' meetings, technical assistance visits to other CoE/CCOE sites, etc.

Factor 4: Partnerships (10%)

The CoE or CCOE shall maintain existing partnership and develop new ones within their region and neighboring regions and with government-sponsored agencies and organizations:

The Regional Women's Health Coordinator (RWHC) in their region. The RWHCs and contact information can be found at *http://www.4woman.gov/owh/reg/.*

The Minority Women's Health Panel of Experts (if there is one in their region). The MWHPEs and contact information can be found at *http://www.4woman.gov/owh/minority.htm#mwhpe.*

DHHS agencies (HRSA, OMH/OPHS, IHS, NIH, CDC, FDA, etc.).

Other government and non-government agencies.

The partnerships shall work towards:

Improving diversity at their institution regarding populations served, culturally competent materials and center staff, and

Continuing to transform the programs through leadership, outreach especially to adolescents and elderly women, prevention programs on heart disease, diabetes/obesity, cancer, HIV/AIDS, mental health, and violence against women, and underserved women, including the American Indian population.

Partnership agreements shall be included in the appendix of the application.

2. *Review and Selection Process:* Accepted applications will be reviewed for technical merit in accordance with DHHS policies. Applications will be evaluated by a objective/technical review panel composed of experts in the fields of program management, academic/community service delivery, outreach, health education, research, and leadership development and evaluation. Consideration for award will be given to applicants that meet the goals and review criteria of the CoE/CCOE Ambassadors for Change programs.

Funding decisions will be made by the OWH, and will take into consideration the recommendations and ratings of the review panel, program needs, stated preferences, and the organization's women's health experience.

VI. Award Administration Information

1. *Award Notices:* Within a month of the review of all applications, applicants not scoring in the funding range will receive a letter stating that they have not been recommended for funding. Applicants selected for funding support will receive a Notice of Grant Award signed by the grants officer. This is the authorizing document to begin performing grant activities and it will be sent electronically and followed up with a mailed copy. Pre-award costs are not supported by the OWH.

2. *Administrative and National Policy Requirements:* (1) In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of the 45 CFR parts 74 and 92, currently in effect or implemented during the period of this grant. (2) Requests that require prior approval from the awarding office (See Chapter 8, PHS Grants Policy Statement) must be submitted in writing to the OPHS Grants Management Office. Only responses signed by the Grants Management Officer are to be considered valid. Grantees who take action on the basis of responses from other officials do so at their own risk. Such responses will not be considered binding by or upon the OWH. (3) Responses to reporting requirements, conditions, and requests for post-award amendments must be mailed to the Office of Grants Management at the address indicated below in ''Agency Contacts.'' All correspondence requires the signature of an authorized business official and/or the project director. Failure to follow this guidance will result in a delay in responding to your correspondence. (4) The DHHS Appropriations Act requires that, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the issuance shall clearly state the percentage and dollar amount of the total costs of the program or project that will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. *Reporting:* A successful applicant will submit an annual technical report and a Financial Status Report in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR parts 74 and 92. An original and two copies of the annual report must be submitted by August 15. The annual report will serve as the non-competing continuation application and must cover all activities for the entire budget year. Therefore, this report must also include the budget request for the next grant year, with appropriate justification, and signatures, and be submitted using Form OPHS–1. A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period.

VII. Agency Contact(s)

For application kits and information on budget and business aspects of the application, please contact: Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101

Wootten Parkway, Suite 550, Rockville, MD 20857. Telephone: (240) 453–8822.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of the grant application by CCOEs should be directed in writing to Ms. Barbara James, Director, National Community Centers of Excellence in Women's Health Program, 5600 Fishers Lane, Room 16A–55, Rockville, MD 20859. Telephone: (301) 443–1402. E-mail: *bjames1@osophs.dhhs.gov.* Questions from the CoEs should be directed to Ms. Eileen Newman, Public Health Analyst at the same address. Her e-mail is *enewman@osophs.dhhs.gov.*

VIII. Other Information

Eleven (11) CCOE programs and three (3) CCOE Ambassador for Change programs are currently funded by the OWH. Information about these programs may be found at the following Web site: *http://www.4woman.gov/owh/CCOE/index.htm.*

Seventeen (17) CoE programs and three (3) CoE Ambassadors for Change programs are currently funded by the OWH. Information about these programs may be found at the following Web site: *http://www.4woman.gov/COE/index.htm.*

Dated: March 16, 2006.

Wanda K. Jones,

Deputy Assistant Secretary for Health (Women's Health), Office of Public Health and Science.

[FR Doc. E6–4188 Filed 3–22–06; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000E–1252] (formerly Docket No. 00E–1252)

Determination of Regulatory Review Period for Purposes of Patent Extension; ALAMAST

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ALAMAST and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product ALAMAST (pemirolast potassium). ALAMAST is indicated for the prevention of itching of the eye due to allergic conjunctivitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ALAMAST (U.S. Patent No. 5,034,230) from Santen Pharmaceutical Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ALAMAST represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ALAMAST is 1,298 days. Of this time, 1,115 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: March 7, 1996. The applicant claims March 6, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 7, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 26, 1999. The applicant claims March 25, 1999, as the date the new drug application (NDA) for ALAMAST (NDA 21–079) was initially submitted. However, FDA records indicate that NDA 21–079 was submitted on March 26, 1999.

3. *The date the application was approved*: September 24, 1999. FDA has verified the applicant's claim that NDA 21–079 was approved on September 24, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 755 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 22, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 19, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess.,

pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 13, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–4163 Filed 3–22–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005E–0235]

Determination of Regulatory Review Period for Purposes of Patent Extension; VESICARE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VESICARE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VESICARE (solifenacin succinate). VESICARE is indicated for the treatment of overactive bladder with symptoms of urge urinary incontinence, urgency, and urinary frequency. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VESICARE (U.S. Patent No. 6,017,927) from Yamanouchi Pharmaceutical Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VESICARE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VESICARE is 2,027 days. Of this time, 1,325 days occurred during the testing phase of the regulatory review period, while 702 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: May 5, 1999. FDA has verified the applicant's claim that the date the Investigational New Drug application became effective was on May 5, 1999.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 19, 2002. FDA has verified the applicant's claim that the new drug application (NDA) for VESICARE (NDA 21–518) was initially submitted on December 19, 2002.

3. *The date the application was approved*: November 19, 2004. FDA has verified the applicant's claim that NDA 21–518 was approved on November 19, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 329 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 22, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 19, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 13, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–4164 Filed 3–22–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005E–0252]

Determination of Regulatory Review Period for Purposes of Patent Extension; MYCAMINE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MYCAMINE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MYCAMINE (micafungin sodium). MYCAMINE is indicated for treatement of patients with esophageal candidiasis and prophylaxis of Candida infections in patients undergoing hematopoietic stem cell transplantation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MYCAMINE (U.S. Patent No. 5,376,634) from Astellas Pharma, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MYCAMINE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MYCAMINE is 2,546 days. Of this time, 2,221 days occurred during the testing phase of the regulatory review period, while 325 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: March 29, 1998. The applicant claims June 30, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 29, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: April 26, 2004. The applicant claims April 23, 2004, as the date the new drug application (NDA) for MYCAMINE (NDA 21–754) was initially submitted. However, FDA records indicate that NDA 21–754 was submitted on April 26, 2004.

3. *The date the application was approved*: March 16, 2005. FDA has verified the applicant's claim that NDA 21–754 was approved on March 16, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 476 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 22, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 19, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 13, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–4165 Filed 3–22–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: April 6, 2006, 3 p.m.–5:30 p.m. April 7, 2006, 8:30 a.m.–4 p.m.

Place: DoubleTree Hotel and Executive Center, 1750 Rockville Pike, Rockville, Maryland 20852.

Status: The meeting will be open to the public.

Agenda: Agency and Bureau administrative updates will be provided. The purpose of the meeting will be to address issues related to the status of the nursing workforce. A representative from the Bureau of Health Professions will present an overview of the preliminary findings from the 2004 National Sample Survey of Registered Nurses. In addition, representatives from the Bureau of Labor Statistics will present data on registered nurses employment projections from 2004 to 2014. During this meeting, Council workgroups will deliberate on content presented and formulate recommendations to the Secretary of Health and Human Services and the Congress on nursing workforce issues based on the latest data and trends. This meeting will form the basis for NACNEP's mandated Sixth Annual Report.

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Donna English, M.P.H., R.N., Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5688.

Dated: March 16, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–4166 Filed 3–22–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee D—Clinical Studies, April 9, 2006, 6 p.m. to April 10, 2006, 5 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on March 9, 2006, 71 FR 12202.

The meeting is amended to change the meeting location from Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814 to Marriott Bethesda North Hotel Conference Ctr, 5701 Marinelli Rd., N. Bethesda, MD 20852. The meeting is closed to the public.

March 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2817 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Academic/Teacher Award (K07s).

Date: March 21, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: William J. Johnson, PhD., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, NIH/NHLBI, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301–435–0317, *johnsonw@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, The Career Enhancement Award (K18s).

Date: April 4, 2006.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keith A. Mintzer, PhD., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, (301) 435–0280, *mintzerk@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 16, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2821 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, March 31, 2006, 3 p.m. to March 31, 2006, 4 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 which is published in the **Federal Register** on March 14, 2006, 71 FR 13131.

This meeting has been changed to April 3, 2006, from 5 p.m. to 6 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 16, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2819 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such

as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: May 10, 2006.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: Topic proposed for discussion: implementation of the MDCC ''Action Plan for the Muscular Dystrophies.''

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washington Boulevard, Gaithersburg, Maryland 20878, (301) 590–0044.

Contact Person: John D. Porter, PhD., Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2172, Bethesda, MD 20892, (301) 496–1917, *porterjo@ninds.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the MDCC Web site: *http://www.ninds.nih.gov/research/muscular__dystrophy/coordinating__committee,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in Neurosciences, National Institutes of Health, HHS)

Dated: March 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2823 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of SBRP P42 Suppliments.

Date: April 4, 2006.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401 East Campus, 79 T.W. Alexander Drive, 3133 AB, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B. Allen, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institutes of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93:115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards: 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2824 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Maternal Influence K08 Review.

Date: April 10, 2006.

Time: 4 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3118, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2825 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 15, 2006, 3 p.m. to March 15, 2006, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 28, 2006, 71 FR 10041–10043.

The meeting will be held April 10, 2006. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 16, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2818 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Biological Mechanism of Emotion, Stress and Health.

Date: March 30, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Biao Tian, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysics and Protein Interactions in the Nervous System.

Date: March 31, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 453–1178, *fujiij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting date due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology of Tolerance.

Date: April 10, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Special Emphasis Panel, Glycotechnology Resource Center.

Date: April 10–11, 2006.

Time: 7:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Mike Radtke, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 176, MSC 7806, Bethesda, MD 20892, 301–435–728, *radtkem@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 39.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 933.33, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 16, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2820 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 15, 2006, 12 p.m. to March 15, 2006, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 28, 2006, 71 FR 10041–10043.

The meeting will be held April 11, 2006. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 16, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2822 Filed 3–22–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–2006–0005]

RIN 1660–ZA14

NEPA Alternative Arrangements for Critical Physical Infrastructure in New Orleans

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

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) and the Council on Environmental Quality (CEQ) have established Alternative Arrangements to meet the requirements of the National Environmental Policy Act (NEPA) and the CEQ Regulations for Implementing the Procedural Requirements of NEPA (CEQ Regulations) for FEMA Grants to Reconstruct Critical Infrastructure in the New Orleans Metropolitan Area. These Alternative Arrangements are designed to enable timely action on the expected large number of grant applications to restore safe and healthful living conditions in the New Orleans Metropolitan Area (NOMA). These alternative arrangements will enable FEMA, as a component of DHS, to consider the potential for significant impacts to the human environment from its approval to fund the reconstruction of critical physical infrastructure in NOMA through its grant programs.

DATES: Comments due on or before May 22, 2006.

ADDRESSES: You may submit comments, identified by Docket Number FEMA–2006–0005, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

E-mail: *FEMA-RULES@dhs.gov.* Include Docket Number FEMA–2006–0005 in the subject line of the message.

Fax: 202–646–4536.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 406, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and docket number (if available). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal

information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of General Counsel, 500 C Street, SW., Room 406, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Brent Paul, Environmental Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or phone (202) 646–3032.

SUPPLEMENTARY INFORMATION:

1. What are NEPA Alternative Arrangements?

NEPA Alternative Arrangements are a set of procedures, established in consultation with CEQ, for complying with the requirements of the National Environmental Policy Act and CEQ regulations when emergency circumstances require taking actions with significant environmental impacts and there is not sufficient time to follow the regular Environmental Impact Statement process. These arrangements are limited to actions necessary to control the immediate impacts of the emergency. CEQ and DHS arrived at these alternative arrangements in accordance with 40 CFR 1506.11 on December 6, 2005.

2. What is the nature of the emergency?

Damages to the critical physical infrastructure in the New Orleans Metropolitan Area (NOMA) from the impact of Hurricanes Katrina and Rita have rendered parts of the city inoperable and uninhabitable. Without the restoration of this critical infrastructure the city cannot adequately support a safe and healthy reconstruction and repopulation process.

FEMA expects a large number of grant applications which would overwhelm the available personnel and resources to assess each application in an Environmental Impact Statement (EIS). Review and approval of these applications must be accomplished in an expeditious manner to provide safe and healthy conditions for the reconstruction and repopulation of NOMA and will be required in a timeframe that does not allow available staff and resources to complete the EIS process and to issue the individual Record of Decision (ROD).

3. What authority exists for these Alternative Arrangements?

These Alternative Arrangements were prepared pursuant to CEQ regulations at 40 CFR 1506.11 and FEMA regulations at 44 CFR 10.13.

4. What types of critical physical infrastructure actions fall under these Alternative Arrangements?

Grant applications for the reconstruction of the following categories of critical physical infrastructure would be included under these Alternative Arrangements:

- Hospitals and health care facilities.
- Utilities and Wastewater Treatment Plants.
- Permanent police and fire stations.
- Government and court administration buildings.
- Detention Centers (jailhouses).
- Permanent schools.

FEMA is developing a description for each category which it will post on the Web site established per the alternative arrangements (*http://www.fema.gov/ehp/noma*). This description will provide criteria for determining whether a grant for a specific proposed project falls within an identified critical infrastructure category and is subject to the alternative arrangements. The description will also describe mitigation measures that will be available to reduce environmental impacts including any impacts to properties eligible for listing or listed on the National Register of Historic Places.

5. Who was consulted during the preparation of these Alternative Arrangements?

The Department of Homeland Security and the White House Council on Environmental Quality were heavily involved in the preparation of these Alternative Arrangements to ensure that they were necessary to control the immediate impacts of the emergency. This notice provides the process for engaging other potentially interested parties.

6. How does FEMA plan to consult and involve affected disaster victims, communities, and local governments?

FEMA will continue to provide opportunities for stakeholders to become involved in the environmental review process through its regular outreach mechanisms including meetings sponsored by the Long Term Community Recovery Emergency Support Function and Public Assistance meetings with applicants and local officials. Other mechanisms provide special efforts to involve NOMA residents that may have temporarily relocated outside of NOMA, these mechanisms include the development of a FEMA Internet page with environmental related information specific to the proposed actions in NOMA (*http://www.fema.gov/ehp/noma*), and linking to other public involvement forums such as State, parish, local group, and committee hearings, and outreach through various groups like faith-based organizations.

7. How can affected disaster victims and the general public submit comments to FEMA on these NEPA Alternative Arrangements?

The general public and disaster victims can submit comments regarding this procedure through one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

E-mail: *FEMA-RULES@dhs.gov.* Include Docket Number FEMA–2006–0005 in the subject line of the message.

Fax: 202–646–4536.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 406, 500 C Street, SW., Washington, DC 20472.

The general public should submit comments on the content of the website and project specific information to *FEMA–NOMA@dhs.gov.*

8. Why are NEPA Alternative Arrangements needed for the FEMA-funded reconstruction of critical infrastructure in NOMA?

The NEPA Alternative Arrangements have been developed for the New Orleans Metropolitan Area because it was a unique situation where the sensitivity of the area, the level of devastation, and the density of reconstruction that will be addressed through FEMA grants warranted the agency to consider all FEMA funding of projects rather than environmentally assessing the impacts of each grant application individually. The combined effects of these numerous actions are highly uncertain, may involve unknown risks, and are expected to result in cumulatively significant environmental impacts.

FEMA believes that actions in this small geographic area by one applicant could likely result in an extensive land use change which may be incompatible with existing or planned land use of the surrounding area. In addition, the wind and flood damage from Hurricane Katrina in NOMA was concentrated in

largely low-income and minority communities. As a result, reconstruction of the critical infrastructure in these areas and its related environmental effects (*i.e.* land-use changes, air quality impacts of construction activities, air quality impacts of traffic patterns, water quality impacts, etc.) may disproportionately impact these communities.

NOMA contains numerous historic properties, many of which are listed or eligible to be listed in the National Register of Historic Places. These historic properties may be adversely impacted by the reconstruction activities.

FEMA also believes that the accumulated effects of FEMA-funded reconstruction actions together with other local, State, and Federal planned actions for the New Orleans Metropolitan Area may result in significant environmental impacts.

9. Will these Alternative Arrangements circumvent the basic concepts of NEPA?

The Alternative Arrangements cannot circumvent the National Environmental Policy Act because they are imbedded in the procedures established to comply with the Act. The intent of these arrangements is to implement the basic principles of NEPA as reflected in the CEQ regulations implementing the NEPA section 102(C) requirement for a detailed statement to the extent practical in the time available. The arrangements will provide expedited but effective fulfillment of the public involvement, consideration of alternatives, impacts analyses, and informed decision making objectives of NEPA. CEQ provided its letter concurring with these alternative arrangements on December 6, 2005.

10. Will alternatives to projects be considered under these Alternative Arrangements?

Non-federal applicants may include alternatives in their applications for funding for reconstruction of critical physical infrastructure in NOMA. These Alternative Arrangements allow for, but do not require, the submission or analysis of alternatives for individual projects. However, evaluation of alternatives, such as mitigation alternatives to meet other legal requirements like Floodplain Management and Wetlands Protection regulations or Executive Order 12898 on Environmental Justice, will be considered in the context of the grant applications. For example, the evaluation of alternatives may also be used to assist in the identification of treatment measures for undertakings that may have adverse effects on properties that are eligible for or listed in the National Register of Historic Places.

The applicant may provide sector-specific Critical Infrastructure Facility Plans. This plan will provide the needs identified by the applicant for a particular sector and the development plan to meet those needs. These plans may have an evaluation of alternatives for the re-establishment of the sector's critical infrastructure.

11. What is the end date for these NEPA Alternative Arrangements?

The NEPA Alternative Arrangements are limited to actions necessary to control the immediate impacts of the emergency. The need for the Alternative Arrangements will continue to exist as long as necessary to process grant applications for the reconstruction of critical infrastructure in NOMA. While there is no clear end date, grant applications are expected to arrive as local, regional, State, and interstate planning efforts conclude. For NOMA, the response time from the receipt of the grant application, to action on the application, and implementation or execution dates of approved grant applications is further limited by public health and safety concerns. It is urgent to restore the critical infrastructure needed to protect the health and safety of the public in the New Orleans Metropolitan Area.

12. How are these NEPA Alternative Arrangements reviewed?

DHS and CEQ will review these Alternative Arrangements on a quarterly basis to assess their effectiveness and longevity. This review will include a review of significant comments received during the previous quarter. The review will be made available to the public through the Web site prepared for the Alternative Arrangements (*www.fema.gov/ehp/noma*).

13. How is FEMA ensuring that projects comply with other Federal environmental and historic preservation laws?

Projects that are subject to the NEPA Alternative Arrangements must comply with other environmental and historic preservation laws and executive orders. Thus, projects subject to the Alternative Arrangements will still be reviewed to ensure compliance with relevant environmental and historic preservation laws and executive orders. The results of this review will be made available to the public through the web site.

The Department of Homeland Security and CEQ have established Alternative Arrangements to meet the requirements of NEPA and the CEQ Regulations for Implementing the Procedural Requirements of NEPA for FEMA Grants to Reconstruct Critical Infrastructure in the New Orleans Metropolitan Area. These Alternative Arrangements are designed to enable timely action on the expected large number of grant applications to restore safe and healthful living conditions in the New Orleans Metropolitan Area. These alternative arrangements will enable FEMA to consider the potential for significant impacts to the human environment from its approval to fund the reconstruction of critical physical infrastructure in NOMA through its grant programs.

The Alternative Arrangements to Meet National Environmental Policy Act Requirements for the Reconstruction of New Orleans Metropolitan Area Critical Infrastructure Funded by Federal Emergency Management Agency Grant Programs follows: Alternative Arrangements to Meet National Environmental Policy Act Requirements for the Reconstruction of New Orleans Metropolitan Area Critical Infrastructure Funded by Federal Emergency Management Agency Grant Programs

I. Scope of the Emergency

Hurricanes Katrina and Rita caused sufficient damage in parts of the State of Louisiana to trigger Presidential disaster declarations for these areas. Damage was so severe and wide spread that the impact of Hurricane Katrina was also designated as the first catastrophic incident of national significance under the National Response Plan. Disaster-related damages to the critical physical infrastructure in the New Orleans Metropolitan Area (NOMA) have rendered parts of the city inoperable and uninhabitable. Without this critical infrastructure the city cannot adequately support a safe and healthful reconstruction and repopulation process.

The Department of Homeland Security's Federal Emergency Management Agency (FEMA) expects numerous grant applications requiring agency action in a timeframe [1] that would not allow for completion of an Environmental Impact Statement (EIS) and a Record of Decision (ROD). This constitutes an emergency situation.

The Department of Homeland Security and the Council on Environmental Quality (CEQ) established these alternative

[1] This limited timeframe is the time from the receipt of the grant application to the approval and execution of the proposed action.

arrangements to enable timely action on grant applications to restore safe and healthful living conditions in NOMA while observing the requirements and objectives of the National Environmental Policy Act (NEPA). These alternative arrangements will enable FEMA to consider the potential for significant impacts to the human environment from its funding the reconstruction of critical physical infrastructure in NOMA through its grant programs. These alternative arrangements have been developed in consultation with CEQ pursuant to NEPA regulations found in 40 CFR 1506.11 and 44 CFR 10.13.

II. Actions Needed to Control the Immediate Impacts of the Emergency

FEMA currently administers grant programs to fund the repair, restoration, and replacement of eligible infrastructure that has been damaged or destroyed in areas that have been included in a Presidential disaster declaration. Although the restoration of eligible infrastructure substantially to its pre-disaster conditions is excluded from NEPA by section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5159) FEMA anticipates that the applications from the State of Louisiana for NOMA will more strongly reflect future demands than returning to pre-disaster conditions. Proposed projects will not necessarily be the same size, nature, or location; will use current building codes, and construction methods; and take advantage of current community and urban planning principles, and hazard mitigation opportunities. In such situations NEPA does apply. The following types of critical physical infrastructure [2] projects in NOMA that may qualify for FEMA grant funding are addressed by these alternate arrangements:

- Hospitals and health care facilities.
- Utilities and Wastewater Treatment Plants.
- Permanent police and fire stations.
- Government and court administration buildings.
- Detention Centers (jailhouses).
- Permanent schools.

III. Potential Significant Effects of the Proposed Action

Both the Department of Homeland Security and FEMA consider this a unique situation where the sensitivity of the area and the level of devastation and the density of reconstruction warrant the agency to consider the FEMA funded projects together rather than individually. The combined effects of these numerous actions are highly uncertain and may involve unknown risks. However, FEMA believes the following factors that could trigger the need for an EIS may be present:

- Actions will likely result in an extensive change in land use;
- Actions could result in a land use change which is incompatible with existing or planned land use of the surrounding area;
- Many people, including low income and minority communities, will be affected by these actions;
- The environmental impacts of these actions will likely be controversial;
- Actions could adversely affect a significant amount of properties listed or eligible to be listed in the National Register of Historic Places; and
- Actions are likely to be either a part of or closely related to other actions underway or planned for NOMA and the cumulative nature of these projects could cause significant environmental impacts.

IV. Components of the NEPA Process that Add Value and Will Be Used

a. Public Involvement

FEMA will continue to provide opportunities for stakeholders to become involved in the environmental review process through regular outreach mechanisms. An example of these mechanisms is meetings with the applicant and local officials to explain the Public Assistance Program requirements, including those environmental and historic preservation compliance requirements and related environmental, social, economic, cultural, and historic consequences. Other existing venues for the involvement of stakeholders will be identified and utilized to the extent practical. Public input will be used to further develop appropriate outreach mechanisms best suited to assist in assessing the potential for impact to the human environment from the reconstruction of critical physical infrastructure projects required to restore safe and healthful conditions for the repopulation of NOMA.

Special effort will be taken to involve the general public and NOMA residents, including those that have temporarily relocated outside of NOMA. FEMA will develop an internet page for environmentally related public notices and environmentally related information specific to the proposed actions in NOMA. This page would also track other projects in NOMA in order to provide the public with information on the individual and the cumulative nature of impacts of the FEMA funded actions. Efforts would be made to link to other public involvement forums such as State, parish, local group, and committee hearings and make this information available via electronic and non-electronic modes of outreach to assure availability to all those potentially affected.

For each project type, such as those identified above, FEMA will develop public involvement strategies that take into consideration the nature of that project type and the likely stakeholders that would have an interest in or be affected by those projects. Such strategies will include addressing national, State and local media, notifying groups linked to the various types of infrastructure, involving various civic, ethic, and religious groups, etc. When an action also requires public involvement to satisfy requirements under other Federal laws, regulations, or Executive Orders, including the National Historic Preservation Act and Executive Order 11988, Floodplains, FEMA will work to integrate those public involvement requirements into the alternate arrangements public involvement process.

b. Alternatives and Mitigation Measures

FEMA has developed the list of types of critical infrastructure projects (section II) that would be addressed by these alternative arrangements when applications are received from the State of Louisiana. Grant applications are project specific and provide the proposed sites or alternative sites. Potential alternatives also include whether to approve or condition the grant.

FEMA will establish criteria that will be followed for each type of critical physical infrastructure reconstruction project to mitigate or avoid significant environmental impacts whenever possible. Public input and consultation with the appropriate Federal, tribal, and State resource agencies will be used to help identify appropriate measures to minimize the potential for adverse environmental impacts associated with the reconstruction of each type of critical infrastructure. As these environmental impact evaluations are completed and mitigation measures are developed, FEMA will post available and relevant documents on the internet site and make copies available to interested groups and members of the public upon request.

Given the urgency of the reconstruction effort, it is likely that

[2] While levees are considered critical infrastructure, their restoration is not an eligible FEMA activity because they fall under the purview of the U.S. Army Corps of Engineers.

some environmental impact analyses will need to proceed with incomplete or unavailable information. When information on the environmental effects of a type of critical physical infrastructure reconstruction is limited by incomplete or unavailable information, FEMA will use the direction in the Council on Environmental Quality regulations at 40 CFR 1502.22.

c. Environmental (including related social, cultural, historic, and economic) Impacts and Incorporation of Other Environmental/Historic Preservation Documentation and Processes

FEMA will post on the internet site prepared for NOMA and use the public outreach described above to provide the projects and associated environmental reviews. This will allow the public and environmental reviewers an opportunity to track all the projects and associated impacts in a given area in NOMA.

FEMA will refer to and incorporate other available environmental and planning documents and data prepared for the NOMA area that provide useful information. The agency also intends to incorporate and utilize, to the extent feasible and practical, the environmental documentation or information prepared or gathered by other agencies before this event and those that will be prepared during the reconstruction and rebuilding efforts in NOMA. Examples of documents incorporated by reference include:

- New Orleans International Airport EIS.
- New Orleans Regional Transit Authority EIS for city's streetcar system.
- East-West Corridor Environmental Impact Study.
- New Orleans Riverfront Redevelopment Master Plan.

FEMA will also document and incorporate its ongoing consultation efforts with other regulatory and environmental agencies including the State Historic Preservation Offices and the Advisory Council on Historic Preservation.

V. Duration of the Emergency

The emergency identified above started at the moment of the Presidential disaster declaration and will continue until critical infrastructure in NOMA that is immediately necessary to protect the health and safety of the public is fully restored. Although the submission of some project applications may be contingent upon the occurrence of an independent event (*i.e.* reconstruction of levees, development of local plans, etc.), the need for the alternative arrangements would continue to exist so long as the amount of time (from the submission of the application to the date agency action on the application is necessary to allow timely implementation or execution of the action) is limited. FEMA and DHS will review these alternative arrangements with the Council on Environmental Quality on a quarterly basis to assess their effectiveness and longevity.

VI. Documentation

Documentation of the analysis of the proposed actions on grant applications and the potential for significant impacts to the human environment will consist of these alternative arrangements and the evolving website and available documents incorporated by reference, with updates as new information becomes available, and the posting of agency actions (receiving, approving, conditioning, or denying) on critical infrastructure grant applications as well as notices of other actions being taking in the NOMA.

Dated: March 20, 2006.

David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–4191 Filed 3–22–06; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–13]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Assessment System (PHAS): Management Operations Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

PHA's (or Resident Management Corporations) submit management information for evaluation of all major areas of a participant's management operations. The information is used to assess the management performance of PHAs.

DATES: *Comments Due Date:* April 24, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0106) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Assessment System (PHAS): Management Operations Certification.

OMB Approval Number: 2535–0106.

Form Numbers: HUD–50072.

Description of the Need for the Information and Its Proposed Use: PHAs (or Resident Management Corporations) submit management information for evaluation of all major areas of a participant's management operations. The information is used to assess the management performance of PHAs.

Frequency of Submission: Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3,174		1		1,150		3,643

Total Estimated Burden Hours: 3,643.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 16, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–4167 Filed 3–22–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–ES; N–79979]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, 60 acres of public land in Las Vegas, Clark County, Nevada. Clark County School District proposes to use the land for development of a high school.

DATES: For a period until May 8, 2006, interested parties may submit comments to the Field Manager, BLM Las Vegas Field Office.

ADDRESSES: Please submit your comments to the Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Brenda Warner, BLM Realty Specialist, (702) 515–5084.

SUPPLEMENTARY INFORMATION: The following described public land in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for a high school site (N–79979).

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.

Sec. 35, E½NW¼SW¼NW¼, E½SW¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, E½NE¼SE¼NW¼—general location: west of Torrey Pines Drive, south of Levi Ave. and north of Erie Ave.

The area described contains approximately 60 acres in Clark County.

The land is not required for any Federal purpose. Conveyance is consistent with the Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Valid and existing rights;

2. A right-of-way for railroad purposes granted to the San Pedro, Los Angeles, and Salt Lake Railroad Company, its successors or assigns, by right-of-way CC–00360, pursuant to the Act of March 3, 1875, (43 U.S.C. 934–939);

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

Upon publication of this notice in the **Federal Register**, the above described land is segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a high school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a high school site. All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words ''CONFIDENTIALITY REQUEST'' in uppercase letters in order for BLM to comply with your request. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on May 22, 2006. The lands will not be offered for conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5).

Dated: February 24, 2006.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 06–2891 Filed 3–21–06; 2:00 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Colorado River Management Plan, Final Environmental Impact Statement, Grand Canyon National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement for the Colorado River Management Plan, Grand Canyon National Park.

SUMMARY: Pursuant to subsection 102(2)(C) of the National Environmental Policy Act of 1969, codified as amended

at 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Record of Decision for the Colorado River Management Plan, Grand Canyon National Park, Arizona. On February 17, 2006, the Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the NPS will begin to implement the two Preferred Alternatives contained in the Final Environmental Impact Statement issued on November 10, 2005. For the Lees Ferry to Diamond Creek section of the Colorado River, the NPS has selected the preferred alternative, modified Alternative H, which will allow 5.5 months mixed motor/nonmotor use and 6.5 months nonmotorized use; reduce the maximum group size for commercial groups; establish use patterns based on daily, weekly and seasonal launch limits; and increase noncommercial use primarily in the shoulder and winter months. This alternative will allow for a moderate increase in estimated yearly passenger totals and allow passenger exchanges at Whitmore to accommodate commercial trips launching during the mixed-use seasons. Noncommercial permits will be awarded through a ''hybrid'' weighted lottery system for applicants applying for Lees Ferry to Diamond Creek river trips after boaters transition from the waitlist. This course of action and 7 other alternatives were analyzed in the Draft and Final Environmental Impact Statements for the Lees Ferry to Diamond Creek section of the Colorado River. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

For the Lower Gorge of the Colorado River, the NPS has selected modified Alternative 4, which reflects an agreement reached between Grand Canyon National Park and the Hualapai Tribe, achieved through extensive consultation, on most issues relating to the elements of use, specifically for trips launching at or continuing past Diamond Creek. This alternative will allow overall HRR operations to increase, while reducing group size, limiting day trips in the non-peak season, and limiting overnight trips throughout the year. However, agreement could not be reached after extensive consultation and incorporation of Hualapai tribal concerns, on the level of pontoon boat operations and upstream travel from Lake Mead. This selected modified Alternative 4, incorporates the NPS's preference for lower levels of pontoon boat use in the Quartermaster area compared to levels proposed by the Hualapai Tribe. Pontoon operations, under this alternative, will continue to be allowed, with five boats operating at one time in the Quartermaster area and with a maximum daily capacity of 480 passengers, which could increase to 600 passengers per day based on favorable performance reviews of concession operations and resource monitoring data. Upriver, motorized trip takeouts will be allowed with a maximum of four trips per day during the peak season and one per day during the non-peak season; however, no jetboat tours will be allowed to operate. This course of action and 4 other alternatives were analyzed in the Draft and Final Environmental Impact Statements for the Lower Gorge of the Colorado River. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternatives, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings.

FOR FURTHER INFORMATION CONTACT: Mary Killeen, Chief of Planning and Compliance Office, Grand Canyon National Park, 928–638–7885.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://www.nps.gov/grca/crmp.*

Dated: February 17, 2006.

Steve Martin,

Deputy Director, National Park Service.

[FR Doc. 06–2761 Filed 3–22–06; 8:45 am]

BILLING CODE 4312–ED–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK, and Museum of the Aleutians, Unalaska, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK, and in the physical custody of the Museum of the Aleutians, Unalaska, AK. The human remains were removed from Amaknak Island, Split Rock Island, and Unalaska Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Bureau of Land Management and Smithsonian Institution professional staff in consultation with representatives of the Qawalangin Tribe of Unalaska.

During the 1950s to 1980s, human remains representing a minimum of three individuals were removed from Umqan #2 and K-B–1 sites near Unalaska on Unalaska Island in the Fox Island group of the eastern Aleutian Islands, AK. No known individuals were identified. No associated funerary objects are present.

During the 1950s to 1980s, human remains representing a minimum of nine individuals were removed from AMD-I, AMD-II, AMD-III, Bridge, and AMOK-I sites near Unalaska on Amaknak Island in the Fox Island group of the eastern Aleutian Islands, AK. No known individuals were identified. No associated funerary objects are present.

During the 1950s to 1980s, human remains representing a minimum of one individual were removed from Site 44647 near Unalaska on Split Rock Island in the Fox Island group of the eastern Aleutian Islands, AK. No known individual was identified. No associated funerary objects are present.

According to museum records, most of the human remains were excavated by Dr. Ted Bank of Western Michigan University, Kalamazoo, MI, under federal permits. Some additional human remains were collected under undocumented circumstances and were placed in the archeological collections of Western Michigan University or kept by Dr. Bank. All excavations were done on land under Bureau of Land Management authority at the time. No further information was found in museum records. Between 1998 and 2001, the Museum of the Aleutians of Unalaska, AK, received the Western Michigan University archeological collections from Amaknak Island, Split Rock Island, and Unalaska Island, AK,

including human remains that had been in the possession of the now deceased Dr. Bank.

Unalaska Island and nearby Amaknak and Split Rock Islands have been inhabited for over 8,000 years by Aleut (Unangan) people. Based on geographic location, oral history, and archeological evidence, the human remains from these three islands are of Aleut (Unangan) origin. The Aleut (Unangan) are ancestors of the Qawalangin Tribe of Unalaska, the current and only Indian tribe of Unalaska, AK.

Officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 13 individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Qawalangin Tribe of Unalaska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 West 7th Avenue, No. 13, Anchorage, AK 99513–7599, telephone (907) 271–5510, before April 24, 2006. Repatriation of the human remains to the Qawalangin Tribe of Unalaska may proceed after that date if no additional claimants come forward.

The Bureau of Land Management is responsible for notifying the Ounalashka Corporation and Qawalangin Tribe of Unalaska that this notice has been published.

Dated: March 14, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–4179 Filed 3–22–06; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–269 and 731–TA–311–314, 317, and 379 (Second Review)]

Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, and Japan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on brass sheet and strip from France, Germany, Italy, and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission further determines that revocation of the countervailing duty order on brass sheet and strip from Brazil and the antidumping duty orders on brass sheet and strip from Brazil and Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Background

The Commission instituted these reviews on March 31, 2005 (70 FR 16519) and determined on July 5, 2005 that it would conduct full reviews (70 FR 41427, July 19, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 9, 2005 (70 FR 53688). The hearing was held in Washington, DC, on January 24, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on March 21, 2006. The views of the Commission are contained in USITC Publication 3842 (March 2006), entitled *Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, and Japan: Investigation Nos. 701–TA–269 and 731–TA–311–314, 317, and 379 (Second Review).*

By order of the Commission.

Issued: March 20, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4197 Filed 3–22–06; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] On March 2, 2006, the Commission terminated the five-year review of the countervailing duty order concerning brass sheet and strip from France (investigation No. 701–TA–270 (Second Review)).

[3] Chairman Stephen Koplan and Commissioner Charlotte R. Lane dissenting with respect to Brazil.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–555]

In the Matter of Certain Devices for Determining Organ Positions and Certain Subassemblies Thereof; Notice of Commission Determination not to Review an Initial Determination Granting a Motion to Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 5) issued by the presiding administrative law judge (''ALJ'') granting the motion of Université Joseph Fourier (Grenoble) (''UJF'') of Grenoble, France, to intervene as a complainant in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 2, 2005, based on a complaint filed by SAS PRAXIM of La Tronche, France and Varian Medical

Systems, Inc. of Palo Alto, California (''complainants''). The complaint, as supplemented, alleged violations of section 337 by Resonant Medical, Inc. (''Resonant'') of Montreal, Canada, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for determining organ positions and certain subassemblies thereof by reason of infringement of claims 1, 2, 5, and 10 of U.S. Patent No. 5,447,154. 70 FR 72314 (2005).

On January 30, 2006, non-party UJF moved to intervene as a complainant. On February 9, 2006, Resonant filed a response to the motion. On February 8, 2006, complainants filed a statement in support of the motion. The Commission investigative attorney did not oppose the motion.

On February 16, 2006, the ALJ issued an ID (Order No. 5) granting the motion to intervene.

No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and rule 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 10.42).

By order of the Commission.

Issued: March 20, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4202 Filed 3–22–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–565]

In the Matter of Certain Ink Cartridges and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 17, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Epson Portland Inc. of Hillsboro, Oregon, Epson America, Inc. of Long Beach, California, and Seiko Epson Corporation of Japan. Supplemental letters were filed on March 10 and 14, 2006. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of claim 7 of U.S. Patent No. 5,615,957; claims 18, 81, 93, 149, 164 and 165 of U.S. Patent No. 5,622,439; claims 83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34 and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1, 2, 3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31 and 34 of U.S. Patent No. 6,550,902; and claims 1, 10 and 14 of U.S. Patent No. 6,955,422. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 16, 2006, Ordered that -(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ink cartridges or component parts thereof by reason of infringement of one or more of claim 7 of U.S. Patent No. 5,615,957; claims 18, 81, 93, 149, 164 and 165 of U.S. Patent No. 5,622,439; claims 83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34 and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1, 2, 3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31 and 34 of U.S. Patent No. 6,550,902; and claims 1, 10 and 14 of U.S. Patent No. 6,955,422; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Epson Portland Inc., 3950 NW Aloclek Place, Hillsboro, Oregon 97124.

Epson America, Inc., 3840 Kilroy Airport Way, Long Beach, California 9080.

Seiko Epson Corporation, 3–3–5 Owa, Suwa-Shi, Nagano-Ken, 392–8502, Japan.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Glory South Software Manufacturing Inc., 6481 Orangethorpe Ave., Suite 6, Buena Park, California 90620.

Butterfly Print Image Corp. Ltd., Units 811–812, 8/F Park Sun Building, 103–107 Wo Yi Hop Road, Kwai Chung, N.T., Hong Kong.

Ink Lab (H.K.) Co., Ltd., Flat A 11/F, Lucky Horse Industrial Building, 64 Tong Mi Road, Mongkok, Kowloon, Hong Kong.

Nectron International, Ltd., 725 Park Two, Sugar Land, Texas 77478.

Mipo International Ltd., Flat B, 11F, Wong Tze Building, 71 Hoe Yuen Road, Kwun Tong, Kowloon, Hong Kong.

Mipo America Ltd., 3100 N.W. 72nd Avenue # 106, Miami, Florida 33122.

Nine Star Image Co. Ltd., No. 63 Mingzhubei Road, Xiangzhou District, Zhuhai, Guangdong, China 519 075.

Nine Star Technology Company Ltd., 4620 Mission Boulevard, Montclair, California 91763.

Town Sky Inc., 5 South Linden Avenue, Suite 4, South San Francisco, California 94080.

Zhuhai Gree Magneto-Electric Co. Ltd., No. 205, West Shi Hua Road, Zhuhai City, Guangdong Province, China 519020.

MMC Consumables Inc., 20456 Carrey Road, Walnut, California 91789.

Tully Imaging Supplies Ltd., Room 902, 9/F, Island Place Tower, 510 King's Road, North Point, Hong Kong.

Inkjetwarehouse.com Inc., 106 Powder Mill Road, Canton, Connecticut 06019.

Wellink Trading Co., Ltd., Avn. Venceslau Morais S/N, 11–P, Edf. C. Ind., Keck Seng Building 2, Macao, China.

Ribbon Tree (Macao) Trading Co., Ltd., Avn. Venceslau Morais S/N, 11–P, Edf. C. Ind., Keck Seng Building 2, Macao, China.

Ribbon Tree (USA) Inc., dba Cana-Pacific Ribbons Inc., 6920 Salashan Parkway, Unit D107, Ferndale, Washington 98248.

Apex Distributing Inc., 6920 Salashan Parkway, Unit D107, Ferndale, Washington 98248.

Artech GMBH, Feldbachacker 10, D–44 149, Dorfmund, Germany.

Ink Tec Co. Ltd., 1124, Shingil-Dong Danwon-Gu, Ansan-City, Kyungki-Do, 425–839, Korea.

Ink Tec America Corporation, 7020 Troy Hill Drive, Suite H, Elkridge, Maryland 21075.

Dataproducts USA LLC, 2001 Anchor Court, Thousand Oaks, California 91320.

Gerald Chamales Corp., dba Rhinotek Computer Products, 2301 E. Del Amo Blvd., Compton, California 90220.

Master Ink Co., Ltd., 604 Po Lung Centre, 11 Wang Chiu Road, Kowloon Bay, Hong Kong.

AcuJet U.S.A., Inc., 128 S. 6th Avenue, City of Industry, California 91746.

(c) Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: March 17, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4196 Filed 3–22–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–825 and 826 (Review)]

Certain Polyester Staple Fiber from Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on March 31, 2005 (70 FR 16522) and determined on July 5, 2005 that it would conduct full reviews (70 FR 41427, July 19, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 13, 2005 (70 FR 54080). The hearing was held in Washington, DC, on January 17, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on March 20, 2006. The views of the Commission are contained in USITC Publication 3843 (March 2006), entitled *Certain Polyester Staple Fiber from Korea and Taiwan (Inv. Nos. 731–TA–825 and 826 (Review))*.

By order of the Commission.

Issued: March 20, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4198 Filed 3–22–06; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on February 28, 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''), VSI Alliance 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, Cast, Inc., Woodcliff Lake, NJ; and Beijing Sanda Development Center, Beijing, People's Republic of China have been added as parties to this venture. Also, Dolphin Integration, Meylan, France; Elixent Limited, Bristol, United Kingdom; Infineon Technologies Corporation, Munich, Germany; Microelectronics Centre of Harbin Institute of Technology, Harbin, People's Republic of China; Palmchip Corp., Santa Clara, CA; Sonics, Inc., Mountain View, CA; and STMicroelectronics SA, Crolles, France 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 VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance 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 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 28, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 28, 2005 (70 FR 71333).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–2792 Filed 3–22–06; 8:45am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection; Comments: Work Opportunity Tax Credit Program and the Welfare-to-Work Tax Credit

ACTION: Notice.

SUMMARY: The U.S. Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments on the proposed three-year extension (without change) of the Work Opportunity Tax Credit (WOTC) Program and the Welfare-to-Work Tax Credit (WtWTC) electronic reporting form ETA 9058; administrative forms ETA 9057, 9059, 9061–9063 and 9065; and the following program related documents: January 2006, Revised, Third Edition of ETA Handbook No. 408; ''Guidance for Work Opportunity Tax Credit and Welfare-to Work Tax Credit Allotments Fiscal Year (FY) 2005,'' Training and Employment Guidance Letter (TEGL); and the Technical Assistance and Review Guide. This request covers the period from June 2006 to June 2009. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing this link: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Submit comments on or before May 22, 2006.

ADDRESSES: Send comments to: Christine Kulick, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Division of Adult Services, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210 (202–693–3937—not a toll free number), fax: 202–693–3015, and e-mail address: *kulick.christine@dol.gov*

FOR FURTHER INFORMATION CONTACT: Carmen Ortiz, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Division of Adult Services, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210 (202–693–2786—not a toll free number), fax: 202–693–3015, and e-mail address: *ortiz.carmen@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Data on WOTC and WtWTC Tax Credits will be collected by state workforce agencies (SWAs) and provided to the Office of Workforce Investment, Division of Adult Services, Washington, DC, through the appropriate Department of Labor (DOL) regional offices via a quarterly management report. Data obtained from the administrative or processing forms will be used for WOTC and WtWTC program performance management and outcome reporting.

II. Desired Focus of Comments

Currently, ETA is soliciting comments concerning the proposed three-year extension (without change) of the WOTC Program and the WtWTC electronic reporting form ETA 9058; administrative forms ETA 9057, 9059, 9061–9063 and 9065; and the following program related documents: January 2006, Revised Third Edition of ETA Handbook No. 408; ''Guidance for the Work Opportunity Tax Credit Program and Welfare-to-Work Tax Credit Allotments Fiscal Year (FY) 2005'' TEGL; and the Technical Assistance and Review Guide. This request covers the period from June 2006 through June 2009.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond by including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice or by accessing this link: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

III. Current Actions

This is a request for Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)) to extend the collection of information and use of program materials for WOTC and WtWTC. On October 4, 2004, the President signed into law the ''Working Families Tax Relief Act of 2004,'' Public Law 108–311. This law reauthorized the WOTC and WtWTC, without changes, through December 31, 2005. The reauthorization was retroactive to the tax credits' expiration date of December 31, 2003. OMB authorization for WOTC and WtWTC administrative and electronic reporting forms and other related materials will expire on June 30, 2006. Because Congress reauthorizes these tax credits continuously for periods that range between one and three years, we are requesting a three-year extension through June 2009, to continue the existing uninterrupted collection of information. Further, the Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) requires that, when feasible, federal agencies design and implement the use of automated systems that facilitate the electronic signature and filing of forms (by participants) to conduct official business with the public by 2003. The Office of Workforce Investment, Division of Adult Services, complied with this requirement by successfully implementing an electronic reporting system for the tax credits' program and WOTC and WtWTC quarterly report.

The automated reporting system is known as ETA's Enterprise Business Support System (EBSS) Tax Credit Reporting System (TCRS). EBSS/TCRS is a Web-based system that allows states to meet the reporting responsibilities in a more efficient manner while reducing the reporting burden on the state, regional, and national levels. Through this system, states can manually enter or electronically upload the required quarterly data report (ETA Form 9058). This electronic reporting system reduced burden hours by 78 percent from 3,215,368 annual burden hours estimated for these forms in the 2002 ICR to 703,125 actual burden hours in 2004. The present ICR reflects the substantial decrease in response time for these forms.

Type of Review: Three-Year Extension (without change).

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit and Welfare-to-Work Tax Credit.

OMB Number: 1205–0371.

Burden Hours: (see chart below).

Burden hour requirement	Total respondents	Frequency	Annual responses	Average response time	Annual burden hours
Form 905	52	Quarterly	208	1:00	208
Form 9058	52	Quarterly	208	1:00	208
Form 9059	52	Quarterly	208	1:00	208
Employer/Job-seeker complete Form 9061	770,000	On occasion	770,000	.33	254,100
Form 9061 processed by SWAs	52	On occasion	770,000	.33	254,100
Form 9062	52	On occasion	40	.33	13
Form 9063	52	On occasion	440,000	.33	145,200
Form 9065	52	Quarterly	208	1:00	208
Record keeping	52	Annually	52	931	48,412
Planning guidance	52	One Time	52	8:00	416
Modification planning guidance	52	One Time	52	1:00	52
Total			1,801,028		703,125

Total Burden Hours: 703,125.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request, and they will also become a matter of public record.

Dated: Signed at Washington, DC this 16th day of March, 2006.

Gay Gilbert,

Administrator, Office of Workforce Investment, Employment & Training Administration.

[FR Doc. E6–4190 Filed 3–22–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of data collections using Form ETA–563, Trade Adjustment Assistance Quarterly Activities Report (1205–0016 expires May 31, 2006), and Form ETA–9027 (1205–0016 expires May 31, 2006), Training Waivers Issued and Revoked.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or at this Web site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 22, 2006.

ADDRESSES: Susan Worden, Program Analyst, Division of Trade Adjustment Assistance, Room C–5311, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3517 (this is not a toll-free number), fax (202) 693–3584, or e-mail *Worden.Susan@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Key workload data on the Trade Adjustment Assistance (TAA) program are needed to allocate program and administrative funds to State agencies administering the program for the Secretary. This revision to the ETA–563 and ETA–9027 (1205–0016 expires May 31, 2006) eliminates non-essential data elements or duplication of data collected elsewhere, and simplifies the reporting process.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a notice of proposed revision of collection of information currently approved by OMB (ETA–563 and ETA–9027, 1205–0016 expires May 31, 2006). This revision of the ETA–563 reduces the burden hours and eliminates data elements duplicated in other data collections. The changes to the ETA–9027 eliminate outdated data elements.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Quarterly Determinations, Allowance Activities, and Employability Services Under the Trade Act; Training Waivers Issued and Revoked.

OMB Number: 1205–0016.

Recordkeeping: 2 years.

Affected Public: State or Local Government.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
ETA–563	52	Quarterly	50	8 minutes	26 hours.
ETA–9027	52	Quarterly	50	10 minutes	34 hours.
Combined Reprogramming burden	52	One time		Minimal	Minimal.
Totals			100		60 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $900.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 16, 2006.

Erica Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–4195 Filed 3–22–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 06–020]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, worldwide license to practice the invention described in Invention Disclosure KSC–12899 entitled ''Gas Phase Oxidation of NO to NO_2'' to Phoenix Systems International, having its principal place of business in Pine Brook, New Jersey. The patent rights in this invention will be assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

March 15, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–4168 Filed 3–22–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 5–8, 2006, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Tuesday, November 22, 2005 (70 FR 70638).

Wednesday, April 5, 2006, Conference Room T–8E8, Two White Flint North, Rockville, Maryland

1:30 p.m.–6 p.m.: Safeguards and Security Matters (Closed)—The Committee will hear presentations by and hold discuss with representatives of the NRC staff regarding safeguards and security matters.

Note: This session will be closed to protect information classified as national security as well as safeguards information pursuant to 5 U.S.C. 552b(c) (1) and (3).

Thursday, April 6, 2006, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Draft Final Regulatory Guide, ''Risk-Informed, Performance-Based Fire Protection for Existing Light Water Nuclear Power Plants'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final Regulatory Guide, ''Risk-Informed, Performance-Based Fire Protection for Existing Light Water Nuclear Power Plants,'' and related matters.

10:15 a.m.–12:15 p.m.: Safety Conscious Work Environment/Safety Culture (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff activities associated with responding to the Commission's Staff Requirements Memorandum on Safety Conscious Work Environment/Safety Culture, and related matters.

1:15 p.m.–2:15 p.m.: Hazards Analysis Associated with the Grand Gulf Early Site Permit Application and the Associated NRC Staff's Evaluation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, and System Energy Resources, Inc. as needed, regarding the hazards analysis associated with the Grand Gulf Early Site Permit Application and the associated NRC staff's evaluation.

2:30 p.m.–4:30 p.m.: Application of TRACG Code to ESBWR Stability (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and General Electric Nuclear Energy regarding application of the TRACG Code for analyzing the Economic Simplified Boiling Water Reactor (ESBWR) Stability.

Note: A portion of this session may be closed to discuss General Electric proprietary information pursuant to pursuant to 5 U.S.C. 552b(c)(4).

4:45 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, April 7, 2006, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Review of 1994 Addenda for Class 1, 2, and 3 Piping Systems to the ASME Code Section III and the Resolution of the Differences Between the Staff and ASME (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the American Society of Mechanical Engineers (ASME) regarding the 1994 Addenda for Class 1, 2, and 3 Piping Systems to the ASME Code Section III and the resolution of differences between the NRC staff and ASME.

10:15 a.m.–10:45 a.m.: Subcommittee Reports (Open)—The Committee will hear reports by and hold discussions with the cognizant Chairman of the ACRS Subcommittees regarding: interim review of the Nine Mile Point license renewal application and the associated NRC staff's draft Safety Evaluation Report; and interim review of the Ginna core power uprate application and the associated NRC staff's Safety Evaluation.

10:45 a.m.–11:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

11:45 a.m.–12 noon: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1 p.m.–1:30 p.m.: Quality Assessment of Selected NRC Research Projects (Open)—The Committee will select projects and make assignments for assessing the quality of the selected research projects. 1:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, April 8, 2006, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 2005 (70 FR 56936). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it may be necessary to close portions of this meeting noted above to discuss and protect information classified as national security information as well as safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3), and General Electric proprietary information pursuant to 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 16, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–4193 Filed 3–22–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on April 5, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, April 5, 2006—8:30 a.m.–12 Noon

The purpose of this meeting is to discuss the License Renewal Application for Nine Mile Point and the related Safety Evaluation Report (SER) with open items prepared by the NRR staff. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Constellation Energy Group, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. John G. Lamb (telephone 301/415–6855) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 16, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–4194 Filed 3–22–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specifications for Boiling Water Reactor Plants to Risk-Inform Requirements Regarding Selected Required Action End States Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application related to the revision of Boiling Water Reactor (BWR) plant required action end state requirements in technical specifications (TS). The purpose of this model is to permit the NRC to efficiently process amendments that propose to revise BWR TS required action end state requirements. Licensees of nuclear power reactors to which the model applies may request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (70 FR 74037, December 14, 2005) that provided a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination relating to changing BWR TS required action end state requirements. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to adopt the changes. The staff has posted a model application on the NRC Web site to assist licensees in using the consolidated line item improvement process (CLIIP) to revise the BWR TS required action end state requirements. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: T. R. Tjader, Mail Stop: O12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1187.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The Consolidated Line Item Improvement Process (CLIIP) is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing changes to the standard TS (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary safety assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP includes NRC staff evaluation of any comments received for a proposed change to the STS, and either a reconsideration of the change or an announcement of the availability of the change for adoption by licensees. Those licensees opting to apply for the subject change to their TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the revision of BWR TS required action end state requirements. This change was proposed for incorporation into the STS by participants in the Owners Groups Technical Specification Task Force (TSTF) and is designated TSTF–423, Revision 0. TSTF–423, as well as the NRC staff's safety evaluation and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room). TSTF–423, the NRC staff's safety evaluation, and the model application, can be viewed on the NRC Web site at: (*http://www.nrc.gov/reactors/operating/licensing/techspecs.html*).

Applicability

This proposal to modify technical specification requirements by the adoption of TSTF–423 is applicable to all licensees of BWR plants who have adopted or will adopt, in conjunction with the change, technical specification requirements for a Bases control program consistent with the TS Bases Control Program described in Section 5.5 of the BWR STS. Licensees that have not adopted requirements for a Bases control program by converting to the improved STS or by other means, are requested to include the requirements

for a Bases control program consistent with the STS in their application for the change. The need for a Bases control program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the Bases in TSTF–423. The staff is requesting that the Bases changes be included with the proposed license amendments consistent with the Bases in TSTF–423, prior to implementing TSTF–423. To ensure that the overall change, including the Bases, includes appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on the licensee's incorporation of the changes into the Bases document and on requiring the licensee to control the changes in accordance with the Bases Control Program. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested Bases and Bases control program. However, deviations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–423.

Public Notices

In a notice in the **Federal Register** dated December 14, 2005 (70 FR 74037), the staff requested comment on the use of the CLIIP to process requests to revise the BWR TS regarding required action end state requirements, designated as TSTF–423.

In response to the notice soliciting comments from interested members of the public about modifying the TS requirements regarding revising required action end state requirements, the staff received one set of comments (from the Owners Groups TSTF, representing licensees). Specific comments on the model SE were offered, and are summarized and discussed below:

1. *Comment:* We commend the staff for adopting a draft Safety Evaluation format that simplifies the application of the model Safety Evaluation for TSTF–423 to individual licensees. For example, providing blanks for plant name, operating license number, etc. We encourage the staff to follow this example for future CLIIP model Safety Evaluations.

Response: The NRC staff acknowledges the comment; no action taken.

2. *Comment:* The ''Applicability'' portion of the notice states that each licensee applying for the changes proposed in TSTF–423 should include Bases for the proposed Technical Specifications (TS) consistent with the Bases proposed in TSTF–423. We request that the section be revised to not require licensees to submit Bases changes. The Bases changes in TSTF–423 are not integral to the change and both licensee and NRC resources could be saved by allowing licensees to adopt the necessary Bases changes using the Technical Specifications Bases Control Program. As a precedent, the CLIIP for TSTF–460 (Notice of Availability published in the **Federal Register** on August 23, 2004) allowed licensees to commit to updating their TS Bases under the TS Bases Control Program instead of requiring licensees to submit their Bases changes for NRC review. We propose that the TSTF–423 CLIIP take a similar approach.

Response: The NRC staff does not agree with the comment. The associated TS Bases changes are an essential and integral element of the change, must be consistent with the Bases in TSTF–423, and should be submitted by the licensees with the license amendment request for adoption of TSTF–423.

3. *Comment:* Section 1.0 of the model Safety Evaluation, in the first paragraph, states that TSTF–423 was proposed by the Nuclear Energy Institute Risk Informed Technical Specification Task Force. That is incorrect. TSTF–423, Revision 0, was submitted by the Owners Group Technical Specifications Task Force in a letter to the NRC dated August 12, 2003.

Response: The NRC staff agrees with the comment. The correction has been made.

4. *Comment:* Section 1.0 of the model Safety Evaluation, the last sentence of section, states, ''Short duration repairs are on the order of 2-to-3 days, but not more than a week.'' We recommend replacing this sentence with the statement from the Implementation Guidance (TSTF–IG–05–02), which states, ''A 'short duration' is envisioned to be the duration that boiling water reactors (BWRs) are most physically and practicably able to remain in the hot shutdown condition (*i.e.*, from a few days to approximately one week).'' This clarifies that the time frames are a statement of fact rather than a restriction which must be incorporated in plant operating controls.

Response: The NRC staff does not agree with the comment. This issue was discussed thoroughly and the one week limit was determined appropriate. The one week limit is explicitly stated in the Implementation Guidance (Reference 8 to the SE) submitted by industry, agreed to by the NRC staff, and to which the licensees must commit. Section 1 paragraph 6 of the Implementation Guidance (TSTF–IG–05–02) states, ''Any entry into Mode 3 using this TS allowance must be limited to no more than seven days.'' No action has been taken.

5. *Comment:* In Section 3.2, ''Assessment of TS Changes,'' of the model Safety Evaluation, each subsection is titled with the applicable Topical Report section number and the ITS LCO number. The abbreviation ''TS'' is used to indicate the Topical Report section number (*e.g.*, ''TS 4.5.1.2 and LCO 3.4.3 (BWR/4); TS 4.5.2.2 and LCO 3.4.4 (BWR/6), Safety/Relief Valves (SRVs).'' The labels ''4.5.1.2'' and ''4.5.2.2'' are the Topical Report sections associated with these LCO changes. These references also appear in the text of Section 3.2. This presentation is confusing as ''TS'' is defined in the model Safety Evaluation as ''Technical Specifications'' and non-ITS plants have Technical Specification requirements with numbers similar to the Topical Report numbers. We recommend replacing this use of the abbreviation ''TS'' with either ''Topical Report section'' or defining another acronym, such as ''TR.''

Response: The NRC staff agrees with the comment. The abbreviation for the Topical Report Section was poorly chosen, in that it was easily confused with the abbreviation for Technical Specification. The Topical Report Section abbreviation has been changed to ''TRS.''

6. *Comment:* In Section 3.2.4 of the model Safety Evaluation, in the title and in the first paragraph, the LCO name ''Low-Low Set Logic (LLS) Valves'' is used. The word ''logic'' should not appear in the LCO name. The document should be revised to state ''Low-Low Set (LLS) Valves.''

Response: The NRC staff agrees with the comment. The correction has been made.

7. *Comment:* Section 5.0, ''Environmental Consideration,'' of the model Safety Evaluation states that the amendments meet the eligibility criteria for categorical exclusion set forth in ''10 CFR 51.22(c)(9) [and (c)(10)].'' 10 CFR 51.22(c)(10) pertains to issuance of an amendment pursuant to ''parts 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 60, 61, 70 or part 72 of this chapter which (i) changes surety, insurance and/or indemnity requirements, or (ii) changes

recordkeeping, reporting, or administrative procedures or requirements.'' Paragraph (c)(10) is not applicable to this change and the reference should be deleted.

Response: The NRC staff agrees with the comment. The correction has been made.

8. *Comment:* Section 7.0, ''References,'' of the model Safety Evaluation, Reference 1, states the date of NEDC–32988–A, Revision 2, as September 2005. The correct date of the document is December 2002.

Response: The NRC staff agrees with the comment. The correction has been made.

The NRC staff has made editorial changes to the previously published model SE related to TSTF–423 resulting from the disposition of comments 3, 5, 6, 7, and 8. The staff finds that technically the previously published SE remains unaltered. Below are the republished model SE and model NSHC determination (previously published in the **Federal Register**; 70 FR 23238, December 14, 2005), and the model application prepared by the staff that licensees may reference in their plant-specific applications.

Dated at Rockville, Maryland, this 16th day of March 2006.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Branch Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

Model Plant Specific Safety Evaluation for Technical Specification Task Force (TSTF) Change TSTF–423, Risk Informed Modification to Selected Required Action End States, a Consolidated Line Item Improvement

U.S. Nuclear Regulatory Commission, Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. [_____] to Facility Operating License NFP–[_____ [Utility Name] [Plant Name], [Unit _____] Docket No. –[____]

1.0 Introduction

By letter dated _____, 20__, [Utility Name] (the licensee) proposed changes to the technical specifications (TS) for [plant name]. The requested changes are the adoption of TSTF–423, Revision 0, to the Boiling Water Reactor (BWR) Standard Technical Specifications (STS) (NUREG 1433 and NUREG 1434), which was proposed by the Owners Groups Technical Specifications Task Force (TSTF) on August 12, 2003, on behalf of the industry. TSTF–423, Revision 0, incorporates the BWR Owners Group (BWROG) approved Topical Report NEDC–32988, Revision 2, ''Technical Justification to Support Risk Informed Modification to Selected Required Action End States for BWR Plants'' (Reference 1), into the BWR STS (NOTE: The changes in TSTF–423 are made with respect to Revision 2 of the BWR STS NUREGs).

TSTF–423 is one of the industry's initiatives developed under the Risk Management Technical Specifications (RMTS) program. These initiatives are intended to maintain or improve safety through the incorporation of risk assessment and management techniques in TS, while reducing unnecessary burden and making TS requirements consistent with the Commission's other risk-informed regulatory requirements, in particular the maintenance rule.

The Code of Federal Regulations, 10 CFR 50.36, ''Technical Specifications,'' states: ''When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow the remedial action permitted by the technical specification until the condition can be met.'' The STS and most plant TS provide a completion time (CT) for the plant to meet the limiting condition for operation (LCO). If the LCO or the remedial action cannot be met, then the reactor is required to be shut down. When the STS and individual plant technical specifications were written, the shutdown condition or end state specified was usually cold shutdown.

Topical Report NEDC–32988, Revision 2, provides the technical basis to change certain required end states when the TS Actions for remaining in power operation cannot be met within the CTs. Most of the requested TS changes permit an end state of hot shutdown (Mode 3), if risk is assessed and managed, rather than an end state of cold shutdown (Mode 4) contained in the current TS. The request was limited to those end states where: (1) entry into the shutdown mode is for a short interval, (2) entry is initiated by inoperability of a single train of equipment or a restriction on a plant operational parameter, unless otherwise stated in the applicable TS, and (3) the primary purpose is to correct the initiating condition and return to power operation as soon as is practical.

The STS for BWR plants define five operational modes. In general, they are:

- Mode 1—Power Operation. The reactor mode switch is in run position.
- Mode 2—Reactor Startup. The reactor mode switch is in refuel position (with all reactor vessel head closure bolts fully tensioned) or in startup/hot standby position.
- Mode 3—Hot Shutdown. The reactor coolant system (RCS) temperature is above 200 degrees F (TS specific) and the reactor mode switch is in shutdown position (with all reactor vessel head closure bolts fully tensioned).
- Mode 4—Cold Shutdown. The RCS temperature is equal to or less than 200 degrees F and the reactor mode switch is in shutdown position (with all reactor vessel head closure bolts fully tensioned).
- Mode 5—Refueling. The reactor mode switch is in shutdown or refuel position, and one or more reactor vessel head closure bolts are less than fully tensioned.

Criticality is not allowed in Modes 3 through 5.

TSTF–423 generally allows a Mode 3 end state rather than a Mode 4 end state for selected initiating conditions in order to perform short-duration repairs which necessitate exiting the original Mode of operation. Short duration repairs are on the order of 2-to-3 days, but not more than a week.

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36(c), TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The rule does not specify the particular requirements to be included in a plant's TS. As stated in 10 CFR 50.36(c)(2)(i), the ''Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specifications * * *.''

Reference 1 states: ''Cold shutdown is normally required when an inoperable system or train cannot be restored to an operable status within the allowed time. Going to cold shutdown results in the loss of steam-driven systems, challenges the shutdown heat removal systems, and requires restarting the plant. A more preferred operational mode is one that maintains adequate risk levels while repairs are completed without causing unnecessary challenges to plant equipment during shutdown and startup transitions.'' In the end state changes under consideration here, a problem

with a component or train has or will result in a failure to meet a TS, and a controlled shutdown has begun because a TS Action requirement cannot be met within the TS CT.

Most of today's TS and the design basis analyses were developed under the perception that putting a plant in cold shutdown would result in the safest condition and the design basis analyses would bound credible shutdown accidents. In the late 1980s and early 1990s, the NRC and licensees recognized that this perception was incorrect and took corrective actions to improve shutdown operation. At the same time, standard TS were developed and many licensees improved their TS. Since enactment of a shutdown rule was expected, almost all TS changes involving power operation, including a revised end state requirement, were postponed (see, for example the Final Policy Statement on TS Improvements, Reference 2). However, in the mid 1990s, the Commission decided a shutdown rule was not necessary in light of industry improvements.

Controlling shutdown risk encompasses control of conditions that can cause potential initiating events and responses to those initiating events that do occur. Initiating events are a function of equipment malfunctions and human error. Responses to events are a function of plant sensitivity, ongoing activities, human error, defense-in-depth, and additional equipment malfunctions.

In practice, the risk during shutdown operations is often addressed via voluntary actions and application of 10 CFR 50.65 (Reference 3), the maintenance rule. Section 50.65(a)(4) states: ''Before performing maintenance activities * * * the licensee shall assess and manage the increase in risk that may result from the proposed maintenance activities. The scope of the assessment may be limited to structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety.'' Regulatory Guide (RG) 1.182 (Reference 4) provides guidance on implementing the provisions of 10 CFR 50.65(a)(4) by endorsing the revised Section 11 (published separately) to NUMARC 93–01, Revision 2. The revised Section 11 of NUMARC 93–01, Revision 2, was subsequently incorporated into Revision 3 of NUMARC 93–01 (Reference 5). However, Revision 3 has not yet been formally endorsed by the NRC. The changes in TSTF–423 are consistent with the rules, regulations and associated regulatory guidance, as noted above.

3.0 Technical Evaluation

The changes proposed in TSTF–423 are consistent with the changes proposed and justified in Topical Report GE NEDC–32988–A, Revision 2, (Reference 1) and approved by the associated NRC SE (Reference 6). The evaluation included in Reference 6, as appropriate and applicable to the changes of TSTF–423 (Reference 7), is reiterated here and differences from the SE are justified. In its application the licensee commits to TSTF–IG–05–02, Implementation Guidance for TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A,'' (Reference 8), which addresses a variety of issues such as considerations and compensatory actions for risk-significant plant configurations. An overview of the generic evaluation and associated risk assessment is provided below, along with a summary of the associated TS changes justified by Reference 1.

3.1 Risk Assessment

The objective of the BWROG topical report (Reference 1) risk assessment was to show that any risk increases associated with the changes in TS end states are either negligible or negative (*i.e.*, a net decrease in risk).

The BWROG topical report documents a risk-informed analysis of the proposed TS change. Probabilistic Risk Assessment (PRA) results and insights are used, in combination with results of deterministic assessments, to identify and propose changes in ''end states'' for all BWR plants. This is in accordance with guidance provided in RG 1.174 (Reference 9) and RG 1.177 (Reference 10). The three-tiered approach documented in RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications,'' was followed. The first tier of the three-tiered approach includes the assessment of the risk impact of the proposed change for comparison to acceptance guidelines consistent with the Commission's Safety Goal Policy Statement, as documented in RG 1.174. The first tier aims at ensuring that there are no unacceptable temporary risk increases as a result of the TS change, such as when equipment is taken out of service. The second tier addresses the need to preclude potentially high-risk configurations which could result if equipment is taken out of service concurrently with the equipment out of service as allowed by this TS change. The third tier addresses the application of 10 CFR 50.65(a)(4) of the Maintenance Rule for identifying risk-significant configurations resulting from maintenance related activities and taking appropriate compensatory measures to avoid such configurations. This TS invokes a risk assessment because 10 CFR 50.65(a)(4) is applicable to maintenance related activities and does not cover other operational activities beyond the effect they may have on existing maintenance related risk.

BWROG's risk assessment approach was found comprehensive and acceptable in the SE for the topical report. In addition, the analyses show that the three-tiered approach criteria for allowing TS changes are met as follows:

- *Risk Impact of the Proposed Change (Tier 1).* The risk changes associated with the TS changes in TSTF–423, in terms of mean yearly increases in core damage frequency (CDF) and large early release frequency (LERF), are risk neutral or risk beneficial. In addition, there are no significant temporary risk increases, as defined by RG 1.177 criteria, associated with the implementation of the TS end state changes.
- *Avoidance of Risk-Significant Configurations (Tier 2).* The performed risk analyses, which are based on single LCOs, shows that there are no high-risk configurations associated with the TS end state changes. The reliability of redundant trains is normally covered by a single LCO. When multiple LCOs occur, which affect trains in several systems, the plant's risk-informed configuration risk management program (CRMP), or the risk assessment and management program implemented in response to the Maintenance Rule 10 CFR 50.65(a)(4), shall ensure that high-risk configurations are avoided. As part of the implementation of TSTF–423, the licensee has committed to follow Section 11 of NUMARC 93–01, Revision 3, and include guidance in appropriate plant procedures and/or administrative controls to preclude high-risk plant configurations when the plant is at the proposed end state. The staff finds that such guidance is adequate for preventing risk-significant plant configurations.
- *Configuration Risk Management (Tier 3).* The licensee has a program, as described above, in place to comply with 10 CFR 50.65(a)(4) to assess and manage the risk from maintenance activities. This program can support a licensee decision in selecting the appropriate actions to control risk for most cases in which a risk-informed TS is entered.

The generic risk impact of the end state mode change was evaluated subject to the following assumptions

which are incorporated into the TS, TS Bases, and TSTF–IG–05–02 (Reference 8):

1. The entry into the end state is initiated by the inoperability of a single train of equipment or a restriction on a plant operational parameter, unless otherwise stated in the applicable technical specification.

2. The primary purpose of entering the end state is to correct the initiating condition and return to power as soon as is practical.

3. When Mode 3 is entered as the repair end state, the time the reactor coolant pressure is above 500 psig will be minimized. If reactor coolant pressure is above 500 psig for more than 12 hours, the associated plant risk will be assessed and managed.

These assumptions are consistent with typical entries into Mode 3 for short duration repairs, which is the intended use of the TS end state changes.

The staff concludes that, in general, going to Mode 3 (hot shutdown) instead of going to Mode 4 (cold shutdown) to carry out equipment repairs that are of short duration, does not have any adverse effect on plant risk.

3.2 Assessment of TS Changes

The changes proposed by the licensee and in TSTF–423 are consistent with the changes in topical report GE NEDC–32988 (Reference 1), and approved by the NRC SE (Reference 6). The following are the changes, including a synopsis of the STS LCO, and a conclusion of acceptability.

3.2.1 Topical Report Section (TRS) 4.5.1.2 and LCO 3.4.3 (BWR/4); TRS 4.5.2.2 and LCO 3.4.4 (BWR/6), Safety/Relief Valves (SRVs).

The function of the SRVs is to protect the plant against severe overpressurization events. These TS provide the operability requirements for the SRVs as described below. The TS change allows the plant to remain in Mode 3 until the repairs are completed.

[**Note:** Plant Applicability, BWR4/6]

LCO: The safety function of 11 SRVs must be operable (BWR/4 plants). The safety function of seven SRVs must be operable and the relief function of seven additional SRVs must be operable (BWR/6 plants).

Condition requiring entry into end state: If the LCO cannot be met with one or two SRVs inoperable, the inoperable valves must be returned to operability within 14 days. If the SRVs cannot be returned to operable status within that time, the plant must be placed in Mode 3 within 12 hours and in Mode 4 within 36 hours.

Modification for end state required actions: If the LCO cannot be met with one or two SRVs inoperable, the inoperable valves must be returned to operability within 14 days. If the one or two inoperable SRVs cannot be returned to operable status within 14 days, the plant must be placed in Mode 3 within 12 hours. If three or more SRVs become inoperable, the plant must be placed in Mode 4 within 36 hours.

Assessment: The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and in the Mode 3 end state. The evaluation indicates that the core damage risks are lower in Mode 3 than in Mode 4. Going to Mode 4 for one inoperable SRV would cause loss of the high-pressure steam-driven injection system (reactor core isolation cooling (RCIC)/high pressure coolant injection (HPCI)), and loss of the power conversion system (condenser/feedwater), and require activating the residual heat removal (RHR) system. In addition, emergency operating procedures (EOPs) direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for reactor pressure vessel (RPV) water makeup and cooling. Based on the low probability of loss of the necessary overpressure protection function and the number of systems available in Mode 3, the staff concluded in the SE (reference 6) for the BWROG topical report that the risks of staying in Mode 3 are approximately the same as, and in some cases lower than, the risks of going to the Mode 4 end state. The change allows the inoperable SRV to be repaired in a plant operating mode with lower risks. After repairs are made, the plant can be brought to full-power operation with less potential for transients and errors. The plant is taken into cold shutdown only when three or more SRVs are inoperable.

Finding: Based on the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the staff finds that the requested change to allow operation in Mode 3 with a minimum number of SRVs inoperable, after plant risk has been assessed and managed, is acceptable.

3.2.2 TRS 4.5.1.3 and LCO 3.5.1(BWR/4); TRS 4.5.2.3 and LCO 3.5.1 (BWR/6), Emergency Core Cooling Systems (ECCS) (Operating).

The ECCS systems provide cooling water to the core in the event of a loss-of-coolant accident (LOCA). This set of ECCS TS provide the operability requirements for the various ECCS subsystems as described below. This TS change would delete the secondary actions. The plant can remain in Mode 3 until the required repair actions are completed. The reactor is not depressurized.

[**Note:** Plant Applicability, BWR4/6]

LCO: Each ECCS injection/spray subsystem and the automatic depressurization system (ADS) function of seven BWR/4, or eight BWR/6, SRVs must be operable.

Conditions requiring entry into end state: If the LCO cannot be met, the following actions must be taken for the listed conditions:

a. If one low-pressure ECCS injection/spray subsystem is inoperable, the subsystem must be restored to operable status in 7 days.

b. If the inoperable ECCS injection/core spray cannot be restored to operable status, the plant must be placed in Mode 3 within 12 hours and Mode 4 within 36 hours (BWR/4 plants only).

c. If two ECCS injection subsystems are inoperable or one ECCS injection subsystem and one ECCS spray system are inoperable, one ECCS injection/spray subsystem must be restored to operable status within 72 hours. If this required action cannot be met, the plant must be placed in Mode 3 within 12 hours and in Mode 4 within 36 hours (BWR/6 plants only).

d. If the HPCI/High Pressure Core Spray (HPCS) system is inoperable, the RCIC system must be verified to be operable by administrative means within 1 hour and the HPCI/HPCS system restored to operable status within 14 days.

e. If one ADS valve is inoperable, it must be restored to operable status within 14 days.

f. If one ADS valve is inoperable and one low-pressure ECCS injection/spray subsystem is inoperable, the ADS valve must be restored to operable status within 72 hours or the low-pressure ECCS injection/spray subsystem must be restored to operable status within 72 hours.

g. If two or more ADS valves become inoperable, or the required actions described in items e and/or f cannot be met, the plant must be placed in Mode 3 within 12 hours and the reactor steam dome pressure reduced to less than 150 psig within 36 hours.

Modification for End State Required Actions:

a. No change

b. If the ECCS injection or spray system is inoperable, the plant must be

restored to operable status within 12 hours. The plant is not taken into Mode 4 (cold shutdown).

c. If two ECCS injection subsystems are inoperable or one ECCS injection subsystem and one ECCS spray system are inoperable, one ECCS injection/spray subsystem must be restored to operable status within 72 hours. If this required action cannot be met, the plant must be placed in Mode 3 within 12 hours. The plant is not taken into Mode 4 (BWR/6 plants only).

d. No change

e. No change

f. No change

g. If two or more ADS valves become inoperable or the required actions described in item e and/or f cannot be met, the plant must be placed in Mode 3 within 12 hours. The reactor is not depressurized and not taken to Mode 4.

Assessment: The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and the Mode 3 end state. The evaluation indicates that the core damage risks are lower in Mode 3 than in the current end state Mode 4. Going to Mode 4 for one ECCS subsystem or one ADS valve would cause loss of the high-pressure steam-driven injection system (RCIC/HPCI), and loss of the power conversion system (condenser/feedwater), and require activating the RHR system. In addition, Plant Emergency Operating Procedures (EOPs) direct the operator to take control of the depressurization function if low-pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the reactor coolant inventory and the number of systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are approximately the same as, and in some cases lower than, the risks of going to the Mode 4 end state.

Finding: Based on the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.3 TRS 4.5.1.4 and LCO 3.5.3 (BWR/4 only), Reactor Core Isolation Cooling (RCIC) System.

The function of the RCIC system is to provide reactor coolant makeup during loss of feedwater and other transient events. This TS provides the operability requirements for the RCIC system as described below. The TS change allows the plant to remain in Mode 3 until the repairs are completed.

[**Note:** Plant Applicability, BWR/4]

LCO: The RCIC system must be operable during Modes 1, 2 and 3 when the reactor steam dome pressure is greater than 150 psig.

Condition requiring entry into end state: If the LCO cannot be met, the following actions must be taken: (a) Verify by administrative means within 1 hour that the HPCI system is operable, (b) restore the RCIC system to operable status within 14 days. If either or both actions cannot be completed within the allotted time, the plant must be placed in Mode 3 within 12 hours and the reactor steam dome pressure reduced to less than 150 psig within 36 hours.

Modification for end state required actions: This TS change keeps the plant in Mode 3 (hot shutdown) until the required repairs are completed. The reactor steam dome pressure is not reduced to less than 150 psig.

Assessment: This change would allow the inoperable RCIC system to be repaired in a plant operating mode with lower risk and without challenging the normal shutdown systems. The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and in the Mode 3 end state. The evaluation indicates that the core damage risks are lower in Mode 3 than in Mode 4. Going to Mode 3 with reactor steam dome pressure less than 150 psig for inoperability of RCIC would also cause loss of the high-pressure steam-driven injection system HPCI and loss of the power conversion system (condenser/feedwater), and would require activating the RHR system. In addition, Plant EOPs direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the necessary overpressure protection function and the number of systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are approximately the same as, and in some cases lower than, the risks of going to the Mode 4 end state.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.4 TRS 4.5.1.6 and LCO 3.6.1.6 (BWR/4); TRS 5.5.2.5 and LCO 3.6.1.6 (BWR/6), Low-Low Set (LLS) Valves.

The function of LLS is to prevent excessive short-duration SRV cycling during an overpressure event. This TS provides operability requirements for the four LLS SRVs as described below. The TS change allows the plant to remain in Mode 3 until the repairs are completed.

[**Note:** Plant Applicability, BWR 4/6]

Conditions requiring entry into end state: If one LLS valve is inoperable, it must be returned to operability within 14 days. If the LLS valve cannot be returned to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours and in Mode 4 within 36 hours.

Modification for end state required actions: The TS change would keep the plant in Mode 3 until the required repair actions are completed. The plant would not be taken into Mode 4 (cold shutdown).

Assessment: The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and the Mode 3 end state. The evaluation indicates that the core damage risks are lower in Mode 3 than in Mode 4, the current end state. Going to Mode 4 for one LLS inoperable SRV would cause loss of the high-pressure steam-driven injection system (RCIC/HPCI), and loss of the power conversion system (condenser/feedwater), and would require activating the RHR system. With one LLS valve inoperable, the remaining valves are adequate to perform the required function. EOPs direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the necessary overpressure protection function during the infrequent and limited time in Mode 3 and the number of systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are approximately the same as and in some cases lower than the risks of going to the Mode 4 end state. The change allows repairs of the inoperable SRV to be performed in a plant operating mode with lower risks.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.5 TRS 4.5.1.1, TRS 4.5.2.1 and LCO 3.3.8.2, Reactor Protection System (RPS) Electric Power Monitoring.

RPS Electric Power Monitoring System is provided to isolate the RPS bus from the motor generator (MG) set or an alternate power supply in the event of over voltage, under voltage, or under frequency. This system protects

the load connected to the RPS bus against unacceptable voltage and frequency conditions and forms an important part of the primary success path of the essential safety circuits. Some of the essential equipment powered from the RPS buses includes the RPS logic, scram solenoids, and various valve isolation logic. The TS change allows the plant to remain in Mode 3 until the repairs are completed.

[**Note:** Plant Applicability, BWR 4/6]

LCO: For Modes 1, 2, 3 and Modes 4 and 5 (with any control rod withdrawn from a core cell containing one or more fuel assemblies), two RPS electric power monitoring assemblies shall be operable for each in-service RPS motor generator set or alternate power supply.

Condition Requiring Entry into End State: If the LCO cannot be met, the associated in-service power supply(s) must be removed from service within 72 hours for one Electric Power Assembly (EPA) inoperable or within one hour for both EPAs inoperable. In Modes 1, 2, and 3, if the in-service power supply(s) cannot be removed from service within the allotted time, the plant must be placed in Mode 3 within 12 hours and Mode 4 within 36 hours.

Modification: The change is to keep the plant in Mode 3 until the repair actions are completed. Delete required action in C.2 which required the plant to be in Mode 4.

Assessment: To reach Mode 3 per the TS, there must be a functioning power supply with degraded protective circuitry in operation. However, the over voltage, under voltage, or under frequency condition must exist for an extended time period to cause damage. There is a low probability of this occurring in the short period of time that the plant would remain in Mode 3 without this protection.

The specific failure condition of interest is not risk significant for BWR PRAs. If the required restoration actions cannot be completed within the specified time, going into Mode 4 would cause loss of the high-pressure steam-driven injection system (RCIC/HPCI) and loss of the power conversion system (condenser/feedwater), and would require activating the RHR system. In addition, EOPs direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the RPS power monitoring system during the infrequent and limited time in Mode 3 and the number of systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are approximately the same as and in some cases lower than the risks of going to the Mode 4 end state.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.6 TRS 4.5.1.19 and LCO 3.8.1(BWR/4); TRS 4.5.2.17 and LCO 3.8.1(BWR/6), AC Sources (Operating).

The purpose of the AC electrical system is to provide during all situations the power required to put and maintain the plant in a safe condition and prevent the release of radioactivity to the environment.

The Class 1E electrical power distribution system AC sources consist of the offsite power source (preferred power sources, normal and alternate(s)), and the onsite standby power sources (*e.g.*, emergency diesel generators (EDGs)). In addition, many sites provide a crosstie capability between units.

As required by General Design Criterion (GDC) 17 of 10 CFR Part 50, Appendix A, the design of the AC electrical system provides independence and redundancy. The onsite Class 1E AC distribution system is divided into redundant divisions so that the loss of any one division does not prevent the minimum safety functions from being performed. Each division has connections to two preferred offsite power sources and a single EDG or other Class 1E Standby AC power source.

Offsite power is supplied to the unit switchyard(s) from the transmission network by two transmission lines. From the switchyard(s), two electrically and physically separated circuits provide AC power through a stepdown transformer(s) to the 4.16-kV emergency buses.

In the event of a loss of offsite power, the emergency electrical loads are automatically connected to the EDGs in sufficient time to provide for a safe reactor shutdown and to mitigate the consequence of a design basis accident (DBA) such as a LOCA.

[**Note:** Plant Applicability, BWR 4/6]

LCO: The following AC electrical power sources shall be operable in Modes 1, 2, and 3:

a. Two qualified circuits between the offsite transmission network and the onsite Class1E AC Electric Power Distribution System,

b. Three EDGs,

c. Automatic Load Sequencers.

Condition requiring entry into end state: Plant operators must bring the plant to Mode 4 within 36 hours following the sustained inoperability of one required Automatic Load Sequencer; either or both required offsite circuits; either one, two or three required EDGs; or one required offsite circuit and one, two or three required EDGs.

Modification for end state require actions: Delete required action G.2 to go to Mode 4 (cold shutdown). The plant will remain in Mode 3 (hot shutdown).

Assessment: Entry into any of the conditions for the AC power sources implies that the AC power sources have been degraded and the single failure protection for the safe shutdown equipment may be ineffective. Consequently, as specified in TS 3.8.1 at present, the plant operators must bring the plant to Mode 4 when the required action is not completed by the specified time for the associated action.

The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and in the Mode 3 end state. Events initiated by the loss of offsite power are dominant contributors to core damage frequency in most BWR PRAs, and the steam-driven core cooling systems, RCIC and HPCI, play a major role in mitigating these events. The evaluation indicates that the core damage risks are lower in Mode 3 than in Mode 4 for one inoperable AC power source. Going to Mode 4 for one inoperable AC power source would cause loss of the high-pressure steam-driven injection system (RCIC/HPCI), and loss of the power conversion system (condenser/feedwater), and require activating the RHR system. In addition, EOPs direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the AC power and the number of steam-driven systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are lower than going to the Mode 4 end state.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.7 TRS 4.5.1.20 and LCO 3.8.4 (BWR/4); TRS 4.5.2.18 and LCO 3.8.4 DC Sources (Operating).

The purpose of the DC power system is to provide a reliable source of DC power for both normal and abnormal conditions. It must supply power in an emergency for an adequate length of

time until normal supplies can be restored.

The DC electrical system:

a. Provides the AC emergency power system with control power,

b. Provides motive and control power to selected safety related equipment, and

c. Provides power to preferred AC vital buses (via inverters).

[**Note:** Plant Applicability, BWR 4/6]

LCO: For Modes 1, 2 and 3, the following DC sources are required to be operable: BWR/4: The (Division 1 and Division 2 station service, and DG 1B, 2A, and 2C) DC electrical power systems shall be operable.

BWR/6: The (Divisions 1, 2, and 3) DC electrical power subsystems shall be operable.

Condition requiring entry into end state: The plant operators must bring the plant to Mode 3 within 12 hours and Mode 4 within 36 hours following the sustained inoperability of one DC electrical power subsystem for a period of 2 hours.

Modification for end state required actions: The TS change is to remove the requirement to place the plant in Mode 4, Required Actions in D.2 (BWR/4) and E.2 (BWR/6) are deleted.

Assessment: If one of the DC electrical power subsystems is inoperable, the remaining DC electrical power subsystems have the capacity to support a safe shutdown and to mitigate an accident condition. The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and in the Mode 3 end state, with one DC system inoperable. Events initiated by the loss of offsite power are dominant contributors to core damage frequency in most BWR PRAs, and the steam-driven core cooling systems, RCIC and HPCI, play a major role in mitigating these events. The evaluation indicates that the core damage risks are lower in Mode 3 than in Mode 4. Going to Mode 4 for one inoperable DC power source would cause loss of the high-pressure steam-driven injection system (RCIC/HPCI), and loss of the power conversion system (condenser/feedwater), and require activating the RHR system. In addition, EOPs direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the DC power and the number of systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are approximately the same as and in some cases lower than the risks of going to the Mode 4 end state.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.8 TRS 4.5.1.21 and LCO 3.8.7 (BWR/4); TRS 4.5.2.19 and 3.8.7 (BWR/6), Inverters (Operating).

In Modes 1,2,and 3, the inverters provide the preferred source of power for the 120-VAC vital buses which power the reactor protection system (RPS) and the Emergency Core Cooling Systems (ECCS) initiation. The inverter can be powered from an internal AC source/rectifier or from the station battery.

[**Note:** Plant Applicability, BWR 4/6]

LCO: For Modes 1, 2, and 3 the following Inverters shall be operable:

BWR/4: The (Division 1 and Division 2) shall be operable.

BWR/6: The (Divisions 1, 2, and 3) shall be operable.

Condition requiring entry into end state: The plant operators must bring the plant to Mode 3 within 12 hours and Mode 4 within 36 hours following the sustained inoperability of the required inverter for a period of 24 hours.

Modification for end state required actions: The TS change is to remove the requirement to place the plant in Mode 4. Required Actions in B.2 (BWR/4) and C.2 (BWR/6) are deleted.

Assessment: If one of the Inverters is inoperable, the remaining Inverters have the capacity to support a safe shutdown and to mitigate an accident condition. The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and in the Mode 3 end state, with an inoperable Inverter. Events initiated by the loss of offsite power are dominant contributors to core damage frequency in most BWR PRAs, and the steam-driven core cooling systems, RCIC and HPCI, play a major role in mitigating these events. The evaluation indicates that the core damage risks are lower in Mode 3 than in Mode 4. Going to Mode 4 for one inoperable Inverter power source would cause loss of the high-pressure steam-driven injection system (RCIC/HPCI), and loss of the power conversion system (condenser/feedwater), and require activating the RHR system. In addition, EOPs direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the Inverters during the infrequent and limited time in Mode 3 and the number of systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are approximately the same as and in some cases lower than the risks of going to the Mode 4 end state.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.9 TRS 4.5.1.22 and LCO 3.8.9 (BWR/4); TRS 4.5.2.20 and LCO 3.8.9 (BWR/6), Distribution Systems(Operating).

The onsite Class 1E AC and DC electrical power distribution system is divided into redundant and independent AC, DC, and AC vital bus electrical power distribution systems. The primary AC electrical power distribution subsystem for each division consists of a 4.16-kV Engineered Safety Feature (ESF) bus having an offsite source of power as well as a dedicated onsite EDG source. The secondary plant distribution subsystems include 600-VAC emergency buses and associated load centers, motor control centers, distribution panels and transformers. The 120-VAC vital buses are arranged in four load groups and normally powered from DC via the inverters. There are two independent 125/250-VDC station service electrical power distribution systems and three independent 125-VDC DG electrical power distribution subsystems that support the necessary power for ESF functions. Each subsystem consists of a 125-VDC and 250-VDC bus and associated distribution panels.

[**Note:** Plant Applicability, BWR 4/6]

LCO: For Modes 1,2, and 3, the following electrical power distribution subsystems shall be operable:

BWR/4: The Division 1 and Division 2 AC, DC, and AC vital buses shall be operable.

BWR/6: The Divisions 1, 2, and 3 AC, DC, and AC vital buses shall be operable.

Condition requiring entry into end state: The plant operators must bring the plant to Mode 3 within 12 hours and Mode 4 within 36 hours following the sustained inoperability of one AC or one DC or one AC vital bus electrical power subsystem for a period of 8 hours, 2 hours and 2 hours, respectively (with a maximum 16 hour Completion Time limit from initial discovery of failure to

meet the LCO, to preclude being in the LCO indefinitely).

Modification for end state required actions: The TS change is to remove the requirement to place the plant in Mode 4, Required Action in D.2 (BWR/4) and D.2 (BWR/6) are deleted.

Assessment: If one of the AC/DC/AC vital subsystems is inoperable, the remaining AC/DC/AC vital subsystems have the capacity to support a safe shutdown and to mitigate an accident condition. The BWROG topical report did a comparative PRA evaluation of the core damage risks of operation in the current end state and in the Mode 3 end state, with one of the AC/DC/AC vital subsystems inoperable. Events initiated by the loss of offsite power are dominant contributors to core damage frequency in most BWR PRAs, and the steam-driven core cooling systems, RCIC and HPCI, play a major role in mitigating these events. The evaluation indicates that the core damage risks are lower in Mode 3 than in Mode 4. Going to Mode 4 for one inoperable AC/DC/AC vital subsystem would cause loss of the high-pressure steam-driven injection system (RCIC/HPCI), and loss of the power conversion system (condenser/feedwater), and require activating the RHR system. In addition, EOPs direct the operator to take control of the depressurization function if low pressure injection/spray systems are needed for RPV water makeup and cooling. Based on the low probability of loss of the AC/DC/AC vital electrical subsystems during the infrequent and limited time in Mode 3 and the number of systems available in Mode 3, the staff concludes in the SE to the BWR topical report that the risks of staying in Mode 3 are approximately the same as and in some cases lower than the risks of going to the Mode 4 end state.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.10 TRS 4.5.1.5 and LCO 3.6.1.1, Primary Containment.

The function of the primary containment is to isolate and contain fission products released from the Reactor Primary System following a design basis LOCA and to confine the postulated release of radioactivity. The primary containment consists of a steel-lined, reinforced concrete vessel, which surrounds the Reactor Primary System and provides an essentially leak-tight barrier against an uncontrolled release of radioactivity to the environment. Additionally, this structure provides shielding from the fission products that may be present in the primary containment atmosphere following accident conditions.

[**Note:** Plant Applicability, BWR 4/6]

LCO: The primary containment shall be operable.

Condition Requiring Entry into End State: If the LCO cannot be met, the primary containment must be returned to operability within one hour (Required Action A.1). If the primary containment cannot be returned to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action B.1) and in Mode 4 within 36 hours (Required Action B.2).

Modification for End State Required Actions: Delete Required Action B.2.

Assessment: The primary containment is one of the three primary boundaries to the release of radioactivity. (The other two are the fuel cladding and the Reactor Primary System pressure boundary.) Compliance with this LCO ensures that a primary containment configuration exists, including equipment hatches and penetrations, that is structurally sound and will limit leakage to those leakage rates assumed in the safety analyses. This LCO entry condition does not include leakage through an unisolated release path. The BWROG topical report has determined that previous generic PRA work related to Appendix J requirements has shown that containment leakage is not risk significant. Should a fission product release from the primary containment occur, the secondary containment and related functions would remain operable to contain the release, and the standby gas treatment system would remain available to filter fission products from being released to the environment. By remaining in Mode 3, HPCI, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for reactor coolant makeup and cooling. Therefore, defense-in-depth is maintained with respect to water makeup and decay heat removal by remaining in Mode 3.

Finding: The requested change is acceptable. Note that the staff's approval relies upon the secondary containment and the standby gas treatment system for maintaining defense-in-depth while in this reduced end state.

3.2.11 TRS 4.5.1.7 and LCO 3.6.1.7, Reactor Building-to-Suppression Chamber Vacuum Breakers(BWR/4 only).

The reactor building-to-suppression chamber vacuum breakers relieve vacuum when the primary containment depressurizes below the pressure of the reactor building, thereby serving to preserve the integrity of the primary containment.

[**Note:** Plant Applicability, BWR/4]

LCO: Each reactor building-to-suppression chamber vacuum breaker shall be operable.

Condition Requiring Entry into End State: If one line has one or more reactor building-to-suppression chamber vacuum breakers inoperable for opening, the breaker(s) must be returned to operability within 72 hours (Required Action C.1). If the vacuum breaker(s) cannot be returned to operability within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action E.1) and in Mode 4 within 36 hours (Required Action E.2).

Modification for End State Required Actions: Modify the Required Actions so that if vacuum breaker(s) cannot be returned to operable status within the required Completion Times, the plant is place in hot shutdown. That is, modify Condition E to relate only to Condition C, delete Required Action E.2, and add Condition F, with Required Actions F.1 and F.2, shutting down the plant to Mode 3 and then Mode 4 respectively, to address an inability to comply with the required actions related to the other Conditions (i.e., Conditions A, B, and D).

Assessment: The BWROG topical report has determined that the specific failure condition of interest is not risk significant in BWR PRAs. The reduced end state would only be applicable to the situation where the vacuum breaker(s) in one line are inoperable for opening, with the remaining operable vacuum breakers capable of providing the necessary vacuum relief function. The existing end state remains unchanged, as established by new Condition F, for conditions involving more than one inoperable line or vacuum breaker since they are needed in Modes 1, 2, and 3. In Mode 3, for other accident considerations, HPCI, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for reactor coolant makeup and cooling. Therefore, defense-in-depth is maintained with respect to water

makeup and decay heat removal by remaining in Mode 3.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.12 TRS 4.5.1.8 and LCO 3.6.1.8, Suppression Chamber-to-Drywell Vacuum Breakers(BWR/4 only).

The function of the suppression chamber-to-drywell vacuum breakers is to relieve vacuum in the drywell, thereby preventing an excessive negative differential pressure across the wetwell/drywell boundary.

[**Note:** Plant Applicability, BWR/4]

LCO: Nine suppression chamber-to-drywell vacuum breakers shall be operable for opening.

Condition Requiring Entry into End State: If one suppression chamber-to-drywell vacuum breaker is inoperable for opening, the breaker must be returned to operability within 72 hours (Required Action A.1). If the vacuum breaker cannot be returned to operability within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action C.1) and in Mode 4 within 36 hours (Required Action C.2).

Modification for End State Required Actions: Modify the Required Actions so that if vacuum breaker(s) cannot be returned to operable status within the required Completion Times, the plant is placed in hot shutdown. That is, modify Condition C to relate only to Condition A, and delete Required Action C.2, and add Condition D, with Required Actions D.1 and D.2, shutting down the plant to Mode 3 and then Mode 4 respectively, to address an inability to comply with the required actions related to Condition B, to close the vacuum breaker.

Assessment: The BWROG topical report has determined that the specific failure of interest is not risk significant in BWR PRAs. The reduced end state would only be applicable to the situation where one suppression chamber-to-drywell vacuum breaker is inoperable for opening, with the remaining operable vacuum breakers capable of providing the necessary vacuum relief function, since they are required in Modes 1, 2, and 3. By remaining in Mode 3, HPCI, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for RCS makeup and cooling. Therefore, defense-in-depth is maintained with respect to water makeup and decay heat removal by remaining in Mode 3. The existing end state remains unchanged for conditions involving any suppression chamber-to-drywell vacuum breakers that are stuck open, as established by new Condition D.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.13 TRS 4.5.1.9, TRS 4.5.2.8, and LCO 3.6.1.9, Main Steam Isolation Valve (MSIV) Leakage Control System (LCS).

The MSIV LCS supplements the isolation function of the MSIVs by processing the fission products that could leak through the closed MSIVs after core damage, assuming leakage rate limits which are based on a large LOCA.

[**Note:** Plant Applicability, BWR 4/6]

LCO: Two MSIV LCS subsystems shall be operable.

Condition Requiring Entry into End State: If one MSIV LCS subsystem is inoperable, it must be restored to operable status within 30 days (Required Action A.1). If both MSIV LCS subsystems are inoperable, one of the MSIV LCS subsystems must be restored to operable status within seven days (Required Action B.1). If the MSIV LCS subsystems cannot be restored to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action C.1) and in Mode 4 within 36 hours (Required Action C.2).

Modification for End State Required Actions: Delete Required Action C.2.

Assessment: The BWROG topical report has determined that this system is not significant in BWR PRAs and, based on a BWROG program, many plants have eliminated the system altogether. The unavailability of one or both MSIV LCS subsystems has no impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the MSIV LCS system (*i.e.*, the frequency with which the system is expected to be challenged to mitigate offsite radiation releases resulting from MSIV leaks above TS limits) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.1.9, TRS 4.5.2.8, and LCO 3.6.1.9, ''Main Steam Isolation Valve (MSIV) Leakage Control System (LCS).'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the MSIV LCS system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that the plant in Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable MSIV LCS system. Personnel safety must be considered separately.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.14 TRS 4.5.1.11 and LCO 3.6.2.4, Residual Heat Removal (RHR) Suppression Pool Spray(BWR/4 only).

Following a DBA, the RHR suppression pool spray system removes heat from the suppression chamber airspace. A minimum of one RHR suppression pool spray subsystem is required to mitigate potential bypass leakage paths from drywell and maintain the primary containment peak pressure below the design limits.

[**Note:** Plant Applicability, BWR/4]

LCO: Two RHR suppression pool spray subsystems shall be operable.

Condition Requiring Entry into End State: If one RHR suppression pool spray subsystem is inoperable (Condition A), it must be restored to operable status within seven days (Required Action A.1). If both RHR suppression pool spray subsystems are inoperable (Condition B), one of them must be restored to operable status within eight hours (Required Action B.1). If the RHR suppression pool spray subsystem cannot be restored to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action C.1),

and in Mode 4 within 36 hours (Required Action C.2).

Modification for End State Required Actions: Delete Required Action C.2.

Assessment: The main function of the RHR suppression spray system is to remove heat from the suppression chamber so that the pressure and temperature inside primary containment remain within analyzed design limits. The RHR suppression spray system was designed to mitigate potential effects of a postulated DBA, that is, a large LOCA which is assumed to occur concurrently with the most limiting single failure and conservative inputs, such as for initial suppression pool water volume and temperature. Under the conditions assumed in the DBA, steam blown down from the break could bypass the suppression pool and end up in the suppression chamber air space and the RHR suppression spray system could be needed to condense such steam so that the pressure and temperature inside primary containment remain within analyzed design basis limits. However, the frequency of a DBA is very small and the containment has considerable margin to failure above the design limits. For these reasons, the unavailability of one or both RHR suppression spray subsystems has no significant impact on CDF or LERF, even for accidents initiated during operation at power. Therefore, it is very unlikely that the RHR suppression spray system will be challenged to mitigate an accident occurring during power operation. This probability becomes extremely unlikely for accidents that would occur during a small fraction of the year (less than three days) during which the plant would be in Mode 3 (associated with lower initial energy level and reduced decay heat load as compared to power operation) to repair the failed RHR suppression spray system.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.1.11 and LCO 3.6.2.4, ''Residual Heat Removal (RHR) Suppression Pool Spray.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the RHR Suppression Pool Spray system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases, and precluding the need for RHR suppression spray subsystems.

In addition, the probability of a DBA (large break) is much smaller during shutdown as compared to power operation. A DBA in Mode 3 would be considerably less severe than a DBA occurring during power operation since Mode 3 is associated with lower initial energy level and reduced decay heat load. Under these extremely unlikely conditions, an alternate method that can be used to remove heat from the primary containment (in order to keep the pressure and temperature within the analyzed design basis limits) is containment venting. For more realistic accidents that could occur in Mode 3, several alternate means are available to remove heat from the primary containment, such as the RHR system in the suppression pool cooling mode and the containment spray mode.

The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable RHR suppression spray system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.15 TRS 4.5.1.12, TRS 4.5.2.10, and LCO 3.6.4.1, Secondary Containment.

Following a DBA, the function of the secondary containment is to contain, dilute, and stop radioactivity (mostly fission products) that may leak from primary containment. Its leak tightness is required to ensure that the release of radioactivity from the primary containment is restricted to those leakage paths and associated leakage rates assumed in the accident analysis and that fission products entrapped within the secondary containment structure will be treated by the standby gas treatment system prior to discharge to the environment.

[**Note:** Plant Applicability, BWR 4/6]

LCO: The secondary containment shall be operable.

Condition Requiring Entry into End State: If the secondary containment is inoperable, it must be restored to operable status within four hours (Required Action A.1). If it cannot be restored to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action B.1), and in Mode 4 within 36 hours (Required Action B.2).

Modification for End State Required Actions: Delete Required Action B.2.

Assessment: This LCO entry condition does not include gross leakage through an unisolable release path. The BWROG topical report has determined that previous generic PRA work related to Appendix J requirements has shown that containment leakage is not risk significant. The primary containment, and all other primary and secondary containment-related functions would still be operable, including the standby gas treatment system, thereby minimizing the likelihood of an unacceptable release. By remaining in Mode 3, HPCI, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for RCS makeup and cooling. Therefore, defense-in-depth is improved with respect to water makeup and decay heat removal by remaining in Mode 3.

Finding: The requested change is acceptable. Note that the staff's approval relies upon the primary containment, and all other primary and secondary containment-related functions, to still be operable, including the standby gas treatment system, for maintaining defense-in-depth while in this end state.

3.2.16 TRS 4.5.1.13, TRS 4.5.2.11, and LCO 3.6.4.3, Standby Gas Treatment (SGT) System.

The function of the SGT system is to ensure that radioactive materials that leak from the primary containment into the secondary containment following a DBA are filtered and adsorbed prior to exhausting to the environment.

Applicability: BWR4/6.

LCO: Two SGT subsystems shall be operable.

Condition Requiring Entry into End State: If one SGT subsystem is inoperable, it must be restored to operable status within seven days (Required Action A.1). If the SGT subsystem cannot be restored to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action B.1) and in Mode 4 within 36 hours (Required Action B.2). In addition, if two SGT subsystems are inoperable in Mode 1, 2, or 3, LCO 3.0.3 must be entered immediately (Required Action D.1).

Modification for End State Required Actions: Delete Required Action B.2. Change Required Action D.1 to ''Be in Mode 3'' with a Completion Time of ''12 hours.''

Assessment: The unavailability of one or both SGT subsystems has no impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the SGT system (*i.e.*, the frequency with which the system is expected to be challenged to mitigate offsite radiation releases resulting from materials that leak from the primary to the secondary containment above TS limits) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.1.13, TRS 4.5.2.11, and LCO 3.6.4.3, ''Standby Gas Treatment (SGT) System.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the SGT system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable SGT system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.17 TRS 4.5.1.14 and LCO 3.7.1, Residual Heat Removal Service Water (RHRSW) System (BWR/4 only).

The RHRSW system is designed to provide cooling water for the RHR system heat exchangers, which are required for safe shutdown following a normal shutdown or DBA or transient.

[**Note:** Plant Applicability, BWR/4]

LCO: Two RHRSW subsystems shall be operable.

Condition Requiring Entry into End State: If the LCO cannot be met, the following actions must be taken for the listed conditions:

a. If one RHRSW pump is inoperable (Condition A), it must be restored to operable status within 30 days (Required Action A.1).

b. If one RHRSW pump in each subsystem is inoperable (Condition B), one RHRSW pump must be restored to operable status within seven days (Required Action B.1).

c. If one RHRSW subsystem is inoperable for reasons other than Condition A (Condition C), the RHRSW subsystem must be restored to operable status within seven days (Required Action C.1).

d. If the required action and associated completion time cannot be met within the allotted time (Condition E), the plant must be placed in Mode 3 within 12 hours (Required Action E.1) and in Mode 4 within 36 hours (Required Action E.2). {Note: Condition D addresses both RHRSW subsytems inoperable for reason other than Condition B, and its Required Action D.1 is not affected by this change.

Modification for End State Required Actions: Renumber Conditions D (and Required Action D.1), and E (and Required Actions E.1 and E.2), to Conditions E (and Required Action E.1) and F (and Required Actions F.1 and F.2), respectively. Modify new Condition F to address new Condition E, which maintains the existing requirements with respect to both RHR subsystems being inoperable for reasons other than Condition B. Add a new Condition D, which establishes requirements for existing Conditions A, B, and C, that are similar to existing Condition E but without Required Action E.2.

Assessment: The BWROG topical report performed a comparative PRA evaluation of the core damage risks when operating in the current end state versus the Mode 3 end state. The results indicated that the core damage risks while operating in Mode 3 (assuming the individual failure conditions) are lower or comparable to the current end state. By remaining in Mode 3, HPCI, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for RCS makeup and cooling. Therefore, defense-in-depth is improved with respect to water makeup and decay heat removal by remaining in Mode 3, and the required safety function can still be performed with the RHRSW subsystem components that are still operable.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.18 TRS 4.5.1.15 and LCO 3.7.2, Plant Service Water (PSW) System and Ultimate Heat Sink (UHS) (BWR/4 only).

The PSW system (in conjunction with the UHS) is designed to provide cooling water for the removal of heat from certain safe shutdown-related equipment heat exchangers following a DBA or transient.

[**Note:** Plant Applicability, BWR/4]

LCO: Two PSW subsystems and UHS shall be operable.

Condition Requiring Entry into End State: If the LCO cannot be met, the following actions must be taken for the listed conditions:

a. If one PSW pump is inoperable (Condition A), it must be restored to operable status within 30 days (Required Action A.1).

b. If one PSW pump in each subsystem is inoperable (Condition B), one PSW pump must be restored to operable status within seven days (Required Action B.1).

c. If the required action and associated completion time cannot be met within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action E.1) and in Mode 4 within 36 hours (Required Action E.2).

Modification: Renumber unaffected Conditions C, D, E, and F to Conditions D, E, F, and G respectively, and renumber associated Required Actions accordingly. Add a new Condition C, for the Required Actions and associated Completion Time of Conditions A and B not met, with a Required Action C.1, to be in Mode 3 in a Completion Time of 12 hours. Change the new Condition G to read, ''Required Action and associated Completion Time of Condition E not met, OR Both [PSW subsystems inoperable for reasons other than Condition(s) B [and D], [OR [UHS] inoperable for reasons other than Conditions D [or E].''

Assessment: The BWROG topical report performed a comparative PRA evaluation of the core damage risks associated with operating in the current end state versus the Mode 3 end state. The results indicated that the core damage risks while operating in Mode 3 (assuming the individual failure conditions) are lower or comparable to the current end state. With one pump inoperable in one or more subsystems, the remaining pumps are adequate to

perform the PSW heat removal function. By remaining in Mode 3, HPCI, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for RCS makeup and cooling. Therefore, defense-in-depth is improved with respect to water makeup and decay heat removal by remaining in Mode 3.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.19 TRS 4.5.1.16 and LCO 3.7.4, Main Control Room Environmental Control (MCREC) System (BWR/4 only).

The MCREC system provides a radiologically controlled environment from which the plant can be safely operated following a DBA.

[**Note:** Plant Applicability, BWR/4]

LCO: Two MCREC subsystems shall be operable.

Condition Requiring Entry into End State: If one MCREC subsystem is inoperable, it must be restored to operable status within seven days (Required Action A.1). If the MCREC subsystem cannot be restored to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action B.1) and in Mode 4 within 36 hours (Required Action B.2). If two MCREC subsystems are inoperable in Mode 1, 2, or 3, LCO 3.0.3 must be entered immediately (Required Action D.1).

Modification for End State Required Actions: Delete Required Action B.2, and change Required Action D.1 to ''Be in Mode 3'' with a Completion Time of ''12 hours.''

Assessment: The unavailability of one or both MCREC subsystems has no significant impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the MCREC system (*i.e.*, the frequency with which the system is expected to be challenged to provide a radiologically controlled environment in the main control room following a DBA which leads to core damage and leaks of radiation from the containment that can reach the control room) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.1.16, and LCO 3.7.4, ''Main Control Room Environmental Control (MCREC) System.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the MCREC system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable MCREC system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.20 TRS 4.5.1.17 and LCO 3.7.5, Control Room Air Conditioning (AC) System (BWR/4 only).

The Control Room AC system provides temperature control for the control room following control room isolation during accident conditions.

[**Note:** Plant Applicability, BWR/4]

LCO: Two control room AC subsystems shall be operable.

Condition Requiring Entry into End State: If one control room AC subsystem is inoperable, the subsystem must be restored to operable status within 30 days (Required Action A.1). If the required actions and associated completion times cannot be met, the plant must be placed in Mode 3 within 12 hours (Required Action B.1) and in Mode 4 within 36 hours (Required Action B.2). If two control room AC subsystems are inoperable, LCO 3.0.3 must be entered immediately (Required Action D.1).

Modification for End State Required Actions: Delete Required Action B.2, and change Required Action D.1 to ''Be in Mode 3'' with a Completion Time of ''12 hours.''

Assessment: The unavailability of one or both AC subsystems has no significant impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the AC system (*i.e.*, the frequency with which the system is expected to be challenged to provide temperature control for the control room following control room isolation following a DBA) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.1.17, and LCO 3.7.5, ''Control Room Air Conditioning (AC) System.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the AC system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable AC system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.21 TRS 4.5.1.18 and LCO 3.7.6, Main Condenser Off gas (BWR/4 only).

The Off gas from the main condenser normally includes radioactive gases. The gross gamma activity rate is controlled to ensure that accident analysis assumptions are satisfied and that offsite dose limits will not be exceeded during postulated accidents. The main condenser Off gas (MCOG) gross gamma activity rate is an initial condition of a DBA which assumes a gross failure of the MCOG system pressure boundary.

[**Note:** Plant Applicability, BWR/4]

LCO: The gross gamma activity rate of the noble gases measured at the main condenser evacuation system pretreatment monitor station shall be ≤240 mCi/second after decay of 30 minutes.

Condition Requiring Entry into End State: If the gross gamma activity rate of the noble gases in the main condenser Off gas (MCOG) system is not within limits, the gross gamma activity rate of the noble gases in the main condenser Off gas must be restored to within limits within 72 hours (Required Action A.1). If the required action and associated completion time cannot be met, one of the following must occur:

a. All steam lines must be isolated within 12 hours (Required Action B.1).

b. The steam jet air ejector (SJAE) must be isolated within 12 hours (Required Action B.2).

c. The plant must be placed in Mode 3 within 12 hours (Required Action B.3.1) and in Mode 4 within 36 hours (Required Action B.3.2).

Modification for End State Required Actions: Delete Required Action B.3.2.

Assessment: The failure to maintain the gross gamma activity rate of the noble gases in the main condenser Off gas (MCOG) within limits has no significant impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the MCOG system (*i.e.*, the frequency with which the system is expected to be challenged to mitigate offsite radiation releases following a DBA) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.1.18 and LCO 3.7.6, ''Main Condenser Off gas.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the MCOG system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable MCOG system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.22 TRS 4.5.2.6 and LCO 3.6.1.7, Residual Heat Removal (RHR) Containment Spray System (BWR/6 only).

The primary containment must be able to withstand a postulated bypass leakage pathway that allows the passage of steam from the drywell directly into the primary containment airspace, bypassing the suppression pool. The primary containment also must be able to withstand a low energy steam release into the primary containment airspace. The RHR Containment Spray System is designed to mitigate the effects of bypass leakage and low energy line breaks.

[**Note:** Plant Applicability, BWR/6]

LCO: Two RHR containment spray subsystems shall be operable.

Condition Requiring Entry into End State: If one RHR Containment Spray Subsystem is inoperable, it must be restored to operable status within seven days (Required Action A.1). If two RHR Containment Spray Subsystems are inoperable, one of them must be restored to operable status within eight hours (Required Action B.1). If the RHR Containment Spray System cannot be restored to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action C.1), and in Mode 4 within 36 hours (Required Action C.2)

Modification for End State Required Actions: Delete Required Action C.2.

Assessment: The primary containment is designed with a suppression pool so that, in the event of a LOCA, steam released from the primary system is channeled through the suppression pool water and condensed without producing significant pressurization of the primary containment. The primary containment is designed so that with the pool initially at the minimum water level and the worst single failure of the primary containment heat removal systems, suppression pool energy absorption combined with subsequent operator controlled pool cooling will prevent the primary containment pressure from exceeding its design value. However, the primary containment must also withstand a postulated bypass leakage pathway that allows the passage of steam from the drywell directly into the primary containment airspace, bypassing the suppression pool. The primary containment also must withstand a postulated low energy steam release into the primary containment airspace. The main function of the RHR containment spray system is to suppress steam, which is postulated to be released into the primary containment airspace through a bypass leakage pathway and a low energy line break under DBA conditions, without producing significant pressurization of the primary containment (*i.e.*, ensure that the pressure inside primary containment remains within analyzed design limits).

Under the conditions assumed in the DBA, steam blown down from the break could find its way into the primary containment through a bypass leakage pathway. In addition to the DBA, a postulated low energy pipe break could add more steam into the primary containment airspace. Under such an extremely unlikely scenario (very small frequency of a DBA combined with the likelihood of a bypass pathway and a concurrent low energy pipe brake inside the primary containment), the RHR containment spray system could be needed to condense steam so that the pressure inside the primary containment remains within analyzed design limits. Furthermore, containments have considerable margin to failure above the design limit (it is very likely that the containment will be able to withstand pressures as much as three times the design limit). For these reasons, the unavailability of one or both RHR containment spray subsystems has no significant impact on CDF or LERF, even for accidents initiated during operation at power. Therefore, it is very unlikely that the RHR containment spray system will be challenged to mitigate an accident occurring during power operation. This probability becomes extremely unlikely for accidents that would occur during a small fraction of the year (less than three days) during which the plant would be in Mode 3 (associated with lower initial energy level and reduced decay heat load as compared to power operation) to repair the failed RHR containment spray system.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.2.6 and LCO 3.6.1.7, ''Residual Heat Removal (RHR) Containment Spray

System.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the RHR containment spray system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable RHR containment spray system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.23 TRS 4.5.2.7 and LCO 3.6.1.8, Penetration Valve Leakage Control System (PVLCS) (BWR/6 only).

The PVLCS supplements the isolation function of primary containment isolation valves (PCIVs) in process lines that also penetrate the secondary containment. These penetrations are sealed by air from the PVLCS to prevent fission products leaking past the isolation valves and bypassing the secondary containment after a design basis loss-of-coolant accident (LOCA).

[**Note:** Plant Applicability, BWR/6]

LCO: Two PVLCS subsystems shall be operable.

Condition Requiring Entry into End State: If one PVLCS subsystem is inoperable, it must be restored to operable status within 30 days (Required Action A.1). If two PVLCS subsystems are inoperable, one of the PVLCS subsystems must be restored to operable status within seven days (Required Action B.1). If the PVLCS subsystem cannot be restored to operable status within the allotted time, the plant must be placed in Mode 3 within 12 hours (Required Action C.1) and in Mode 4 within 36 hours (Required Action C.2).

Assessment: The BWROG topical report has determined that this system is not significant in BWR PRAs. The unavailability of one or both PVLCS subsystems has no impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the PVLCS system (*i.e.*, the frequency with which the system is expected to be challenged to prevent fission products leaking past the isolation valves and bypassing the secondary containment) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.2.7 and LCO 3.6.1.8, ''Penetration Valve Leakage Control System (PVLCS).'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the PVLCS system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable PVLCS system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.24 TRS 4.5.1.10, TRS 4.5.2.9 and LCO 3.6.2.3, Residual Heat Removal (RHR) Suppression Pool Cooling.

Some means must be provided to remove heat from the suppression pool so that the temperature inside the primary containment remains within design limits. This function is provided by two redundant RHR suppression pool cooling subsystems.

[**Note:** Plant Applicability, BWR 4/6]

LCO: Two RHR suppression pool cooling subsystems shall be operable.

Condition Requiring Entry into End State: If one RHR suppression pool cooling subsystem is inoperable (Condition A), it must be restored to operable status within seven days (Required Action A.1). If the RHR suppression pool spray subsystem cannot be restored to operable status within the allotted time (Condition B), the plant must be placed in Mode 3 within 12 hours (Required Action B.1), and in Mode 4 within 36 hours (Required Action B.2).

Modification for End State Required Actions: Delete Required Action B.2, and retain Condition B and Required Action B.1 for one RHR suppression pool spray subsystem inoperable. Add Condition C, with Required Actions C.1 and C.2, identical to existing Condition B, with Required Actions B.1 and B.2, to maintain existing requirements unchanged for two RHR suppression pool subsystems inoperable.

Assessment: The BWROG topical report has completed a comparative PRA evaluation of the core damage risks of operation in the current end state versus operation in the Mode 3 end state. The results indicated that the core damage risks while operating in Mode 3 (assuming the individual failure conditions) are lower or comparable to the current end state. One loop of the RHR suppression pool cooling system is sufficient to accomplish the required safety function. By remaining in Mode 3, HPCS, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for RCS makeup and cooling. Therefore, defense-in-depth is improved with respect to water makeup and decay heat removal by remaining in Mode 3.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.25 TRS 4.5.2.12 and LCO 3.6.5.6, Drywell Vacuum Relief System (BWR/6 only).

The Mark III pressure suppression containment is designed to condense, in the suppression pool, the steam released into the drywell in the event of a loss-of-coolant accident (LOCA). The steam discharging to the pool carries the non-condensibles from the drywell. Therefore, the drywell atmosphere changes from low humidity air to nearly 100% steam (no air) as the event progresses. When the drywell subsequently cools and depressurizes, non-condensibles in the drywell must be replaced to avoid excessive weir wall overflow into the drywell. Rapid weir wall overflow must be controlled in a large break LOCA, so that essential

equipment and systems located above the weir wall in the drywell are not subjected to excessive drag and impact loads. The drywell post-LOCA and the drywell purge vacuum relief subsystems are the means by which non-condensibles are transferred from the primary containment back to the drywell.

[**Note:** Plant Applicability, BWR/6]

LCO: Two drywell post-LOCA and two drywell purge vacuum relief subsystems shall be operable.

Condition Requiring Entry into End State: If one or two drywell post-LOCA vacuum relief subsystems are inoperable (Condition A), or if one drywell purge vacuum relief subsystem is inoperable (Condition B), for reasons other than being not closed, the subsystem(s) must be restored to operable status within 30 days (Required Actions B.1 and C.1, respectively). If the required actions cannot be completed within the allotted time, the plant must be placed in Mode 3 within 12 hours and in Mode 4 within 36 hours.

Modification for End State Required Actions: Renumber Conditions D, E, F and G, to Conditions E, F, G, and H respectively, and renumber associated Required Actions accordingly. Add a new Condition D for when Required Action and associated Completion Time of Condition B or C not met, with Required Action D.1 to be in Mode 3 in a Completion Time of 12 hours. Change new Condition G to read, ''Required Action and associated Completion Time of Condition A, E or F not met.''

Assessment: The BWROG topical report has determined that the specific failure conditions of interest are not risk significant in BWR PRAs. With one or two drywell post-LOCA vacuum relief subsystems inoperable or one drywell purge vacuum relief subsystem inoperable, for reasons other than not being closed, the remaining operable vacuum relief subsystems are adequate to perform the depressurization mitigation function. By remaining in Mode 3, HPCS, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for RCS makeup and cooling. Therefore, defense-in-depth is improved with respect to water makeup and decay heat removal by remaining in Mode 3.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.26 TRS 4.5.2.13 and LCO 3.7.1, Standby Service Water (SSW) System and Ultimate Heat Sink (UHS) (BWR/6 only).

The SSW system (in conjunction with the UHS) is designed to provide cooling water for the removal of heat from certain safe shutdown-related equipment heat exchangers following a DBA or transient.

[**Note:** Plant Applicability, BWR/6]

LCO: Division 1 and 2 SSW subsystems and UHS shall be operable.

Condition Requiring Entry into End State: If one or more cooling towers with one cooling tower fan is inoperable (Condition A), the cooling tower fan(s) must be restored to operable status within seven days (Required Action A.1). If one SSW subsystem is inoperable for reasons other than Condition A (Condition C), the SSW subsystem must be restored to operable status within 72 hours (Required Action C.1). If the required action(s) and associated completion time(s) (of Conditions A or C) cannot be met (Condition D), the plant must be placed in Mode 3 within 12 hours (Required Action D.1) and in Mode 4 within 36 hours (Required Action D.2).

Modification: The existing second and third conditions of existing Condition D have been transferred to a new Condition E in an unchanged form (with Required Actions E.1 and E.2 identical to existing Required Actions D.1 and D.2). Existing Condition B with its associated Required Actions and Associated Completion Times, has been transferred to a new Condition D in an unchanged form. Existing Condition C, with its associated Required Action and Associated Completion Time, has been moved to a new Condition B in unchanged form. A new Condition C has been created. If the Required Actions and Associated Completion Times for new Condition A or B are not met (new Condition C), then the plant must be placed in Mode 3 in 12 hours (new Required Action C.1).

Assessment: The BWROG topical report determined that the specific failure condition of interest is not risk significant in BWR PRAs. With the specified inoperable components/subsystems, a sufficient number of operable components/subsystems are still available to perform the heat removal function. By remaining in Mode 3, HPCS, RCIC, and the power conversion system (condensate/feedwater) remain available for water makeup and decay heat removal. Additionally, the EOPs direct the operators to take control of the depressurization function if low pressure injection/spray are needed for RCS makeup and cooling. Therefore, defense-in-depth is improved with respect to water makeup and decay heat removal by remaining in Mode 3.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.27 TRS 4.5.2.14 and LCO 3.7.3, Control Room Fresh Air (CRFA) System (BWR/6 only).

The CRFA system provides a radiologically controlled environment from which the unit can be safely operated following a DBA. The CRFA system consists of two independent and redundant high efficiency air filtration subsystems for treatment of recirculated air or outside supply air. Each subsystem consists of a demister, an electric heater, a prefilter, a high efficiency particulate air (HEPA) filter, an activated charcoal adsorber section, a second HEPA filter, a fan, and the associated ductwork and dampers. Demisters remove water droplets from the airstream. Prefilters and HEPA filters remove particulate matter that may be radioactive. The charcoal adsorbers provide a holdup period for gaseous iodine, allowing time for decay.

[**Note:** Plant Applicability, BWR/6]

LCO: Two CRFA subsystems shall be operable.

Condition Requiring Entry into End State: If one CRFA subsystem is inoperable (Condition A), it must be restored to operable status within seven days (Required Action A.1). If two CRFA subsystems are inoperable (Condition B for control room boundary and Condition E for reasons for inoperability), one CRFA subsystem must be restored to operable status in 24 hours (Required Action B.1) or enter LCO 3.0.3 (Required Action E.1). If Conditions A or B, and associated Required Actions A.1 and B.1) cannot be met in the required Completion Time (Condition C), the plant must be placed in Mode 3 within 12 hours (Required Action C.1) and in Mode 4 within 36 hours (Required Action C.2).

Modification for End State Required Actions: Delete Required Action C.2, and change Required Action E.1 to ''Be in Mode 3'' within a Completion Time of ''12 hours.''

Assessment: The unavailability of one or both CRFA subsystems has no significant impact on CDF or LERF,

irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the CRFA system (i.e., the frequency with which the system is expected to be challenged to provide a radiologically controlled environment in the main control room following a DBA which leads to core damage and leaks of radiation from the containment that can reach the control room) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (i.e., Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.2.14 and LCO 3.7.3, ''Control Room Fresh Air (CRFA) System.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the CRFA system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable CRFA system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.28 TRS 4.5.2.15 and LCO 3.7.4, Control Room Air Conditioning (CRAC) System (BWR/6 only).

The control room AC system provides temperature control for the control room following control room isolation. The control room AC system consists of two independent, redundant subsystems that provide cooling and heating of recirculated control room air. Each subsystem consists of heating coils, cooling coils, fans, chillers, compressors, ductwork, dampers, and instrumentation and controls to provide for control room temperature control. The control room AC system is designed to provide a controlled environment under both normal and accident conditions. A single subsystem provides the required temperature control to maintain a suitable control room environment for a sustained occupancy of 12 persons.

[Note: Plant Applicability, BWR/6]

LCO: Two control room AC subsystems shall be operable.

Condition Requiring Entry into End State: If one control room AC subsystem is inoperable, it must be restored to operable status within 30 days (Required Action A.1). If the required actions and associated completion times cannot be met, the plant must be placed in Mode 3 within 12 hours (Required Action B.1) and in Mode 4 within 36 hours (Required Action B.2). If two control room AC subsystems are inoperable, LCO 3.0.3 must be entered immediately (Condition D).

Modification for End State Required Actions: Delete Required Action B.2, and change Required Action D.1 to ''Be in Mode 3'' with a Completion Time of ''12 hours.''

Assessment: The unavailability of one or both AC subsystems has no significant impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the AC system (*i.e.*, the frequency with which the system is expected to be challenged to provide temperature control for the control room following control room isolation following a DBA which leads to core damage) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.2.15 and LCO 3.7.4, ''Control Room Air Conditioning (AC) System.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the CRAC system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable CRAC system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

3.2.29 TRS 4.5.2.16 and LCO 3.7.5, Main Condenser Off gas (BWR/6 only).

The Off gas from the main condenser normally includes radioactive gases. The gross gamma activity rate is controlled to ensure that accident analysis assumptions are satisfied and that offsite dose limits will not be exceeded during postulated accidents.

[Note: Plant Applicability, BWR/6]

LCO: The gross gamma activity rate of the noble gases measured at the Off gas recombiner effluent shall be ≤380 mCi/second after decay of 30 minutes.

Condition Requiring Entry into End State: If the gross gamma activity rate of the noble gases in the main condenser Off gas is not within limits (Condition A), the gross gamma activity rate of the noble gases in the main condenser Off gas must be restored to within limits within 72 hours (Required Action A.1). If the required action and associated completion time cannot be met, one of the following must occur:

a. All steam lines must be isolated within 12 hours (Required Action B.1).

b. The steam jet air ejector (SJAE) must be isolated within 12 hours (Required Action B.2).

c. The plant must be placed in Mode 3 within 12 hours (Required Action B.3.1) and in Mode 4 within 36 hours (Required Action B.3.2).

Modification for End State Required Actions: Delete Required Action B.3.2.

Assessment: The failure to maintain the gross gamma activity rate of the noble gases in the main condenser Off gas (MCOG) within limits has no significant impact on CDF or LERF, irrespective of the mode of operation at the time of the accident. Furthermore, the challenge frequency of the MCOG system (*i.e.*, the frequency with which the system is expected to be challenged to mitigate offsite radiation releases following a DBA) is less than 1.0E–6/yr. Consequently, the conditional probability that this system will be challenged during the repair time interval while the plant is at either the

current or the proposed end state (*i.e.*, Mode 4 or Mode 3, respectively) is less than 1.0E–8. This probability is considerably smaller than probabilities considered ''negligible'' in Regulatory Guide 1.177 for much higher consequence risks, such as large early release.

Section 6 of reference 6 summarizes the staff's risk argument for approval of TRS 4.5.2.16 and LCO 3.7.5, ''Main Condenser Off gas.'' The argument for staying in Mode 3 instead of going to Mode 4 to repair the MCOG system (one or both trains) is also supported by defense-in-depth considerations. Section 6.2 makes a comparison between the Mode 3 and the Mode 4 end state, with respect to the means available to perform critical functions (*i.e.*, functions contributing to the defense-in-depth philosophy) whose success is needed to prevent core damage and containment failure and mitigate radiation releases. The risk and defense-in-depth arguments, used according to the ''integrated decision-making'' process of Regulatory Guides 1.174 and 1.177, support the conclusion that Mode 3 is as safe as Mode 4 (if not safer) for repairing an inoperable MCOG system.

Finding: Based upon the above assessment, and because the time spent in Mode 3 to perform the repair is infrequent and limited, and in light of defense-in-depth considerations (discussed in Reference 1), the change is acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [_____] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment changes requirements with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that adopting TSTF–423, Rev 0, involves no significant hazards considerations, and there has been no public comment on the finding in **Federal Register** Notice 70 FR 74037, December 14, 2005. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. NEDC–32988–A, Revision 2, ''Technical Justification to Support Risk-Informed Modification to Selected Required Action End States for BWR Plants,'' December 2002.

2. **Federal Register**, Vol. 58, No. 139, p. 39136, ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Plants,'' July 22, 1993.

3. 10 CFR 50.65, Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants.''

4. Regulatory Guide 1.182, ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants,'' May 2000. (ML003699426)

5. NUMARC 93–01, ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Nuclear Management and Resource Council, Revision 3, July 2000.

6. NRC Safety Evaluation for Topical Report NEDC–32988, Revision 2, September 27, 2002. (ML022700603)

7. TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A.''

8. TSTF–IG–05–02, Implementation Guidance for TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A,'' September 2005.

9. Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decision Making on Plant Specific Changes to the Licensing Basis,'' USNRC, August 1998. (ML003740133)

10. Regulatory Guide 1.177, ''An Approach for Pant Specific Risk-Informed Decision Making: Technical Specifications,'' USNRC, August 1998. (ML003740176)

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: A change is proposed to the technical specifications (TS) of [plant name], consistent with Technical Specifications Task Force (TSTF) change TSTF–423 to the standard technical specifications (STS) for BWR Plants (NUREG 1433 and NUREG 1434) to allow, for some systems, entry into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Changes proposed in will be made to the [plant name] TS for selected Required Action end states providing this allowance.

Basis for proposed no-significant-hazards-consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no-significant-hazards-consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a change to certain required end states when the TS Completion Times for remaining in power operation will be exceeded. Most of the requested technical specification (TS) changes are to permit an end state of hot shutdown (Mode 3) rather than an end state of cold shutdown (Mode 4) contained in the current TS. The request was limited to: (1) Those end states where entry into the shutdown mode is for a short interval, (2) entry is initiated by inoperability of a single train of equipment or a restriction on a plant operational parameter, unless otherwise stated in the applicable technical specification, and (3) the primary purpose is to correct the initiating condition and return to power operation as soon as is practical. Risk insights from both the qualitative and quantitative risk assessments were used in specific TS assessments. Such assessments are documented in Section 6 of GE NEDC–32988, Revision 2, ''Technical Justification to Support Risk Informed Modification to Selected Required Action End States for BWR Plants.'' They provide an integrated discussion of deterministic and probabilistic issues, focusing on specific technical specifications, which are used to support the proposed TS end state and associated restrictions. The staff finds that the risk insights support the conclusions of the specific TS assessments. Therefore, the probability

of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting proposed TSTF–423, are no different than the consequences of an accident prior to adopting TSTF–423. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). If risk is assessed and managed, allowing a change to certain required end states when the TS Completion Times for remaining in power operation are exceeded, i.e., entry into hot shutdown rather than cold shutdown to repair equipment, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change and the commitment by the licensee to adhere to the guidance in TSTF–IG–05–02, Implementation Guidance for TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A,'' will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows, for some systems, entry into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed. The BWROG's risk assessment approach is comprehensive and follows staff guidance as documented in RGs 1.174 and 1.177. In addition, the analyses show that the criteria of the three-tiered approach for allowing TS changes are met. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A risk assessment was performed to justify the proposed TS changes. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The Following Example of an Application Was Prepared by the NRC Staff To Facilitate Use of the Consolidated Line Item Improvement Process (CLIIP). The Model Provides the Expected Level of Detail and Content for an Application To Adopt TSTF–423, Revisions 0, ''Risk-Informed Modifications to Selected Required Action End States,'' for BWR Plants (and Adoption of a Technical Specification Bases Control Program)* Using CLIIP. Licensees Remain Responsible for Ensuring That Their Actual Application Fulfills Their Administrative Requirements as Well as Nuclear Regulatory Commission Regulations.

U.S. Nuclear Regular Commission,
Document Control Desk,
Washington, DC 20555.

Subject: Plant Name, Docket No. 50—Application for Technical Specification Change TSTF–423, Risk Informed Modification To Selected Required Action End States for BWR Plants, (and Adoption of a Technical Specifications Bases Control Program)* Using the Consolidated Line Item Improvement Process

Gentleman: In accordance with the provisions of 10 CFR 50.90 [Licensee] is submitting a request for an amendment to the technical specifications (TS) for [Plant Name, Unit Nos.].

The proposed amendment would modify TS to risk-inform requirements regarding selected Required Action End States, (and, in conjunction with the proposed change, TS requirements for a Bases control program consistent with TS Bases Control Program described in Section 5.5 of the BWR Standard Technical Specifications.)*

Enclosure 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Enclosure 2 provides the existing TS pages marked up to show the proposed change. Enclosure 3 provides revised (clean) TS pages. Enclosure 4 provides a summary of the regulatory commitments made in this submittal. Enclosure 5 provides the existing TS Bases pages marked up to show the proposed change (*for information only).*)

[Licensee] requests approval of the proposed license amendment by [Date], with the amendment being implemented [by Date or Within X Days].

In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [State] Official.

* If not already in the facility Technical Specifications.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [Licensee] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [Name, Telephone Number]

Sincerely,
[Name, Title]

Enclosures:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Regulatory Commitments
5. Proposed Technical Specification Bases Changes

cc: NRC Project Manager

NRC Regional Office
NRC Resident Inspector
State Contact

ENCLOSURE 1

Description and Assessment

1.0 Description

The proposed amendment would modify technical specifications to risk-inform requirements regarding selected Required Action End States.[1]

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) TSTF–423 Revision 0. The availability of this TS improvement was published in the **Federal Register** on [Date] as part of the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of Topical Report, TSTF–423, and Published Safety Evaluation

[Licensee] has reviewed GE topical report (Reference 1), TSTF–423 (Reference 2), and the NRC model safety evaluation (Reference 3) as part of the CLIIP. [Licensee] has concluded that the information in the GE topical report and TSTF–423, as well as the safety evaluation prepared by the NRC staff are applicable to [Plant, Unit Nos.] and justify this amendment for the incorporation of the changes to the [Plant] TS. [Note: Only those changes proposed in TSTF–423 are addressed in the model SE. The model SE and associated topical report address the entire fleet of BWR plants, and the plants adopting TSTF–423 must confirm the applicability of the changes to their plant.]

2.2 Optional Changes and Variations

[Licensee] is not proposing any variations or deviations from the GE topical report and the TS changes described in the TSTF–423 Revision 0 or the NRC staff's model safety evaluation dated [Date]. [Note: The CLIIP does not prevent licensees from requesting an alternate approach or proposing changes without the requested Bases or Bases control program. However, deviations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review. Significant variations

[1] [In conjunction with the proposed change, technical specifications (TS) requirements for a Bases Control Program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS.]

from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–423.]

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[Licensee] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [Licensee] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [Plant] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [Date] for this TS improvement, plant-specific verifications were performed as follows:

[Licensee] commits to the regulatory commitments in Enclosure 4. In addition, [Licensee] has proposed TS Bases consistent with the GE topical report and TSTF–423, which provide guidance and details on how to implement the new requirements. Implementation of TSTF–423 requires that risk be managed and assessed, and the licensee's configuration risk management program is adequate to satisfy this requirement. The risk assessment need not be quantified, but may be a qualitative assessment of the vulnerability of systems and components when one or more systems are not able to perform their associated function. Finally, [Licensee] has a Bases Control Program consistent with Section 5.5 of the Standard Technical Specifications (STS).

4.0 Environmental Evaluation

The amendment changes requirements with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendment adopting TSTF–423, Rev 0, involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that TSTF–423, Rev 0, involves no significant hazards considerations, and there has been no public comment on the finding in **Federal Register** Notice 70 FR 74037, December 14, 2005. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

5.0 References

1. NEDC–32988–A, Revision 2, ''Technical Justification to Support Risk-Informed Modification to Selected Required Action End States for BWR Plants,'' December 2002.

2. TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A.''

3. **Federal Register**, Vol. XX, No. XX, p. XXXXX, ''Notice of Availability of Model Application Concerning Technical Specifications for Boiling Water Reactor Plants to Risk-Inform Requirements Regarding Selected Required Action End States Using the Consolidated Line Item Improvement Process, and NRC Model Safety Evaluation,'' [Date].

Enclosure 2

Proposed Technical Specification Changes (Mark-up)

Enclosure 3

Proposed Technical Specification Pages

[Clean copies of Licensee specific Technical Specification (TS) pages, corresponding to the TS pages changed by TSTF–423, Rev 0, are to be included in Enclosure 3]

Enclosure 4

List of Regulatory Commitments

The following table identifies those actions committed to by [Licensee] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [Contact Name].

Regulatory committments	Due date/event
[Licensee] will follow the guidance established in Section 11 of NUMARC 93–01, ''Industry Guidance for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Nuclear Management and Resource Council, Revision 3, July 2000.	[Ongoing, or implement with amendment].
[Licensee] will follow the guidance established in TSTF–IG–05–02, Implementation Guidance for TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A,'' September 2005.	[Implement with amendment, when TS Required Action End State remains within the Applicability of TS].

Enclsoure 5

Proposed Changes to Technical Specification Bases Pages

[FR Doc. 06–2803 Filed 3–22–06; 8:45 am]

BILLING CODE 7590–01–P

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 15c2–8, SEC File No. 270–421, OMB Control No. 3235–0481.

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 (''OMB'') a request for extension of the previously approved collection of information discussed below.

- Rule 15c2–8 Delivery of Prospectus

Rule 15c2–8 under the Securities Exchange Act of 1934 requires broker-dealers to deliver preliminary or final prospectuses to specified persons in association with securities offerings. This requirement ensures that information concerning issuers flows to purchasers of the issuers' securities in a timely fashion. It is estimated that there are approximately 8,000 broker-dealers, any of which potentially may participate in an offering subject to Rule 15c2–8. The Commission estimates that Rule 15c2–8 creates approximately 10,600 burden hours with respect to 120 initial public offerings and 460 other offerings. Please note that 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 by sending an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Comments must be submitted to OMB within 30 days of this notice.

March 16, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–4174 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12672]

Issuer Delisting; Notice of Application of AvalonBay Communities, Inc. To Withdraw Its Common Stock, $.01 Par Value, and 8.70% Series H Cumulative Redeemable Preferred Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc.

March 16, 2006.

On March 13, 2006, AvalonBay Communities, Inc., a Maryland corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, and 8.70% series H cumulative redeemable preferred stock, $.01 par value, (collectively ''Securities''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer approved resolutions on February 8, 2006 to withdraw the Securities from listing on PCX. The Issuer stated that the Board decided to withdraw the Securities from listing on PCX because the Issuer has determined that: (i) The benefits of continued listing on PCX do not outweigh the incremental cost of the listing fees and the administrative burden associated with listing on PCX and (ii) the Securities are listed, and will continue to list on the New York Stock Exchange, LLC (''NYSE'') which, based on recent trading volumes appears adequate to meet investors needs.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of the Securities from listing on PCX and shall not affect their continued listing on NYSE or their obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before April 11, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–12672 or;

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 1–12672. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4176 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–00368]

Issuer Delisting; Notice of Application of Chevron Corporation, To Withdraw Its Common Stock, $.75 Par Value, From Listing and Registration on the Pacific Exchange, Inc.

March 16, 2006.

On March 13, 2006, Chevron Corporation, a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.75 par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer approved a resolution on February 28, 2006 to withdraw the Security from listing on PCX. The Issuer stated that the Board decided to withdraw the Security from listing on PCX because the benefits of continued listing on PCX do not outweigh the incremental cost of the listing fees and the administrative burden associated with listing on PCX. The Issuer stated that the Security is listed on the New York Stock Exchange, LLC (''NYSE'') and will remain listed on NYSE.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of the Security from listing on PCX and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before April 11, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–00368 or;

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 1–00368. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4177 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12998]

Issuer Delisting; Notice of Application of TDC A/S (Formerly Tele Danmark A/S) To Withdraw Its American Depositary Shares (Evidenced by American Depositary Share Receipts, Each Representing One Half of One Ordinary Share, Par Value DKK 5 Each and Ordinary Shares, Par Value DKK 5), From Listing and Registration on the New York Stock Exchange, LLC

March 17, 2006.

On March 13, 2006, TDC A/S (formerly Tele Danmark A/S), a company incorporated under the laws of Denmark (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its American Depositary Shares (evidenced by American Depositary Share Receipts, each representing one half of one Ordinary Share, par value DKK 5 each) (''ADS'') and Ordinary Shares, par value DKK 5 each (''Shares'') (collectively, ''Securities''), from listing and registration on the New York Stock Exchange, LLC (''NYSE'').

On March 3, 2006, the Board of Directors (''Board'') of the Issuer approved a resolution to withdraw the Securities from listing and registration on NYSE. The Issuer stated that the following reasons factored into the Board's decision to withdraw the Securities from listing on NYSE.

First, the number of holders of the ADS resident in the United States decreased considerably in connection with the completion of the tender offer for all Securities (''Tender Offer'') by Nordic Telephone Company ApS (''Purchaser'') that expired on January 20, 2006. Pursuant to the Tender Offer, the Purchaser purchased 88.2% of the share capital of the Issuer. Based on information provided by Innisfree M&A Incorporated, as of early February 24, 2006, there were approximately 1,710 ADS accounts held by U.S. holders containing an aggregate of approximately 799,122 ADS (or the equivalent of 399,561 Ordinary Shares).

Second, trading of the ADS on NYSE has also decreased since completion of the Tender Offer. The average daily trading volume of the ADS for the three-week period ending on February 24, 2006 was approximately 9,200. The average daily trading volume of the ADS for the corresponding three-week period in 2005 was approximately 32,800. The average daily trading volume of the ADS for the five-day period ending on February 24, 2006 was approximately 7,800. The average daily trading volume for the corresponding five-day period in 2005 was 71,100. The average daily trading volume of the ADS for the one-year period ending on February 24, 2006 was approximately 32,400. The daily trading volume on February 24, 2006 was approximately 3,900. These decreases, as well as the factors mentioned below, have caused the Issuer to re-evaluate the merits of maintaining its NYSE listing and registration under the Act.

Third, the Issuer has adopted amendments to its articles of incorporation to permit the Purchaser to redeem all outstanding shares (including those represented by the ADS) not held by the Purchaser in a compulsory acquisition. The Board took notice of certain protests raised against the validity of said amendments; irrespective thereof the U.S. delisting were still considered to be in the best interest of the Issuer.

In addition, in connection with the proposed delisting from NYSE, the Board also considered that the Board, following the extraordinary general meeting of the Issuer's shareholders held on February 28, 2006, does not include any directors who satisfy the ''independence'' standards under NYSE's corporate governance rules. The Issuer is therefore unable to comply with Subsection 303A.06 of the *Listed Company Manual*, which requires that the Issuer have an audit committee, each member of which satisfies the independence standards of the NYSE. The Board has therefore decided not to form an audit committee for the time being. As a result, the Issuer is in material non-compliance with NYSE's Corporate Governance Standards applicable to foreign private issuers. The Issuer stated that the Shares are currently listed on the Copenhagen Stock Exchange and the Issuer expects to seek to withdraw the Shares on the Copenhagen Stock Exchange.

The Issuer stated in its application that it has complied with NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration by providing NYSE with the required documents governing the removal of securities from listing and registration on NYSE.

The Issuer's application relates solely to the withdrawal of the Securities from listing on NYSE and from registration under Section 12(b) of the Act,[3] and shall not affect their obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before April 12, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of NYSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–12998 or;

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

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[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 1–12998. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4173 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27264; File No. 812–13253]

SBL Fund and Security Management Company, LLC

March 16, 2006.

AGENCY: The Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for an exemption from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: SBL Fund (''SBL'') and Security Management Company, LLC (''SMC'') (collectively, ''Applicants'').

Summary of Application: Applicants seek an order to permit shares of SBL and shares of any other existing or future investment company that is designed to fund insurance products and for which SMC, or any of its affiliates, may serve as investment manager, investment adviser, sub-adviser, administrator, manager, principal underwriter or sponsor (SBL and such other investment companies being hereinafter referred to, collectively, as ''Insurance Investment Companies''), or permit shares of any current or future series of any Insurance Investment Company (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); (3) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the ''Manager''); and (4) any insurance company general accounts that are permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5.

Filing Date: The application was filed on December 28, 2005 and amended and restated on March 1, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on April 10, 2006 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Amy Lee, Associate General Counsel and Vice President, Security Benefit Corporation, One Security Benefit Place, Topeka, Kansas 66636–0001.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (202–551–8090).

Applicants' Representations

1. SBL is a Kansas corporation organized on May 26, 1977 and is registered as an open-end management investment company under the 1940 Act. SBL is a series company currently comprising eighteen (18) series (the ''Insurance Funds''). Additional series of SBL and classes of additional Insurance Funds may be established in the future.

2. SMC serves as SBL's investment adviser. SMC is controlled by its members, Security Benefit Life Insurance Company (''SBLIC'') and Security Benefit Corporation (''SBC''). SBLIC, a Kansas stock life insurance company, is controlled by SBC. SBC is wholly-owned by Security Mutual Holding Company, which is in turn controlled by SBLIC policyholders. Pursuant to investment subadvisory agreements, SMC retains a sub-adviser for many Insurance Funds. Each sub-adviser is registered as an investment adviser with the Commission under the Investment Advisers Act of 1940.

3. SBL currently offers shares of the Insurance Funds only to separate accounts of affiliated insurance companies in order to fund benefits under flexible premium variable annuity contracts and variable life insurance policies. In the future, the Insurance Investment Companies intend to offer shares of the Insurance Funds to (a) separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, ''Separate Accounts''); (b) Qualified Plans; (c) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the ''Manager''); and (d) any insurance company general accounts that are permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (''General Accounts'').

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies have established or will establish their own separate accounts and design their own variable contracts. Each Participating Insurance Company has or will have the legal obligation to satisfy

[5] 17 CFR 200.30–3(a)(1).

all applicable requirements under both state and federal law. Participating Insurance Companies may rely on Rules 6e–2 and 6e–3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Investment Companies intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager or to General Accounts, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts (''Treasury Regulations''). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or General Accounts is computed in the same manner as for shares held by the Separate Accounts, and the Manager or the General Accounts do not intend to sell to the public shares of the Insurance Investment Company that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager, who may hold shares only in connection with the creation or management of the Insurance Investment Company. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to the Manager for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Investment Company to be offered and sold to, and held by: (1) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) Qualified Plans; (3) any Manager to an Insurance Fund; and (4) General Accounts.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to an insurance company by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to General Accounts, Qualified Plans or the Manager.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are

offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts.

5. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Investment Companies may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans, the Manager and the General Accounts must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans and General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans, Manager or General Accounts arose, the Qualified Plans, Manager or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager, General Accounts or Qualified Plans to invest directly in the Insurance Investment Companies should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the Insurance Funds to sell shares to General Accounts or the Manager subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(i), (ii)).

8. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, to the investment company's investment manager and its affiliates or General Accounts (collectively, ''eligible shareholders'') could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of Section 9(a) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management investment company. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance

company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as the funding medium for variable contracts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, the Manager or General Accounts. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Funds. Those individuals who participate in the management or administration of the Insurance Funds will remain the same regardless of which separate accounts, insurance companies, Qualified Plans or General Accounts use the Insurance Funds. Therefore, applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Investment Companies to Qualified Plans, the Manager or General Accounts. The insulation of the Insurance Investment Companies from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager, and General Accounts are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to underlying fund shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. Applicants assert that the Insurance Investment Companies' sale of shares to Qualified Plans, the Manager or General Accounts will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled

in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans or General Accounts, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (i.e., long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Investment Company with a greater variety of investment objectives and policies.

19. Applicants note that Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans,'' ''the general account of a life insurance company,'' ''the manager * * * of an investment company'' and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Investment Companies to sell their respective shares directly to Qualified Plans, the Manager or General Accounts does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any variable contract, Qualified Plan, Manager or General Accounts. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treas. Reg. 1.817–5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that the Insurance Investment Companies may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Accordingly, Applicants assert that such Insurance Investment Companies will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

22. Applicants assert that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Investment Company, on the one hand, and its Manager or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager will permit the orderly and efficient creation and operation of Insurance Investment Companies, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Investment Company operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Investment Companies as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of SMC, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Investment Companies available for mixed and shared funding and permitting the purchase of Insurance Investment Company shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Investment Companies. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Investment Companies, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Investment Company shall consist of persons who are not ''interested persons'' of the Insurance Investment Company, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission (''Independent Board Members''), except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor the respective Insurance Investment Company for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Investment Company, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Investment Company (''Participating Qualified Plan''), any Participating Insurance Company (on their own behalf, as well as by virtue of any investment of general account assets in all Insurance Investment Companies), and the Manager (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Investment Company under their agreements governing participation in the Insurance Investment Company, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Investment

Company, or a majority of its Independent Board Members, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Investment Company, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Investment Company or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (iii) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Investment Company or any Insurance Fund and reinvesting those assets in a different investment medium; and (iv) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Investment Company's election, to withdraw its Separate Account's investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Investment Company, to withdraw its investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Investment Company, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the Independent Board Members shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Investment Company or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (i) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (ii) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by its General Accounts, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their registered Separate Accounts investing in an Insurance Investment Company calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Investment Company's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Investment Company shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Fund will make its shares available under a variable contract and/or Qualified Plans at or about the same time it accepts any seed capital from any Manager or any General Account of a Participating Insurance Company.

8. An Insurance Investment Company will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Investment Company will disclose in its prospectus that: (i) Shares of the Insurance Investment Company are offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans and General Accounts; (ii) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Investment Company and the interests of Qualified Plans or General Accounts investing in the Insurance Investment Company might at some time be in conflict; and (iii) the Board will monitor the Insurance Investment Company for any material conflicts and determine what action, if any, should be taken.

9. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any

provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. Each Insurance Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Investment Company), and in particular each Insurance Investment Company will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although SBL is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Managers will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Investment Company; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

13. The Participants shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in each Insurance Investment Company.

14. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Investment Company, the Insurance Investment Company shall require such Plan to execute a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Investment Company.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–4187 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53510; File No. SR–Amex–2006–24]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of a Licensing Fee for Options on the First Trust Morningstar Dividend Leaders Index Fund Shares

March 17, 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 March 14, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by adopting a per contract license fee for the orders of specialists, registered options traders (''ROTs''), firms, non-member market makers, and broker-dealers in connection with options transactions in the First Trust Morningstar Dividend Leaders Index Fund (symbol: FDL). The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com,* at the principal office of Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to adopt a per contract licensing fee for options on FDL. This fee change will be assessed on members commencing March 15, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain exchange-traded funds (''ETFs''), such as FDL. This requirement to pay an index license fee to a third party is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

of specialists, ROTs, firms, non-member market makers, and broker-dealers, which is collected on every option transaction in designated products in which such market participant is a party.[5]

The purpose of this proposal is to charge an options licensing fee in connection with options on FDL. Specifically, Amex seeks to charge an options licensing fee of $0.10 per contract side for FDL options for specialist, ROT, firm, non-member market maker, and broker-dealer orders executed on the Exchange. In all cases, the fees will be charged only to the Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of the FDL options. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that the proposal to require payment of a per contract licensing fee in connection with FDL options by those market participants that are the beneficiaries of Exchange index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that it has, in recent years, revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services. Amex believes that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex also believes that these fees will help to allocate to those market participants engaging in transactions in FDL options a fair share of the related costs of offering such options.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.[6] In connection with the adoption of an options licensing fee for FDL options, the Exchange believes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

2. Statutory Basis

Amex believes that the proposed fee change is consistent with Section 6(b)(4) of the Act[7] regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–Amex–2006–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–24 and should be submitted on or before April 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4181 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

[5] *See, e.g.*, Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005) (SR–Amex–2005–087).

[6] Section 6(b)(4) of the Act requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. *See* 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53398A; File No. SR–Amex–2005–107]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating To Amending Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

March 17, 2006.

Correction

In FR Document No. E6–3490, beginning on page 12738 for Monday March 13, 2006, the release heading in the text of column 2 on page 12738, which provides a description of the release, was incorrectly stated. The heading should read as follows:

Self-Regulatory Organizations; American Stock Exchange LLC.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

Also in FR Document No. E6–3490, beginning on page 12738 for Monday March 13, 2006, the first full sentence in the text of column 2 on page 12738, which states that the American Stock Exchange, Inc. filed with the Securities and Exchange Commission a proposed rule change, was incorrectly stated. The sentence should read as follows:

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2005, the American Stock Exchange LLC. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4185 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53491; File No. SR–ISE–2006–13]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Changes

March 16, 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 March 13, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by ISE. ISE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 3 Premium Products.[5] The text of the proposed rule change is available on ISE's Web site at *http://www.iseoptions.com*, at the Office of the Secretary at ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Premium Products'' are defined in the Schedule of Fees as the products enumerated therein.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following 3 Premium Products: Standard & Poor's MidCap 400 Depository Receipts (''MDY''),[6] iShares MSCI Canada Index Fund (''EWC''),[7] and iShares MSCI EAFE Index Fund (''EFA'').[8] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on MDY, EWC and EFA.[9] The amount of the execution fee and comparison fee for products covered by this filing would be $0.15 and $0.03 per contract, respectively, for all Public

[6] ''Standard & Poor's®,'' ''S&P®,'' ''S&P 400®,'' ''Standard & Poor's Depositary Receipts®,'' ''SPDR®,'' ''Standard & Poor's MidCap 400 Depositary Receipts™,'' and ''MidCap SPDRs™,'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill'') and have been licensed for use by PDR Services LLC and the American Stock Exchange LLC (''Amex'') in connection with the listing and trading of MidCap SPDRs (''MDY'') on the Amex. MDY is not sponsored, sold, or endorsed by Standard & Poor's, (''S&P''), a division of McGraw-Hill, and S&P makes no representation regarding the advisability of investing in MDY. McGraw-Hill and S&P have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on MDY or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on MDY or with making disclosures concerning options on MDY under any applicable federal or state laws, rules, or regulations. McGraw-Hill and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[7] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''MSCI Canada Index'' and ''MSCI EAFE Index'' are service marks of Morgan Stanley Capital International (''MSCI'') and have been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. Neither MSCI Canada Index Fund (''EWC'') nor MSCI EAFE Index Fund (''EFA'') are sponsored, endorsed, issued, sold or promoted by MSCI. BGI and MSCI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EWC and EFA or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EWC and EFA or with making disclosures concerning options on EWC and EFA under any applicable federal or state laws, rules or regulations. BGI and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[8] *See id.*

[9] These fees will be charged to Exchange members. Under a pilot program that is set to expire on July 31, 2006, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

Customer Orders [10] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all Market Maker transactions would be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker transactions in equity options.[11] The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposal is the requirement under Section 6(b)(4) of the Act [12] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 thereunder [14] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2006–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–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. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–13 and should be submitted on or before April 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4184 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

[10] Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[11] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53505; File No. SR–NASD–2006–032]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Reduce Routing Charges for Non-NASD Members

March 16, 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 March 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On March 15, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and at the same time is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reduce routing charges for non-NASD members that use Nasdaq systems and to eliminate for those non-members a volume-based port fee waiver for non-NASD members that use Nasdaq's INET facility. The filing would apply to these non-members a pricing schedule similar to the schedule that Nasdaq instituted for members.[4] Nasdaq requests approval to implement these reduced non-member fees on an accelerated basis with a retroactive effective date of March 1, 2006, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 adds a technical correction to the rule text.

[4] *See* File No. SR–NASD–2006–031 (March 1, 2006).

same date these fee changes became applicable to members.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics.* Proposed deletions are in [brackets].

* * * * *

7010. System Services

(a) through (h) No change.

(i) Nasdaq Market Center, Brut, and Inet Order Execution and Routing

(1) through (6) No change.

(7) The fees applicable to non-members using Nasdaq's Brut and Inet Facilities shall be the fees established for members under Rule 7010(i), as amended by SR–NASD–2005–019, SR–NASD–2005–035, SR–NASD–2005–048, SR–NASD–2005–071, SR–NASD–2005–125, SR–NASD–2005–137, SR–NASD–2005–154, SR–NASD–2006–013, [and] SR–NASD–2006–023, *and SR–NASD–2006–031,* and as applied to non-members by SR–NASD–2005–020, SR–NASD–2005–038, SR–NASD–2005–049, SR–NASD–2005–072, SR–NASD–2005–126, SR–NASD–2005–138, SR–NASD–2005–155, SR–NASD–2006–014, [and] SR–NASD–2006–024, *and SR–NASD–2006–032.*

(j) through (v) No change.

(w) INET System Connectivity

(1) No change.

(2) The INET connectivity fees applicable to non-members shall be the fees established for members under Rule 7010(w), as established by SR–NASD–2005–128 and amended by SR–NASD–2005–147, [and] SR–NASD–2006–013, *and SR–NASD–2006–031,* and as applied to non-members by SR–NASD–2005–128, SR–NASD–2005–148, [and] SR–NASD–2006–014, *and SR–NASD–2006–032.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq states that this filing would apply to non-members a pricing schedule similar to that Nasdaq is instituting for members.[5] Nasdaq states that under that schedule, NASD members saw their routing charges reduced as follows:

(1) From $0.0015 to $0.001, the fee per share executed for routing orders in New York Stock Exchange (''NYSE'') listed securities to venues other than the NYSE;

(2) From $0.0035 to $0.003, the fee per share executed for routing orders in securities listed on a venue other than the NYSE and routed to venues other than the American Stock Exchange (''AMEX'');

(3) From $0.0035 to $0.003, the fee per share executed for routing orders in Non-Nasdaq Exchange Traded Funds (''ETFs'') to venues other than the NYSE or AMEX.

Finally, Nasdaq states that NASD members had eliminated the port fee waiver for Nasdaq's INET facility subscribers that for a calendar month average daily execution of orders in the INET system of in excess of 30 million shares of added liquidity.

Nasdaq represents that this filing seeks to impose these exact changes on non-NASD members that use Nasdaq systems and seeks to do so on accelerated basis and retroactively to March 1, 2006, the same date these fee changes became applicable to members.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(5) of the Act,[7] in particular, in that the proposed rule change, as amended, provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] *See* footnote 4, *supra.*

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq states that written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–032. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–032 and should be submitted on or before April 13, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[8] Specifically, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,[9] which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using the Nasdaq Facilities that would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective March 1, 2006, pursuant to SR–NASD–2006–031.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR–NASD–2006–031, which implemented those fees for NASD members and which became effective as of March 1, 2006. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[10] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change, as amended, (File No. SR–NASD–2006–032), 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. E6–4175 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53504; File No. SR–NASD–2006–031]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce Routing Charges for NASD Members

March 16, 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 March 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to reduce its routing fees and eliminate a port fee waiver currently available to certain INET users. Nasdaq states that it will implement the proposed rule change immediately. Nasdaq states that this filing is applicable only to NASD members. Nasdaq states that it is also submitting a separate filing to establish the same routing price reductions and port fee waiver elimination for non-NASD members that use its systems.[5]

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].[6]

* * * * *

7010. System Services

(a) through (h) No change.

(i) Nasdaq Market Center, Brut, and Inet Order Execution and Routing

(1) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center, Brut, and Inet (the ''Nasdaq Facilities'') by members for all Nasdaq-listed securities subject to the Nasdaq UTP Plan and for Exchange-Traded Funds that are not listed on Nasdaq. The term ''Exchange-Traded Funds'' shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420(i), (j), and (l), respectively.

Order Execution	
Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq Facilities:	
Charge to member entering order:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed.	$0.0028 per share executed (or, in the case of executions against Quotes/Orders at less than $1.00 per share, 0.1% of the total transaction cost).
Other members	$0.0030 per share executed (or, in the case of executions against Quotes/Orders at less than $1.00 per share, 0.1% of the total transaction cost).

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* File No. SR–NASD–2006–32 (March 1, 2006).

[6] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com.* Prior to the date when The Nasdaq Stock Market LLC (''Nasdaq LLC'') commences operations, Nasdaq LLC will file a conforming change to the rules of Nasdaq LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

Credit to member providing liquidity:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 30 million shares of liquidity provided.	$0.0025 per share executed (or $0, in the case of executions against Quotes/Orders at less than $1.00 per share).
Other members	$0.0020 per share executed (or $0, in the case of executions against Quotes/Orders at less than $1.00 per share).
Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the Nasdaq Facilities:	
Charge to member entering order:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 500,000 shares of liquidity provided.	$0.001 per share executed (but no more than $10,000 per month).
Other members	$0.001 per share executed.
Order Routing for Nasdaq-Listed Securities	
Any order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing.	The greater of (i) $0.004 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than $0.003 per share executed.
Any other order entered by a member that is routed outside of the Nasdaq Facilities:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed.	The greater of (i) $0.0028 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than $0.003 per share executed.
Other members	The greater of (i) $0.0030 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than $0.003 per share executed.
Order Routing for Exchange-Traded Funds Not Listed On Nasdaq	
Order routed to the New York Stock Exchange (''NYSE'') through its DOT system.	See DOT fee schedule in Rule 7010(i)(6).
Any other order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing.	$0.004 per share executed.
Order routed to the American Stock Exchange (''Amex'') after attempting to execute in the Nasdaq Facilities.	$0.01 per share executed.
Order routed through the Intermarket Trading System (''ITS'') after attempting to execute in the Nasdaq Facilities.	$0.0007 per share executed.
Order routed to venues other than the NYSE and Amex after attempting to execute in the Nasdaq Facilities.	$0.003[5] per share executed.

(2) For purposes of assessing Nasdaq Facilities fees and credits hereunder, (A) a Discretionary Order that executes prior to being displayed as a Quote/Order will always be deemed to be accessing liquidity unless it is executed by (or receives delivery of) a displayed Discretionary Order at a price in the discretionary price range of the displayed Discretionary Order, and (B) a Discretionary Order that executes after being displayed as a Quote/Order will always be deemed to be providing liquidity, unless the displayed Discretionary Order executes against (or is delivered to) a Quote/Order or Non-Directed Order that has not been designated ''Immediate or Cancel,'' at a price in its discretionary price range.

(3) Closing Cross.

Market-on-Close and Limit-on-Close orders executed in the Nasdaq Closing Cross.	$0.0005 per share executed.
All other quotes and orders executed in the Nasdaq Closing Cross	No charge for execution.

(4) Opening Cross.

Members shall be assessed the following Nasdaq Market Center execution fees for quotes and orders executed in the Nasdaq Opening Cross:

Market-on-Open, Limit-on-Open, Good-till-Cancelled, Immediate-or-Cancel, and Day orders executed in the Nasdaq Opening Cross.	$0.0005 per share executed for the net number of buy and sell shares up to a maximum of $10,000 per firm per month.
All other quotes and orders executed in the Nasdaq Opening Cross	No charge for execution.

(5) Except as provided in paragraph (6), the following charges shall apply to the use of the order execution and routing services of the Nasdaq Facilities by members for securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans other than Exchange-Traded Funds (''Covered Securities''):

Order Execution	
Order that accesses the Quote/Order of a Nasdaq Facility market participant:	
Charge to member entering order	$0.0007 per share executed.
Credit to member providing liquidity:	
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of more than 5 million shares of liquidity accessed, provided, or routed.	$0.0005 per share executed.
Other members	No credit.
Order Routing	
Order routed to Amex	$0.01 per share executed.
Order routed through the ITS	$0.0007 per share executed.
Order routed to NYSE	See DOT fee schedule in Rule 7010(i)(6).
Order for NYSE-listed Covered Security routed to venue other than the NYSED $0.001 [5] per share executed.	
Order for Covered Security listed on venue other than the NYSE and routed to venue other than Amex.	$0.003 [5] per share executed.

(6) The following classes shall apply to the use of the Nasdaq Facilities by members for routing to the NYSE through its DOT system for all securities, including Exchange-Traded Funds:

Order charged a fee by the NYSE specialist	$0.01 per share executed.
Order that attempts to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist.	No charge.
Order that does not attempt to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist:	
Average daily shares of liquidity routed through Nasdaq's DOT linkage by the member during the month:	
More than 30 million	$0.0001 per share executed.
Between 2,000,001 and 30 million	$0.0003 per share executed.
Between 250,001 and 2 million	$0.0005 per share executed.
Between 100,001 and 250,000	$0.001 per share executed.
100,000 or less	$0.01 per share executed.

(7) The fees applicable to non-members using Nasdaq's Brut and Inet Facilities shall be the fees established for members under Rule 7010(i), as amended by SR–NASD–2005–019, SR–NASD–2005–035, SR–NASD–2005–048, SR–NASD–2005–071, SR–NASD–2005–125, SR–NASD–2005–137, SR–NASD–2005–154, SR–NASD–2006–013, and SR–NASD–2006–023, and as applied to non-members by SR–NASD–2005–020, SR–NASD–2005–038, SR–NASD–2005–049, SR–NASD–2005–072, SR–NASD–2005–126, SR–NASD–2005–138, SR–NASD–2005–155, SR–NASD–2006–014, and SR–NASD–2006–024.

(j) through (v) No Change.

(w) INET System Connectivity

(1) The following charges shall apply to telecommunication protocols used to access Nasdaq's INET System:

Port Fees:

Connectivity to Harborside Financial Center and Secaucus Datacenters

$400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month.

Internet Ports: An additional $200 per month for each Internet port that requires additional bandwidth.

Connectivity to Chicago Datacenter

$800 per month for each port pair.

[All port fees, not including Internet Bandwidth surcharges, will be waived for Subscribers that for a calendar month have an average daily share volume for executed orders exceeding 30 million shares of added liquidity.]

INET Terminal Fees:

Each ID is subject to a minimum commission fee of $50 per month unless it executes a minimum of 100,000 shares.

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

Each ID that is given web access is subject to a $50 monthly fee.

Portal Fees:

Each ID is subject to a monthly user fee of $150.

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

(2) The INET connectivity fees applicable to non-members shall be the fees established for members under Rule 7010(w), as established by SR–NASD–2005–128 and amended by SR–NASD–2005–147 and SR–NASD–2006–013, and as applied to non-members by SR–NASD–2005–128, SR–NASD–2005–148, and SR–NASD–2006–014.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to encourage greater use of Nasdaq routing facilities, Nasdaq is proposing to reduce its routing fees as follows:

(1) Nasdaq would reduce, from $0.0015 to $0.001, the fee per share executed for routing orders in New York Stock Exchange (''NYSE'') listed securities to venues other than the NYSE;

(2) Nasdaq would reduce, from $0.0035 to $0.003, the fee per share executed for routing orders in securities listed on a venue other than the NYSE and routed to venues other than the American Stock Exchange (''AMEX'');

(3) Nasdaq would reduce, from $0.0035 to $0.003, the fee per share executed for routing orders in Non-Nasdaq Exchange Traded Funds (''ETFs'') to venues other than the NYSE or AMEX.

Finally, Nasdaq is proposing to eliminate the port fee waiver for Nasdaq's INET facility subscribers that for a calendar month average daily execution of orders in the INET system of in excess of 30 million shares of added liquidity. Nasdaq states that this port fee waiver is part of INET's legacy pricing structure and is inconsistent with Nasdaq's integrated pricing structure in which no other system provides such fee waivers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. In particular, Nasdaq states that the proposal will reduce routing costs for market participants and more closely unify Nasdaq pricing policies across all of its systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq states that written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–031 and should be submitted on or before April 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4186 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53497; File No. SR–PCX–2005–122]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal from Registration

March 16, 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 October 24, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] On January

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Exchange filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect the recent acquisition of PCX by Archipelago Holdings, Inc. (''Archipelago'') and the merger of NYSE with Archipelago. *See* File No. SR–

Continued

6, 2006, the Exchange filed Amendent No. 1 to the proposed rule change.[4] The Commission is publishing this notice and order to solicit comments on the proposal, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc., proposes to amend its rules governing the NYSE Arca Marketplace, the equities trading facility of NYSE Arca Equities, Inc. With this filing, the Exchange proposes to amend its rules to comply with new requirements under Commission Rule 12d2–2, as amended[5] (''Rule 12d2–2'') promulgated under Section 12(d)[6] of the Act. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

The following version of Rule 5.4(b) shall remain effective until April 24, 2006: Rule 5.4(b). No changes.

The following version of Rule 5.4(b) shall become effective on April 24, 2006: Rule 5.4(b). An issuer proposing to withdraw a security from listing on the Corporation shall submit *to the Corporation* a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registrations, [and] a [statement setting forth in detail the reasons] *letter from an authorized officer of the issuer providing the specific reasons cited by the board of directors of the issuer* for the proposed withdrawal [and the facts in support thereof]*, and a copy of the Form 25 that the issuer has filed with the Securities and Exchange Commission in accordance with Rule 12d2–2 promulgated under Section 12(d) of the Securities Exchange Act of 1934, as amended, no later than the date of such filing.* The issuer may be required, under special circumstances, to submit the proposed withdrawal to the shareholders for their vote at a meeting for which proxies are solicited provided the security is not also listed on another exchange having similar requirements. *The Corporation, upon receiving written notification of the issuer's intent to withdraw its securities from listing and registration, shall post notice of such intent on the Exchange's website by the next business day and until the delisting becomes effective.*

* * * * *

The following version of Rule 5.5(m) shall remain effective until April 24, 2006: Rule 5.5(m). No changes.

The following version of Rule 5.5(m) shall become effective on April 24, 2006: Rule 5.5(m).

Delisting Procedures

Whenever the Corporation determines that it [is] *may be* appropriate to either suspend dealings in and/or remove securities from listing pursuant to Rule 5.3 or Rule 5.5, except for [other than routine] reasons *specified in subsection (a) of Rule 12d2–2 promulgated under Section 12(d) of the Securities Exchange Act of 1934, as amended (''Exchange Act Rule 12d2–2'')* [(e.g., redemptions, maturities, etc.)], or violations of Rule 5.3(k)(5) in which case the Corporation shall initiate delisting a listed company's securities, it will follow, insofar as practicable, the following procedures:

(1) Consideration of Commencement of Delisting Action

(*a*) The Corporation shall notify the issuer in writing describing the basis on which the Corporation is considering the delisting of the company's security. Such notice shall be sent by certified mail and shall include the time and place of a meeting to be held by the Corporation to hear any reasons why the issuer believes its security should not be delisted. Generally, the issuer will be notified at least three (3) weeks prior to the meeting and will be requested to submit a written response.

[(2)] (*b*) If, after such meeting, the Corporation determines that the security should be delisted, the Corporation shall notify the issuer [by telephone] *in writing* (if possible, the same day of the meeting) [and in writing] of the delisting decision and the basis thereof. The written notice will also inform the issuer that it may appeal the decision to the Board of Directors and request a hearing.

[(3)] (*c*) Concurrent with the Corporation's decision to delist the issuer's security, the Corporation will prepare a press announcement, which will be disseminated to the Market Makers and the investing public no later than the opening of trading the business day following the Corporation's decision (the Securities Qualification Department will also distribute the information to the ETP Holders). Accordingly, the suspension of trading in the issuer's security will become effective at the opening of business on the day following the Corporation's decision.

(2) Appeal Procedures

[(4)] (*a*) If the issuer requests an appeal hearing, it must file its request along with (i) a $2,500 delisting appeal fee and (ii) an answer to the causes specified by the Corporation with the Secretary of the Corporation no later than five (5) business days following service of notice of the proposed delisting. If the issuer does not request a hearing within the specified period of time, or it does not submit the $2,500 fee to the Corporation in the form and manner prescribed, the Corporation will submit an application to the Securities and Exchange Commission to strike the security from list of companies listed on the Corporation. The Corporation will furnish a copy of such application to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated thereunder.

[(5)] *(b)* If a request for a hearing is made and the requirements of Rule 5.5(m)[(4)]*(2)(a)* are met within the time specified, the issuer will be entitled to an appeal hearing and the Corporation will provide the issuer at least fifteen (15) business days notice of the time and place of the hearing.

[(6)] *(c)* The hearing shall be held before the Board Appeals Committee appointed by the Board of Directors for such purpose. Only those members of the Board Appeals Committee who attend the hearing may vote with respect to any decisions the Committee may make.

[(7)] *(d)* Any documents or other written material the issuer wishes to consider should be submitted to the appropriate office of the Corporation at least five (5) business days prior to the date of the hearing.

[(8)] *(e)* At the hearing, the issuer must prove its case by presenting testimony, evidence, and argument to the Board Appeals Committee. The form and manner in which the actual hearing will be conducted will be established by the Board Appeals Committee so as to assure the orderly conduct of the proceeding. At the hearing, the Board Appeals Committee may require the issuer to furnish additional written information that has come to its attention.

[(9)] *(f)* After the conclusion of the proceeding, the Board Appeals Committee shall make its decision. The decision of the Board Appeals Committee shall be in writing with one

PCX–2006–24. All references herein have been changed to reflect the aforementioned rule change.

[4] *See* letter from David Strandberg, Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 5, 2006 (''Amendment No. 1''). In Amendment No. 1, PCX made changes to its rule text to clarify that the delisting procedures set forth therein apply to instances where the Exchange is considering delisting for reasons other than those set forth in subsection (a) of Rule 12d2–2.

[5] 17 CFR 240.12d2–2.

[6] 15 U.S.C. 78s(d).

copy served upon the issuer and the second copy filed with the Secretary of the Corporation. Such decision shall be final and conclusive. *If the decision is that the security should be removed from listing, the Corporation shall follow the procedures set forth below. If the decision is that the security should not be removed from listing, the issuer shall receive a notice to that effect from the Corporation.*

(3) Public Notice of Delisting Action. If the *final* decision is that the security of the issuer is to be removed from listing, *then, no fewer than ten (10) days before the delisting becomes effective: (a)* an application *on Form 25* shall be submitted by the Corporation to the Securities and Exchange Commission to strike the security from listing and registration *in accordance with Exchange Act Rule 12d2–2,* [and] *(b)* a copy of such application shall be provided to the issuer in accordance with [Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated thereunder] *Exchange Act Rule 12d2–2, and (c) public notice of the Corporation's final determination to delist the security shall be made via a press release and posting on the Corporation's website until the delisting is effective.* [If the decision is that the security should not be removed from listing, the issuer shall receive a notice to that effect from the Corporation.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 5.4(b) sets forth the Exchange procedures that apply when an issuer proposes to withdraw a security from listing on the Exchange. Rule 5.5(m) provides the applicable procedures when the Exchange considers removing securities from listing. The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) and NYSE Arca Equities Rule 5.5(m) to comply with new requirements under Rule 12d2–2 and to otherwise clarify the Exchange's withdrawal and delisting procedures. The Exchange will implement the proposed rule change immediately upon approval by the Commission.

The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to comply with new requirements under Rule 12d2–2 relating to voluntary delistings by issuers.[7] Specifically, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to provide that an issuer proposing to withdraw a security from listing on the Exchange shall submit to the Exchange a copy of the Form 25 that the issuer has filed with the Commission in accordance with Rule 12d2–2 no later than the date of such filing. Further, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to provide that the Exchange, upon receiving notification by an issuer of its intent to withdraw its securities from listing and registration, will post notice of such intent on the Exchange's Web site by the next business day and will continue to post the notice until the delisting becomes effective.

In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to clarify that the issuer, when proposing to withdraw its securities from listing and registration, must submit to the Exchange a ''letter from an authorized officer of the issuer providing the specific reasons cited by the board of directors of the issuer for the proposed withdrawal,'' rather than a ''statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.'' The Exchange wishes to make this clarification because it has received several inquiries from issuers on this particular part of the rule.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.5(m) to comply with new requirements under Rule 12d2–2 relating to the delisting procedures that apply when the Exchange determines that it may be appropriate to remove securities from listing.[8] Specifically, the Exchange proposes new Rule 5.5(m)(3) to provide that, in the event the Exchange makes a final decision to remove the security of an issuer from listing, the Exchange will take the following actions, no fewer than ten (10) days before the delisting becomes effective: (i) An application on Form 25 will be submitted by the Exchange to the Commission to strike the security from listing and registration in accordance with Rule 12d2–2; (ii) a copy of such application will be provided to the issuer in accordance with Rule 12d2–2; and (iii) public notice of the Exchange's final determination to delist the security will be made via a press release and posting on the Exchange's website until the delisting is effective. In connection with this proposed change, the Exchange also proposes to make reference to the above public notice procedures in the appeal procedures discussion in new NYSE Arca Equities Rule 5.5(m)(2)(f).

The Exchange also proposes to amend NYSE Arca Equities Rule 5.5(m) to make certain clarifications. In the introductory paragraph of the Rule, the Exchange proposes to clarify that the delisting procedures set forth therein apply to instances where the Exchange is considering delisting for reasons other than those set forth in subsection (a) of Rule 12d2–2. In addition, the Exchange proposes to include headings in the Rule that clarify that the delisting procedures apply: (i) When the Exchange is considering commencement of delisting action, (ii) when an issuer chooses to appeal the Exchange's initial determination and, (iii) when the Exchange takes final delisting action. In addition, the Exchange proposes to clarify in NYSE Arca Equities Rule 5.5(m)(1)(b) that the Exchange, when considering commencement of delisting action, will notify the issuer in writing, if possible, the same day of the meeting, rather than by telephone. The Exchange proposes this clarification because it is in accordance with the Exchange's current practices.

2. Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition

[7] Rule 12d2–2(c)(2)(iii) and (c)(3).

[8] Rule 12d2–2(b).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2005–122. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the NYSE Arca, Inc. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–122 and should be submitted on or before April 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–4182 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53518; File No. SR–Phlx–2005–93]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, 4 and 5 Thereto To Amend Its By-Laws and Charter in Connection With a Restructuring of Its Board of Governors

March 20, 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 December 30, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Phlx. On February 16, 2006, the Exchange filed Amendment No. 1 to the proposed rule change;[3] on March 10, 2006, the Exchange filed Amendment No. 2 to the proposed rule change;[4] on March 17, 2006, the Exchange filed Amendment No. 3 to the proposed rule change;[5] and on March 20, 2006, the Exchange filed Amendment Nos. 4[6] and 5[7] to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its By-Laws and Charter to revise the current structure of the Phlx Board of Governors (''Board''). Specifically, the Exchange proposes to: (i) Voluntarily conform to certain aspects of the Commission's proposed SRO Governance Rulemaking, including the incorporation of the concept of ''independent directors;''[8] (ii) create a single Vice-Chairman of the Board; (iii) eliminate the distinction between On-Floor and Off-Floor Governors; (iv) make changes to the election of Governors in the By-Laws and Charter; and (v) make other modifications, including revising the composition of various Phlx standing committees. The text of the proposed rule change, as amended, is available at the Commission's Public Reference Room, at the Exchange's Web site (*http://www.phlx.com*) and at the Exchange's principal office.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Phlx revised the proposed definitions of the terms ''Independent'' and ''Material Relationship'' that are to be included in the Exchange's By-Laws and made clarifying changes to the purpose section and to the rule text of the proposed rule change.

[4] In Amendment No. 2, the Phlx incorporated the proposed definition of ''Independent Governor'' in the Exchange's Restated Certificate of Incorporation (''Charter''); incorporated the definition of ''Annual Independence Review'' in the Exchange's By-Laws; revised the rule text to clarify the standards to be applied by the Nominating, Elections and Governance Committee in evaluating nominees for Independent Governor; described in the purpose section of the proposed rule change the selection criteria for the position of Vice-Chairman; and made clarifying changes to the rule text.

[5] In Amendment No. 3, the Phlx revised the purpose section and the rule text of the proposed rule change to set forth that the Nominating, Elections and Governance Committee shall be composed of five persons as follows: Three Independent Governors (one of whom must be a Designated Independent Governor), one Stockholder Governor, and one Member Governor.

[6] In Amendment No. 4, the Phlx deleted revisions, as proposed in the original filing, that would have capitalized the term ''member'' in various Charter provisions and reinstated in the Charter a reference to ''member (as such term is defined in the Exchange Act).''

[7] In Amendment No. 5, the Phlx revised the statutory basis section of the proposed rule change.

[8] *See* Securities Exchange Act Release No. 50669 (November 18, 2004), 69 FR 71126 (December 8, 2004) (''Proposed SRO Governance Rulemaking'').

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, as amended, 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 address various governance issues in both the Exchange's By-Laws and Charter.

Conformance to Certain Aspects of the Proposed SRO Governance Rulemaking

One purpose of the proposed rule change is to amend the Exchange's By-Laws and Charter to voluntarily conform to certain aspects of the Proposed SRO Governance Rulemaking, including the concept of ''independent directors'' as set forth in the proposed rulemaking.[9] The Exchange proposes to convert all non-industry [10] positions to independent positions and to add an additional Independent Governor to ensure a majority of Independent Governors in accordance with the Proposed SRO Governance Rulemaking.[11] An Independent Governor would be defined as a Governor who has no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of such member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. A material relationship would be defined as a relationship, compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of a Governor. The Board would make this independence determination upon a Governor's nomination and no less frequently than annually and as often as necessary in light of a Governor's circumstances and pursuant to Article IV, Section 4–4 of the Phlx By-Laws to ensure that the status of all incumbent Independent Governors do not fall outside the definition of Independent.[12] The designation of ''Independent'' would replace the defined terms ''public'' [13] and ''non-industry,'' as presently set forth in the Phlx's By-Laws and Charter. Currently, the Board consists of 22 Governors.[14] Under this proposal, the Board would consist of 23 Governors. Accordingly, the Board would consist of a majority of Independent Governors.

Single Vice-Chairman

The Phlx proposes to amend its By-Laws and Charter to create, in proposed Phlx By-Laws Article V, Section 5–2, a single Vice-Chairman of the Board who would be recommended by the Chairman for nomination by the Nominating, Elections and Governance Committee and elected by the stockholders. The Vice-Chairman would not be subject to a term limit. The Vice-Chairman would be an individual who, anytime within the prior three years, has been a Member primarily engaged in business on the Exchange's equity market or equity options market or is a general partner, executive officer (vice-president or above) or a Member associated with a Member Organization primarily engaged in business on the Exchange's equity market or equity options market. Currently, the By-Laws require two Vice-Chairmen of the Board, with one Vice-Chairman elected as an On-Floor Governor by the Members, and the other Vice-Chairman elected as an Off-Floor Governor by the stockholders. The Exchange proposes this change to conform to a structure that is more typical of a for-profit stock corporation and also because the two Vice-Chairmen model is not sustainable if the ''On-Floor'' and ''Off-Floor'' distinctions are eliminated, as discussed below.

Elimination of the ''On-Floor'' and ''Off-Floor'' Governor Distinction

The Exchange proposes to eliminate the distinction between ''On-Floor'' [15] and ''Off-Floor'' [16] Governors, in both its By-Laws and Charter, to allow for greater stockholder representation and, specifically, representation on the Board of the six recently acquired strategic investors.[17] Presently, there are five Off-Floor Industry Governors elected by the stockholders and five On-Floor Industry Governors elected by the Members. The Exchange proposes to replace this current model with nine positions that would consist of six positions elected by stockholders, two Member positions and one Philadelphia Board of Trade

[9] *See id.*

[10] Currently, ''non-industry'' is defined as follows: The term non-industry when used in the context of Governors or committee members shall mean (a) public Governors; (b) officers and employees of issuers of securities listed on the Exchange; (c) persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates (such as brokers or dealers established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (d) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and (e) other individuals who would not be industry Governors or committee members. Phlx By-Laws Article I, Section 1–1(t).

[11] *See supra* at note 8.

[12] ''Independent'' would be defined in the Phlx By-Laws, Article 1, Section 1–1(o) as follows: The term ''Independent,'' when used in the context of Governor or Committee Members, shall mean persons affirmatively determined by the Board as having no Material Relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of such member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange.

[13] ''Public'' is defined in the Phlx By-Laws Article I, Section 1–1(y) as follows: The term ''public'' when used in the context of Governors or committee members shall mean non-industry persons who have no material business relationship with a broker, dealer or the Exchange.'' The proposed rule change would delete the definition of ''public'' from the Phlx By-Laws.

[14] *See* Phlx Charter Article Seventh, and Phlx By-Laws Article IV, Section 4–1.

[15] Phlx By-Laws Article IV, Section 4–1 provides that an ''On-Floor Governor'' is ''an industry Governor and is a member primarily engaged in business on the Exchange's Equity Floor or a general partner, executive officer (vice president and above) or member associated with a member organization primarily engaged in business on the Exchange's Equity Floor (On-Floor Equity Governor) * * * [and] is an industry Governor and is a member of the Philadelphia Board of Trade (On-Floor PBOT Governor) * * * [and] is an industry Governor and is a member primarily engaged in business as a specialist on the Exchange's Equity Options Floor or a general partner, executive officer (vice president and above) or a member associated with a member organization primarily engaged in specialist business on the Exchange's Equity Options Floor (On-Floor Equity Options Specialist Governor) * * * [and] is an industry Governor and is a member primarily engaged in business as a registered options trader on the Exchange's Equity Options Floor or a general partner, executive officer (vice president and above) or a member associated with a member organization primarily engaged in registered options trader business on the Exchange's Equity Options Floor (On-Floor Equity Options Registered Options Trader Governor); and * * * who is an industry Governor and is a member primarily engaged in business on the Exchange's Equity Options Floor as a floor broker (On-Floor Equity Options Broker Governor).''

[16] Phlx By-Laws Article IV, Section 4–1 provides that ''Off-Floor Governors'' are ''industry Governors and general partners, executive officers (vice president or above), or members or participants associated with member or participant organizations which conduct a non-member or non participant public customer business and shall individually not be primarily engaged in business activities on the Exchange Floor.''

[17] During 2005, six firms invested in the Exchange: Citigroup Financial Products, Inc.; Credit Suisse First Boston NEXT Fund, Inc.; Morgan Stanley & Co., Inc., UBS Securities LLC; Citadel Derivatives Group, LLC; and Merrill Lynch, Pierce Fenner & Smith, Inc.

(''PBOT'') position. The Member positions and the PBOT position would be elected by Members of the Exchange.

Election of Governors

The Exchange proposes to amend its By-Laws and Charter to reflect that two of the Independent Governors will be nominated and elected by the Members of the Exchange, as will both Member Governors and the PBOT Governor, in order to maintain the 20% fair representation of membership on the Board.[18] The Exchange represents that the proposed amendments to its Charter and By-Laws, in and of themselves, would require minimal changes to the present composition of the Board, subject to a formal analysis and determination by the Board of the qualifications of the Independent Governors, and would be largely a reclassification of Board positions.

The Exchange would conform the composition of the Board to the provisions of the proposed rule change as follows: upon the approval of the proposed rule change by the Commission, the Exchange will hold an Annual Meeting of Member and Member Organizations, to be followed by the Annual Meeting of Stockholders to elect the class of Governors for 2006. The class of 2006 Governors will be nominated and elected pursuant to the Charter and By-Laws, as proposed to be amended, with two of the nine Board positions being nominated and selected by the Members and elected by the Trustee of the Series Class A Preferred Stock. The classes of 2007 and 2008 Governors will be permitted to complete their terms but will be appointed by the Nominating, Elections and Governance Committee, with the approval of the Board, to fill the new positions established by the amendments until which time those positions come up for election in either 2007 and 2008 respectively.[19] Following the election of the class of 2006, over 20% of the Governors serving on the Board will have been nominated and elected by the Members.

Stockholder Meetings

With regard to its Charter, the Phlx seeks to remove Article Ninth to allow greater flexibility in the Exchange's governance processes. In the absence of this Article, the issue of obtaining the written consent of the stockholders of the Exchange for any action in lieu of a meeting will be governed by Delaware General Corporation Law, which will allow stockholders to take actions outside of a stockholder meeting by less-than-unanimous written consent.

Other Modifications

To conform with the proposed changes to the Board's composition described above, the Exchange also proposes to amend its By-Laws and Charter sections relating to Board Committees as follows:[20]

- The following committees are not affected by the changes described herein with the exception of minor technical modifications:
  - Admissions
  - Options Allocation, Evaluation and Securities Committee
  - Equity Allocation Evaluation and Securities Committee
  - Floor Procedure
  - Foreign Currency Options
  - Marketing
  - Options
  - The Automation Committee currently allows for the Chairman of the Committee to be designated as a Non-Industry or Off-Floor Governor. The proposal would change this designation to a Stockholder or Independent Governor.
  - The Business Conduct Committee is currently composed of three Non-Industry Governors (one of whom must be Public); one Equity Floor Member; one Equity Options Floor Member; one At-Large Floor Member; and three Off-Floor Members. The proposal would modify the composition as follows: Three Independent Governors; four Members or persons associated with a Member Organization; one Member who primarily conducts business on the Equity Floor; and one Member who primarily conducts business on the Equity Options Floor.
  - The Compensation Committee is currently composed of one Chairman (who must be a Non-Industry Governor); two Non-Industry Governors (one of whom must be a Public Governor); and the two Vice-Chairmen of the Board. The proposal would modify the composition as follows: Four Independent Governors (one of whom must serve as chairman of the committee) and the Vice-Chairman of the Board.
  - The Executive Committee is currently composed of the Chairman of the Board; the two Vice-Chairmen of the Board; the Chairman of the Finance Committee; one Chairman of a floor committee not represented by the On-Floor Vice-Chairman; one Chairman of a floor committee not represented by the Off-Floor Vice-Chairman; one Off-Floor Governor; and two Non-Industry Governors (one of whom must be a Public Governor). The proposal would modify the composition as follows: the Chairman of the Board; the Vice-Chairman of the Board; two Stockholder Governors; two Independent Governors; the Chairman of the Finance Committee; and two Chairmen of Floor Committees.
  - The Finance Committee is currently composed as follows: the Chairman of the Board; the two Vice-Chairmen of the Board; one On-Floor Member (who may be a Governor); one Off-Floor Member (who may be a Governor); and four Non-Industry Governors (one whom must be a Public Governor). The proposal would modify the composition as follows: the Chairman and Vice-Chairman of the Board; two Members or persons associated with a Member Organization, who may be Governors (one of whom conducts business primarily on the Equity or Equity Options Floor); one Stockholder Governor; and four Independent Governors. The Chairman of this committee would be the Vice-Chairman of the Board, a Stockholder Governor or a Member Governor.
  - The Nominating and Elections Committee would be renamed the Nominating, Elections and Governance Committee. The purpose of this change is to have the Committee's name more properly reflect the existing role and function of this Committee. No substantive changes in the Committee's functions are proposed. The Nominating and Elections Committee is currently composed of the following: The Chairman (who must be a Non-Industry Public Governor); three Non-Industry Governors; one Off-Floor Member (who may be a Governor); one On-Floor Equity Governor; and one On-Floor Equity Options Governor. The proposal would modify the composition as follows: Three Independent Governors (one of whom must be a Designated Independent Governor); one Stockholder Governor; and one Member Governor. The Nominating, Elections and Governance Committee would select its Chairman from among the members of such Committee who are Independent Governors. Constituted in this manner, the interests of the Members of the Exchange, by virtue of

[18] *See* Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). *See also* Proposed SRO Governance Rulemaking. The Exchange states that it is proposing to voluntarily adopt certain concepts addressed in the Commission's Proposed SRO Governance Rulemaking.

[19] *See* Phlx By-Laws Article IV, Section 4–7.

[20] The Exchange notes that no changes are being made to Phlx By-Laws Article X, Section 10–9, its Audit Committee provision. The Commission recently approved a proposed rule change to amend this provision of the Phlx By-Laws to require, among other things, that the members of the Audit Committee be ''Independent Governors.'' *See* Securities Exchange Act Release No. 53356 (February 23, 2006), 71 FR 10741 (March 2, 2006) (SR–Phlx–2004–37).

the Member Governor and the Designated Independent Governor who are both elected by the Members, would be represented by at least 20% of the Committee in compliance the fair representation requirement of Section 6(b)(3) of the Act.[21]

○ The Quality of Markets Committee would not change in any way, except that ''Non-Industry Governors'' would be called ''Independent Governors'' and ''Industry Governors'' would be called ''Stockholder Governors.''

In addition, various technical modifications have been made to the Phlx By-Laws for purposes of consistency.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[22] in general, and furthers the objectives of Section 6(b)(3) of the Act[23] in particular, in that it is designed to assure a fair representation of its members in the selection of its directors and administration of its affairs because the members will elect five Designated Governors, including two Designated Independent Governors, one PBOT Governor, and 2 Member Governors. The Exchange also believes that its proposal furthers the objectives of Section 6(b)(3) of the Act[24] because the Nominating, Elections and Governance Committee will consist of three Independent Governors (one of whom must be a Designated Independent Governor), one Stockholder Governor, and one Member Governor, with the Designated Independent Governor elected by the Members, ensuring greater Member representation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Phlx has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of the comment period, 21 days from the date of publication of the proposal in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2005–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2005–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–93 and should be submitted by April 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–2857 Filed 3–21–06; 11:52 am]

BILLING CODE 8010–01–P

[21] 15 U.S.C. 78f(b)(3).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(3).

[24] 15 U.S.C. 78f(b)(3).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53496; File No. SR–Phlx–2005–62]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amending Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

March 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')&thnsp;[1], and Rule 19b–4[2] thereunder, notice is hereby given that on October 25, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On January 4, 2006, Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Phlx amended its rule text and the purpose section of the Exchange's Form 19b–4 to clarify the effective date of the proposed rule change and revised Phlx Rule 809 to state that an issuer proposing to withdraw a security from listing on the Exchange must provide a copy of Form 25 to the Exchange upon filing with the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rules 809 (Issuer Request for Removal and Delisting of Securities), 810 (Suspension and Delisting Policies Based on Exchange Findings), and 811 (Delisting Policies and Procedures) in view of the recent adoption by the Commission of amendments to its rules[4] that would streamline the procedure for removing from listing, and withdrawing from registration, securities under Section 12(b) of the Act.[5] The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

Rule 809

Issuer Request for Removal and Delisting of Securities

* * * * *

The following will be the operative text of Rule 809 effective as of April 24, 2006:

An issuer proposing to withdraw a security from listing on the Exchange shall submit the following:

A certified copy of a resolution adopted by the Board of Directors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another Exchange having similar requirements.

An issuer proposing to withdraw a security from listing on the Exchange shall do so by electronically submitting to the Securities and Exchange Commission Form 25 via the EDGAR system in compliance with all of the requirements of Rule 12d2–2(c) under the Exchange Act, and shall simultaneously provide a copy of such Form 25 to the Exchange.

* * * * *

Rule 810

Suspension and Delisting Policies Based on Exchange Findings

* * * * *

The following will be the operative text of Rule 810 effective as of April 24, 2006:

(a) through (c)—*No Change.*

Commentary:

.01 An application by the Exchange to strike a security from listing and/or registration will be submitted to the Securities and Exchange Commission electronically on Form 25 via the EDGAR system, and a copy of the application on Form 25 will be promptly delivered to the issuer.

* * * * *

Rule 811

Delisting Policies and Procedures

* * * * *

The following will be the operative text of Rule 811 effective as of April 24, 2006:

(a) through (f)—*No Change.*

(g) At the conclusion of the hearing the Committee will present its findings to the Board of Governors so that a final determination can be made. Such decision shall be final. If the Committee or the Board determines that the security of the issuer should be removed from listing, an application shall be submitted by the Exchange to the Securities and Exchange Commission (*''Commission''*) to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Exchange Act and the rules promulgated thereunder. If the decision is that the security should not be removed from listing, the issuer will receive a notice to that effect from the Exchange.

An application by the Exchange to strike a security from listing and/or registration will be submitted to the Commission electronically on Form 25 via the EDGAR system, and a copy of the application on Form 25 will be promptly delivered to the issuer.

The actions required to be taken by the Exchange *and issuers* to strike a security from listing and/*or* registration [for routine reason, such as redemption, maturity and retirement, is] *are* set forth in Rule 12d2–2[(a)] *and Rule 19d–1* promulgated under the Exchange Act.

The relevant portions of [the] Section 12 of the Exchange Act and Rules promulgated thereunder pertaining to the suspension, removal or withdrawal *of registration/and or listing* of securities [for all other reasons], *and the timing thereof* are summarized below:

(1) [SEC authorization for w]*W*ithdrawal *of registration and/*or striking *for certain corporate events* from listing of Exchange listed security—Section 12(d) of the Exchange Act *and Rule 12d2–d(a) thereunder;*

(2) suspension of trading by Exchange—Rule 12d2–1 under the Exchange Act;

(3) application of Exchange to strike security from listing and *or/*registration *and notice provisions*—Rule 12d2–2 *(a) and (b)* [(c) and (e)] under the Exchange Act;[or]

(4) application of issuer to withdraw from listing and registration *and notice provisions*—Rule 12d2–2([d) and (e]*c*) under the Exchange Act[.];

(5) timing and effectiveness of application by issuer or Exchange to strike a security from listing and/or registration—Rule 12d2–2(d) under the Exchange Act; or

(6) exemption of certain standardized options and futures products from Section 12(d) of the Act—Rule 12d2–2(e).

In appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may[, with the consent of the Exchange,] file a delisting application *electronically on Form 25 via the EDGAR system, and shall no fewer than ten days prior to filing Form 25 provide written notice to the Exchange,* provided that it states in its application that it [is no longer eligible for continued listing on the Exchange] *has complied with the rules of the Exchange and the requirements of Rule 12d2–2(c) under the Exchange Act governing the voluntary withdrawal of the class of securities from listing and registration on the Exchange.*[6]

Pursuant to this rule, the Exchange will provide public notice of its final determination to remove a security from listing and/or registration by issuing a press release and posting a notice on its web site. Such notice will be disseminated no fewer than ten days before the delisting becomes effective pursuant to paragraph (d)(1) of Rule 12d2–2 under the Exchange Act, and will remain posted on the web site until the delisting is effective.

* * * * *

[4] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) (the ''Delisting Release''). Changes to Commission rules under the Act pursuant to the Delisting Release will not be operative until April 24, 2006.

[5] 15 U.S.C. 78s(b)(1).

[6] Phlx intends to amend its rule text to clarify that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice. Telephone conversation between Jurij Trypupenko, Director, Phlx, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission, on March 15, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform the Exchange's Rules 809, 810, and 811 to the Commission's recent actions regarding streamlining the procedures for removing from listing, and withdrawing from registration, securities under Section 12(d) of the Act.

On July 14, 2005, the Commission published the Delisting Release making changes to the Commission's rules governing removal from listing and registration and instituting electronic submission of Form 25.[7] In the Delisting Release, the Commission, among other things, adopted amendments to Rules 12d2–2 and 19d–1 under the Act and Form 25 thereunder,[8] to indicate that national securities exchanges and issuers that seek to delist and/or deregister securities under Section 12(d) of the Act will do so by electronically filing Form 25 via the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.[9]

Phlx Rule 811 (Delisting Policies and Procedures) currently establishes a procedure for the Exchange to delist a company that is below the Exchange's continued listing criteria (and not able to otherwise qualify under an initial listing standard), which includes an opportunity for a company to come into compliance, provision of notice of the Exchange staff's decision to delist, and opportunity for a company to appeal the decision to a committee designated by the Exchange's board of directors; and indicates that the Exchange will follow Section 12(d) of the Act and Commission Rule 12d2–2.

The Exchange proposes changes to Phlx Rule 811 to conform it to the Delisting Release. The proposed changes to Phlx Rule 811 include language modifications that: indicate that applications by the Exchange to strike a security from listing and/or registration will be submitted on Form 25 via EDGAR, and a copy will be promptly delivered to the issuer; add a reference to Commission Rule 19d–1 under the Act in terms of the Exchange and issuers following the procedures established in Commission Rule 19d–1 along with Commission Rule 12d2–2 under the Act; expand and modify references to Commission Rule 12d2–2 so that they are commensurate with the Delisting Release; and provide for public notice of the Exchange's final determination to remove a security from listing and/or registration by issuing a press release and posting a notice on its web site for the requisite period of time. The proposed changes to Phlx Rule 811 also relate to the exemption of certain standardized options and futures products from Section 12(d) of the Act.

Phlx Rule 810 (Suspension and Delisting Policies Based on Exchange Findings) currently provides that if an issuer cannot demonstrate proper listing compliance it will be subject to delisting procedures pursuant to Phlx Rule 811; and that if the entire outstanding amount of a class, issue or series is retired through payment at maturity or through redemption, reclassification or otherwise, the Exchange may give notice to the SEC on Form 25. The Exchange proposes a change to clarify that Form 25 will be electronically filed via EDGAR, in compliance with the Delisting Release.

Phlx Rule 809 (Issuer Request for Removal and Delisting of Securities) currently provides that if an issuer desires to withdraw a security from listing it must, among other things, provide a certified copy of a resolution adopted by the Board of Directors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof. The Exchange proposes to clarify that for such requests an issuer shall use Form 25 electronically filed via Edgar in compliance with all of the requirements of Commission Rule 12d2–2(c) under the Act for such requests, in compliance with the Delisting Release.

The Exchange believes that the proposed changes conform its rules to the Delisting Release and streamline the process for delisting and/or deregistration.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the 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

[7] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[8] 17 CFR 240.12d2–2, 17 CFR 240.19d–1, and 17 CFR Part 249.25. The Exchange likewise adopted amendments to Rule 101 of Regulation S–T, 17 CFR 232.101.

[9] To permit the EDGAR system to differentiate between a Form 25 filed by exchanges and by issuers, the Commission established that a Form 25 filed by exchanges would have the EDGAR submission type of 25–NSE and a Form 25 filed by issuers would have the EDGAR submission type of 25.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–62 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2005–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–62 and should be submitted on or before April 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4183 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed Collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832.

Comments should be sent to the Agency Clearance Officer no later than May 22, 2006.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular Submission.

Title of Information Collection: TVA Accounts Payable Customer Satisfaction Survey.

Frequency of Use: On occasion.

Small Business or Organizations Affected: Yes.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 200.

Estimated Average Burden Hours Per Response: 10 minutes.

Need For and Use of Information: This information collection will be distributed by e-mail to TVA's suppliers that receive remittance information by e-mail. The information collected will be used to evaluate current performance of the Accounts Payable Department (APD) which will identify areas for improvement and enable APD to provide better service to suppliers and facilitate commerce between TVA and its suppliers.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations Information Services.

[FR Doc. E6–4178 Filed 3–22–06; 8:45 am]

BILLING CODE 8120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intention To Grant Exclusive License in Government-Owned Invention

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA hereby gives notice of its intention to grant an exclusive license in the invention titled ''Automated System for Assisting Employees to Comply with Filing Requirements'', Application Number 11/174,642, to HRWorx LLC, a small business located in Herndon, VA. HRWorks is participating in a Cooperative Research and Development Agreement with the William J. Hughes Technical Center to further develop and commercialize the Government-owned invention. (Authority: 35 U.S.C. 209, 15 U.S.C. 3710a, 37 CFR part 401)

DATES: Comments in response to this notice may be submitted on or before April 7, 2006.

ADDRESSES: Comments about this Notice may be mailed or delivered to the FAA at the following address: Office of the Center Counsel, ACT–7, Federal Aviation Administration William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, or by e-mail to *james.drew@faa.gov.*

FOR FURTHER INFORMATION CONTACT: James Drew, Senior Attorney, ACT–7, Federal Aviation Administration William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, telephone (609) 485–7093 or by e-mail to *james.drew@faa.gov.*

Issued in Atlantic City, New Jersey, on March 17, 2006.

James J. Drew,

Senior Attorney, Intellectual Property.

[FR Doc. E6–4209 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability; Solicitation of Proposals for Funding through the Alternative Transportation in Parks and Public Lands Program.

SUMMARY: This solicitation is for proposals for fiscal year 2006 funding through the new Alternative Transportation in Parks and Public Lands program, administered by the Federal Transit Administration in partnership with the Department of the Interior and the U.S. Department of Agriculture's Forest Service. The purpose of the program is to enhance the protection of national parks and Federal lands, and increase the enjoyment of those visiting them. The program funds capital and planning expenses for alternative transportation systems in parks and public lands.

Federal land management agencies and State, tribal and local governments acting with the consent of a Federal land management agency are eligible to apply.

DATES: Complete proposals must be received by the designated Federal land management agency contact listed in this notice by the close of business May 5, 2006.

ADDRESSES: Project proposals must be submitted to the designated contact person at the headquarters office of the Federal land management agency that manages the park or public land involved. If the project involves more than one Federal land management agency, a project proposal template must be submitted to all agencies involved. The required project proposal template is available at *http://www.fta.dot.gov*. E-mail submission is preferred. Mail and fax submission will also be accepted.

- National Park Service: Kevin Percival, *Kevin_Percival@nps.gov,* tel: 303–969–2429, fax: 303–987–6675, mail: 12795 W. Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287.
- Fish and Wildlife Service: Nathan Caldwell, *nathan_caldwell@fws.gov,* tel: 703–358–2376, fax: 703–358–2517, mail: 4401 N. Fairfax Drive, Suite 634; Arlington, VA 22203.
- Forest Service: Ellen LaFayette, *elafayette@fs.fed.us,* tel: 703–605–4509, fax: 703–605–1542, mail: 1400 Independence Avenue, SW., Washington, DC 20250–1101.
- Bureau of Land Management: Linda Force, *Linda_Force@blm.gov,* tel: 202–557–3567, fax: 202–452–5046, mail: 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION: Contact David Vozzolo, Deputy Associate Administrator for Planning and Environment, 202–366–4033, e-mail: *atppl@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Program Information
II. Guidelines for Preparing and Submitting Proposals
III. Proposal Review, Selection, and Notification
IV. Additional Program Information

I. General Program Information

A. Authority

Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA–LU) establishes a new program called the Alternative Transportation in Parks and Public Lands program (49 U.S.C. 5320). SAFETEA–LU authorizes $98 million in funding for the program for fiscal years 2006 through 2009. For fiscal year 2006, Congress appropriated $21,780,000 for this program. No one project may receive more than 25 percent of funds.

B. Background

Congestion in and around parks and public lands causes traffic delays and noise and air pollution that substantially detract from the visitor's experience and the protection of natural resources. In August 2001, the Department of Transportation and the Department of the Interior published a comprehensive study of alternative transportation needs in national parks and related Federal lands. The study identified significant alternative transportation needs at sites managed by the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service. Additionally, a supplement to this report identified Forest Service sites that would benefit from such services.

Section 3021 of SAFETEA–LU (49 U.S.C. § 5320) addresses these needs by establishing a new program to fund alternative transportation projects in national parks and public lands. The goals of the program are to ensure access to all, including persons with disabilities; improve conservation and park and public land opportunities in urban areas through partnering with State and local governments; improve park and public land transportation infrastructure; enhance the environment and prevent or mitigate adverse impacts on natural resources; reduce congestion and pollution; improve visitor mobility and accessibility and the visitor experience; improve Federal land management agency resource management; and conserve natural, historical, and cultural resources.

C. Eligible Applicants

Eligible applicants are:

(1) The following Federal land management agencies: The National Park Service, the Fish and Wildlife Service, the Bureau of Land management, the Forest Service, and the Bureau of Reclamation; and

(2) State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant.

D. Eligible Expenses

SAFETEA–LU defines alternative transportation as ''transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. Such term also includes a non-motorized transportation system (including the provision of facilities for pedestrians, bicycles, and non-motorized watercraft).''

A qualified project is a planning or capital project in or in the vicinity of a Federally-owned or managed park, refuge, or recreational area that is open to the general public and meets the goals of the program. Project evaluation will be based on the considerations listed in the law and explained in part F of this notice. The following types of projects are eligible:

(1) Planning Projects: Activities to comply with metropolitan and statewide planning provisions. (49 U.S.C. 5320(b)(5)(A) referencing 49 U.S.C. 5303, 5304, and 5305). Activities include planning studies for an alternative transportation system including evaluation of no-build and all other reasonable alternatives, traffic studies, visitor utilization studies, transportation analysis, feasibility studies, and environmental studies.

(2) Capital projects for ''acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;'' (49 U.S.C. 5320(b)(5)(A) referencing 49 U.S.C. 5302(a)(1)(A).)

(3) Fixed Guideway and Bus Projects:

(i) New fixed guideway capital projects including the acquisition of real property, the initial acquisition of rolling stock for the systems, the acquisition of rights-of-way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;

(ii) Capital projects to modernize existing fixed guideway systems;

(iii) Capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for

assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations; and

(iv) The development of corridors to support new fixed guideway capital projects, including protecting rights-of-way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased public transportation usage in the corridor. (49 U.S.C. 5320(b)(5)(A) referencing 49 U.S.C. 5309(b).)

(4) Purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on August 10, 2005, with clean fuel vehicles;

(5) The deployment of alternative transportation vehicles that introduce innovative technologies or methods;

(6) The capital costs of coordinating Federal land management agency public transportation systems with other public transportation systems;

(7) Non-motorized transportation systems (including the provision of facilities for pedestrians, bicycles and non-motorized watercraft); and

(8) Any other alternative transportation project that:

- Enhances the environment;
- Prevents or mitigates an adverse impact on a natural resource;
- Improves Federal land management agency resource management;
- Improves visitor mobility and accessibility and the visitor experience;
- Reduces congestion and pollution (including noise pollution and visual pollution); or
- Conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

E. Planning and Coordination Requirements

(1) Planning Requirements

Section 5320(e) specifies that if the participant is a Federal land management agency, the project must be consistent with the metropolitan and statewide planning and public participation requirements found in 49 U.S.C. 5303, 5304, and 5307(d). If the qualified participant is a State or local government, or more than one State or local governmental authority in more than one State, the qualified participant must comply with the metropolitan and statewide planning provisions and public participation requirements. FTA cannot award funds to an implementation project if it is not in the metropolitan Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP). If an implementation project is not in the TIP or STIP at the time of submitting a proposal, it can still be selected, but will not receive funds until it is incorporated into the TIP or STIP. In addition, implementation projects not in the TIP or STIP at the time of submitting a proposal should demonstrate intent to be included, such as through a copy of correspondence with the metropolitan or state planning organization.

Projects must also be consistent with Federal land management agency plans.

(2) Coordination With Federal Land Management Agency

If the applicant is a State, tribal, or local government authority, the applicant must have the consent of the Federal land management agency or agencies to be affected. A letter from the unit(s) of the Federal land management agency or agencies affected expressing support for the project should be submitted with the project proposal.

F. Proposal Evaluation Criteria

Consistent with the considerations identified in Section 5320(g)(2), proposed projects will be evaluated based on the following criteria:

- Demonstration of need
  - Documentation of problem in plans and other reports
  - Severity of problem
- Protection of natural and cultural resources
  - Protection or improvement of cultural, historical, scenic, and natural resources
  - Environmental benefits—reduction of pollution (including air pollution, noise pollution, and visual pollution)
- Operational efficiency and financial sustainability
  - Evaluation of costs and benefits of all reasonable alternatives
  - Financial planning (including for capital, operations, maintenance, and equipment replacement expenses; and revenues, including user fees)
  - Cost effectiveness
  - Innovative financing or joint development strategies
  - Deferred maintenance issues
- Public benefits
  - Enhancing visitor experience
  - Mobility issues (reduces congestion, improves intermodal connectivity, improves public access, including access for persons with disabilities)
  - Safety
  - Partnership with public and private entities, and benefits to gateway communities.

Additional consideration will be given to projects based upon geographic diversity, balance between urban and rural projects, and balance in size of projects. Finally, projects that demonstrate innovative funding mechanisms or partnerships will be given extra consideration. The application template contains specific questions related to each of these areas to guide the applicant in justifying the project.

II. Guidelines for Preparing and Submitting Proposals

Project proposal templates for the Alternative Transportation in Parks and Public Lands program are available at *http://www.fta.dot.gov.* Click on the navigational tab for Grant Programs on the right hand side, then click on the Grant Programs link, and then click on the link for the Alternative Transportation in Parks and Public Lands Program. To receive a proposal template by e-mail, please send an e-mail to *tina.hodges@dot.gov.* There are separate proposal templates for planning and capital projects. A synopsis of this announcement will also be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.*

Project proposals must be submitted to the designated contact person at the headquarters office of the Federal land management agency that manages the park or public land involved. This list can be found in the **ADDRESSES** section of this notice. If the project involves more than one Federal land management agency, a proposal template must be submitted to all agencies involved. The project proposal must be ten or fewer pages in length at ten point font or larger. If a proposal is greater than ten pages, only the first ten pages will be considered during the evaluation process. Submission by e-mail is preferred. Mail and fax submissions will also be accepted.

If applicants would like to apply for funds appropriated for future fiscal years, applicants must reapply each year.

III. Proposal Review, Selection and Notification

Proposals will first be reviewed and screened by the headquarters office of the relevant Federal land management agency (or agencies if the project involves more than one). Following this initial review, proposals will be evaluated by an interagency team which includes representatives from FTA, each of the Federal land management agencies, and the Department of the Interior. After evaluating the projects

based on the criteria in the law and further explained in part F of this notice, the team will provide a recommendation to the Secretary of the Interior. The Secretary of the Interior, after consultation with and in cooperation with the Secretary of Transportation, shall determine the final selection and amount of funding for each project.

The Department of the Interior plans to announce the projects selected by summer 2006. The Department of the Interior will notify each Federal land management agency of projects awarded for sites under the agency's jurisdiction. FTA will publish the list of all selected projects and funding levels in the **Federal Register**, as well as in its annual report to Congress on the Alternative Transportation in Parks and Public Lands program submitted as part of its Annual Report on New Starts in early February 2007. Criteria and application procedures may be reassessed for subsequent years.

IV. Additional Program Information

A. Funds Administration and Oversight

Once proposals have been reviewed and projects have been chosen based on selection criteria, the cognizant federal agency (or agencies), will award funds to the proposing entity to implement the project. These funds will be administered according to federal requirements as well as the appropriate policies, guidelines and rules of the pertinent agencies.

For projects directly administered by a Federal land management agency, these funds will be administered by interagency agreement between the FTA and the respective agency. For programs administered by a State, tribal, or local governmental authority, these funds will be administered through a grant administered by FTA. With regard to interagency agreement and grant requirements, 49 U.S.C. 5320(i) authorizes the Secretary to apply the requirements of 49 U.S.C. 5307 (Urbanized Area Formula Grant) and 5333(a) (Prevailing Wages Requirement) ''to the extent the Secretary deems appropriate.'' FTA is in the process of developing the interagency agreement and grant requirements for this program and will make these available for public notice and comment in the **Federal Register** prior to award of program funds.

Additionally, each recipient (federal land management agency, and State, tribal, and local governments) of federal funds must comply with requisite federal guidelines governing the management of federal funds and specific program requirements. Program Oversight, as defined by FTA, will ensure that projects meet the basic statutory, administrative, and regulatory requirements as stipulated by the conditions for accepting Federal funds.

B. Performance Measures

Participants may be asked to compile data for use in measuring program performance.

C. Technical Assistance, Planning, and Research

The Alternative Transportation in Parks and Public lands program allows the Department of Transportation to spend not more than ten percent of program funds to carry out planning, research, and technical assistance activities. FTA will oversee the funds allocated to technical assistance to assist program participants in planning, implementing, and evaluating alternative transportation projects. In addition, FTA will be responsible for the provision of planning guidance and dissemination of research findings.

Issued in Washington, DC, this 17th day of March, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. E6–4208 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24063]

Disadvantaged Business Enterprises; Western States Guidance for Public Transportation Providers

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of policy implementation and request for comments.

SUMMARY: This notice provides the opportunity for public comment on specific issues regarding the Federal Transit Administration's (FTA) implementation of Department of Transportation (DOT) guidance for participants of the Disadvantaged Business Enterprise (DBE) program. This guidance is applicable to recipients of Federal financial assistance from the Federal Transit Administration (FTA) located in the states under the U.S. Court of Appeals for the 9th Circuit (California, Oregon, Washington, Alaska, Arizona, Idaho, Montana, Nevada, and Hawaii).

DATES: *Effective Date:* Comments must be received on or before April 24, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written Comments: Submit written comments to the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may submit comments identified by the docket number (FTA–06–24063) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2478.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name (Federal Transit Administration) and Docket number (FTA–2006–24063) for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Scheryl Portee, Attorney Advisor, Office of the Chief Counsel, (202) 366–4011 (telephone) and (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

Background

The General Counsel of the Department of Transportation recently reviewed and approved guidance concerning the effects of the *Western States Paving Co.* v. *United States & Washington State Department of Transportation,* 407 F. 3d 983 (9th Cir. 2005), court decision on participants in the Department's disadvantaged business enterprise (DBE) program. The guidance applies to recipients of Federal funds authorized under chapter 53 of Title 49 of the United States Code that are located within the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

The Court of Appeals for the 9th Circuit, like other Federal courts that have reviewed the Department of Transportation's DBE program, held that 49 CFR Part 26 and the authorizing statute for the DBE program in TEA–21

are constitutional. The court upheld congressional determination that there is a compelling need for the DBE program and the DOT rules at Part 26 are narrowly tailored to meet that need.

However, the 9th Circuit held that the DBE Program administered by the Washington State Department of Transportation was not narrowly tailored because the evidence of discrimination supporting the use of race-conscious measures in the program was inadequate. Since the *Western States* decision and DOT's guidance on the effects of that decision will impact FTA grantees in the 9th Circuit, we are issuing this **Federal Register** notice.

Specifically, this notice provides information on the procedures that FTA will employ as a review process for fiscal year 2006 DBE goal submissions (due on August 1, 2005) to FTA in regard to: Race-neutral submissions, the evidence-gathering process to determine evidence of discrimination or its effects in grantees' market, and action plans for disparity/availability studies or other appropriate evidence gathering process, is undertaken. FTA will apply the following guidance to recipients of Federal funds:

The DOT Guidance

The following is the text of the DOT Western States guidance:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Part 26.

Question: To Whom Do These Questions and Answers Apply?

Answer

These questions and answers apply only to recipients of Federal financial assistance from the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) located in the states comprising the 9th Federal Judicial Circuit. These states are California, Oregon, Washington, Alaska, Arizona, Idaho, Montana, Nevada, and Hawaii.

These questions and answers do *not* apply to recipients in other states.

These questions and answers apply *only* to the disadvantaged business enterprise programs (DBE) of recipients of Federal financial assistance governed by 49 CFR Part 26.

Question: What Did the Court Say in Western States?

Answer

Like other Federal courts that have reviewed the Department of Transportation's DBE program, the 9th Circuit panel held that 49 CFR Part 26 and the authorizing statute for the DBE program in TEA–21 were constitutional. The court affirmed that Congress had determined that there was a compelling need for the DBE program and the Part 26 was narrowly tailored.

The court agreed that Washington State did not need to establish a compelling need for its DBE program, independent of the determinations that Congress made on a national basis.

However, the court said that race conscious elements of a national program, to be narrowly tailored as applied, must be limited to those parts of the country where its race-based measures are demonstrably needed.

Whether race-based measures are needed depends on the presence or absence of discrimination or its effects in a state's transportation contracting industry.

In addition, even when discrimination is present in a state, a program is narrowly tailored only if its application is limited to those specific groups that have actually suffered discrimination or its effects.

• The court concluded that Washington State DOT's DBE program was not narrowly tailored because the evidence of discrimination supporting its application was inadequate. The court mentioned several ways in which the state's evidence was insufficient:

+ Washington State DOT had not conducted statistical studies to establish the existence of discrimination in the highway contracting industry that were completed or valid.

+ Washington State DOT's calculation of the capacity of DBEs to do work was flawed because it failed to take into account the effects of past race-conscious programs on current DBE participation.

+ The disparity between DBE participation on contracts with and without affirmative action components did not provide any evidence of discrimination.

+ A small disparity between the proportion of DBE firms in the state and the percentage of funds awarded to DBEs in race-neutral contracts (2.7% in the case of Washington State DOT) was entitled to little weight as evidence of discrimination, because it did not account for other factors that may affect the relative capacity of DBEs to undertake contracting work.

+ This small statistical disparity is not enough, standing alone, to demonstrate the existence of discrimination. To demonstrate discrimination, a larger disparity would be needed.

+ Washington State DOT did not present any anecdotal evidence of discrimination.

+ The affidavits required by 49 CFR 26.67(a), in which DBEs certify that they are socially and economically disadvantaged, are not evidence of the presence of discrimination.

Consequently, the court found that the Washington State DOT DBE program was unconstitutional as applied.

The court cited the 8th Circuit's decision in Sherbrooke Turf v. Minnesota Department of Transportation. In that case, the court said, Minnesota and Nebraska had hired outside consulting firms to conduct statistical analyses of the availability and capacity of DBEs in their local markets, which the 8th Circuit had relied on in holding that the two states' DBE programs were constitutional as applied.

Question: What Action Should Recipients Take With Respect to Submitting Their Overall Goals for FY 2006?

Answer

Recipients should examine the evidence they have on hand of discrimination and its effects. Does this evidence appear to address successfully the problems the 9th Circuit's decision articulated concerning the Washington State DOT DBE program?

If the recipient currently has sufficient evidence of discrimination or its effects, the recipient should go ahead and submit race- and gender-conscious goals where appropriate, as provided in Part 26. (This submission would include the normal race conscious/race-neutral ''split'' in overall goals.)

If the evidence of discrimination and its effects pertains to some, but not all, of the groups that Part 26 presumes to be socially and economically disadvantaged, then these race- and gender-conscious goals should apply only to the group or groups for which the evidence is adequate.

If necessary, the Department may entertain program waivers of Part 26's prohibition of group-specific goals in this situation.

If the recipient does not currently have sufficient evidence of discrimination or its effects, then the recipient would submit an all-race neutral overall goal for FY 2006. The recipient's submission would include a statement concerning the absence of adequate evidence of discrimination and its effects.

A race-neutral submission of this kind should include a description of plans to conduct a study or other appropriate

evidence-gathering process to determine the existence of discrimination or its effects in the recipient's market. An action plan describing the study and time lines for its completion should also be included.

The Department's operating administrations are willing, in response to recipients' requests, to extend the time for submitting FY 2006 goals for a time sufficient to allow recipients to evaluate the adequacy of their current evidence of discrimination or its effects.

Operating administrations will review recipients' annual goal submissions to determine whether recipients have provided evidence of discrimination or its effects.

Question: Should Recipients Who Will Be Submitting All Race-Neutral Overall Goals for FY 2006 Because They Do Not Have Sufficient Evidence of Discrimination or Its Effects Make Any Changes to Contracts Issued During FY 2005 or Earlier?

Answer

No. Even where FY 2005 contracts used race-conscious contract goals, we do not believe it is appropriate to attempt to revise or reform those contracts.

Question: If Recipients Will Be Operating an All-Race Neutral DBE Program in FY 2006 or Subsequent Years, What Should Such a Program Include?

With few exceptions, generally there is no difference in how the DBE program regulations apply to a race- and gender-neutral program (hereafter race-neutral) as compared to a race- and gender-conscious program (hereafter race-conscious).

In a wholly race-neutral program (*e.g.*, the annual overall DBE goal has been approved with no portion of it projected to be attained by using race- and gender-conscious means) the recipient does not set contract goals on any of its U.S. DOT-assisted contracts for which DBE subcontracting possibilities exist. Recipients having an all race-neutral program are not required to establish contract goals to meet any portion of their overall goal.

Recipients should take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 CFR 26.51(b) as possible to meet the overall goal and to demonstrate that you are administering your program in good faith. The Department expects that recipients using all race-neutral programs will use methods such as unbundling of contracts, technical assistance, capital and bonding assistance, business development programs, etc., rather than waiting passively for DBEs to participate.

The good faith efforts requirements in 49 CFR 26.53 that apply when DBE contract goals are set have no required application to recipients implementing a race-neutral program. However, recipients must continue to collect the data required to be reported in the Uniform Report of DBE Awards or Commitments and Payments Form (see § 26.11) and to monitor compliance with the commercially useful function requirements.

The prompt payment and retainage requirements of 49 CFR 26.29 are race-neutral mechanisms designed to benefit all subcontractors, DBEs and non-DBEs alike. Recipients using all race-neutral programs must continue to implement them.

The requirement that DBEs must perform a commercially useful function to receive credit toward the overall goal applies to race neutral programs just as it does to programs that use race-conscious means to meet program objectives.

It is helpful for recipients to maintain an effective monitoring and enforcement program to track DBE participation obtained through race neutral means that the recipient claims credit (see 49 CFR 26.37(b)).

Question: What Must Recipients Do That Have Already Submitted Their FY 2006 Goals to Modal Administrations for Approval?

Answer

If the appropriate modal administration determines that the FY 2006 DBE goal submission does not contain the kind of information or documentation suggested by this guidance that would comport with the law established by the Ninth Circuit Court of Appeals, the recipient will be directed to revise and resubmit its DBE goal submission consistent with this guidance.

Question: Will the Process Used by the Modal Administrations to Review and Approve Goal Submissions Made by Recipients in the Ninth Circuit Change?

For FHWA recipients in the 9th Circuit, FY 2006 DBE goal submissions will require concurrence by the FHWA Office of Civil Rights and the Office of Chief Counsel in Washington, DC before approval by the appropriate FHWA division office.

FTA's process will remain the same. [Note—Please see request for comment below].

For FAA recipients in the 9th Circuit, FY 2006 DBE goal submissions with a race-conscious component will require concurrence by the FAA Headquarters Office of Civil Rights and a legal sufficiency review by the Office of Chief Counsel in Washington, DC before being approved by the appropriate FAA Regional Office of Civil Rights and Office of Chief Counsel. Those with an all race-neutral overall goal will be approved by the Regional Office of Civil Rights.

Question: If A Recipient Lacks Sufficient Evidence of Discrimination or Its Effects, What Should It Do To Remedy the Lack of Information?

Answer

A recipient in this situation should immediately begin to conduct a rigorous and valid study to determine whether there is evidence of discrimination or its effects.

The Department expects recipients who submit an all-race neutral goal for FY 2006 because they lack sufficient evidence of discrimination to ensure that this evidence-gathering effort is completed expeditiously.

Studies to determine the presence of discrimination or its effects are often referred to as ''disparity'' or ''availability'' studies, though there can also be rigorous and scientifically valid studies which may have different names. Whatever label is applied to a study, however, the key point is that it be designed to determine, in a fair and valid way, whether evidence of the kind the 9th Circuit decision determined was essential to a DBE program including race-conscious elements exists.

Question: What Should Recipients' Studies Include?

Answer

Based on the 9th Circuit decision, recipients should consider the following points as they design their studies:

The study should ascertain the evidence for discrimination and its effects separately for each of the groups presumed by Part 26 to be disadvantaged.

The study should include an assessment of any anecdotal and complaint evidence of discrimination.

Recipients may consider the kinds of evidence that are used in ''Step 2'' of the Part 26 goal-setting process, such as evidence of barriers in obtaining bonding and financing, disparities in business formation and earnings.

With respect to statistical evidence, the study should rigorously determine the effects of factors other than discrimination that may account for

statistical disparities between DBE availability and participation. This is likely to require a multivariate/regression analysis.

The study should quantify the magnitude of any differences between DBE availability and participation, or DBE participation in race-neutral and race-conscious contracts. Recipients should exercise caution in drawing conclusions about the presence of discrimination and its effects based on small differences.

In calculating availability of DBEs, the study should not rely on numbers that may have been inflated by race-conscious programs that may not have been narrowly tailored.

Recipients should consider, as they plan their studies, evidence-gathering efforts that Federal courts have approved in the past. These include the studies by Minnesota and Nebraska cited in Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F.3d 964 (8th Cir. 2003), cert. denied 124 S. Ct. 2158 (2004) and the Illinois evidence cited in Northern Contracting, Inc. v. State of Illinois, *et al.* 2005 WL 2230195, N.D.Ill., September 08, 2005 (No. 00 C 4515)

Question: Can There Be Statewide or Regional Studies, as Opposed to a Separate Study for Each Individual Recipient?

Answer

If feasible, studies may be undertaken on a regional or statewide basis to reduce the costs that would be involved if each recipient conducted its own separate study.

We would expect that each State DOT would conduct a statewide study. Such a study should be conducted in cooperation with transit and airport recipients in the state, so that the study would apply to recipients in all three modes.

Larger transit and/or airport recipients may want to conduct their own study, since the demographics of large urban areas may differ from that of the state as a whole.

Question: Will Federal Funds Help To Defray the Costs of Recipients' Studies?

Answer

Yes. FHWA, FTA, and FAA have all stated that the costs of conducting disparity studies are reimbursable from Federal program funds, subject to the availability of those funds.

Recipients should contact their operating administration for more detailed information.

FTA Requests for Comment

FTA requests comment on two matters concerning the implementation of the DOT General Counsel's DBE Guidance on the Western States court decision:

1. For 9th circuit recipients only, with respect to FY 2006 overall DBE goals, recipients should submit DBE goals to their FTA Regional Office for review by the Regional Civil Rights Officer. As determined by the Regional Civil Rights Officer, recipients with race-neutral goals may be required to certify that they will conduct or participate in a disparity or availability study or other appropriate evidence gathering process and the time frame for completion of the study or process.

2. As mentioned in the DOT Guidance, disparity studies using FY 2006 funding allocations will be an authorized expense for reimbursement, subject to the availability of funds. We seek comment on whether disparity studies should receive grantee funding priority, and on whether any additional funding should be made available for this purpose.

Issued on: March 20, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. E6–4226 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** document with a 60-day comment period was published on November 29, 2005 [70 FR 71601].

DATES: Comments must be received on or before April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard at the National Highway Traffic Safety Administration, Office of International Vehicle, Fuel Economy and Consumer Standards, (NVS–131), 202–366–5222, 400 Seventh Street, SW., Room 5320, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 544; Insurer Reporting Requirement.

OMB Control Number: 2127–0547.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: NHTSA must ensure that passenger motor vehicle insurance companies and rental/leasing companies comply with 49 CFR part 544, Insurer Reporting Requirement. Part 544 requires that the insurance/rental and leasing companies provide information on comprehensive insurance premiums, theft and recoveries and actions taken to address motor vehicle theft.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 64,610 hours (56,700 man-hours for 28 insurance companies and 7,910 man-hours for 14 rental and leasing companies).

Estimated Annual Cost: $2,325,960.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC on: March 20, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 06–2838 Filed 3–22–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub–No. 5) (2006–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2006 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2006 RCAF (Unadjusted) is 1.178. The second quarter 2006 RCAF (Adjusted) is 0.562. The second quarter 2006 RCAF–5 is 0.537.

DATES: *Effective Date:* April 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 15, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 06–2782 Filed 3–22–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–992X]

Atlantic & Pacific Railroad and Transportation Company—Discontinuance of Service Exemption—in Rice County, KS

On March 2, 2006, Atlantic & Pacific Railroad and Transportation Company (APR) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over an approximately 4-mile line of railroad owned by the Kansas & Oklahoma Railroad (KO) and located in Rice County, KS.[1] The line extends from the point of interchange with KO's line at approximately milepost 87.0 (at or near Chase, KS), to the point of interchange with KO's line at approximately milepost 91.0 (at or near Silica, KS). The line traverses U.S. Postal Service Zip Codes 67524, 67554, and 67573, and includes no stations.

APR states that, as it is not the owner of the line, it does not have information on whether the line contains Federally granted rights-of-way. Any documentation in the possession of the railroad will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 20, 2006.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the appropriate filing fee. *See* 49 CFR 1002.2(f)(25).[2]

All filings in response to this notice must refer to STB Docket No. AB–992X and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., 5th Floor, Washington, DC 20005. Replies to the petition are due on or before April 11, 2006.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 16, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–2827 Filed 3–22–06; 8:45 am]

BILLING CODE 4915–01–P

[1] APR was granted an exemption to lease and operate the line in *Atlantic & Pacific Railroad and Transportation Company—Lease and Operation Exemption—Kansas & Oklahoma Railroad,* STB Finance Docket No. 34451 (STB served July 20, 2004). According to APR, the line has no active shippers and no rail service has been performed during the lease term.

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c) and 1105.8.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554 (Sub-No. 5)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial Revocation of Exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, revokes the class exemption as it pertains to the modified trackage rights described in STB Finance Docket No. 34554 (Sub-No. 4)[1] to permit the trackage rights to expire on or about December 31, 2006, in accordance with

[1] On February 13, 2006, Union Pacific Railroad Company (UP) concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to extend the expiration date of the local trackage rights granted to UP over BNSF's line of railroad between BNSF milepost 579.3 near Mill Creek, OK, and BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles. UP submits that the trackage rights are only temporary rights, but, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Union Pacific Railroad Company—Trackage Rights Exemption—BNSF Railway Company,* STB Finance Docket No. 34554 (Sub-No. 4) (STB served Mar. 3, 2006).

the agreement of the parties,[2] subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

DATES: This exemption is effective on April 22, 2006. Petitions to stay must be filed by April 3, 2006. Petitions to reopen must be filed by April 12, 2006.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34554 (Sub-No. 5) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Gabriel S. Meyer, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1609. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone: (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: March 17, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–4210 Filed 3–22–06; 8:45 am]

BILLING CODE 4915–01–P

[2] The original trackage rights granted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34554 (STB served October 7, 2004), also extended from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX. By decisions served on November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1) and on March 25, 2005, in STB Finance Docket No. 34554 (Sub-No. 3), the Board granted exemptions to permit the trackage rights authorized in STB Finance Docket No. 34554 and extended in STB Finance Docket No. 34554 (Sub-No. 2), served on Feb. 11, 2005, to expire. At the time of that extension, it was anticipated by the parties that the rights would expire on or about December 31, 2005. However, this authority had not yet been exercised at the time of filing of the notice of exemption in STB Finance Docket No. 34554 (Sub-No. 4) for a further extension of the expiration date.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. Ab–988X]

Nebkota Railway, Inc.—Abandonment Exemption—In Sheridan and Cherry Counties, NE

By petition filed on December 1, 2005, Nebkota Railway, Inc. (NRI) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 43-mile portion of its line of railroad extending from milepost 374 at Rushville 69360 to the end of the line at milepost 331 at Merriman 69218 in Sheridan and Cherry Counties, NE. Notice of the filing was served and published in the **Federal Register** on December 21, 2005 (70 FR 75860). The Nebraska Game and Parks Commission (NGPC) filed a request for issuance of a notice of interim trail use (NITU). Rails to Trails Conservancy (RTC) and NGPC jointly filed a reply to NRI's petition and a request for imposition of a public use condition. NRI responded. We will grant the petition for exemption, subject to public use, trail use, environmental, and standard employee protective conditions.

Background

The line proposed for abandonment is part of a 73.5-mile rail line acquired by NRI from the Chicago and North Western Transportation Company (CNW) in *Nebkota Railway, Inc.—Acquisition and Operation Exemption—Line of Chicago and North Western Transportation Company,* Finance Docket No. 32442 (ICC served Feb. 4, 1994). The 73.5-mile line extends from Merriman to Chadron, NE. In that proceeding, NRI also acquired incidental trackage rights over 27.8 miles of CNW's rail line extending from Chadron to Crawford, NE, to allow NRI to interchange with the Burlington Northern Railroad Company (BN). The line is a part of what had been CNW's Cowboy Line, which was mostly abandoned by CNW pursuant to authority granted in *Chicago and North Western Transportation Company—Abandonment Exemption—Between Norfolk and Merriman, NE,* Docket No. AB–1 (Sub-No. 249X) (ICC served June 2, 1994).

There are three shippers on the portion of the line proposed for abandonment, Farmers Co-op Elevator Company of Gordon, Retzlaff Grain Co., Inc., and West Plains Grain, Inc. According to NRI, the traffic on that portion, which constitutes the eastern end of its line, has declined dramatically over the past few years and has proven to be a drain on the remainder of its operations. NRI's traffic data show that the number of revenue carloads being transported has dropped from 346 in the year 2002 to 108 in the year 2004. NRI states that, in the 3-year period, it has sustained an operating loss of $24,309.80. No overhead traffic moves over the line and NRI does not anticipate any increase in local traffic within the foreseeable future. NRI states that, if the 43-mile portion is authorized for abandonment, the tracks, ties, and other track materials will be salvaged and sold to help NRI retain and profitably operate the remainder of its railroad system, extending between Chadron and Rushville, with incidental trackage rights between Chadron and Crawford. NRI states that it has notified the three shippers on the line of the abandonment proposal and that they do not oppose the abandonment.

In a joint reply filed on January 10, 2006, RTC and NGPC have expressed concern regarding the disposition of the right-of-way (ROW) should the Board authorize the abandonment. They contend that NRI, CNW, and RTC entered into a master agreement to settle a prolonged dispute between CNW and the State of Nebraska regarding abandonment of the Cowboy Line. RTC and NGPC point out that the master agreement, among other things, requires NRI to consent to rail bank its line under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and convey the ROW to RTC or its assignee should NRI seek to abandon all or a portion of its line. Because NRI has disputed its obligations under the master agreement, RTC and NGPC request that the Board impose a public use condition in the instant proceeding and retain jurisdiction over the line by various other means until the contractual dispute with NRI is resolved.

In a letter dated January 26, 2006, NRI has responded that, without accepting the arguments advanced in support of the request for the public use condition, NRI agrees upon the Board's approval of its abandonment petition to convey the ROW to NGPC to be used as a recreational trail pursuant to the Trails Act. NRI believes that this action would obviate the need for imposition of a public use condition.

On February 17, 2006, RTC and NGPC jointly filed a status report on their negotiations, to which NRI responded by letter dated February 24, 2006. RTC and NGPC jointly filed a further reply on February 28, 2006, and NRI responded by letter dated March 1, 2006.

Subsequently, by facsimile filed on March 1, 2006, RTC and NGPC have informed the Board that they have resolved their dispute with NRI. Consequently, they withdraw their objections and requests for relief regarding retention of jurisdiction by the Board in this proceeding.

Discussion and Conclusions

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) Continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption also will foster sound economic conditions and encourage efficient management by relieving NRI from the expense of maintaining and operating a line that continues to operate at a loss and by allowing NRI to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. NRI has informed the three shippers on the line of its abandonment proposal, and they have not objected. Nevertheless, to ensure that the shippers are informed of our action, we will require NRI to serve a copy of this decision and notice on Farmers Co-op Elevator Company of Gordon, Retzlaff Grain Co., Inc., and West Plains Grain, Inc., within 5 days of the service date of this decision and notice and to certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

NRI has submitted an environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. *See* 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on January 31, 2006, requesting comments by March 2, 2006. In the EA, SEA discussed concerns expressed by, or reviews not yet completed by, various agencies. Based on the record at that time, SEA recommended that five conditions be imposed on any decision granting abandonment authority.

In the EA, SEA noted that the U.S. Fish and Wildlife Service, Mountain-Prairie Region (FWS), had not yet completed its review of the proposed abandonment. Therefore, SEA recommended that, prior to the onset of salvage operations, NRI be required to consult with the FWS and report the result of these consultations to SEA.

SEA also stated that the U.S. National Park Service, Midwest Regional Office (NPS), had not yet completed its review. Therefore, SEA recommended that, prior to the onset of salvage operations, NRI be required to consult with NPS and report the result of these consultations to SEA.

At the time the EA was prepared, the U.S. Environmental Protection Agency, Region 7 (USEPA), had not provided comments regarding potential permitting requirements of the proposed abandonment under section 402 of the Clean Water Act. Therefore, SEA recommended that NRI be required to consult with USEPA and report the result of these consultations to SEA prior to the onset of salvage operations.

SEA indicated in the EA that the U.S. Department of Commerce, National Geodetic Survey (NGS), had not completed its review. Therefore, SEA recommended that, prior to the onset of salvage operations, NRI be required to consult with NGS and report the result of these consultations to SEA.

Finally, SEA stated in the EA that the Supervisors of Cherry and Sheridan Counties had not yet completed their review of the proposed abandonment. Therefore, SEA recommended that, prior to the onset of salvage operations, NRI be required to consult with the Supervisors of those counties and report the result of these consultations to SEA.

Comments in response to the EA were received and considered by SEA. In particular, SEA received input from FWS, NPS, and USEPA stating that they had no comment on the abandonment as proposed. SEA also received comments from the Supervisors of Cherry and Sheridan Counties stating that they had no objection to the abandonment as proposed. Based on these comments, SEA has modified its recommendations. Because most of the concerns raised in the EA have been satisfied, SEA now recommends only the imposition of a condition requiring NRI to consult with NGS and report the result of these consultations to SEA prior to the onset of salvage operations. Accordingly, we will impose the environmental condition recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

On January 4, 2006, NGPC filed a request for issuance of a NITU for the 43-mile line under the Trails Act. NGPC has submitted a statement of willingness to assume financial responsibility for the ROW and has acknowledged that use of the ROW is subject to possible future reconstruction and reactivation of the ROW for rail service, as required under 49 CFR 1152.29. By letter filed on January 26, 2006, NRI states that it is willing to convey the ROW for use as a trail under the Trails Act. Because NGPC's request complies with the requirements of 49 CFR 1152.29 and NRI is willing to enter into negotiations, we will issue a NITU for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, NRI may fully abandon the line, subject to the conditions imposed below. *See* 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that, following abandonment and salvage of the line, the ROW may be suitable for other public use. RTC and NGPC have requested imposition of a 180-day public use condition to ensure preservation of the ROW and to provide sufficient time to negotiate for the acquisition of the ROW for use of as a trail. RTC and NGPC also request that NRI be prohibited from disposing of any interest in real estate, bridges, culverts, roadbed and any potential trail-related structures other than to RTC or NGPC

for a 180-day period from the effective date of the abandonment.

Persons who request a Trails Act condition may also request a public use condition under 49 U.S.C. 10905. *See Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591, 609 (1986) (*Trails*). When both conditions are appropriate, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. RTC and NGPC have met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) The condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition, commencing from the effective date of this decision and notice, will be imposed on the line to be abandoned to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use.

If a trail use agreement is reached on a portion of the ROW, NRI must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to negotiate to acquire the ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, NRI is not required to deal exclusively with RTC and NGPC, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in *Trails*, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. *See* 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. *See* 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by NRI of the above-described line, subject to the employee protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), and subject to the conditions that NRI (1) comply with the terms and conditions for implementing interim trail use/rail banking and permitting public use negotiations as set forth below, for a period of 180 days commencing from the April 22, 2006, effective date of this decision and notice (until October 19, 2006), and (2) consult with NGS and report the result of these consultations to SEA prior to the onset of salvage operations.

2. NRI is directed to serve a copy of this decision and notice on Farmers Co-op Elevator Company of Gordon, Retzlaff Grain Co., Inc., and West Plains Grain, Inc., within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, NRI may discontinue service and salvage track and related materials. NRI shall keep intact the ROW, including bridges, culverts, roadbed and any potential trail-related structures, for a period of 180 days from the effective date of this decision and notice to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before October 19, 2006, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by October 19, 2006, interim trail use may be implemented. If no agreement is reached by that time, NRI may fully abandon the line provided the other conditions imposed in this proceeding are met.

8. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by March 31, 2006, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

9. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: ''Office of Proceedings, AB–OFA.''

10. Provided no OFA has been received, this exemption will be effective on April 22, 2006. Petitions to stay must be filed by April 7, 2006, and petitions to reopen must be filed by April 17, 2006.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), NRI shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NRI's filing of a notice of consummation by March 21, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

Decided: March 17, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–4201 Filed 3–22–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–1, Revenue Procedure 2003–3, Revenue Procedure 2001–3, Revenue Procedure 2000–3, and Revenue Procedure 2005–68

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–1, and Revenue Procedure 2003–3, Revenue Procedure 2000–1, Revenue Procedure 2000–3 and Revenue Procedure 2005–68, 26 CFR 601.201 (Rulings and Determination Letters.

DATES: Written comments should be received on or before May 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.201—Rulings and Determination Letters.

OMB Number: 1545–1522.

Revenue Procedure Number: Revenue Procedures 2003–1, 2003–3, 2000–1, 2000–3 and 2005–68.

Abstract: The information requested in these revenue procedures are required to enable the Internal Revenue Service to give advice on filing letter rulings and determination letter requests and to process such requests.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 3,800.

Estimated Time Per Respondent: 80 hours, 19 minutes.

Estimated Total Annual Burden Hours: 305,230.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4170 Filed 3–22–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
March 23, 2006

Part II

Department of Health and Human Services

Announcement of Availability of Funds for Adolescent Family Life (AFL) Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Adolescent Family Life (AFL) Demonstration Projects

AGENCY: Department of Health and Human Services, Office of the Secretary.

Funding Opportunity Title: Announcement of Availability of Funds for Adolescent Family Life (AFL) Demonstration Projects.

Announcement Type: Initial Competitive Grant.

CFDA Number: 93.995.

Key Dates: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Office of Grants Management no later than May 22, 2006. Applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the application due date. Applications will not be accepted by fax, nor will the submission deadline be extended. The application due date requirement specified in this announcement supersedes the instructions in the OPHS–1 (revised 08/2004). Applications that do not meet the deadline will be returned to the applicant unread. See heading ''APPLICATION and SUBMISSION INFORMATION'' for additional information.

Overview: The Office of Adolescent Pregnancy Programs (OAPP) of the Office of Population Affairs (OPA) requests applications for care demonstration grants under the Adolescent Family Life (AFL) Act Demonstration Projects Program, as authorized by Title XX of the Public Health Service (PHS) Act, 42 U.S.C. 300z et seq. Title XX authorizes the Secretary of Health and Human Services to award grants for care demonstration projects to provide services to pregnant adolescents, adolescent parents, and their families. Services are intended to ''enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life'' and ''to assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.'' PHS Act § 2001(b)(3)(A) and (B). In addition, Title XX demonstration projects are required to ''use such methods as will strengthen the capacity of families to deal with the sexual behavior, pregnancy, or parenthood of adolescents and to make use of support systems such as other family members [and] friends.'' PHS Act § 2003. With respect to Title XX care demonstration projects in particular, funds are awarded to develop interventions in an effort to ameliorate the effects of too-early childbearing for teen parents, their babies and their families.

The parenting and healthy relationship skills of the adolescent mothers, extended family members, fathers of their children, husbands, and/or male partners with whom they are in a long-term relationship, are important to ensuring services meet the intent of the legislation. For example, fathers of the adolescent mothers' children, husbands and/or male partners with whom the adolescent mothers are in long-term relationships can be offered case management services and an array of other services that consist of and are not limited to: career and leadership development, entrepreneurial training, tutoring and General Education Degree (GED) preparation, parenting groups, couples groups encouraging healthy relationships leading to marriage, mentoring, community service, cultural activities, and resources for employment. In addition, parents and siblings of the pregnant or parenting adolescent are encouraged to participate in various supportive services that will also help to ensure the welfare of the babies and the adolescent mother.

These grants are for public or private nonprofit organizations or agencies to demonstrate effective means of strengthening families by providing an array of services that help prevent repeat pregnancy and enhance the well being of pregnant or parenting adolescent mothers, their children, fathers of their children, husbands and/or male partners with whom they are in a long-term relationship. Faith-based and community-based organizations are encouraged to apply. See heading ''Care Services'' for additional information.

Applicants should describe current and proposed efforts to prevent the sexual coercion and exploitation of teens by older partners, as well as management and reporting that comply with State reporting laws regarding child sexual abuse, sexual assault (including statutory rape), incest, or family violence in their proposals. For more information, applicants may access the National Clearinghouse on Child Abuse and Neglect Web site at *http://nccanch.acf.hhs.gov.*

Special consideration may be granted to underserved areas and populations not currently receiving Title XX funding for care programs. The Deputy Assistant Secretary of Population Affairs (DASPA) has the discretion not to fund current Title XX care and prevention grantees. However, all applicants are required to adhere to the DASPA criteria as set forth in this announcement. If there are multiple applicants from one State, agency collaboration is encouraged. Please note, the DASPA may elect to award one grant per State.

I. Funding Opportunity Description

Care Services

Under this announcement, funds are available for *care projects only.* The project site or sites must be identified in the application rather than selected after the grant is awarded. Under the Title XX statute, the primary purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger. Care services should promote the healthy involvement of the adolescents' children, extended family members, fathers of their children, husbands, and/or male partners with whom they are in a long-term relationship. The OAPP encourages the submission of care applications which propose to: (1) Add care services to supplement existing adolescent health services in school, hospital or other community settings; (2) provide care services to underserved populations; (3) continue services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing physically, intellectually and emotionally; (4) stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training preparation and placement; (5) involve the adolescents' children, extended family members, fathers of their children, husbands and/or male partners with whom they are in a long-term relationship (e.g., through job training, parenting classes, and counseling); (6) provide education on how to build and maintain healthy relationships, prepare for marriage, parenting and future families; (7) assure identification of mental health concerns and referral to appropriate resources; and (8) provide Sexually Transmitted Infections (STI) and HIV/AIDS awareness and prevention counseling.

Applicants should justify their proposed approach by assessing current literature and describing the lack of existing programming in the community. Applicants should propose projects that will establish better coordination, integration, and linkages

among organizations with such existing programs.

Under the statutory requirements of Title XX, applicants for care projects are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of STIs, including HIV/AIDS;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of parents as the providers of sex education; and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services; and

(10) Counseling and referral for family planning services.

Note: Funds provided under Title XX may not be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community. In accordance with sec. 2006(a)(17) of Title XX (42 U.S.C. 300z-5(a)(17)), applicants must make maximum use of funds available under the Title X Family Planning Program in providing this required core service. According to the Title XX legislation (section 2006(a)(18)), ''the acceptance by any individual of family planning services or family planning information (including educational materials) * * * shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service furnished by the applicant.''

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

The applicants proposal must address how each of the ten core services and any supplemental services will be provided, either directly or by referral.

Youth Development or Developmental Assets Approach

Achieving a successful transition into adulthood for adolescents can be difficult and this is particularly so for pregnant and parenting adolescents. Research has clearly shown that future educational and economic prospects for teens decline significantly if they have a baby. Teen pregnancy is closely linked to less than optimal health outcomes for mother and infant, school dropout, lack of job skills, repeat pregnancies, poverty, and unstable home environments. To help address these multiple problems, the OAPP encourages applicants to incorporate youth development concepts into their care programs.

All adolescents need to see hope for their future, acquire the skills necessary to turn hope into reality, and be provided with opportunities to help them reach that reality. Examples of youth development activities in a care program are ones that address school retention and completion, job and vocational training, service learning, community involvement, building and maintaining healthy relationships, marriage preparation, building skills, confidence and self-efficacy, and avoiding health risks such as tobacco, alcohol, drug use, and sexual involvement. These types of activities contribute to strengthening the support systems these young parents need to achieve productive futures. Where possible, adolescents should be an integral part of the design, implementation, and evaluation of this approach. All services provided by AFL grantees, however, including all activities that are part of a youth development approach, must be within the scope of the Title XX care services listed above.

Parental, Family, and Male Involvement

Strengthening families and healthy relationship skills is a primary focus for the OAPP. In the case of adolescent parents, this includes not only providing health, educational, and social services for adolescents who are pregnant or parenting, but also finding ways to ensure the healthy involvement of their children, extended family members, fathers of their children, husbands and/or male partners with whom they are in a long-term relationship. Research has clearly shown the importance of families in the social, emotional, and intellectual growth of children and adolescents. Adolescent parents are still adolescents; they need the involvement and support of their own parents as they continue their transition to adulthood. Applicants should provide services that include the adolescents' children, extended family members, fathers of their children, husbands, and/or male partners with whom they are in a long-term relationship. The involvement of these groups is important to enhance the overall well-being and skills of these individuals within the context of a healthy family.

Goals and Objectives

The Office of Adolescent Pregnancy Programs (OAPP) has 3 cross-site performance measures for AFL Care programs: (1) Reduce the incidence of repeat pregnancies among AFL clients; (2) Increase AFL Care demonstration client conformance with recommended infant immunization schedules; and (3) Increase the educational attainment of AFL Care demonstration project clients. All grantees will be responsible for reporting on these three measures and the applicant should include a program goal(s) statement related to these outcome objectives. Additional programmatic goal(s) and objectives can be proposed, if applicable.

A goal is a general statement of what the project hopes to accomplish. It should reflect the long-term desired impact of the project on the target group(s) as well as reflect the program goals contained in this program announcement. An outcome objective is a statement which defines a measurable result the project expects to accomplish. All outcome objectives, including the performance measures above, should be described in terms that measure how project specific results will be measured. Good applications should contain the 3 OAPP performance measures listed above and no more than 3 additional objectives. Applications should ensure all proposed objectives are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.).

*S*pecific: An objective should specify one major result directly related to the

program goal, state who is going to be doing what, to whom, by how much, and in what time-frame. It should specify what will be accomplished and how the accomplishment will be measured.

*M*easurable: An objective should be able to describe in realistic terms the expected results and specify how such results will be measured.

*A*chievable: The accomplishment specified in the objective should be achievable within the proposed time line and as a direct result of program activities.

*R*ealistic: The objective should be reasonable in nature. The specified outcomes, expected results, should be described in realistic terms.

*T*ime-framed: An outcome objective should specify a target date or time for its accomplishments. It should state who is going to be doing what, by when, etc.

The Public Management Institute, How to Get Grants (1981).

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent, but not more than five percent, of the Federal funds received under Title XX on evaluation of the project. In cases in which a more rigorous or comprehensive evaluation effort is proposed, waivers of the five percent limit on evaluation may be granted by OAPP (*see* sec. 2006(b)(1)). Under this announcement, the OAPP is requesting applications for evaluation-intensive projects. For evaluation-intensive projects, the OAPP will waive the five percent limit up to a maximum of 20 percent. Evaluation plans that are not evaluation-intensive, according to the following criteria, will be scored accordingly by the external review panel.

1. The evaluation plan should be directly tied to program objectives. Research hypotheses should be clearly stated and reflect the outcomes the program intends to achieve.

2. The evaluation plan should include a process or implementation evaluation. Evaluations in their first year should focus on determining that the intervention is in place, that it is adequately and appropriately staffed, and that it is reaching its intended population.

3. The evaluation plan should have a viable comparison strategy. If a true experimental design with random assignment is not possible, a quasi-experimental design with matched comparison group would be acceptable.

4. The evaluation plan should have a sufficient sample size to ensure that any observed differences between groups are significant. The evaluation plan should propose appropriate statistical analyses.

5. The evaluation plan should measure dosage. Client participation and use of various service components should be carefully tracked so that any differences can be corrected for, or at least taken into account, in discussion of evaluation results.

6. The evaluation plan should include a follow-up assessment and longitudinal tracking of program participants during and after the intervention.

In addition, applications should clearly demonstrate the capacity to participate in a cross-site evaluation, as well as the understanding that use of a core evaluation instrument will be incorporated into the outcome evaluation design. The core instrument has specific questions that will measure the 3 OAPP performance measures. A copy of the core instrument is included in the AFL application kit and may be viewed at *http://opa.osophs.dhhs.gov.*

Section 2006(b)(2) of Title XX requires that evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluation, each grantee shall develop a working relationship with an independent evaluator associated with a college or university located in the grantee's state. This evaluator will provide monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator. It is important to establish this relationship when preparing the application to ensure that the project's goals and objectives and the evaluation plan are consistent with each other.

Curricula Review

The grantee shall submit all curricula and educational materials for use in the AFL project, whether currently available or to be developed by the grantee to the OAPP for review and approval prior to use in the project. The review shall ensure that the materials are medically accurate, consistent with Title XX policies on religion, and in compliance with the statutory prohibitions against advocating, promoting, encouraging, or providing abortions.

Note: Curricula and educational materials should be identified for this application. Review and approval of curricula and other educational materials are not done until an application is approved for funding. Successful approval of a grant application does not indicate approval of curricula and educational materials for use in a funded project.

II. Award Information

This notice announces the availability of approximately $5 million to support an estimated 13–15 new care demonstration grants, up to a maximum of $375,000 each per year. Any application that proposes funding over the maximum will not be considered. Please note, in Fiscal Year (FY) 2005, the OAPP issued a similar Request for Applications (RFA) announcing approximately $5 million for new care demonstration projects. In response to that RFA, OAPP received 216 grant applications and was able to fund only 14 new projects. Grants may be approved for project periods of up to five years, and are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

Applications are encouraged from organizations which are currently operating programs that are completing their funding cycle, if modifications are made to expand or enhance services for a new demonstration project according to the guidelines specified in this announcement. Existing or previous programs should include information regarding the evaluation outcomes of previous programs. Applications are also encouraged from organizations that have the capability to conduct a rigorous evaluation of the funded project.

III. Eligibility Information

1. Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, only those organizations or agencies which demonstrate the capability of providing the proposed services and meet the statutory requirements are considered for grant awards. Faith-based and community-based organizations are encouraged to apply for AFL grants. Please note, however, that AFL funds may not be used for inherently religious activities, such as worship, religious instruction, and proselytization. If an organization engages in such activities, they must be offered separately in time or location from the program funded under the AFL program and participation must be voluntary for program beneficiaries. An AFL program, in providing services and outreach related to program services, cannot discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a

refusal to actively participate in a religious practice.

2. Cost Sharing

Applicants funded under this announcement will be required to match federal funding provided by the OAPP. Section 2005 (c)(2) of Title XX states that an AFL grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The AFL non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment, and services. Generally, other Federal funds may not be used as matching funds. Note, however, that the PHS Grants Policy Statement 9505 (''Non-Federal Sources of Funds'') provides that: ''Unless otherwise restricted by legislation or regulation, costs used to satisfy the grantee's matching requirements may be financed from * * * Funds derived either directly or indirectly from Federal sources which are received as fees, payments, or reimbursements for the provision of a specific service, such as patient care reimbursements received under Medicare or Medicaid.''

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested from, and submitted to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, 240–453–8822. Application kits are also available online at the electronic grants management Web site (e-Grants) at *https://egrants.osophs.dhhs.gov/* and Grants.Gov at *http://www.grants.gov.* Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the application kit at 240–453–8823.

2. Content and Form of Application

In preparing the application, it is important to follow ALL instructions and public policy requirements provided in the application kit. Applications must be submitted on the forms supplied (OPHS–1, Revised 08/2004) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The program narrative must be printed on 8½ by 11 inch white paper, with one-inch margins, double-spaced with an easily readable 12-point font. All pages must be numbered sequentially not including appendices and required forms. The program narrative should not be longer than 50 double-spaced pages, not including appendices and required forms. All pages, figures, and tables *must* be numbered sequentially. Do not staple or bind the application package. Use rubber bands or binder clips.

The narrative description of the project must contain the following:

One-page Summary: Briefly provide a statement of the proposed demonstration project indicating that this is a CARE demonstration project and whether it is for a local or statewide project; Type of organization applying (school, state agency, voluntary agency, etc.); Geographic area to be served (urban, rural, suburban); Description of target population to be served; Statement of the program intervention; Brief description of the proposed project.

- *Description of Applicant Organization:* Describe the decision-making authority and structure (*e.g.* relationship to the Board of Directors), its resources, experience, existing program units and/or those to be established if funding is obtained. This description should cover personnel, time and facilities and contain evidence of the organization's capacity to provide the rapid and effective use of resources needed to conduct the project, collect necessary data and evaluate it.
- *Rationale:* Describe the rationale for use of the proposed approach based upon previous practice and review of the literature and/or evaluation findings.
- *Geographic Area:* Describe the geographic area to be served. Document the incidence of adolescent pregnancy, and describe economic conditions, income levels, existing services and unmet needs in the proposed service area.
- *Program Outcome Objectives:* Provide a clear statement of results or benefits expected that are consistent with the OAPP performance measures. Objectives should be specific, measurable, achievable, realistic, and time-framed.
- *Care Services Demonstration Model:* Describe the program, including how services will continue to be provided to clients after the birth of the child to enable parents to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally. Describe how the applicant will add care services to supplement existing adolescent health services in a school, hospital or other community setting. Describe how the applicant will provide directly, or by referral, each of the required ten core services and any supplemental services as appropriate. As appropriate, state how the project will be coordinated, integrated and linked to existing services within the service area. Describe case management and follow-up procedures. Describe the population, recruitment methods and selection criteria. Describe how the applicant will as appropriate, involve families, voluntary associations, religious and charitable organizations and other groups in the private sector.
- *Workplan and Timetable:* Provide a year long work plan and timetable, which spans at least three years of program implementation.
- *Numbers and Types of Clients:* Provide estimates of clients expected to be served during the first year (e.g. adolescent mothers, extended family members, fathers of their children, husbands, and/or male partners with whom they are in a long-term relationship).
- *Documentation of Support:* Provide a summary of the views of public agencies, providers of services and the general public in the geographical area to be served. Provide documentation of the support from other community agencies.
- *Continuation Funding:* Describe the plan regarding continuation of services at the termination of this Federal funding.
- *Evaluation Plan:* The evaluation plan must clearly articulate the program interventions and/or processes to be tested; theory upon which the program intervention is based; proposed questions/hypotheses the evaluation will address; instruments, including information regarding reliability and validity of instruments; sampling plan and data collection schedule; data analysis plan, including statistical tests. Describe how the evaluation is consistent with the program, particularly how data will be used for mid-course corrections and ongoing program improvements. Discuss how the evaluator will ensure confidentiality of the data. Describe the qualitative methodology planned and how it will be integrated with the required quantitative design. Describe how the data will be collected.
- *Appendices:* Include articles of incorporation and mission statement for private nonprofit organizations. Resumes of key staff and detailed

position descriptions. How the project will obtain parental consent. Letters of commitment and support from other providers. Provide evidence of a working agreements with an evaluator affiliated with a college or university located in the applicant's State. The entities to be involved in the evaluation must be identified, their willingness to participate documented, their role (s) described and their capability documented by an attached curriculum vitae. Provide a copy of the table of contents of the proposed curriculum, plus a list of any other instructional materials that will be an integral part of the proposed project.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps necessary to obtain one. Instructions for obtaining a DUNS number are included in the application package, and may be downloaded from the OPA Web site.

3. Submission Dates, Times and Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Website Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the DATES section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible. Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the OPHS eGrants System

The Grants.gov Website Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Website Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Website Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Website Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Website Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Website Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Website Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Website Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Website Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Website Portal.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov*, or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form

424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

Applications for AFL grants must meet both of the following requirements (each year):

(1) Requirements for Review of an Application by the Governor. Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant. An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements). Applications under this announcement are subject to the review requirements of E.O. 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. Information about the SPOC is located on the OMB Web site *http://www.whitehouse.gov/omb/grants/spoc/html.* The SPOC's comment(s) should be forwarded to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. The SPOC has 60 days from the closing date of this announcement to submit any comments.

5. Funding Restrictions

Budget Request: If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Grant funds may be used to cover costs of: Personnel, consultants, equipment, supplies, grant-related travel, and other grant-related costs. Grant funds may not be used for: building alterations or renovations, construction, fund raising activities, and political education and lobbying. Guidance for completing the application can be found in the Program Guidelines, which are included with the complete application kits.

Applicants for discretionary grants are expected to anticipate and justify their funding needs and the activities to be carried out with those funds in preparing the budget and accompanying narrative portions of their applications. The basis for determining the allowability and allocability of costs charged to Public Health Service (PHS) grants is set forth in 45 CFR parts 74 and 92. If applicants are uncertain whether a particular cost is allowable, they should contact the OPHS Office of Grants Management at 240–453–8822 for further information.

6. Other Submission Requirements

Organizations applying for funds under the AFL Demonstration Projects Program must submit documentation of nonprofit status with their applications. If documentation is not provided, the applicant will be considered non-responsive and will not be entered into the review process. The organization will be notified that the application did not meet the submission requirements.

Any of the following serves as acceptable proof of nonprofit status:

- A reference to the applicant organization's listing in the Internal Revenue Service (IRS) most recent listing of tax-exempt organizations described in section 501(c)(3) of te IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taking body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net

earnings accrue to any private shareholders or individuals.

- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.
- Any of the above proof for a State or national organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

V. Application Review Information

1. Criteria

Eligible competing grant applications will be reviewed by a multi-disciplinary panel of independent reviewers and will be assessed according to the following criteria:

(1) The applicant's presentation of a detailed evaluation plan that indicates an understanding of program evaluation methods, reflects a practical and technically sound approach to assessing both the project's implementation and its outcomes, demonstrates the capacity to participate in a cross-site evaluation, and the intent to incorporate the AFL core evaluation instrument into the outcome evaluation design. The applicant's provision of a clear statement of mission, goals, measurable (outcome) objectives, reasonable methods for achieving the objectives. Evaluation activities are included in the proposed workplan and timetable. (30 points)

(2) The applicant's presentation of an organizational model for service delivery with appropriate design, including all 10 core services with the requirements of Title XX. Any supplemental services listed under the above subtitle ''Care Services'' are also discussed. All services proposed in this part of the project are addressed within an innovative youth development or developmental assets approach. A reasonable workplan and timetable are included. (20 points)

(3) The applicant's presentation of the need for the project, including the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents within this geographic area. [Healthy People 2010 is a set of health objectives for the Nation to achieve over the first decade of the new century; one goal is to eliminate health disparities. In evaluating this criterion, priority will be given to programs which serve underserved populations.] (10 points)

(4) The applicant's presentation of an innovative, detailed, and viable plan to recruit and retain involvement of the adolescents' children, extended family members, fathers of their children, husbands and/or male partners with whom they are in a long-term relationship. This plan should also include innovative strategies for building healthy relationships, marriages, and families. (10 points)

(5) The capacity of the applicant to implement the program, including personnel and other resources, and the applicant's experience and expertise in providing programs for adolescents, including management and reporting of sexual exploitation and coercion of teens. (10 points)

(6) The population the project proposes to serve including number and type of clients to be served. The applicant must specify how program staff demonstrate responsiveness to the population it serves. (10 points)

(7) The community commitment to, and involvement in, planning and implementation of the project, as demonstrated by letters of commitment and willingness to participate in the project's implementation, acceptance of referrals, etc. (10 points)

2. Review and Selection Process

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs (DASPA). In making these decisions, the DASPA will take into account the extent to which applications recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and other factors including:

(1) Recommendations and scores of applications submitted by the review panels;

(2) The geographic area to be served, particularly the underserved areas and populations;

(3) The reasonableness of the estimated cost of the project based on factors such as the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents in this geographic area;

(4) The adequacy of the evaluation plan, including incorporation of the six evaluation criteria listed in the ''Evaluation'' section of this announcement, and the demonstrated ability to participate successfully in a cross-site evaluation.

Special consideration may be granted to underserved areas and populations not currently receiving Title XX funding for care programs. The DASPA has the discretion not to consider, for this announcement, current Title XX care and prevention grantees who are already funded under the Title XX program. However, all applicants are required to adhere to the DASPA criteria as set forth in this announcement. If there are multiple applicants from one State, agency collaboration is encouraged. Please note, the DASPA may elect to award one grant per State.

3. Anticipated Announcement and Award

The OAPP anticipates announcing and awarding grantees under this announcement by September 30, 2006.

VI. Award Administration Information

1. Award Notices

The OAPP does not release information about individual applications during the review process until final funding decisions have been made. When final funding decisions have been made, the applicant's authorized representative will be notified of the outcome of their application by postal mail. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award signed by the Grants Management Officer, which specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

2. Administrative and National Policy Requirements

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html*.

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting

Applicants funded under this grant announcement will be required to electronically submit an End-of-Year Program, Evaluation and Financial report 90 days after the grant budget period ends.

VII. Agency Contacts

Administrative and Budgetary Contacts Requirements

For information related to administrative and budgetary requirements, contact the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; 240–453–8822.

Program Contacts Requirements

For information related to the OAPP program requirements, the OAPP staff are available at 240–453–2828 to answer questions and provide technical assistance on the preparation of grant applications. Questions may also be directed to the OAPP staff via e-mail at *http://oapp@osophs.dhhs.gov*. If contacting the OAPP by e-mail, please include the phrase ''AFL Care Question'' in the subject heading.

VIII. Other Information

Protection of Human Subjects Regulations

The applicant must comply with the HHS Protection of Human Subjects regulations (which require obtaining Institutional Review Board approval), set out at 45 CFR part 46, if applicable. General information about Human Subjects regulations can be obtained through the Office for Human Research Protections (OHRP) at *http://www.hhs.gov/ohrp*, *ohrp@osophs.dhhs.gov*, or toll free at (866) 447–4777.

Technical Assistance

The OAPP is committed to providing technical assistance to help prospective applicants at no cost. The OAPP anticipates offering both in-person technical assistance workshops at three locations across the country, and an interactive on-line workshop to provide such assistance through a teleconference. These one-day workshops will assist the public in learning more about the purposes and requirements of the Title XX program, the application process, budgeting information, and considerations that might help to improve the quality of grant applications. The OAPP encourages applicants to have appropriate agency staff members and a financial representative participate in the workshop. In order to participate in the teleconferencing workshop, participants must have a computer with internet access and a telephone. Participants will be able to ask questions and receive pertinent feedback during this workshop via the computer.

With respect to both the in-person and interactive on-line workshops, applicants should check the OPA website for workshop and registration information. All participants *must pre-register* for the workshops. Participants may pre-register on-line at *http://www.est-oappta.com*. Participants that do not have access to the Internet may call Enterprise Services and Technologies, Incorporated, the technical assistance contractor for the OAPP at 301–585–6046 to request a registration form. Completed registration forms should be faxed to ATTN: OAPP RFA Workshop at 301–941–1847, or you may insert OAPP RFA Workshop into the subject line and e-mail the form to *a.suggs@ent-s-t-com*. Upon receipt of the applicant's request, the specific workshop information and logistical information will be faxed or emailed for the workshop specified by the participant. The OAPP anticipates conducting the in-person technical workshops in April 2006. Applicants should visit the OPA website for further information on dates and times. The interactive on-line workshop will be conducted live by May 26, 2006. If a prospective applicant cannot attend the live interactive on-line workshop, the transcripts of the workshop will be available on-line at *http://opa.osophs.dhhs.gov* until the closing date of this announcement.

Annual Conference and Training

Each year, the OAPP hosts an annual grantee conference for care grantees. The Project Director and Evaluator are expected to attend and/or participate in the annual conference. In addition, the OAPP offers technical assistance and training to improve the caliber and professionalism of front-line staff. The Project Director, Evaluator and front-line staff are expected to participate in OAPP sponsored technical assistance workshops.

Dated: March 9, 2006.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 06–2804 Filed 3–22–06; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.J. Res. 47/P.L. 109–182

Increasing the statutory limit on the public debt. (Mar. 20, 2006; 120 Stat. 289)

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