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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 04–082–2]

Importation of Christmas Cactus and Easter Cactus in Growing Media From the Netherlands and Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants and plant products by adding Christmas cactus (*Schlumbergera* spp.) and Easter cactus (*Rhipsalidopsis* spp.) from the Netherlands and Denmark to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. We are taking this action in response to requests from the Netherlands and Denmark and after determining that Christmas cactus and Easter cactus established in growing media can be imported without resulting in the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This change will allow Christmas cactus and Easter cactus established in growing media to be imported into the United States from the Netherlands and Denmark under certain conditions.

DATES: *Effective Date:* May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Staff Officer, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in ''Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

The regulations currently allow the importation of Christmas cactus (*Schlumbergera* spp.) and Easter cactus (*Rhipsalidopsis* spp.) from all countries of the world, provided that the plants are (1) free of sand, soil, earth, and other growing media, (2) accompanied by phytosanitary certificate of inspection, (3) imported under a permit issued by the Animal and Plant Health Inspection Service (APHIS), and (4) imported into a Federal plant inspection station listed in § 319.37–14(b), where they are subject to inspection by APHIS. Such plants are imported bare-rooted or as rootless cuttings into the United States, and are rooted and/or potted for sale by U.S. nurseries.

In 1994, the governments of the Netherlands and Denmark requested that APHIS consider amending the regulations to allow Christmas cactus and Easter cactus to be imported into the United States established in growing media under the provisions of § 319.37–8(e). These countries currently export cuttings and bare-rooted Cactaceae plants to the United States.

Under § 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. The Secretary has determined that it is not necessary to prohibit the importation of Christmas cactus and Easter cactus from the Netherlands and Denmark that are established in an approved growing medium in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings of pest risk analyses and the Secretary's judgment that the application of the measures required under § 319.37–8(e) will prevent the introduction or dissemination of plant pests and noxious weeds into the United States.

Accordingly, on April 27, 2005, we published in the **Federal Register** (70 FR 21679–21682, Docket No. 04–082–1) a proposal [1] to amend the regulations governing the importation of plants and plant products by adding Christmas cactus (*Schlumbergera* spp.) and Easter cactus (*Rhipsalidopsis* spp.) from the Netherlands and Denmark to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. We solicited comments concerning our proposal for 60 days ending June 27, 2005. We received three comments by that date. They were from growers and a nursery association. The comments are discussed below.

One commenter stated that the importation of Christmas cactus and Easter cactus in growing media should be prohibited because it could result in the introduction of a quarantine pest. The commenter said that any potential for introduction of any pest should be ruled out before a plant in growing media is allowed entry. Another commenter stated that there may be pests or disease organisms on plants that are not known at this time and, therefore, are not addressed by the growing, inspection, and certification requirements of the regulations.

The purpose of conducting an analysis of the risk posed by imported agricultural commodities is to evaluate available scientific evidence and to provide an evaluation of the risks associated with the importation of those commodities and the measures available to mitigate any identified risks. APHIS can only make a determination as to whether or not to allow the importation of a particular commodity based on the current state of scientific knowledge. In this case, we worked closely with the Netherlands and Denmark to develop the lists of pests that are analyzed in the

[1] To view the proposed rule, pest risk analyses, and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0040, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

pest risk analyses. We also consulted applicable scientific literature and reviewed APHIS records to determine what pests have been intercepted on imported Christmas cactus and Easter cactus.

While we do not believe there is a shortage of appropriate scientific information in this specific case, if APHIS were to regulate the trade of agricultural commodities based on the risk posed by unknown factors, such an action could be viewed as being arbitrary and contrary to the international trade agreements to which the United States is a signatory, which could potentially affect the export markets for our own domestically produced commodities. Under the Plant Protection Act, APHIS protects American agriculture while facilitating the trade of agricultural commodities. There is always some uncertainty associated with the risk posed by imported agricultural products, and if zero risk were the standard applied, there would likely be no international trade in agricultural products. While we can never be certain that our methods, regulations, and policies will exclude pests 100 percent of the time, our goal is to do just that, to the extent practicable. We are confident that the measures required under this rule appropriately address the risks associated with Christmas cactus and Easter cactus imported from the Netherlands and Denmark in approved growing media. Our judgment is supported by the fact that bare-rooted Christmas cactus and Easter cactus and the growing media in which they will be imported have separately been imported from the Netherlands and Denmark with no known associated pest problems. Given that the plants in growing media will be subject to a number of additional requirements that do not apply to bare-rooted plants, we believe that the risk posed by known and unknown pests is appropriately reduced, to the extent practicable, by the measures in § 319.37–8(e).

One commenter stated that the use of clean stock and phytosanitary greenhouse production programs do not always provide effective control of *Fusarium* diseases. The commenter noted that one of the two major growers from the Netherlands has admitted to having difficulty controlling this disease on both Christmas cactus and Easter cactus. The commenter stated that, if the disease was introduced in the United States, there is no guarantee it could be eradicated and that domestic growers, which tend to be small operations, are more vulnerable to the loss of their stock as a result of the introduction of pests or diseases and would bear the financial burden of any quarantine. Another commenter stated that *Fusarium* is more prevalent and active in warm weather. The commenter suggested that APHIS require that plants be rooted and grown for a minimum of 6 consecutive months so that the plants would be growing during favorable conditions for at least a portion of their life.

In the pest risk analysis titled ''Importation of Christmas Cactus, *Schlumbergera* spp., and Easter Cactus, *Rhipsalidopsis* spp., in APHIS Approved Growing Media into the United States From Denmark,'' APHIS determined that there are no quarantine pests that follow the import pathway on Christmas cactus and Easter cactus from Denmark. The pest risk analysis concluded that the safeguards in § 319.37–8(e) will effectively remove any pests from the import pathway and allow the safe importation of Christmas cactus and Easter cactus from Denmark.

In the pest risk analysis titled ''Importation of Christmas Cactus, *Schlumbergera* spp., and Easter Cactus, *Rhipsalidopsis* spp., in APHIS Approved Growing Media into the United States From the Netherlands,'' APHIS identified one quarantine pest that could potentially follow the import pathway on Christmas cactus and Easter cactus from the Netherlands: *Fusarium oxysporum* Schlechtend. f. sp. *opuntiarum* (Pettinari) Gordon (Fungi Imperfecti: Hypomycetes). The pest risk analysis concluded that the safeguards in § 319.37–8(e) would effectively remove that and other pests from the import pathway and allow the safe importation of Christmas cactus and Easter cactus from the Netherlands. The pest risk analysis notes that the characteristic above-ground symptoms of the cladophyll rot caused by *Fusarium oxysporum* are relatively easy to identify; should signs of infection be detected during any of the several inspections required under the regulations, the plants would be ineligible for importation into the United States and remedial measures to ensure that the place of production is free from quarantine pests would have to be applied.

One commenter stated that there are not enough safeguards in place to protect domestic growers from the inadvertent entry of an unwanted pest. The commenter recommended that, at a minimum, the cacti be subject to postentry quarantine with multiple inspections by APHIS for 1 year before release. Another commenter stated that APHIS should require a postentry quarantine period of at least 4 months with inspections upon entry and before the movement or sale of the plants.

We are confident that the measures contained in § 319.37–8(e) will mitigate the risks posed by Christmas cactus and Easter cactus imported in growing media from the Netherlands and Denmark. Among other things, the plants will be required to be propagated from clean mother stock, grown in approved growing media, watered with clean water sources, grown in greenhouses that meet certain requirements for pest exclusion, and grown in those greenhouses for a minimum of 4 months prior to importation into the United States. In addition, the plants will be required to be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants. The effectiveness of these measures renders postentry risk management, other than inspection, unnecessary.

One commenter stated that the proposed rule does not preclude a grower from growing the plants in another country that has lower labor costs and bringing them back to the exporting country close to the shipping date, which could result in the introduction of pests. The commenter stated that APHIS must specify where the plants must be grown.

Among other things, the regulations specifically require that articles imported in growing media under the provisions of § 319.37–8(e):

- Must be developed from mother stock that was inspected and found free from evidence of disease and pests by an APHIS inspector or foreign plant protection service inspector no more than 60 days prior to the time the article is established in the greenhouse (except for articles developed from seeds germinated in the greenhouse);
- Must be grown solely in a greenhouse in which sanitary procedures adequate to exclude plant pests and diseases are always employed;
- Must be rooted and grown in an active state of foliar growth for at least 4 consecutive months immediately prior to importation into the United States in a greenhouse unit that is used solely for articles grown in compliance with the regulations; and
- Must be grown from seeds germinated in the greenhouse unit or descended from a mother plant that was grown for at least 9 months in the exporting country prior to the importation into the United States of the descendent plants or, if the mother plant was imported into the exporting country from another country, it must be grown for at least 12 months in the

exporting country prior to importation of the descendent plants into the United States, or treated at the time of importation into the exporting country with a treatment prescribed for pests of that plant by the plant protection service of the exporting country and then grown for at least 9 months in the exporting country prior to importation of the descendent plants into the United States.

Therefore, if plants were grown in another country then brought back to the exporting country shortly before the shipping date as the commenter describes, those plants would not be eligible for importation in growing media under the provisions of § 319.37–8(e).

Two commenters noted that the European Community employs a plant passport system to facilitate the movement of plants among member countries. The commenters stated that they were concerned that the movement of plants among European countries could introduce an unknown pest or disease into Denmark or the Netherlands that was not taken into account by APHIS in its risk analyses, and that such a pest could then be introduced into the United States. One of the commenters was concerned that there may not be adequate safeguards in the plant passport system to ensure that unidentified pests and diseases are detected, while the other commenter stated that APHIS must conduct a risk analysis for pests of Christmas cactus and Easter cactus from each of the countries participating in the European Community's plant passport system.

The plant passport referred to by the commenters is a document that travels with a consignment of plants for planting from their place of production and serves to certify that the material comes from an officially registered producer whose premises are subject to regular plant health inspection by an official plant protection agency to ensure freedom from quarantine pests and diseases. Thus, the plant passport system provides safeguards against the movement of quarantine pests into the Netherlands and Denmark. We note that each of the pest risk analyses prepared for this rulemaking included a pest list for *Schlumbergera* and *Rhipsalidopsis* spp. that, while not comprehensive for all pests of *Schlumbergera* and *Rhipsalidopsis* for all countries in Europe, was intended to identify potential pests that may move into the Netherlands and Denmark from other European countries on *Schlumbergera* and *Rhipsalidopsis* plants moving under the European Community Plant Passport System.

Moreover, though, the provisions of § 319.37–8(e) regarding the origin requirements for seeds and mother plants that are described in the response to the previous comment ensure that the plants eventually offered for importation into the United States are descended from stock that has been found to be free of pests and diseases, and the conditions under which those plants must be grown serve to safeguard them from infestation or infection during their pre-export growth period.

One commenter asserted that the economic analysis is based on out-of-date data from 1998. The commenter stated that APHIS should use more current data to determine the economic impact of the proposed rule.

The economic analysis in the proposed rule cited national data on the volume and sales value of potted and hanging baskets of flowering plants of Christmas cactus and Easter cactus obtained from the National Agricultural Statistics Service.[2] These data are from the 1998 Census of Horticultural Specialties, reported as part of the 1997 Census of Agriculture. Although the 2002 Census of Agriculture represents a more recent source, the information from the 1998 Census of Horticultural Specialties regarding Christmas cactus and Easter cactus has apparently not been updated for the 2002 Census. Therefore, the 1998 data cited in the proposed rule represent the most recently available national data from published sources regarding domestic Christmas cactus and Easter cactus production.

Another commenter stated that plants in media should not be allowed for importation into the United States because U.S. growers will not be able to effectively compete due to lower production costs in other countries.

Determinations as to whether a new agricultural commodity can be safely imported are based on the findings of pest risk analyses, not on factors such as economic competitiveness. APHIS is bound under international trade agreements to remove restrictions on trade when such restrictions are found by scientific analysis to be unnecessary. In this case, we have conducted pest risk analyses that found that all quarantine pests associated with Christmas cactus and Easter cactus from the Netherlands and Denmark are effectively removed from the import pathway by the measures required under § 319.37–8(e). Based on these analyses, the Secretary of Agriculture has determined that it is not necessary to prohibit the importation of Christmas cactus and Easter cactus from the Netherlands and Denmark in approved growing media.

Two commenters claimed that the proposed rule will have a significant impact on a large number of small growers. One of these commenters stated that APHIS did not provide any data to support the statement that few local growers specialize in the production of Christmas cactus and Easter cactus and these growers should be able to compete in the market due to the size and quality of their product. The commenter noted that there are relatively few plants that can be marketed during the Christmas season and, therefore, most growers ''specialize'' in growing these plants, mainly poinsettias and Christmas cactus, for the holiday season.

With the term ''specialize,'' APHIS meant to indicate growers specializing in the production of Christmas cactus and Easter cactus to the exclusion of other genera. There are a number of small growers who include these plants in their production systems along with other plants. The impact of competition in one commodity in a multiple-commodity system would be less than for a grower specializing in this one commodity alone. Given that Christmas cactus and Easter cactus represent only a small fraction of total domestic sales of potted flowering plants and the information available to us indicating that few growers specialize in the production of Christmas cactus and Easter cactus to the exclusion of other genera, we do not expect significant effects on the overall supply and price of potted flowering plants sold in the United States or a resulting significant economic impact on a large number of small entities.

One commenter stated that the economic analysis in the proposed rule failed to mention that the two largest growers of Christmas cactus and Easter cactus in the world are seeking access to the U.S. market. The commenter claimed that the economic analysis is flawed because it does not include this information. The commenter recommended that the economic analysis look at the volume of product produced by those companies, instead of the number of companies that would potentially participate in this program. The commenter noted that the volume of plants grown by each of these two companies dwarfs the total amount grown by all U.S. growers combined.

The economic analysis in the proposed rule stated that because Christmas cactus and Easter cactus

[2] Source: *http://www.nass.usda.gov/census/census97/horticulture*, tables 8 and 10. Holiday cacti are reported as *Zygocactus/Schlumbergera*.

comprise a small fraction of the domestic supply of potted flowering plants and relatively few producers in the Netherlands and Denmark are expected to be involved in the program, no significant change in supply and price is expected. One commenter claims that this conclusion is faulty. The commenter stated that the analysis should be based on the size of the U.S. market, the number of domestic growers producing the commodities, and how well the market is served. In addition, the analysis should take into account the size of the producers in the Netherlands and Denmark. This information would show whether there would be a significant change in supply and price if the proposed rule is approved.

The above two comments are addressed in the response below. APHIS does not have information regarding the volume of Christmas cactus and Easter cactus in media that will be imported under this program. However, these plants have been imported in bare-root form and as rootless cuttings for many years. The imported bare-rooted plants and cuttings are used by U.S. growers to establish their own plants. Imports may fluctuate from year-to-year based on market factors such as expected demand for the product and the availability of the propagative material for producing the final product. From October 2004 to September 2005, a volume of 2,853,832 plant units of bare-rooted Christmas cactus and Easter cactus was imported into the United States (APHIS Import Database, 2004/2005). ''Plant units'' refer to individual plants or plant pieces. Ninety-nine percent of the plant units were imported from the Netherlands and Denmark, and only 1 percent from other countries.

APHIS does not have published domestic sales data for Christmas cactus and Easter cactus for 2004/2005 to compare to the above mentioned import data. As mentioned previously, the most recently available published data are from the 1998 Census of Horticultural Specialties, as presented in table 1 of the economic analysis (see ''Executive Order 12866 and Regulatory Flexibility Act'' below). The prediction of exact outcomes regarding supply and price would therefore be precluded in view of the limited availability of data on domestic supply and elasticities for Christmas cactus and Easter cactus. However, given the small fraction of total domestic sales of potted flowering plants that Christmas cactus and Easter cactus represent, APHIS does not expect significant effects on the overall supply and price of potted flowering plants sold in the United States.

Furthermore, it should be emphasized that APHIS regulates based on phytosanitary concerns, and not market competitiveness. Pest risk assessments by APHIS have determined that Christmas cactus and Easter cactus established in approved growing media and imported under the conditions in § 319.37–8(e) will not result in the introduction and dissemination of a plant pest or noxious weed into the United States.

The alternative to this rule would be to continue the current practice of importing only bare-rooted Christmas cactus and Easter cactus from the Netherlands and Denmark. The benefit of this rule is to provide exporters with the option of shipping rooted cuttings with some growing media attached as an alternative to the current bare-root process, which allows the plants established from these cuttings to be marketable sooner. The bare-root process requires the removal of all media from the roots, which may cause considerable damage to the plant. Importing the plants in growing media will therefore shorten the time required to establish plants from these cuttings, and avoid the damage caused to the plants by the process of removing the growing media from the roots.

All three commenters noted that APHIS has initiated a comprehensive review of its regulations regarding the importation of nursery stock and suggested that it was ill-advised or premature to be considering amendments to those regulations prior to the completion of that review and the codification of any changes deemed necessary as a result of the review.

As stated earlier in this document, our determination as to whether a particular commodity can be safely imported is based on our consideration of the risks associated with that commodity. In this case, we have conducted pest risk analyses that found that all quarantine pests associated with the importation of Christmas cactus and Easter cactus in growing media from the Netherlands and Denmark are effectively removed from the import pathway by the measures required under § 319.37–8(e). Based on these analyses, the Secretary of Agriculture has determined that it is not necessary to prohibit the importation of Christmas cactus and Easter cactus from the Netherlands and Denmark in approved growing media. APHIS is bound under international trade agreements to remove technical barriers to trade in the event that such barriers are found by scientific analysis to be unnecessary. Given this finding, we do not believe it is appropriate to delay publication of this final rule until we have completed the review of the nursery stock regulations.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Miscellaneous

In this final rule, we are making a nonsubstantive editorial change to § 319.37–8(e). Specifically, we are correcting the numbering of a footnote and amending the text of that footnote to reflect the current numbering of the preceding footnote.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations governing the importation of plants and plant products by adding Christmas cactus (*Schlumbergera* spp.) and Easter cactus (*Rhipsalidopsis* spp.) from the Netherlands and Denmark to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. This change will allow Christmas cactus and Easter cactus established in growing media to be imported into the United States from the Netherlands and Denmark under certain conditions.

The United States is a net importer of live trees and plants. Imports of these products were valued at $843.8 million in 2003. In 2003, $147.1 million worth of live trees and plants were imported from the Netherlands, which accounted for 17 percent of all U.S. imports of these products. The value of live trees and plants imported into the United States from Denmark amounted to $1.1 million. Total imports of unrooted cuttings and slips into the United States were valued at $39.4 million in 2003; the value of unrooted cuttings and slips imported from the Netherlands and Denmark amounted to $0.9 million and $0.8 million, respectively (Source: World Trade Atlas, 2004).

The value of live trees and plants exported from the United States amounted to $196.4 million in 2003. The Netherlands was the second largest importing country. Exports of live trees and plants from the United States to the Netherlands amounted to $33.9 million, and the value of live trees and plants exported to Denmark was $0.3 million. U.S. exports of unrooted cuttings and slips were valued at $10.8 million in 2003, with $0.2 million of the exports

going to the Netherlands and no exports to Denmark (Source: World Trade Atlas, 2004).

According to the 1998 Census of Horticultural Specialties, the value of potted *Zygocactus* and *Schlumbergera* [3] plants sold in the United States amounted to $5 million in 1998, and the sales value of hanging baskets of these plants was $680,000 (table 1). *Zygocactus* and *Schlumbergera* represented a small proportion of the potted flowering plant industry in the United States. Less than 4 percent of the operations selling pots and hanging baskets of potted flowering plants in 1998 sold these plants, which accounted for only 0.9 percent of the number of potted plants sold and for only 0.6 percent of the sales value. Similarly, *Zygocactus* and *Schlumbergera* accounted for only 4.1 percent of the number and 3.4 percent of the sales value of hanging baskets of potted flowering plants. A wide variety of potted flowering plants are sold in the United States.

TABLE 1.—POTS AND HANGING BASKETS OF POTTED FLOWERING PLANTS OF ZYGOCACTUS AND SCHLUMBERGERA SOLD IN THE UNITED STATES (1998)

Item	Number of operations	Volume and value of sales			
		Total		Wholesale	
		Number (1,000)	Sales value ($1,000)	Number (1,000)	Sales value ($1,000)
Potted plants:					
Zygocactus/Schlumbergera	175	2,386	$5,332	2,248	$4,953
All potted flowering plants	5,008	251,684	848,086	234,164	710,386
Zygocactus/Schlumbergera as a percentage of all	3.5%	0.9%	0.6%	1.0%	0.7%
Hanging baskets:					
Zygocactus/Schlumbergera	57	109	$680	108	$671
All potted flowering plants	1,514	2,676	20,044	2,251	14,962
Zygocactus/Schlumbergera as a percentage of all	3.8%	4.1%	3.4%	4.8%	4.5%

Source: Census of Horticultural Specialties (1998, *http://www.nass.usda.gov/census/census97/horticulture/horticulture.htm*).

The Regulatory Flexibility Act requires agencies to specifically consider the economic impact of their rules on small entities. As determined by the Small Business Administration, the small entity size standard for floriculture production (North American Industry Classification System [NAICS] code 111422) is $750,000 or less in annual receipts. Flower, nursery stock, and florists' supplies merchant wholesalers (NAICS code 424930) are considered to be small if they employ 100 or fewer individuals (*http://www.census.gov/naics*, *http://www.sba.gov*).

Table 1 shows the number of operations involved in growing Christmas cactus and Easter cactus plants in the United States in 1998. There were 175 operations involved in producing pots and 57 operations involved in producing hanging baskets of potted flowering plants of *Zygocactus* and *Schlumbergera*. Over 90 percent of the plants were sold through wholesale outlets. However, information is not available regarding the size of these grower operations or sales outlets. The number of either small or large entities that could be affected by the rule can therefore not be determined at present.

However, few growers in the United States specialize in the exclusive production of Christmas cactus and Easter cactus. A number of small growers include these plants in their production systems along with other plants. The impact of competition in one commodity in a multiple-commodity system would be less than for a grower specializing in this one commodity alone. U.S. producers should be able to compete in the market due to the size and quality of their product. Growers from the Netherlands and Denmark also have to incur additional shipping costs and phytosanitary compliance costs when shipping to the United States.

The rule will likely benefit importers and consumers in the United States. Importing the plants in growing media will shorten the time required to establish plants from these cuttings, and avoid the damage caused to the plants by the process of removing the growing media from the roots. Consumers will likely benefit from an increased availability of the plants.

Given the small fraction that Christmas cactus and Easter cactus comprise of total domestic sales of potted flowering plants (table 1), APHIS does not expect significant effects on the overall supply and price of potted flowering plants sold in the United States. Furthermore, it should be emphasized that APHIS regulates based on phytosanitary concerns, and not market competitiveness. Pest risk assessments by APHIS have determined that Christmas cactus and Easter cactus from the Netherlands and Denmark established in approved growing media and imported under the conditions in § 319.37–8(e) will not result in the introduction and dissemination of a plant pest or noxious weed into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows *Schlumbergera* spp. and *Rhipsalidopsis* spp. plants to be imported in approved growing media into the United States from the Netherlands and Denmark. State and local laws and regulations regarding imported *Schlumbergera* spp. and *Rhipsalidopsis* spp. plants will be preempted while the plants are in foreign commerce. Potted plants are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

[3] *Zygocactus* is an older synonym of *Schlumbergera*. Taxonomically, Easter cactus was classified in the genus *Schlumbergera*; today it is classified in the genus *Rhipsalidopsis*.

National Environmental Policy Act

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

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

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0266.

Government Paperwork Elimination Act Compliance

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

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

§ 319.37–8 [Amended]

■ 2. Section 319.37–8 is amended as follows:

■ a. In the introductory text of paragraph (e), by removing the period after the word ''*Saintpaulia*'' and by adding, in alphabetical order, entries for ''*Rhipsalidopsis* spp. from the Netherlands and Denmark'' and ''*Schlumbergera* spp. from the Netherlands and Denmark.''.

■ b. By redesignating footnote 11a as footnote 11 and, in the text of newly redesignated footnote 11, by removing the words ''footnote 11'' and adding the words ''footnote 10'' in their place.

■ c. By adding, at the end of the section, the following OMB control number citation: ''(Approved by the Office of Management and Budget under control number 0579–0266)''.

Done in Washington, DC, this 27th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–3126 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–34–P

[4] Go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0040, click on ''Submit,'' then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH37

Transfer of Sugar Program Marketing Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the sugar program regulations of the Commodity Credit Corporation (CCC). The provisions for transferring sugar marketing allocation when a mill closes and growers request to move their allocation are amended. A regulatory deadline, the 20th of each month, for the program's information reporting requirements is added. Also, each cane processor, cane refiner and beet processor will be required to provide an annual report prepared by a Certified Public Accountant (CPA) that verifies the company's data submitted to CCC.

DATES: *Effective Date:* March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146, or via e-mail at *barbara.fecso@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation (CCC) published a proposed rule on September 7, 2005 (70 FR 53103). Public comments were accepted until November 7, 2005. The rule proposed three changes to the Sugar Program Regulations at 7 CFR part 1435.

First CCC proposed to amend the regulations for transferring sugar marketing allocation when a mill closes. The proposed rule provided that the closed mill's allocation would be distributed based on the production history of the growers requesting to move their allocation.

To understand the change that was proposed, it is necessary to understand the relationship between processors, growers, and how allocations have been determined.

The Sugar Program was authorized by section 359 of the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Investment Act of 2002 (the ''2002 Act'') (7 U.S.C. 1359aa *et seq.*). The 2002 Act requires CCC to periodically analyze market factors and establish a national sugar marketing allotment to limit the

quantity of sugar that processors can market. The goal is to achieve a price level that will minimize sugar loan collateral forfeitures to CCC. Once the overall marketing allotment is established, it is allocated between the beet sugar and cane sugar sectors (54.35 and 45.65 percent, respectively). The beet allotment is allocated directly to beet processors, the cane allotment is allocated to four cane-producing states (Florida, Louisiana, Hawaii and Texas), and is further allocated among sugar cane processing mills within each state. Each mill, in turn, divides its allocation among its sugar cane growers. While the allocation formula in the regulation for the beet sector has not changed since 2002, the formula in the regulation for cane state allotments and cane processor allocations was changed in 2004 when a component of the formula, the ''ability to market,'' was redefined (69 FR 55061–55063, September 13, 2004). The problem addressed by this rule arose due to the new cane sector ''ability to market'' definition, which added the 2002 and 2003 crop years' production to the historic period for Florida, Louisiana and Texas.

The current regulations provided that if a mill closes, a grower may petition CCC to move an allocation commensurate with its production history to another mill of its choice. However, when two Louisiana cane processing mills announced they would not reopen for the 2005 crop, there was debate within CCC and in the sugarcane industry about the petition rights of growers who had delivered cane used to establish the mill's allocation, but did not deliver 2002 or 2003 crop cane. Some parties contended that growers who had not delivered in the crop year before the mill closed contributed to its demise by ''shorting'' the mill of its customary level of cane and, therefore, should not be rewarded with the right to petition for a transfer. Others contended that as long as a grower's production contributed to the establishment of a mill's allocation, a grower should always be entitled to transfer its share of the allocation.

The regulations at 7 CFR 1435.308, as set forth in the final rule, provide that CCC will distribute the closed mill's allocation based on the contribution of the growers' production history to the closed mill's allocation. This means that CCC will apply the same formula to each grower at the closed mill as the formula used when that mill's original allocation was determined. For example, if a mill closes in Louisiana, CCC will apply to a grower's history over the crop years 1997 through 2001, a 25% weight for the average of the highest two years of past processings, a 25% weight for the average of the highest two years of past marketings, and a 50% weight for the ''ability to market'', i.e., the average of the production from the 2003 crop year and the Olympic average of the three years of production from among the 1999 through 2003 crop, excluding the highest and lowest production years. The result of using this formula, in this example, is that the right to petition for transfer belongs to any grower who delivered cane to the closed mill from the 1997 crop year through the 2003 crop year.

Public Comments

On this change, the Agency received 54 comments. Forty (40) sugar cane growers submitted form letters supporting the proposed rule, and nine growers submitted the same form letter but appended additional comments. Four sugar cane processors and the Louisiana Farm Bureau, an organization representing Louisiana sugarcane producers also submitted comments. Most of these comments were in support of the changes proposed. The Agency has reviewed the comments and addressed them as follows.

One grower comment suggested that the landowner, not the grower, should name the successor mill in the event of mill closure. The Agency feels that the rule sufficiently addresses this concern without providing explicit allotment transfer rights to landowners. This is because CCC has found that while the grower signs the petition to transfer allocation to a particular mill, landowners have changed transfer requests when better offers were received from competing mills. Further, CCC has found that a grower is normally more aware of what is occurring in the local sugar processing market than a landowner, who may be located some distance from the farm. Moreover, it is presumed that a grower will cooperate with its landowner in the choice of a successor mill and not risk any disquiet to its farm or lease by disputing the landowner's choice of a new mill. Therefore, the rule provides that a grower may petition for the transfer. Thus, no changes are planned in the final rule as a result of this comment.

One commenter supported the proposed rule, and suggested growers will place their allocation at successor mills offering the highest returns. The Agency generally agrees. As the commenter suggests, the intent of the rule was to give the grower the choice of where to deliver its cane if its mill closes. No change was made from the proposed rule in the final rule as a result of this comment.

One mill supported the proposal to determine the grower allocation based on their historical production and suggested that this method gives the grower the freedom to choose a successor mill that best ensures their future in farming. The Agency agrees. This rule offers security to growers by guaranteeing the right to petition for transfer as long as they delivered cane to the mill that closed during the period used to establish the mill's allocation. When their mill closes, growers can contract with mills offering the highest returns without risk of losing allocation. Again, no change was made from what was in the proposed rule in the final rule on this issue.

One processor agreed that the proposed method for calculating transferable allocation would ensure fair and equitable treatment for growers. However, this processor also maintained that ''replacement growers'' should not displace the production history from growers who contributed during the historical period. Replacement growers are those designated by the mill to supply sugarcane replacing sugarcane lost to the mill since the 2001 crop year and is a concept that only applies to Louisiana [See 7 CFR 1435.310(b)(1)(i)(C)].

The final rule partly addresses this commenter's concerns. The method to be used for distributing the closed mill's allocation grants any grower who delivered cane to the closed mill during the period when the mill's allocation was established the right to petition for a transfer of allocation, regardless of whether or not he was a replacement grower. If a grower supplies sugarcane to replace sugarcane lost to the mill after the historical period ends, and this mill closes, he may not petition for transfer.

The Louisiana Farm Bureau (LFB) strongly supported the proposed rule. LFB suggested that (1) it would be unfair to deny a grower who leaves within the last year of the historical period the right to transfer any allocation from a closed mill; (2) it would also be unfair to grant a grower who only delivers cane to a mill in the year prior to closure the right to petition for transfer of an allocation; and, (3) transferring allocations based on preceding crop year deliveries makes it possible to have marketing allocations awarded to non-base acreage. The Agency agrees. There is no change made in the final rule as a result of this comment.

One processor commented that there is a distinction between a mill ''closure'' and mill ''consolidation'' and that

transfer rules should apply differently. The commenter stated that when a mill ceases to operate (a ''closure''), growers should be able to choose their successor mill. However, when mills consolidate (which the commenter defines as to combine resources of more than one mill, and close a mill to achieve economies of scale), growers supplying cane to the closed mill should not be given the right to choose a successor mill. The allocation of these growers, the commenter argues, should stay with the remaining mill. The Agency disagrees. The authority for the transfer of allocation at 7 U.S.C. 1359f(c)(8) allows a grower to transfer allocation to another mill when the plant where it has established history closes. By statute, this right belongs to a grower, and exists to protect growers when a plant closes from having to ship their product beyond what is economically feasible, regardless of whether the closure by the mill owner was to consolidate production to achieve economies of scale. Typically, relationships between landowners, growers, processors, mills, and mill owners are defined by contracts, agreements, and a course of dealing over time. Absent terms in such an agreement which provide otherwise, when a processor closes a facility, the grower may transfer its allocation. Thus, the commenter's suggestions are not adopted and no change is planned in the final rule as a result.

The second change CCC proposed is a deadline for the program's information reporting requirements. The required monthly information would be due on the 20th of each month. The third change CCC proposed is to require each cane processor, cane refiner, and beet processor to provide an annual report by a Certified Public Accountant (CPA) that verifies the company's data submitted to CCC. No comments were received on either of these proposed changes and they are adopted in the final rule.

Executive Order 12866

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

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601–602) do not apply to this rule because CCC is not required to publish a notice of proposed rulemaking for the subject of this rule. Nonetheless, CCC has determined that this rule will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis was not performed.

Environmental Assessment

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

Under 7 U.S.C. 7991(c)(2)(A) these regulations may be promulgated and the program administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the nature of the forms and other information collection activities required for this program, they are not fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms and information required to be submitted under this rule may be submitted to CCC by mail or FAX.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, and Sugar.

■ Accordingly, 7 CFR part 1435 is amended as follows:

PART 1435—SUGAR PROGRAM

■ 1. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

■ 2. In § 1435.200 revise paragraph (a), redesignate paragraph (g) as paragraph (h), and add new paragraph (g) to read as follows:

§ 1435.200 Information reporting.

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, by the 20th of each month, on CCC-required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer the sugar programs. If the 20th of the month falls on a weekend or

a Federal holiday, the report shall be made by the next business day.

* * * * *

(g) By November 20 of each year, each sugar beet processor, sugarcane processor, sugarcane refiner, and importer of sugars, syrups, and molasses will submit to CCC a report, as specified by CCC, from an independent Certified Public Accountant that reviews its information submitted to CCC during the previous October 1 through September 30 period.

* * * * *

■ 3. Amend § 1435.308 by revising paragraph (a) to read as follows:

§ 1435.308 Transfer of allocation, new entrants.

(a) If a sugar beet or sugarcane processing facility is closed, and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer their share of the allocation from the processor that closed the facility to their new processor. If CCC approves transfer of the allocations, it will distribute the closed mill's allocation based on the contribution of the growers' production history to the closed mill's allocation. CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processing company that will accept the additional deliveries, and

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

* * * * *

Signed in Washington, DC, on March 17, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–3099 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23197; Directorate Identifier 2005–NM–109–AD; Amendment 39–14535; AD 2006–07–08]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. This AD requires repetitive inspections for stress corrosion cracks of the main fuselage frame, and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from several reports of cracking of the main fuselage frame. We are issuing this AD to detect and correct stress corrosion cracking of the main fuselage frame, which could result in extensive damage to adjacent structure and reduced structural integrity of the airplane.

DATES: This AD becomes effective May 5, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 5, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. That NPRM was published in the **Federal Register** on December 6, 2005 (70 FR 72601). That NPRM proposed to require repetitive inspections for stress corrosion cracks of the main fuselage frame, and corrective actions if necessary. That AD also proposed to provide an optional terminating action for the repetitive inspections.

Comments

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

Request To Revise the Term ''Trim-Out Limits''

The Boeing Company requests that we revise paragraphs (h)(1) and (h)(2) of the NPRM to refer to ''crack limits'' rather than ''trim-out limits.'' Boeing points out that the term ''trim-out limits'' is not used in McDonnell Douglas DC–9 Service Bulletin 53–168, dated November 17, 1983, including McDonnell Douglas Service Sketch 3529, dated August 23, 1983 (hereafter referred to as the ''service information''), which was referred to in the NPRM as the appropriate source of service information for accomplishing the required actions.

We agree. Making the suggested change will maintain consistency between the AD and the service information. We have revised paragraphs (h)(1) and (h)(2) of the final rule to refer to crack limits.

Request To Remove Reference to Dye-Penetrant Inspection

Boeing also requests that we revise paragraph (g) of the NPRM to remove the reference to a dye-penetrant inspection. Boeing points out that the service information does not include a dye-penetrant inspection.

We agree. This change also ensures consistency between the AD and the service information. We have revised paragraph (g) of the final rule to remove the reference to a dye-penetrant inspection.

Request To Revise Paragraph (k)

Boeing also requests that we revise paragraph (k) of the NPRM to match the description of the frame in paragraph (d) and add the words ''main fuselage'' before the word ''frame.'' Paragraph (k) of the NPRM refers to ''a frame made of 7075–T6 aluminum material''; paragraph (d) of the NPRM refers to a ''main fuselage frame.''

We agree. This change ensures consistent references within the AD. We have revised paragraph (k) of the final rule to add the words ''main fuselage'' frame.

Request To Include Delegation in Paragraph (l)

Boeing also requests that we revise the Alternative Methods of Compliance (AMOCs) paragraph to include AMOC delegation to an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization (DOA) Organization whom the FAA has authorized to make such findings.

We disagree. We authorize Boeing Commercial Airplanes DOA Authorized Representatives to approve AMOCs only for AD-required repairs and modifications. This AD requires inspection and/or replacement of the main fuselage frame, but not repairs or modification. We have not changed the final rule in this regard.

Clarification AMOC Paragraph

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

Conclusion

We have carefully reviewed the available data, including the comments 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

There are about 1,017 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	2	$65	$0	[2] $130	376	$48,880, per inspection cycle.
Optional terminating action (replacing the frame).	[1] 96	65	7,305	13,545	Up to 376	Up to $5,092,920.

[1] Per airplane.
[2] Per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–08 McDonnell Douglas: Amendment 39–14535. Docket No. FAA–2005–23197; Directorate Identifier 2005–NM–109–AD.

Effective Date

(a) This AD becomes effective May 5, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; certificated in any category; as identified in McDonnell Douglas DC–9 Service Bulletin 53–168, dated November 17, 1983.

Unsafe Condition

(d) This AD results from several reports of cracking of the main fuselage frame. We are issuing this AD to detect and correct stress corrosion cracking of the main fuselage frame, which could result in extensive damage to adjacent structure, and reduced structural integrity of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 53–168, dated November 17, 1983, including McDonnell Douglas Service Sketch 3529, dated August 23, 1983.

Repetitive Inspections and Corrective Actions

(g) Prior to the accumulation of 15,000 total flight hours, or within 3,400 flight hours after the effective date of this AD, whichever occurs later: Do a detailed inspection, eddy current inspection, or ultrasonic inspection for stress corrosion cracks of the main fuselage frame in accordance with the service bulletin. Except as provided by paragraph (h) of this AD, repeat the inspection thereafter at intervals not to exceed 8,000 flight hours until the replacement in paragraph (i) of this AD is accomplished.

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

Corrective Actions

(h) If any crack is found during any inspection required by this AD, do the applicable action in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) If the crack is in the pocket area and the crack is within the crack limits specified in McDonnell Douglas Service Sketch 3529, dated August 23, 1983: Repeat the inspection specified in paragraph (g) of this AD at intervals not to exceed 3,400 flight hours until the action in paragraph (i) of this AD is accomplished.

(2) If the crack is in the pocket area and the crack exceeds the crack limits specified in McDonnell Douglas Service Sketch 3529, dated August 23, 1983, before further flight: Do the action in paragraph (i) of this AD.

(3) If the crack is in the web, before further flight: Do the action in paragraph (i) of this AD.

Optional Terminating Action

(i) Replacing the frame with a new or serviceable frame made of 7075-T73 aluminum material in accordance with the service bulletin terminates the repetitive inspection requirements of this AD for that frame only.

No Reporting Required

(j) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(k) After the effective date of this AD, no person may install on any airplane a main fuselage frame made of 7075–T6 aluminum material.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(m) You must use McDonnell Douglas DC–9 Service Bulletin 53–168, dated November 17, 1983, including McDonnell Douglas Service Sketch 3529, dated August 23, 1983, to perform the actions that are required by this AD, unless the AD specifies otherwise. (The issue date of the service sketch is shown only on the first sheet of that document.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on March 22, 2006.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3061 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22794; Directorate Identifier 2005–NM–097–AD; Amendment 39–14536; AD 2006–07–09]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A318–100 and A319–100 series airplanes; Model A320–111 airplanes; and Model A320–200, A321–100, and A321–200 series airplanes. This AD requires repetitive detailed inspections of the trimmable horizontal stabilizer actuator (THSA) attachments for proper clearances, and any crack, damage, or metallic particles; related corrective actions if necessary; and a report of the inspection results to the manufacturer. This AD results from a report that during lab testing to verify the performance of the THSA's secondary load path with a simulated failure of the THSA's primary load path, the secondary load path's nut did not jam (as it was supposed to do). We are issuing this AD to ensure the integrity of the THSA's primary load path, which if failed, could result in latent (undetected) loading and eventual failure of the THSA's secondary load path and consequent uncontrolled movement of the horizontal stabilizer and loss of control of the airplane.

DATES: This AD becomes effective May 5, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 5, 2006.

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

of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A318–100 and A319–100 series airplanes; Model A320–111 airplanes; and Model A320–200, A321–100, and A321–200 series airplanes. That NPRM was published in the **Federal Register** on October 27, 2005 (70 FR 61922). That NPRM proposed to require repetitive detailed inspections of the trimmable horizontal stabilizer actuator (THSA) attachments for proper clearances, and any crack, damage, or metallic particles; related corrective actions if necessary; and a report of the inspection results to the manufacturer.

Comments

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

Updated Service Information

Since we published the NPRM, we have reviewed Airbus Service Bulletin A320–27–1164, Revision 03, including Appendix 01, dated August 24, 2005. The actions described in this service bulletin are essentially the same as the service bulletin we referenced in the NPRM, Airbus Service Bulletin A320–27–1164, Revision 02, including Appendix 01, dated March 30, 2005, except for some minor procedural changes in the order of some steps and when an operator should submit an inspection report. We have revised paragraph (f) of this AD to update the reference to Revision 03 of the service bulletin, and have added paragraph (h) to this AD to allow credit for previous actions done in accordance with Revision 02 of the service bulletin.

Supportive Comments

Three commenters (Airbus, a pilot representing Spirit Airlines pilots, and the Air Line Pilots Association) support the AD. Air Transport Association (ATA) members ''generally support the intent of the rulemaking.''

Request To Extend Compliance Time for Repetitive Inspections

The ATA, on behalf of Northwest Airlines, requests that we extend the repetitive inspection interval from 20 months to approximately 21–22 months. The ATA states that accomplishing the repetitive inspections of the THSA attachments at intervals of 20 months would put a significant financial and logistical burden on some operators because some operators have heavy maintenance schedules that exceed the 20-month interval. Northwest Airlines, in its comments, also states that it is not aware of any substantiating data that would limit the inspection interval and believes the increase in the inspection interval would not affect the level of safety.

We do not agree to increase the inspection interval. The ATA did not provide any substantive data to support an increase. In addition, the manufacturer does not support any increase beyond the 20-month inspection interval, until it completes additional testing. We may consider a request for an alternative method of compliance (AMOC) if data is provided to support such a request. This AD remains unchanged in this regard.

Request To Remove Requirement To Inspect Upper THSA Attachments

The ATA, on behalf of U.S. Airways, states that, if the gap clearance of the lower THSA attachment is within limits, then an inspection of the upper THSA attachment is unnecessary. The ATA contends that if the lower THSA attachment shows no sign of damage, there would be no additional loading on the upper THSA attachment. Further, U.S. Airways notes that if the gap clearance of the lower THSA attachment is incorrect, then the THSA is replaced. Part of the replacement procedures involve inspecting all of the THSA attachments, thus eliminating any safety concerns with the actuator or attachments.

We infer that the ATA requests that we remove the requirement to inspect the upper THSA attachment. We do not agree to remove the inspection requirement for the upper THSA attachment. The designs of both attachments include primary and secondary load paths that operate independently of each other. Therefore, a finding of proper clearance during the lower THSA attachment's inspection is no guarantee that the upper THSA attachment is not damaged. This AD has not changed in this regard.

Request To Allow Credit for Previously Accomplished Inspections

US Airways also requests that we mandate the actions of Airbus Alert Service Bulletin A320–27A1164, dated September 10, 2004, to prevent unnecessary work for operators that have performed lower THSA attachment inspections in accordance with that service bulletin.

We disagree with U.S. Airways' request to mandate the alert service bulletin. However, we agree to allow credit for the alert service bulletin as it applies to the lower THSA attachment. Since the publication of the alert service bulletin and of Airbus Service Bulletin A320–27–1164, Revision 01, including Appendix 01, dated December 17, 2004, it has been found that an inspection of the upper THSA attachment is also necessary. Therefore, the actions in the alert service bulletin and Revision 01 are acceptable only for the lower THSA attachment. The upper THSA attachment must be inspected in accordance with Revision 03, dated August 24, 2005, or have been inspected before the effective date of this AD in accordance with Revision 02, dated March 30, 2005. Paragraph (i) of this AD has been added to allow credit for the lower THSA attachment inspection(s).

Conclusion

We have carefully reviewed the available data, including the comments 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

This AD will affect about 700 airplanes of U.S. registry. The actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $45,500, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–09 Airbus: Amendment 39–14536. Docket No. FAA–2005–22794; Directorate Identifier 2005–NM–097–AD.

Effective Date

(a) This AD becomes effective May 5, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; Model A321–111, –112, and –131 airplanes, and Model A321–211, –212, –213, –231 and –232 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report that during lab testing to verify the performance of the trimmable horizontal stabilizer actuator's (THSA's) secondary load path with a simulated failure of the THSA's primary load path, the secondary load path's nut did not jam (as it was supposed to do). We are issuing this AD to ensure the integrity of the THSA's primary load path, which if failed, could result in latent (undetected) loading and eventual failure of the THSA's secondary load path and consequent uncontrolled movement of the horizontal stabilizer and loss of control of the airplane.

Compliance

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

Repetitive Inspections and Corrective Action

(f) Within 20 months since first flight, or within 600 flight hours after the effective date of this AD, whichever occurs later, do detailed inspections of the THSA attachments for proper clearances and any crack, damage, or metallic particles, and do related corrective actions as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1164, Revision 03, including Appendix 01, dated August 24, 2005, except as described in paragraph (g) of this AD. Do corrective actions before further flight. Thereafter, repeat the inspections at intervals not to exceed 20 months.

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

(g) If any metallic particles are detected during the inspection required by paragraph (f) of this AD: Before further flight, repair the damage according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Previous Actions

(h) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–27–1164, Revision 02, including Appendix 01, dated March 30, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

(i) Inspections of the lower THSA attachment done before the effective date of this AD in accordance with Airbus Alert Service Bulletin A320–27A1164, dated September 10, 2004; or Airbus Service Bulletin A320–27–1164, Revision 01, including Appendix 01, dated December 17, 2004; are acceptable for compliance with the lower THSA attachment inspection requirements of paragraph (f) of this AD.

Inspection Reports

(j) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f) of this AD to Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Appendix 01 of Airbus Service Bulletin A320–27–1164, Revision 02, dated March 30, 2005, or of Revision 03, dated August 24, 2005, is an acceptable method to comply with this paragraph. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If any inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(l) French airworthiness directive F–2005–051, dated March 30, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Airbus Service Bulletin A320–27–1164, Revision 03, including Appendix 01, dated August 24, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 22, 2006.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3062 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24124; Directorate Identifier 2004–NM–272–AD; Amendment 39–14534; AD 2006–07–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300–600 series airplanes. This AD requires modifying nine bolt holes in the vertical flange to prevent cracking before the inspection threshold of AD 98–18–02. This AD results from reports of cracking in the vertical web of the center spar sealing angles of the wing earlier than the inspection interval specified in the existing AD. We are issuing this AD to prevent crack formation in the sealing angles; such cracks could rupture the sealing angle and lead to subsequent crack formation in the bottom skin of the wing, and resultant reduced structural integrity of the center spar section of the wing.

DATES: This AD becomes effective April 17, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 17, 2006.

We must receive comments on this AD by May 30, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On August 19, 1998, we issued AD 98–18–02, amendment 39–10718 (63 FR 45689, August 27, 1998), for certain Airbus Industrie Model A300–600 series airplanes. That AD requires inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment and in the adjacent butt strap and skin panel, and correction of discrepancies. That AD was prompted by reports of cracking in the vertical web of the center spar sealing angles of the wing. We issued that AD to prevent crack formation in the sealing angles; such cracks could rupture and lead to subsequent crack formation in the bottom skin of the wing, and resultant reduced structural integrity of the center spar section of the wing.

Since we issued AD 98–18–02, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that the manufacturer conducted further investigations based on an operator's report of cracks on an airplane in service that occurred before the inspection interval required by AD 98–18–02. The DGAC therefore advises us that a modification of the center spar sealing angles that was previously not required in AD 98–18–02 is now necessary to extend the inspection threshold and prevent cracking of the unmodified structure before the mandated inspection interval. French airworthiness directive 91–253–128(B)R1, dated March 1, 1995, is the parallel French airworthiness directive to AD 98–18–02, and has been replaced by French airworthiness directive 2003–290(B) R1, dated October 1, 2003.

Relevant Service Information

Airbus has issued Service Bulletin A300–57–6033, Revision 01, dated December 18, 2003. The service bulletin describes procedures for modifying nine bolt holes in the vertical flange of the center spar sealing angles outboard of rib 8, adjacent to the pylon attachment fitting. The modification involves removing the nine bolts from the vertical flange of the sealing angle, re-machining the spot faces, cold-expanding the nine bolt holes in the vertical flange, installing oversize bolts in the vertical flange, and installing new oversize bolts at the skin attachment fittings if necessary. The modification also involves the related investigative action of doing high-frequency eddy current inspections for cracks of all bolt holes from which bolts have been removed, including the skin bolt holes. If any crack is found, Airbus Service Bulletin A300–57–6033 specifies that these findings should be reported to Airbus and that the crack should be repaired in accordance with Airbus Service Bulletin A300–57–6027, Revision 06, dated March 2, 2005. (Earlier revisions of Service Bulletin A300–57–6027 were cited as the source of service information for doing the inspections and corrective actions in AD 98–18–02.) The repair includes replacing the forward and aft sealing angles with improved sealing angles, and cold-expanding the attachment holes. The DGAC mandated the service information and issued French airworthiness directive 2003–290(B) R1, dated October 1, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent crack formation in the sealing angles; such cracks could rupture the sealing angle and lead to subsequent crack formation in the bottom skin of the wing, and resultant reduced structural integrity of the center spar section of the wing. This AD requires accomplishing the actions specified in the service information described previously.

Operators should note that after doing Airbus Modification 8609 (modification of the nine bolt holes of the vertical flange) in accordance with Airbus Service Bulletin A300–57–6033, Revision 01, post-modification inspection is required in accordance with AD 98–18–02. Airbus Modification 8608, installed during production, introduces new strengthened sealing angles with repositioned bolt holes done in production. Holes in the web, flange, and skin are all cold-worked. Airplanes with Airbus Modification 8608 installed during production are not subject to the requirements of this AD.

Difference Between This AD and the French Airworthiness Directive

We have determined that either Airbus Modification 8608 has been accomplished in production or Airbus Modification 8609 has been accomplished through Airbus Service Bulletin A300–57–6033 on all airplanes of U.S. Registry, and therefore no airplanes of U.S. Registry are affected by the requirements of this AD. All airplanes of U.S. Registry are equipped with either strengthened sealing angles with repositioned holes (production modification 8608) or have had the nine holes of the sealing angle outboard of rib 8 cold-worked in accordance with Airbus Service Bulletin A300–57–6033 (modification 8609). The post-modification 8609 U.S.-registered airplanes continue to be subject to the post-Modification inspection requirements of AD 98–18–02, paragraph (d). Therefore, unlike the French airworthiness directive, the applicability of this AD also includes the A300–600 series airplanes that have incorporated Airbus Modification 8609. The actions in this new AD apply only to affected airplanes that might be imported and placed on the U.S. Register in the future and that do not have the modification. Therefore, although the French airworthiness directive requires accomplishing repetitive inspections of post-modification 8609 airplanes in accordance with Airbus Service Bulletin A300–57–6027, Revision 06, this AD does not include those inspections. Those inspections are included in AD 98–18–02.

Clarification of Compliance Time

The French airworthiness directive gives a compliance time for doing the modification that is based on accomplishment of previous inspections. As discussed above, this AD does not require those inspections. Therefore, the compliance time for doing the modification in this AD is 500 flight cycles after the effective date of this AD. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of all of these factors, we find that a 500-flight-cycle compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required modification would take about 25 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $1,249 per airplane. Based on these figures, the estimated cost of the AD would be $3,249 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–24124; Directorate Identifier 2004–NM–272–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–07 Airbus: Amendment 39–14534. Docket No. FAA–2006–24124; Directorate Identifier 2004–NM–272–AD.

Effective Date

(a) This AD becomes effective April 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R variant F airplanes (collectively called A300–600 series airplanes); certificated in any category; except those on which Airbus Modification 8608 or 8609 is incorporated.

Unsafe Condition

(d) This AD results from reports of cracking in the vertical web of the center spar sealing angles of the wing earlier than the inspection interval specified in AD 98–18–02, amendment 39–10718. We are issuing this AD to prevent crack formation in the sealing angles; such cracks could rupture the sealing angle and lead to subsequent crack formation in the bottom skin of the wing, and resultant reduced structural integrity of the center spar section of the wing.

Compliance

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

Modification

(f) Within 500 flight cycles after the effective date of this AD: Modify nine bolt holes in the vertical flange of the center spar sealing angles outboard of rib 8, adjacent to the pylon attachment fitting, and do any applicable related investigative and corrective actions before further flight; by doing all the actions in and in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6033, Revision 01, dated December 18, 2003. If any crack is found during the related investigative action: Before further flight, repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6027, Revision 06, dated March 2, 2005.

No Reporting Required

(g) Although Airbus Service Bulletin A300–57–6033, Revision 01, dated December 18, 2003, specifies to report crack findings to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

(3) Airbus Repair Drawing R571–40588 or R571–40942, as referenced in paragraphs (c) and (d) of AD 98–18–02, is an AMOC for the modification in paragraph (f) of this AD.

Related Information

(i) French airworthiness directive 2003–290(B) R1, dated October 1, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A300–57–6027, Revision 06, dated March 2, 2005; and Airbus Service Bulletin A300–57–6033, Revision 01, dated December 18, 2003; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 15, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3063 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22062; Directorate Identifier 2003–NM–219–AD; Amendment 39–14538; AD 2006–07–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This AD requires a one-time inspection of the aft attach fitting assembly of the spoiler link to determine the part number, and further

investigative action and replacement of the assembly with a new or serviceable assembly, if necessary. This AD results from a determination that the holes of certain aft attach fitting assemblies of the spoiler link were not cold-worked during production. We are issuing this AD to prevent fatigue cracking of the aft attach fitting of the spoiler link and consequent failure of the fitting. Failure of the fitting could result in an asymmetrical lift condition and consequent reduced controllability of the airplane.

DATES: This AD becomes effective May 5, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 5, 2006.

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

Contact Aerotech Engineering, Inc., 19655 Descartes, Foothill Ranch, California 92610; for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes. That NPRM was published in the **Federal Register** on August 11, 2005 (70 FR 46790). That NPRM proposed to require a one-time inspection of the aft attach fitting assembly of the spoiler link to determine the part number, and further investigative action and replacement of the assembly with a new or serviceable assembly, if necessary.

Comments

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

Request To Address Illegible Part Numbers

Midwest Airlines (MAL) is concerned about the possibility that operators may not be able to determine the part number on the subject parts. The parts manufacturer used an ''Ink Stamp'' method of marking the parts, and the parts are dimensionally the same as parts produced by the original equipment manufacturer. Thus, the stamped part number is the only way to identify affected parts. MAL points out that that the stamped part number wears and washes off of parts, making it impossible to identify an affected part. MAL notes that a cursory look at airplanes in its fleet revealed that the part number on some of its airplanes is no longer legible. MAL believes that all unmarked parts would have to be changed to ensure that all discrepant parts are removed from service.

We agree that some clarification is necessary. While determining the stamped part number is the only immediate way to identify an affected part, a review of maintenance and purchasing records may also assist in determining whether an affected part is installed. We agree that any part on which the part number and/or lot number cannot be conclusively determined must be replaced to ensure that all discrepant parts are removed from service. Therefore, we have revised paragraph (f)(2) and (g) of this AD to clarify what actions are required if the part number and/or lot number cannot be determined. Also, we have revised paragraph (f) and (f)(2) of this AD to clarify that a review of maintenance records is an acceptable means of determining a part number.

Request To Allow Repetitive Inspections in Lieu of Immediate Replacement

The Air Transport Association (ATA), on behalf of its member, Delta Airlines (Delta), requests that we revise the proposed AD to allow an affected part to be repetitively inspected in lieu of requiring replacement of any identified affected part before further flight. ATA and Delta state that this would allow the replacement to be scheduled and done during a maintenance visit. Neither ATA nor Delta state a technical justification for the request.

We do not concur. There are no data available to determine the damage tolerance characteristics of the subject parts. Thus, we cannot be sure that repetitive inspections of an affected part would ensure an adequate level of safety. We note that the compliance time of 10,000 total flight hours on the aft attach fitting assembly of the spoiler link, or 18 months after the effective date of this AD, whichever is later, should allow the majority of operators to comply with the requirements of this AD at a scheduled maintenance visit. In addition, we have determined from the parts manufacturer that an adequate supply of replacement parts exists to support replacing affected parts during a scheduled maintenance visit within the compliance time. We have not changed the AD in this regard. However, operators may request approval of an alternative method of compliance (AMOC) for the replacement in accordance with paragraph (i)(1) of this AD. The request must include data substantiating that the AMOC would provide an acceptable level of safety.

Request To Expand Applicability

MAL is concerned about the possibility that the subject aft attach fitting assemblies of the spoiler link may be installed on other McDonnell Douglas Model DC–9 airplanes (e.g., Model DC–9–10, –20, –30, –40, or –50 series airplanes).

We acknowledge MAL's concern, but note that the Parts Manufacturing Authority (PMA) supplement limits the installation of the subject parts to McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes. Thus, the subject parts are not installed on any airplane models other than these. We have not changed the AD in this regard.

Request To Include Replacement Cost

MAL, ATA, and Delta request that we revise the Costs of Compliance section of the proposed AD to include the cost of labor and parts associated with replacing the aft attach fitting assembly of the spoiler link. Delta notes that the proposed AD doesn't include any analysis of the cost of replacement if a subject assembly is installed. Delta believes that this information should be provided to operators.

We do not concur. We acknowledge that replacing an affected assembly would take approximately 5 work hours, the cost of necessary parts would be $350, and that there are approximately 134 affected parts that were produced

and sold. However, the economic analysis of an AD is limited to the cost of actions that are actually required by the AD—in this case, the inspection to determine if a part is affected. The economic analysis does not consider the costs of conditional actions, such as replacing a part that is found to be affected. Such conditional actions would be required—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations. We have not changed the AD in this regard.

Clarification of AMOC Paragraph

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

Conclusion

We have carefully reviewed the available data, including the comments 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

There are about 1,296 airplanes of the affected design in the worldwide fleet. This AD will affect about 738 airplanes of U.S. registry. The inspection to determine the part number of the aft attach fitting assembly of the spoiler link will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this inspection for U.S. operators is $47,970, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–11 McDonnell Douglas: Amendment 39–14538. Docket No. FAA–2005–22062; Directorate Identifier 2003–NM–219–AD.

Effective Date

(a) This AD becomes effective May 5, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a determination that the holes of certain aft attach fitting assemblies of the spoiler link were not cold-worked during production. We are issuing this AD to prevent fatigue cracking of the aft attach fitting of the spoiler link and consequent failure of the fitting. Failure of the fitting could result in an asymmetrical lift condition and consequent reduced controllability of the airplane.

Compliance

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

Inspection

(f) Prior to the accumulation of 10,000 total flight hours on the aft attach fitting assembly of the spoiler link, or within 18 months after the effective date of this AD, whichever is later: Inspect the aft attach fitting assembly of the spoiler link to determine the part number, in accordance with Item 1.a). of Section 1.D., ''Description,'' of Aerotech Manufacturing Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' dated June 19, 2003. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the assembly can be conclusively determined from that review.

(1) If the part number is not AMI3954558–1 or AMI3954558–501: No further action is required by this AD, but the provisions of paragraph (h) of this AD continue to apply.

(2) If the part number is AMI3954558–1 or AMI3954558–501, or if the part number cannot be conclusively determined: Before further flight, inspect the aft attach fitting assembly of the spoiler link to determine the lot number, then determine if the lot number is identified in the ''Lot Number'' column of the table in Section 1.A.1. of the service bulletin. If the lot number is not identified in the service bulletin, no further action is required by this AD, but the provisions of paragraph (h) of this AD continue to apply. A review of airplane maintenance records is acceptable in lieu of this inspection if the lot number of the assembly can be conclusively determined from that review.

Replacement

(g) If the part number of the aft attach fitting assembly of the spoiler link is AMI3954558–1 or AMI3954558–501, and the lot number is identified in the ''Lot Number'' column of the table in Section 1.A.1. of Aerotech Manufacturing Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' dated June 19, 2003, or if the part number and/or lot number cannot be conclusively determined: Before further flight, replace the assembly with a new or serviceable assembly having a lot number that is not identified in the ''Lot Number'' column of the table in Section 1.A.1. of the service bulletin, in accordance with Item 1.b). of Section 1.D., ''Description,'' of the service bulletin.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, an aft attach fitting assembly of the spoiler link having part number AMI3954558–1 or AMI3954558–501, and having a lot number identified in the ''Lot Number'' column of the table in Section 1.A.1. of Aerotech Manufacturing Service Bulletin DC9–27–01-AMI5139, Revision ''A,'' dated June 19, 2003.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(j) You must use Aerotech Manufacturing Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' dated June 19, 2003; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Aerotech Engineering, Inc., 19655 Descartes, Foothill Ranch, California 92610; for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 17, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3064 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20918; Directorate Identifier 2004–NM–269–AD; Amendment 39–14539; AD 2006–07–12]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires a one-time inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas; and related investigative/corrective actions if necessary. This AD results from reports of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines. Scribe line damage can also occur at many other locations, including butt joints, external doublers, door scuff plates, the wing-to-body fairing, and areas of the fuselage where decals have been applied or removed. We are issuing this AD to prevent rapid decompression of the airplane due to fatigue cracks resulting from scribe lines on pressurized fuselage structure.

DATES: This AD becomes effective May 5, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 5, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on April 29, 2005 (70 FR 22272). That NPRM proposed to require a one-time inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas; and related investigative/corrective actions if necessary.

Comments

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

Support for Proposed AD

One commenter (AWAS Aviation Services) agrees that fatigue cracks on the fuselage should be addressed in a suitable time period. The commenter considers the proposed compliance time acceptable.

Request To Consider Similar Rulemaking for Other Airplanes

The National Transportation Safety Board (NTSB) believes that the proposed AD will address scribe-type damage on the affected airplanes in a timely manner. However, the NTSB is concerned that this type of damage is not limited to those airplanes, but could be present on virtually every pressurized airplane currently in service. The NTSB urges the FAA to examine similar rulemaking for other makes and models of pressurized airplanes.

We acknowledge the NTSB's concerns. This is a long-term durability issue that is not limited to any particular aircraft model. The effect on each aircraft model will vary with each model's design characteristics and the conditions to which they may be operated. In support of this, we have been in contact with other governing regulatory agencies and other manufacturers, and we may consider

further rulemaking applicable to other airplanes as a result of these efforts.

Request To Allow SRM for Repairs

For repairing ''typical'' scribed areas, this proposed AD would require operators to contact the FAA for approval of repairs. One commenter (USAir) asserts that the Boeing 737 Structural Repair Manual (SRM) provides several repair schemes for localized damage at typical scribed areas, and that omitting the SRM as a repair option could result in many requests for alternative methods of compliance (AMOCs). Another commenter (Japan Transocean Air) requests approval of the SRM for instructions for permanent rework of tactile marks, if the SRM revises the allowable damage limits for fuselage skin.

We disagree with the requests. Merely repairing the detected scribe lines may be inadequate to address the identified unsafe condition. Scribe damage has been found to exceed well beyond the region where it was originally discovered by visual inspection. Current SRM repairs may not be adequate because of the nature of damage caused by scribes. Scribe damage is widespread, frequently concealed by the upper skin of a lap splice, and thus difficult or impossible to detect. At this time, the SRM repairs for the scribed areas do not address the widespread nature of this type of damage and the follow-up inspections that may be required and therefore cannot be used. We are currently working with Boeing to develop repair schemes that may address this issue. These efforts may result in additional FAA methods of compliance that provide clarification and relief in future but are not available at this time. We have not changed the final rule regarding this issue.

Request To Allow Other Service Information for Repairs

One commenter (USAir) suggests that incorporation of Boeing Service Bulletin 737–53A1177, 737–53–1168, or 737–53–1187, which would remove scribe lines from the entire skin panel, would terminate the repetitive inspections of the area. Further, since these service bulletins are FAA approved and available, the commenter requests that we revise the proposed AD to require operators to repair all discrepancies found during the scribe line inspections in accordance with an approved FAA method; or, alternatively, in accordance with Service Bulletin 737–53A1177, 737–53–1168, or 737–53–1187, which would terminate the repetitive inspections of the repaired areas.

We partially agree with the requests. Service Bulletins 737–53A1177, 737–53–1168, and 737–53–1187, which were developed to address a specific unsafe condition, involve a significant level of complexity. The actions specified in the service bulletins might be adequate to terminate the repetitive inspections in certain areas; we may consider a fleetwide AMOC presented by the manufacturer as acceptable for terminating action. In the meantime, we may approve individual operator requests for alternative repair methods under the provisions of paragraph (p) in this final rule, if the requests include data that prove that the alternative method would provide an acceptable level of safety.

Request To Revise Cost Estimates

Several commenters (USAir, Alaska Airlines, America West, and KLM) allege that the figures provided in the Costs of Compliance section of the proposed AD do not accurately reflect the actual cost to the airline industry. The commenters assert that most airplanes will need the exterior paint stripped, and the surface prepared for inspection and repainted. These additional actions will add considerable downtime to the inspection required by this proposed AD. One commenter suggests that either the Limited Return to Service (LRTS) should be made less complex or the work hours necessary for planning and engineering should be considered in the cost estimates. The commenters add that the cost estimates do not include the cost to repeat the inspection or do any repairs if scribe lines are found, which would result in additional downtime for the airplanes and a substantial impact on operations. Therefore, the commenters request that we revise the Costs of Compliance section to reflect the whole effect of the proposed AD on operators.

We acknowledge the commenters' concerns and recognize the additional preparatory work that could be involved on some airplanes, but disagree with the requests. While the LRTS is indeed complex, it is not required. This option was intended to provide operators flexibility in deciding the best compliance method for their fleet. Moreover, the cost information included in an AD describes only the direct costs of the specific actions required by the AD. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required actions. We recognize that, in doing the actions required by the AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time for planning or handling other administrative actions, or gaining access and closing up. These costs are almost impossible to calculate. Also, the economic analysis of an AD does not consider the costs of conditional actions, such as repairing a crack detected during a required inspection. Such conditional repairs or follow-on actions would be required—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations.

Request To Refine Definition of ''Scribe Line''

Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004 (cited as the appropriate source of service information for the actions of the proposed AD), describes a scribe line as damage up to 0.006 inch deep. Two commenters (AWAS and Japan Transocean Air) assert that the use of this definition has led to many findings of damage that had no appreciable depth and therefore contributed to no appreciable decrease in fatigue life, yet resources were expended to repair or repetitively inspect this damage to accomplish the actions specified in this service bulletin. Including a minimum depth would eliminate many of these positive findings and allow better use of Boeing and FAA engineering resources and decrease operators' costs. Therefore, the commenters request that a ''typical scribe'' be further defined by including a minimum measurement limit.

We acknowledge and share these commenters' concerns, but cannot include the definitive criteria that these commenters desire in this final rule because of the complicated nature of the definition of scribe lines. We do agree that a better definition may enhance the inspection process. To this end, we are working with Boeing to develop and present the criteria in a usable format. These efforts may result in additional FAA methods of compliance that provide clarification and relief in the future but are not available at this time. We have not changed the final rule regarding this issue.

Request To Delay AD Pending Issuance of Repair Service Bulletin

The proposed AD does not provide for repairs for scribe marks that are outside the limits of Alert Service Bulletin 737–53A1262. One commenter (Alaska Airlines) notes that Boeing is in the process of developing a new service bulletin that will address many

conditions that might be found during the inspection. Therefore, the commenter requests that we delay issuing the final rule until repair procedures are published in a new service bulletin that addresses scribe lines outside the limits addressed in Alert Service Bulletin 737–53A1262. The commenter recommends that the final rule refer to this new, as yet unpublished service bulletin as well as Alert Service Bulletin 737–53A1262 for repair procedures.

We disagree with the request. Boeing has not yet developed a repair service bulletin. To address the unsafe condition in a timely manner, we must proceed with inspection of the fleet for this safety-related damage. When a repair service bulletin becomes available we anticipate it will be approved through the AMOC process. We have not changed the final rule regarding this issue.

Request To Revise Inspection Requirements for Certain Locations

One operator (Alaska Airlines) requests that we revise the proposed AD to exempt the inspection of the area around the wing-to-body fairing if the sealant has been removed in accordance with the procedures in Appendix A of Alert Service Bulletin 737–53A1262. The commenter provides no further explanation or technical justification for the request.

We disagree with the request. The wing-to-body fairings are removed more often than the airplane is stripped and repainted and are therefore subject to many more scribe opportunities. The sealant removal procedures documented in Appendix A were not available before the service bulletin was issued; the subject area therefore will probably have scribe lines. Considering the age of the fleet and the frequency of fairing removal for standard maintenance, this exemption would not apply. We have not changed the final rule regarding this issue.

Request To Clarify Figure References

One commenter (Alaska Airlines) notes an error in the Accomplishment Instructions of Alert Service Bulletin 737–53A1262. The figure cited in Part 8, step 3, should be Figure 39, not Figure 38. The figure cited in Part 9, step 3 [sic], should be Figure 38, not Figure 39.

We acknowledge these errors in the service bulletin; however, the error in Part 9 is in step 4. In this final rule, we have clarified this requirement in new paragraph (j) and renumbered subsequent paragraphs accordingly.

Request To Clarify Certain Compliance Times

One commenter (United Airlines) identifies conflicting compliance times in Alert Service Bulletin 737–53A1262 for the Figure 44 inspections as part of the LRTS plan. The commenter observes that Part 12, item 10.a.(4), recommends doing the Figure 44 inspections between 40,000 and 45,000 flight cycles; however, for airplanes with 40,000 flight cycles, Figure 40 specifies doing a nondestructive test (NDT) inspection before further flight. The commenter requests that we clarify these compliance thresholds.

The compliance times do not conflict with each other but merely refer to different stages of the overall program. Figure 40 is part of the Special Lap Joint inspections, which are required before certain airplane-level scribe inspections; these inspections take place for higher-cycle unmodified airplanes and allow service to extend into the approved 4,500-flight-cycle grace period (as stated in Figure 1 of the service bulletin). The inspections specified in Part 12 of the service bulletin occur after an airplane-level inspection has identified scribe damage. The inspection program in Part 12 allows continued operation with ongoing inspections. Figure 44 identifies additional lap joint inspections affiliated with this program. We have not changed the AD regarding this issue.

Request To Revise Inspection Requirements for Decals

The proposed AD would require inspection of areas where any decal, regardless of size, has been removed. One commenter (United Airlines) requests that we address decals the same way we address external repair doublers for scribe inspections, i.e., that we require inspections only for decal edges with a dimension of 18 inches or longer. The commenter considers that decal damage would be equivalent to a damaged external doubler of the same size.

We disagree with the request. Although the damage from decals may be equivalent, unlike major repairs, decals are easily removable without leaving any indication of their size or location. Additionally, operators may not have detailed records regarding decal application and removal so the extent of possible damage would not be known. However, according to the provisions of paragraph (p) of the final rule, we may approve requests for relief from certain associated requirements, if the operator's records can conclusively determine the decal dimensions and if supporting data are provided that would ensure an acceptable level of safety. We have not changed the final rule regarding this issue.

Requests To Remove Certain Inspection Requirements Under Certain Conditions

The proposed AD would require inspection of the area under the dorsal fin fairing. One commenter (United Airlines) requests that this area be treated the same as the wing-to-body fairing; i.e., if the area under the dorsal fin fairing has never been stripped or repainted since delivery, then the scribe inspection should not be required in that area.

We agree. The area under the dorsal fin fairing is similar to the area under the wing-to-body fairing. We have added new paragraph (k) in this final rule to remove the requirement to inspect that area, under the conditions specified by the commenter. We have reidentified subsequent paragraphs accordingly.

The proposed AD specifies that no inspections would be required where an existing repair covers a potential scribe line, provided the repair spans a minimum of three rows of fasteners beyond each side of the potential scribe line location. One commenter (United Airlines) requests that this provision be revised to allow for a ten-inch extension of the repair beyond the scribe damage, instead of a three-row overlap. The commenter contends that some existing FAA-approved repairs do not meet the three-row criteria. The commenter refers to section 53–00–01, Figure 217, of the Boeing 737 SRM. The commenter states that the proposed AD criteria would add a burden by requiring operators to remove and replace existing FAA-approved repairs.

We disagree with the request to change the inspection requirements for those conditions. Repairs that span less than three rows above and below potential scribed areas will not provide an adequate alternative load path for a lap joint with a scribe. For repairs of locations that do not meet the three-row criteria, this AD requires operators to contact the FAA for options to removing the repair (i.e., through inspections), for which operators may request AMOCs in accordance with paragraph (p) of this AD.

Request To Clarify Provisions for Continued Operation with Scribe Lines

One commenter (America West) requests that we revise the proposed AD to clarify that Part 14 of the service bulletin, while not mandatory, is an FAA-approved method for continued

operation if scribe lines are found before the compliance times.

We agree. We have explained this provision in paragraph (g) in this final rule.

Request To Extend Certain Compliance Times

One commenter, an operator (Delta Air Lines), reports that a number of its airplanes have been inspected using procedures developed before Alert Service Bulletin 737–53A1262 was issued. The operator plans to request AMOC approval for these procedures. The commenter raises several questions regarding compliance times for submitting AMOCs and reports (of cracks) for these airplanes, and requests that we revise the proposed AD to require a report within 30 days after the AMOC is approved for those airplanes.

We disagree. Individual operator deviations to the required inspection and reporting procedures may be handled as AMOCs, which operators may request in accordance with paragraph (p) of this AD. We have not changed the final rule regarding this issue.

Request To Clarify Service Bulletin Instructions

Boeing requests that we revise the proposed AD to address some inadvertent omissions in Alert Service Bulletin 737–53A1262.

1. Figure 37 is intended to identify ''Restricted Zones'' at door cutouts as both the affected structure and Zone 1B. However, Figure 37 does not identify Zone 1B. This information is necessary compliance information for Figure 1, ''Compliance Threshold Calculation for Zone 1.''

2. Figure 1, sheets 2 and 3, contain two errors for Areas B, C, and E. Where the service bulletin refers only to ''areas where the cutout modification shown in Service Bulletin 737–53A1177 was accomplished,'' this text should be followed by ''or Zone 1B.'' And the phrase ''[i]n areas where the cutout modification shown in Service Bulletin 737–53A1177 was not accomplished'' should be preceded by ''For Zone 1A.'' The commenter states that a 4,500-flight-cycle grace period is incorporated into the threshold calculation for locations without potential multisite damage (MSD), and a 1,200-cycle grace period is incorporated into the threshold calculations for locations with potential MSD. Not subject to MSD, Zone 1B locations are subject to the 4,500 cycles grace period only.

We agree with the requested changes. We have clarified these omissions in new paragraphs (l), (m), and (n) in this final rule. These additional paragraphs do not require additional work by any operator; therefore, we do not need to revise the proposed AD to reopen the period for public comment on this issue.

Request To Emphasize Importance of Crack Reports

Boeing requests that we revise the proposed AD to describe the fleet experience of numerous ''false positive'' indications, i.e., discrepancies that were initially identified as cracks but were upon further analysis determined not to be cracks. Boeing also requests that we recommend that operators submit cracked parts to Boeing for analysis. In support of these requests, Boeing asserts that further analysis of crack findings could change the compliance specifications in Alert Service Bulletin 737–53A1262. Correctly identifying cracks is imperative to reflect actual fleet findings in any future changes to the service bulletin. One operator provided Boeing with nine cut-out samples, which contained positive crack indications based on ultrasonic nondestructive inspections. However, metallurgical analysis revealed no cracks. Boeing emphasizes that potential future changes to the compliance requirements of the service bulletin should be based on confirmed crack findings—not positive crack indications, which may be false positive findings.

We acknowledge Boeing's concerns. But we disagree with the request to require operators to submit cracked parts to Boeing. Although operators may benefit from coordinated efforts to minimize the number of false positive results, requiring operators to send cracked parts to Boeing will add to the costs associated with this AD without further enhancing safety. We have not changed the final rule regarding this issue.

Request To Extend Compliance Time for Reporting

If the inspection reveals any cracks, the proposed AD would require operators to submit a report within 30 days after the inspection. Two operators (Southwest Airlines and America West) speculate that most airplanes will be inspected at a heavy check maintenance facility, and that obtaining the information for the report could take longer than 30 days. The commenters request that we revise the proposed AD to require reports within 30 days after the airplane is returned to service, rather than 30 days after the inspection.

In light of the issue described above, we do not find it appropriate to change this compliance time. The purpose of the report is to gather timely information on crack findings. Heavy checks can take a long time, and delaying the report until the end of the heavy check could defeat the purpose of the report. Further, this AD requires a report only when cracks are found, so a report will likely not be necessary for all airplanes.

Requests To More Accurately Describe Corrective Actions

As written, paragraph (h) of the proposed AD would require operators to repair scribe lines and cracks. Two commenters note that appropriate corrective actions for scribe lines may also include further inspections. Boeing requests that we distinguish the corrective actions in paragraph (h) to identify both inspections and repairs, as applicable. Another commenter (Delta Air Lines) requests that we replace ''repair'' with ''inspection/repair'' in paragraph (k)(2) of the proposed AD.

We partially agree that clarification may be necessary. We have revised paragraph (h) accordingly in this final rule. But we cannot revise paragraph (p)(3) (paragraph (k)(2) in the proposed AD) because Boeing authorized representatives for the Boeing Commercial Airplanes Delegation Option Authorization Organization are not delegated to approve changes to inspection programs.

Request To Allow Previous FAA-Approved Repairs

One commenter (Alaska Airlines) requests that we revise the proposed AD to address scribed areas repaired before the effective date of the AD in accordance with a method approved by the FAA. The commenter states that the proposed AD would not allow previously approved repairs for scribe lines as AMOCs.

We agree. New paragraph (p)(4) in this AD provides AMOC credit for repairs approved by the Seattle Aircraft Certification Office (ACO) or a Boeing Company designated engineering representative or authorized representative, via FAA Form 8110–3 or 8100–9 issued before the effective date of this AD, provided the repair plan specifically addressed scribe line damage as stated in the title of the form.

Request To Clarify Requirements for Demonstrating Compliance

One commenter (KLM) notes that the initial inspection thresholds and the LRTS inspection intervals are based on the first scribing opportunity, which the commenter contends is basically the first repainting. The commenter adds that maintenance records may show the dates an airplane has been repainted,

but not the order of the repainting (first repainting, second, etc.). The commenter surmises that, if the date of the first repainting cannot be determined, the airplane must be inspected before the airplane accumulates 5,000 total flight cycles. To avoid defaulting to this threshold, the commenter asks how an operator can prove that a certain repainting was the first for a specific airplane. The commenter requests that we revise the proposed AD to include this consideration in the definition of the ''first scribing opportunity.''

We disagree with the request. Each operator's system of records will vary in detail, scope, and retrievability; developing a standard protocol would most likely burden rather than help operators. An operator's showing of compliance regarding maintenance records will vary based on whether the operator has owned the airplane since it was delivered from Boeing or purchased it from another source. Any operator who owned the airplane since delivery from Boeing may be able to determine the date of the first repainting and the extent of work performed such as a complete stripping or a scuff-and-paint operation. If the airplane has a maintenance history from a previous owner/operator, then assembling complete repainting records might be more difficult. The level of detail for recording maintenance such as painting varies from operator to operator depending on acceptability by local airworthiness authorities; a standard protocol would be impossible to develop. Individual operators should contact their airworthiness authorities for a showing of compliance. We have not changed the final rule regarding this issue.

Request To Revise Inspection Requirement

One commenter (Air North) requests that the present level of inspection be permitted to monitor the condition of the pressure skin per Boeing SB 737–53A1177 until the lap splice terminating action, at 1200 flight cycles (LFEC), with 250-flight-hour visual inspections.

We have worked extensively with Boeing to align this AD's inspection and LRTS program with existing inspection and modification programs on the 737 Classic fuselage skin. We do not find it necessary to further revise the proposed inspection program. However, under the provisions of paragraph (p) in this final rule, we may approve requests for AMOCs that include data substantiating that the alternative method would provide an acceptable level of safety. We have not changed the final rule regarding this issue.

Request To Advise of Related ADs

One commenter (Delta Air Lines) notes that Part 1, Step 2 (Zone 1 Threshold Determination and Pre-Threshold Special Lap Joint Inspections), of the Work Instructions of Service Bulletin 737–53A1262 refers to ''Special Lap Joint Inspections in Paragraph 1.E., Compliance.'' The inspections that appear as Special Lap Joint Inspection (1) are related to AD 2002–07–08, amendment 39–12702 (67 FR 17917, April 12, 2002). The inspections that appear as Special Lap Joint Inspection (2) are related to AD 2003–08–15, amendment 39–13128 (68 FR 20341, April 25, 2003).

We infer that the commenter requests that we revise paragraph (b) (''Affected ADs'') of the proposed AD to give credit for actions accomplished as part of other related airworthiness directives. We disagree. Although the actions in all three ADs are the same, the compliance times and in some cases the affected airplanes are different. For some airplanes, the inspections of this AD may be required before the compliance times required by the other cited ADs. If an operator finds that actions accomplished for one AD should be credited to another AD, we will evaluate and approve requests for credit on a case-by-case basis, based on a showing of an acceptable level of safety.

Additional Changes to Proposed AD

We have simplified paragraph (h) in this final rule by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD for repair methods.

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

Conclusion

We have carefully reviewed the available data, including the comments 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

There are about 3,132 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Zone	Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
1	Sealant removal	66	$65	$4,290	1,384	$5,937,360
	Inspection	4	65	260	1,384	359,840
2	Sealant removal	38	65	2,470	1,384	3,418,480
	Inspection	29	65	1,885	1,384	2,608,840
3	Sealant removal	88	65	5,720	1,384	7,916,480
	Inspection	38	65	2,470	1,384	3,418,480

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–12 Boeing: Amendment 39–14539. Docket No. FAA–2005–20918; Directorate Identifier 2004–NM–269–AD.

Effective Date

(a) This AD becomes effective May 5, 2006.

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

(d) This AD results from reports of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines. Scribe line damage can also occur at many other locations, including butt joints, external doublers, door scuff plates, the wing-to-body fairing, and areas of the fuselage where decals have been applied or removed. We are issuing this AD to prevent rapid decompression of the airplane due to fatigue cracks resulting from scribe lines on pressurized fuselage structure.

Compliance

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

Inspection

(f) Do a detailed inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, except as provided by paragraphs (g), (j), (k), (l), (m), and (n) of this AD. Do the actions at the time specified in paragraph 1.E., ''Compliance,'' of the service bulletin, except as required by paragraph (i) of this AD. Acceptable inspection exemptions are described in paragraph 1.E.1. of Boeing Alert Service Bulletin 737–53A1262.

(1) If no scribe line is found, no further work is required by this AD.

(2) If any scribe line is found: Do all applicable investigative and corrective actions at the time specified by doing all applicable actions specified in the Accomplishment Instructions of the service bulletin, except as required by paragraph (h) of this AD.

Note 1: A detailed inspection is defined in Note 10 of Boeing Alert Service Bulletin 737–53A1262 under 3.A., ''General Information.'' Specific magnification requirements may be specified in the steps of the Work Instructions.

Exceptions to and Clarification of Service Bulletin 737–53A1262 Procedures

(g) This AD requires accomplishment of Parts 1 through 11 of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004. Parts 12 and 13 of the service bulletin may be accomplished, if applicable, to allow temporary return to service. This AD does not require accomplishment of Part 14 of the service bulletin, although the FAA-approved procedures described in Part 14 are acceptable for continued operation with scribe lines found before the applicable compliance time.

(h) If any scribe line or crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, specifies to contact Boeing for appropriate action: Before further flight, inspect or repair scribe lines and repair cracks using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(i) Where Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Certain figures are incorrectly identified in Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004. The figure cited in Part 8, step 3, should be Figure 39, not Figure 38. The figure cited in Part 9, step 4, should be Figure 38, not Figure 39.

(k) If the operator's records show that the airplane has never been stripped and repainted under the dorsal fin fairing since delivery from Boeing, then this AD does not require inspections of the butt joint, lap joint, and repair, as specified in paragraph (f) of this AD, in the areas under the dorsal fin fairing.

(l) Figure 37 of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, defines ''Restricted Zones'' at door cutouts as the only affected structure. This AD considers this area to also include Zone 1B.

(m) In Figure 1, sheets 2 and 3, of Boeing Service Bulletin 737–53A1262, dated December 9, 2004, the first condition for the initial compliance threshold for Areas B, C, and E is for areas where the cutout modification shown in Boeing Service Bulletin 737–53A1177 was accomplished. This AD considers this condition to also include Zone 1B.

(n) In Figure 1, sheets 2 and 3, of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, the second condition for the initial compliance threshold for Areas B, C, and E is for areas where the cutout modification shown in Boeing Service Bulletin 737–53A1177 was not accomplished. This AD considers this condition to apply only to Zone 1A.

Reporting Requirement

(o) At the applicable time specified in paragraph (o)(1) or (o)(2) of this AD, submit a report of positive findings of cracks found during the inspection required by paragraph (f) of this AD to the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Alternatively, operators may submit reports to their Boeing field service representatives. The report shall contain, as a minimum, the following information: airplane serial number, flight cycles at time of discovery, location(s) and extent of positive crack findings. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done before the effective date of this AD: Send the report within 30 days after the effective date of this AD.

(2) If the inspection was done after the effective date of this AD: Send the report within 30 days after the inspection is done.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the

authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative (AR) for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

(4) A repair plan approved by a Boeing Company AR or Designated Engineering Representative before the effective date of this AD is acceptable for compliance with the requirements of paragraphs (f)(2) and (h) of this AD, provided the approval was documented via FAA Form 8110–3 or 8100–9, and identified scribe line damage in the title of the form.

Material Incorporated by Reference

(q) You must use Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3066 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2005–19411; SFAR No. 105]

RIN 2120–AI47

Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of expiration date.

SUMMARY: This action extends the expiration date of Special Federal Aviation Regulation (SFAR) No. 105 through October 28, 2006. This action is necessary to maintain the reservation system established for unscheduled arrivals at O'Hare International Airport while the FAA completes rulemaking associated with scheduled arrivals at the airport.

DATES: This final rule is effective on March 27, 2006, and SFAR No. 105 published at 70 FR 39610 (July 8, 2005), as amended in this rule, shall remain in effect until October 28, 2006.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations Services, Air Traffic Organization; Telephone: (202) 267–9424; E-mail: *gerry.shakley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(1) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation

Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Authority for This Rulemaking

The U.S. Government has exclusive sovereignty over the airspace of the United States.[1] Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the Nation's navigable airspace. In this regard, the Administrator is required to assign by regulation or order use of the airspace to ensure its efficient use.[2]

The FAA's broad statutory authority to manage the efficient use of airspace encompasses management of the nationwide system of air commerce and air traffic control. To ensure the efficient use of the airspace, the FAA must take steps to prevent congestion at an airport from disrupting or adversely affecting the air traffic system for which the FAA is responsible. Inordinate delays of the sort experienced at O'Hare in late 2003 and much of 2004 can have a crippling effect on other parts of the system, causing significant losses in time and money for individuals and businesses, as well as the air carriers and other operators at O'Hare and beyond. This rule facilitates the Agency's exercise of its authority to manage the safe and efficient use of the navigable airspace.

Background

Since November 2003, O'Hare has suffered an inordinate and unacceptable number of delays as the result of over-scheduling at the airport, which was also having a crippling effect on the entire National Airspace System. In August 2004, the FAA intervened by ordering a limit on the number of scheduled arrivals at the airport during the peak operating hours of 7:00 a.m. through 8:59 p.m., Central Time, effective November 1, 2004, so that the system could return to a reasonably balanced level of operations and delay.[3]

On October 20, 2004, we published a notice of proposed rulemaking (NPRM) seeking public comments on a proposed reservation system for unscheduled

[1] 49 U.S.C. 40103(a).

[2] 49 U.S.C. 40103(b)(1).

[3] Operating Limitations at Chicago International Airport. Docket No. FAA–2004–16944.

arrivals at O'Hare (69 FR 61708). Effective November 1, 2004, and while this rulemaking was pending, we implemented a corresponding voluntary reservation program for unscheduled arrivals using the general procedures followed during Special Traffic Management Programs and the High Density Rule.

On July 8, 2005, the FAA published SFAR No. 105, ''Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport'' (70 FR 39610). As stated in SFAR No. 105, the benefits achieved by the FAA's August 18 Order would dissipate if certain operations at the airport remained capped but other operations were permitted to grow. SFAR No. 105 maintained the historical level of unscheduled operations at O'Hare and supported other agency actions at O'Hare that address congestion and delay until additional capacity exists at the airport.

In SFAR No. 105, we discussed that it may be necessary to extend this rule limiting unscheduled arrivals at O'Hare to coincide with a final rule addressing scheduled arrivals, if adopted, or with an extension of the August 2004 Order. The NPRM addressing scheduled arrivals at O'Hare was published on March 25, 2005 (70 FR 15520), and the agency is currently evaluating the comments. In a separate notice published today in the **Federal Register**, the FAA has extended the August 2004 Order through October 28, 2006. On November 2, 2005 (70 FR 66253), we extended the expiration date on SFAR 105 until March 31, 2006. Consistent with the extension of the August 2004 order, we conclude that it is necessary to extend SFAR 105 through October 28, 2006,[4] to maintain the current operating environment at the airport.

The extension is necessary to conclude the rulemaking addressing limits on scheduled arrivals and consider the effect that rulemaking will have, if any, on SFAR No. 105. This extension provides an interim measure pending adoption of a comprehensive regulation that addresses scheduled operations at the airport.

Therefore, we find that notice and comment procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. We further find that good cause exists to make this rule effective in less than 30 days.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0694.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0694.

This final rule establishes a reservation system to limit the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the peak hours of 7 a.m. through 8:59 p.m., Central Time, Monday through Friday, and 12 p.m. through 8:59 p.m. Central Time on Sunday. We received no comments from the public that specifically discussed information collection.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid OMB control number.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impact of this SFAR extension.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a rule does not warrant a full evaluation, this order permits a statement to that effect. The basis for the minimal impact must be included in the preamble, if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for that determination follows:

In the preamble of SFAR No. 105, the FAA stated that we might consider extending SFAR 105 for a time period that would coincide with a final rule limiting scheduled operations. Because the Agency has not adopted a final rule limiting scheduled operations, the FAA is extending this SFAR through October 28, 2006. In the final economic assessment of SFAR No. 105, the FAA found that the rule provided system delay benefits at a minimal cost. The FAA finds that this extension is cost beneficial and will continue to provide system delay benefits at minimal cost.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

[4] The limits on unscheduled arrivals do not apply on Saturdays.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule extends the expiration date of SFAR No. 105, which provides for fewer airport delays at a minimum cost. Just as in the initial and final regulatory flexibility analyses, the FAA expects there will be a substantial number of small entities affected by the extension of this final SFAR, however, the economic effect will continue to be insignificant. Therefore, as the FAA Administrator, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of the extension of this final rule and determined that it will not have an effect on foreign commerce.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration is amending chapter I of title 14 Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

■ 2. Section 9 of Special Federal Aviation Regulation (SFAR) No. 105 is revised to read as follows:

Special Federal Aviation Regulation No. 105—Operating Limitations for Unscheduled Operations at Chicago's O'Hare International Airport

* * * * *

Section 9. *Expiration.* This Special Federal Aviation Regulation expires at 9 p.m., Central Time, on October 28, 2006, unless sooner terminated.

Issued in Washington, DC on March 27, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–3114 Filed 3–28–06; 11:20 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

[Docket No. 2003N–0324]

New Animal Drugs; Removal of Obsolete and Redundant Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing regulations that exempted certain new animal drugs administered in feed from batch certification requirements. FDA is also removing portions of a regulation that required sponsors to submit data regarding the subtherapeutic use of certain antibiotic, nitrofuran, and sulfonamide drugs administered in animal feed. The intended effect of this rule is to remove regulations that are obsolete or redundant. The portions of the latter regulation that are being removed are most of the Type A medicated articles and use combinations that are listed in the tables contained in that regulation. This rule does not finalize the provisions of the proposed rule regarding removing the remainder of that regulation.

DATES: This rule is effective May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–50), 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, email: *andrew.beaulieu,fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 8, 2003 (68 FR 47272), FDA published a proposed rule to remove and reserve 21

CFR 510 Subpart F—*Animal Use Exemptions From Certification and Labeling Requirements* (part 510), consisting of § 510.515 *Animal feeds bearing or containing new animal drugs subject to the provisions of section 512(n) of the act* (§ 510.515), and 21 CFR 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* (§ 558.15) on the grounds that these regulations were obsolete or redundant.

The proposed rule explained the nature and purpose of §§ 510.515 and 558.15. It also explained that most of the products and use combinations subject to the listings in § 558.15 had approvals that were already codified in part 558 subpart B. It described three categories of products and use combinations subject to the listings in § 558.15 that did not have approvals codified in part 558 subpart B.

The first category consisted of nine products and use combinations that were approved but which were subject to the Drug Efficacy Study Implementation (DESI) program. In the same issue of the **Federal Register** as the proposed rule, FDA published a notice of opportunity for hearing (NOOH), which announced the agency's findings of effectiveness for these products and use combinations (68 FR 47333). The agency proposed to withdraw the new animal drug applications (NADAs) for those products and use combinations lacking substantial evidence of effectiveness, following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. For applications proposed to be withdrawn, the agency provided an opportunity for hearing. In response to the NOOH, FDA received supplemental applications for seven of the products and use combinations with labeling conforming to the relevant findings of effectiveness. FDA has approved those applications and, elsewhere in this issue of the **Federal Register**, FDA is publishing final rules amending part 558 subpart B to reflect those approvals. FDA received hearing requests for the other two products.

In the second category was one use combination that was approved but was not subject to the agency's DESI program. In the same issue of the **Federal Register** as the proposed rule, FDA issued a final rule amending part 558 subpart B to reflect this approval (68 FR 47237).

The third category contained five use combinations the agency believed were not approved and, therefore, were erroneously listed in § 558.15. The proposed rule stated that the agency was unaware of any company that currently marketed any of these use combinations, and requested that if a company wished to market one of them then it should present evidence supporting approval to avoid facing potential regulatory action in the event of future marketing. To date, no company has asserted that it holds a valid approval for them.

II. Comments on the Proposed Rule and Summary of the Final Rule

The agency received only one set of comments on the proposed rule, from Pennfield Oil Co. (Pennfield). Pennfield owns a bacitracin methylene disalicylate (BMD) Type A medicated article, NADA 141–137, that is listed in the table in § 558.15(g)(1). This listing is under Fermenta Animal Health Co., which is a predecessor in interest to Pennfield. Pennfield also owns an oxytetracycline/neomycin Type A medicated article, NADA 138–939, that is listed in the table in § 558.15(g)(2). In response to the NOOH, FDA received hearing requests regarding both of these products.

A. Removal of § 510.515

The comment agreed with the agency's position that § 510.515 is obsolete and stated that it did not oppose the removal of this provision. Thus, there were no opposing comments and, for the reasons described in the proposed rule, FDA is removing part 510 subpart F. FDA is also making a conforming change in § 558.4 *Requirement of a medicated feed mill license*.

B. Removal of § 558.15

The comment objected to removal of § 558.15 until the issues in the NOOH are addressed. It argued that the BMD listing in § 558.15 provides evidence of Pennfield's approval and that removal of that section, without updating the BMD listing in part 558 subpart B, would result in a lack of recognition in the regulations of the approval that Pennfield currently has.

FDA agrees that it should, at this time, maintain the listing for Pennfield's BMD Type A medicated article in § 558.15.

FDA is aware of only two approved new animal drugs for use in animal feeds that are not listed in part 558 subpart B—Pennfield's BMD and oxytetracycline/neomycin Type A medicated articles. FDA has decided to maintain both of these listings in § 558.15 until, as part of the DESI program, either their approvals are withdrawn or part 558 subpart B has been amended to reflect their approvals.

Thus, FDA is removing from the tables in § 558.15(g) those products and use combinations that are not approved and those products and use combinations whose approval is reflected in part 558 subpart B. FDA is retaining only the listings for NADA 141–137 and NADA 138–939 in those tables. In addition, FDA is retaining § 558.15(a) through (f) until all of the table listings are removed. FDA intends to finalize the proposed rule to remove all of § 558.15 once, as part of the DESI program, either the approvals for NADA 141–137 and NADA 138–939 are withdrawn or part 558 subpart B has been amended to reflect their approvals.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–602), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not an economically significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

FDA proposed the removal of §§ 510.515 and 558.15 on August 8, 2003, because they were obsolete or redundant. The purpose of § 510.515 was to provide exemption from certification and labeling requirements of certain drugs used in animal feeds. FDA had discontinued the practice of certifying antibiotic animal drugs, thereby rendering the regulation obsolete relative to its intended purpose. The original purpose of § 558.15, requiring the submission of the results of studies on the long-term administration of then-marketed antimicrobial drugs in animal feed on the occurrence of multiple drug-resistant bacteria associated with these animals, was also obsolete as FDA had a new strategy and concept for assessing

the safety of antimicrobial new animal drugs, including subtherapeutic use of antimicrobials in animal feed, with regard to their microbiological effects on bacteria of human health concern.

A. Benefits

Only one set of comments to the proposal was received by FDA. Because these comments did not question the benefits as described in the proposed rule, we retain the benefits for the final rule. This final rule is expected to provide greater clarity in the regulations for new animal drugs for use in animal feeds by deleting obsolete provisions in §§ 510.515 and 558.15. We do not expect this final rule to result in any direct human or animal health benefit. Rather, this final rule would remove regulations that are no longer necessary.

B. Compliance Costs

The analysis of the proposed rule concluded that five combination uses would lose marketing ability as a result of the revocation of § 558.15, and that our previous attempts to contact the three sponsors of these five drug combinations led us to conclude that these sponsors no longer market these combinations. This conclusion is reinforced now by the lack of public comments on these five drug combination uses. Therefore, we do not expect the final rule that revokes § 558.15 to have a substantive effect on any approved new animal drugs, or to cause any approved new animal drug to lose its marketing ability or experience a loss of sales.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. FDA has determined that this final rule does not impose compliance costs on the sponsors of any products that are currently marketed. Further, it does not cause any drugs that are currently marketed to lose their marketing ability. We therefore certify that this final rule would not have a significant economic effect on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (as amended).

D. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the implicit price deflator for the gross domestic product. FDA does not expect this final rule to result in any 1 year expenditure that would meet or exceed this amount. As such, no further analysis of anticipated costs and benefits is required by the Unfunded Mandates Reform Act.

V. Paperwork Reduction Act of 1995

FDA concludes that this rule does not have information collection requirements.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

Subpart F—[Removed and Reserved]

■ 2. Subpart F, consisting of § 510.515, is removed and reserved.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

■ 4. In paragraph (c) of § 558.4, remove ''§§ 510.515 and 558.15'' and add in its place ''§ 558.15''.

§ 558.15 [Amended]

■ 5. Amend § 558.15 as follows:

■ a. In the table in paragraph (g)(1), remove the entries for ''Pitman-Moore, Inc.'', ''A. L. Laboratories, Inc'', ''Elanco Products Co'', ''Sanofi Animal Health, Inc.'', ''The Upjohn Co'', ''Pfizer, Inc'', ''Hoechst-Roussel Agri-Vet, Inc'', ''American Cyanamid Co., Fermenta Animal Health Co., Feed Specialties Co., Inc., Pfizer, Inc., PennField Oil Co., and VPO, Inc..'', ''Merck Sharp & Dohme Research Labs., and Solvay Veterinary, Inc.'', ''Pfizer, Inc., PennField Oil Co.'', ''American Cyanamid Co'', ''Hoffman-La Roche, Inc'', ''Pfizer, Inc.'', ''American Cyanamid Co. and Pfizer, Inc.'', and ''Boehringer Ingelheim Vetmedica, Inc..''; and under the ''Drug Sponsor'' column revise the entry for ''A.L. Laboratories, Inc., Fermenta Animal Health Co.'', to read ''Fermenta Animal Health Co.''; and

■ b. In the table in paragraph (g)(2), remove the entries for ''Boehringer Ingelheim Vetmedica, Inc.'', ''American Cyanamid Co'', ''The Upjohn Co.'', ''Pitman-Moore, Inc.'', ''Merck Sharp & Dohme Research Labs.'', ''A. L. Laboratories, Inc.'', ''Whitmoyer Labs, Inc'', and ''Elanco Products Co.''; and under the ''Drug sponsor'' column revise the entry for ''Pfizer, Inc., PennField Oil Co., and VPO, Inc.'' to read ''PennField Oil Co.''

Dated: March 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–3121 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group Ltd. The ANADA provides for the veterinary prescription use of flunixin meglumine injectable solution for the control of inflammation in horses and cattle.

DATES: This rule is effective March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Christopher Melluso, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *christopher.melluso@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed ANADA 200–387 for the use of Flunixin Injectable Solution by veterinary

prescription for the control of inflammation in horses and cattle. Cross Vetpharm Group's Flunixin Injectable Solution is approved as a generic copy of Schering-Plough Animal Health's BANAMINE (flunixin) Solution, approved under NADA 101–479. The ANADA is approved as of March 2, 2006, and the regulations in 21 CFR 522.970 are amended to reflect the approval. 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(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.970 [Amended]

■ 2. Section 522.970 is amended in paragraphs (b)(2) and (e)(2)(iii) by removing ''and 059130'' and by adding in its place ''059130, and 061623''.

Dated: March 13, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 06–3118 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 2003N–0324]

New Animal Drugs for Use in Animal Feeds; Bacitracin; Nitarsone; Zoalene

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 three supplemental new animal drug applications (NADAs) filed by Alpharma, Inc. Two of the supplemental NADAs provide for the use of approved, single-ingredient Type A medicated articles containing bacitracin methylene disalicylate and zoalene, with or without roxarsone, to formulate two-way or three-way combination drug Type C medicated feeds for replacement chickens. The third NADA provides for the use of bacitracin zinc and nitarsone single-ingredient Type A medicated articles for two-way combination Type C medicated feeds for growing turkeys. These approvals reflect FDA's effectiveness conclusions, which relied on the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group's evaluation of the effectiveness of these drugs when used in animal feed as single ingredients.

DATES: This rule is effective March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–50), 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, e-mail: *andrew.beaulieu@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 8, 2003 (68 FR 47332), as corrected October 7, 2003 (68 FR 57911), as part of the Drug Efficacy Study Implementation (DESI) program CVM announced the effective conditions of use for several drug products and use combinations listed in 21 CFR 558.15. CVM proposed to withdraw the NADAs for those products or use combinations lacking substantial evidence of effectiveness following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. Alpharma, Inc., One Executive Dr., Fort Lee, NJ 07024, filed supplements to three of its approved NADAs to revise the labeling of its products to comply with these findings of effectiveness.

Alpharma, Inc., filed a supplement to approved NADA 141–130 for use of bacitracin methylene disalicylate and zoalene Type A medicated articles to formulate two-way combination drug Type C medicated feeds. This supplemental NADA provides for the use of combination feeds containing BMD (bacitracin methylene disalicylate) at 4 to 50 grams per ton (g/ton) and ZOAMIX (zoalene) at 36.3 to 113.5 g/ton of feed in replacement chickens for increased rate of weight gain and improved feed efficiency; and for development of active immunity to coccidiosis.

Alpharma, Inc., also filed a supplement to approved NADA 141–131 for use of bacitracin methylene disalicylate, zoalene, and roxarsone single-ingredient Type A medicated articles to make three-way combination drug Type C medicated feeds. This supplemental NADA provides for the use of combination feeds containing BMD (bacitracin methylene disalicylate) at 4 to 50 g/ton, ZOAMIX (zoalene) at 36.3 to 113.5 g/ton, and 3–NITRO (roxarsone) at 22.7 to 45.4 g/ton of feed in replacement chickens for increased rate of weight gain and improved feed efficiency; for development of active immunity to coccidiosis; and for improved pigmentation.

Alpharma, Inc., also filed a supplement to approved NADA 141–132 for use of bacitracin zinc and nitarsone single-ingredient Type A medicated articles to make two-way combination drug Type C medicated feeds. This supplemental NADA provides for the use of combination feeds containing ALBAC (bacitracin zinc) at 4 to 50 g/ton and HISTOSTAT (nitarsone) at 170 g/ton (0.01875 percent) of feed in growing turkeys for increased rate of weight gain and improved feed efficiency; and as an aid in the prevention of blackhead.

The DESI evaluation is concerned only with the effectiveness of the drug products and use combinations. Nothing in this document constitutes a bar to further proceedings with respect to questions of safety of the subject drugs in treated animals or of the drugs or their metabolites in food products derived from treated animals.

Products that comply with FDA's findings of effectiveness are eligible for copying as described in the *Generic Animal Drug and Patent Term Restoration Act Policy Letter Eight*, August 21, 1991 (56 FR 41561). Accordingly, sponsors may now obtain approval of abbreviated NADAs for

these three combination drug medicated feeds.

The NADAs are approved as of February 15, 2006, and the regulations are amended in 21 CFR 558.76, 558.78, 558.369, and 558.680 to reflect the approval. Approval of these supplemental NADAs did not require review of any new safety or effectiveness data. Therefore, a freedom of information summary was not prepared.

The agency has determined under 21 CFR 25.33(a)(2) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.76 [Amended]

■ 2. In § 558.76, amend paragraph (d)(3)(xviii) by adding ''or roxarsone'' after ''arsanilic acid''.

■ 3. In § 558.78, amend paragraph (d)(3) by redesignating paragraphs (d)(3)(x) through (d)(3)(xii) as paragraphs (d)(3)(xi) through (d)(3)(xiii); and add new paragraph (d)(3)(x) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(d) * * *

(3) * * *

(x) Nitarsone as in § 558.369.

* * * * *

§ 558.369 [Amended]

■ 4. In § 558.369, amend paragraph (d)(2)(i) by adding ''or bacitracin zinc'' after ''disalicylate''.

■ 5. In § 558.680, amend the table in paragraph (d)(1)(i), after the entry for ''Arsanilic acid 90 (0.01%) plus penicillin 2.4 to 50'' by adding entries for ''Bacitracin 4 to 50'' and ''Bacitracin methylene disalicylate 4 to 50 plus roxarsone 22.7 to 45.4'' to read as follows:

§ 558.680 Zoalene.

* * * * *

(d) * * *

(1) * * *

Zoalene in grams/ton	Combination in grams/ton	Indications for use	Limitations
(i) * * *			
	Bacitracin 4 to 50	Replacement chickens: For development of active immunity to coccidiosis; for increased rate of weight gain, improved feed efficiency	Feed as in subtable in § 558.680(d)(1)(i); grower ration not to be fed to birds over 14 weeks of age. As bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter
	Bacitracin methylene disalicylate 4 to 50 plus roxarsone 22.7 to 45.4	Replacement chickens: For development of active immunity to coccidiosis; for increased rate of weight gain, improved feed efficiency, and improved pigmentation	Feed as in subtable in § 558.680(d)(1)(i); grower ration not to be fed to birds over 14 weeks of age. Discontinue use 5 days before slaughter; as sole source of organic arsenic; drug overdose or lack of water may result in leg weakness. As bacitracin methylene disalicylate and roxarsone provided by No. 046573 in § 510.600(c) of this chapter
*	*	*	* * * *

* * * * *

Dated: March 22, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 06–3122 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 2003N–0324]

New Animal Drugs for Use in Animal Feeds; Bacitracin; Nicarbazin; Oxytetracycline and Neomycin; Penicillin

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 four supplemental new animal drug applications (NADAs) filed by Phibro Animal Health. One supplemental NADA provides for the use of fixed-combination Type A medicated articles containing oxytetracycline and neomycin sulfate to formulate two-way fixed-combination drug Type B and Type C medicated feeds for chickens, turkeys, swine, cattle, and sheep. Two of the supplemental NADAs provide for the use of approved, single-ingredient Type A medicated articles containing nicarbazin and penicillin, with or without roxarsone, to formulate two-way or three-way combination drug Type C medicated feeds for broiler chickens. The fourth supplemental NADA provides for the use of approved, single-ingredient Type A medicated articles nicarbazin, bacitracin methylene disalicylate, and roxarsone to formulate three-way combination drug Type C

medicated feeds for broiler chickens. These approvals reflect FDA's effectiveness conclusions which relied on the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group's evaluation of the effectiveness of these drugs when used in animal feed as single ingredients.

DATES: This rule is effective March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–50), 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, e-mail: *andrew.beaulieu@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 8, 2003 (68 FR 47332), as corrected October 7, 2003 (68 FR 57919), as part of the Drug Efficacy Study Implementation (DESI) program, CVM announced the effective conditions of use for several drug products and use combinations listed in 21 CFR 558.15. CVM proposed to withdraw the new animal drug applications (NADAs) for those products or use combinations lacking substantial evidence of effectiveness following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. Phibro Animal Health, 65 Challenger Rd., 3d Floor, Ridgefield Park, NJ 07660, filed supplements to four of its approved NADAs to revise the labeling of its products to comply with these findings of effectiveness.

Phibro Animal Health filed a supplement to approved NADA 94–975 for NEO–TM 50/50D and NEO–TM 100/100D (oxytetracycline and neomycin sulfate) Type A medicated articles. The supplemental NADA provides for use of these fixed-combination Type A medicated articles to formulate two-way fixed-combination drug Type B and Type C medicated feeds containing oxytetracycline and neomycin sulfate, in a 1:1 ratio, for several production and therapeutic indications in chickens, turkeys, swine, cattle, and sheep.

Phibro Animal Health also filed a supplement to approved NADA 98–371 for use of nicarbazin, procaine penicillin, and roxarsone single-ingredient Type A medicated articles to make three-way combination drug Type C medicated feeds. This supplemental NADA provides for the use of combination feeds containing NICARBAZIN (nicarbazin) at 90.8 to 181.6 grams per ton (g/ton), PENICILLIN G PROCAINE (procaine penicillin) at 2.4 to 50 g/ton, and 3–NITRO (roxarsone) at 22.7 to 45.4 g/ton of feed in broiler chickens as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis; for increased rate of weight gain and improved feed efficiency; and for improved pigmentation.

Phibro Animal Health also filed a supplement to approved NADA 98–374 for use of nicarbazin and procaine penicillin G Type A medicated articles to formulate two-way combination drug Type C medicated feeds. This supplemental NADA provides for the use of combination feeds containing NICARBAZIN (nicarbazin) at 90.8 to 181.6 g/ton and PENICILLIN G PROCAINE (procaine penicillin) at 2.4 to 50 g/ton of feed in broiler chickens as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis; and for increased rate of weight gain and improved feed efficiency.

Phibro Animal Health also filed a supplement to approved NADA 100–853 for use of nicarbazin, bacitracin methylene disalicylate, and roxarsone single-ingredient Type A medicated articles to make three-way combination drug Type C medicated feeds. This supplemental NADA provides for the use of combination feeds containing NICARBAZIN (nicarbazin) at 90.8 to 181.6 g/ton, BMD (bacitracin methylene disalicylate) at 4 to 50 g/ton, and 3–NITRO (roxarsone) at 22.7 to 45.4 g/ton of feed in broiler chickens as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

The DESI evaluation is concerned only with the effectiveness of the drug products and use combinations. Nothing in this document constitutes a bar to further proceedings with respect to questions of safety of the subject drugs in treated animals or of the drugs or their metabolites in food products derived from treated animals.

Products that comply with FDA's findings of effectiveness are eligible for copying, as described in the *Generic Animal Drug and Patent Term Restoration Act Policy Letter Eight*, August 21, 1991 (56 FR 41561). Accordingly, sponsors may now obtain approval of abbreviated NADAs for this fixed combination Type A medicated article and three combination drug medicated feeds.

The supplemental NADAs are approved as of February 15, 2006, and the regulations are amended in 21 CFR 558.76, 558.460, and 558.366, and also in 21 CFR part 558 by adding new § 558.455 to reflect these approvals. Approval of these supplemental NADAs did not require review of any new safety or effectiveness data. Therefore, a freedom of information summary was not prepared.

The agency has determined under 21 CFR 25.33(a)(2) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.76, revise paragraph (d)(3)(xiii) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xiii) Nicarbazin alone or with narasin or roxarsone or with narasin and roxarsone as in § 558.366.

* * * * *

■ 3. In § 558.366, amend the table in paragraph (d) after the entry for ''Narasin 27 to 45 and roxarsone 22.7 to 45.4'' by adding three entries to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(d) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
90.8 to 181.6 (0.01 to 0.02 pct)	Bacitracin methylene disalicylate 4 to 50 and roxarsone 22.7 to 45.4	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency, and improved pigmentation	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. Feed as the sole source of organic arsenic; drug overdose or lack of water may result in leg weakness; do not use in flushing mashes. Discontinue medication 5 days before marketing the birds for human consumption to allow for elimination of the drug from edible tissue. Do not feed to laying hens in production. Nicarbazin as provided by No. 066104; bacitracin methylene disalicylate and roxarsone by No. 046573 in § 510.600(c) of this chapter	066104
	Penicillin 2.4 to 50	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. Do not use in flushing mashes. Do not feed to chickens producing eggs for human consumption. Discontinue medication 5 days before marketing the birds for human consumption to allow for elimination of the drug from edible tissue. Penicillin as procaine penicillin G. Nicarbazin and penicillin as provided by No. 066104 in § 510.600(c) of this chapter	066104
	Penicillin 2.4 to 50 and roxarsone 22.7 to 45.4	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency, and improved pigmentation	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. Feed as the sole source of organic arsenic; drug overdose or lack of water may result in leg weakness; do not use in flushing mashes. Discontinue medication 5 days before marketing the birds for human consumption to allow for elimination of the drug from edible tissue. Do not feed to laying hens in production. Penicillin as procaine penicillin G. Nicarbazin and penicillin as provided by No. 066104; roxarsone by No. 046573 in § 510.600(c) of this chapter	066104
*	*	* *	* *	*

■ 4. Add § 558.455 to read as follows:

§ 558.455 Oxytetracycline and neomycin.

(a) *Specifications.* Type A medicated articles containing oxytetracycline equivalent to 50 grams per pound (g/lb) oxytetracycline hydrochloride and 50 g/lb neomycin sulfate or oxytetracycline equivalent to 100 g/lb oxytetracycline hydrochloride and 100 g/lb neomycin sulfate.

(b) *Sponsors.* See No. 066104 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.430 and 556.500 of this chapter.

(d) *Indications for use*—(1) *Chickens.* It is used in feed as follows:

Oxytetracycline and neomycin sulfate amount in grams per ton of feed	Indications for use	Limitations	Sponsors
(i) 10 to 50	Chickens: For increased rate of weight gain and improved feed efficiency	Feed continuously; do not feed to chickens producing eggs for human consumption	066104
(ii) 100 to 200	Chickens: For control of infectious synovitis caused by *Mycoplasma synoviae*; control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline	Feed continuously for 7 to 14 days (d); do not feed to chickens producing eggs for human consumption; in low calcium feed, withdraw 3 d before slaughter	066104
(iii) 400	Chickens: For control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to oxytetracycline	Feed continuously for 7 to 14 d; do not feed to chickens producing eggs for human consumption; in low calcium feeds, withdraw 3 d before slaughter	066104
(iv) 500	Chickens: For reduction of mortality due to air sacculitis (air-sac-infection) caused by *E. coli* susceptible to oxytetracycline	Feed continuously for 5 d; do not feed to chickens producing eggs for human consumption; withdraw 24 hours before slaughter; in low calcium feeds withdraw 3 d before slaughter	066104

(2) *Turkeys*. It is used in feed as follows:

Oxytetracycline and neomycin sulfate amount	Indications for use	Limitations	Sponsors
(i) 10 to 50 g/ton of feed	Growing turkeys: For increased rate of weight gain and improved feed efficiency	Feed continuously; do not feed to turkeys producing eggs for human consumption	066104
(ii) 100 g/ton of feed	Turkeys: For control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline	Feed continuously for 7 to 14 d; do not feed to turkeys producing eggs for human consumption	066104
(iii) 200 g/ton of feed	Turkeys: For control of infectious synovitis caused by *M. synoviae* susceptible to oxytetracycline	Feed continuously for 7 to 14 d; withdraw 5 d before slaughter; do not feed to turkeys producing eggs for human consumption	066104
(iv) To provide 25 mg/lb of body weight daily	Turkeys: For control of complicating bacterial organisms associated with bluecomb (transmissible enteritis; coronaviral enteritis) susceptible to oxytetracycline	Feed continuously for 7 to 14 d; withdraw 5 d before slaughter; do not feed to turkeys producing eggs for human consumption	066104

(3) *Swine*. It is used in feed as follows:

Oxytetracycline and neomycin sulfate amount	Indications for use	Limitations	Sponsor
(i) 10 to 50 g/ton of feed	Swine: For increased rate of weight gain and improved feed efficiency		066104
(ii) To provide 10 mg/lb of body weight daily	1. Swine: For treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* and treatment of bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin	Feed continuously for 7 to 14 d; withdraw 5 d before slaughter	066104
	2. Breeding swine: For control and treatment of leptospirosis (reducing the incidence of abortion and shedding of leptospirae) caused by *Leptospira pomona* susceptible to oxytetracycline	Feed continuously for not more than 14 d; withdraw 5 d before slaughter	066104

(4) *Cattle and sheep*. It is used in feed as follows:

Oxytetracycline and neomycin sulfate amount	Indications for use	Limitations	Sponsor
(i) 10 to 20 grams per ton of feed	Sheep: For increased rate of weight gain and improved feed efficiency		066104
(ii) To provide 0.05 to 0.1 mg/lb of body weight daily.	Calves (up to 250 lb): For increased rate of weight gain and improved feed efficiency	Feed continuously; in milk replacers or starter feed	066104
(iii) To provide 10 mg/lb of body weight daily	1. Calves and beef and nonlactating dairy cattle: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin	Feed continuously for 7 to 14 d; in feed or milk replacers. If symptoms persist after using for 2 or 3 d, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. A milk discard time has not been established for use in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older. Withdraw 5 d before slaughter	066104
	2. Calves (up to 250 lb): For treatment of bacterial enteritis caused by *E. coli* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin	Feed continuously for 7 to 14 d; in milk replacers or starter feed. If symptoms persist after using for 2 or 3 d, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. A milk discard time has not been established for use in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older. Withdraw 5 d before slaughter	066104
	3. Sheep: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline; treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin	Feed continuously for 7 to 14 d. If symptoms persist after using for 2 or 3 d, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms. Withdraw 5 d before slaughter	066104
(iv) To provide 25 mg/head/day	Calves (250 to 400 lb): For increased rate of weight gain and improved feed efficiency		066104
(v) To provide 75 mg/head/day	Growing cattle (over 400 lb): For increased rate of weight gain; improved feed efficiency, and reduction of liver condemnation due to liver abscesses		066104
(vi) To provide 0.5 to 2.0 g/head/day	Cattle: For prevention and treatment of the early stages of shipping fever complex	Feed 3 to 5 d before and after arrival in feedlots. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. A milk discard time has not been established for use in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older	066104

■ 5. In § 558.460, redesignate paragraphs (d)(2)(vi), (d)(2)(vii), and (d)(2)(viii) as paragraphs (d)(2)(iii), (d)(2)(v), and (d)(2)(vi); and add new paragraph (d)(2)(iv) to read as follows:

§ 558.460 Penicillin.

* * * * *

(d) * * *

(2) * * *

(iv) Nicarbazin alone or with roxarsone as in § 558.366.

* * * * *

Dated: March 22, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 06–3120 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 814 and 820

[Docket No. 2006N–0127]

Medical Device Reporting; Premarket Approval of Medical Devices; Quality System Regulation; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to correct some inadvertent typographical errors and other minor errors in certain device regulations. FDA intends for these corrections to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Philip Desjardins, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240–276–2343.

SUPPLEMENTARY INFORMATION:

I. Highlights of Final Rule

FDA is making the following changes to correct typographical and other minor errors in certain device regulations:

1. FDA is amending 21 CFR 814.126(b)(1)(iv) to replace ''8dd'' with ''803.''

2. FDA is amending 21 CFR 820.198(a)(3) to eliminate a reference to part 804, a part that does not exist.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule corrects only typographical errors in existing regulations and does not change in any way how devices are regulated, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

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

IV. Paperwork Reduction Act of 1995

FDA has determined that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. The Technical Amendments

This rule corrects certain minor errors in existing regulations. This administrative action is limited to correcting typographical errors and eliminating a reference to a nonexistent Code of Federal Regulations (CFR) part. It makes no changes in substantive requirements.

Because the final rule is an administrative action, FDA has determined that it has no substantive impact on the public. It imposes no costs, and merely makes technical administrative changes in the CFR for the convenience of the public. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

List of Subjects

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Institutional review board requirements, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 814 and 820 are amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 2. Amend paragraph (b)(1)(iv) of § 814.126 by removing ''part 8dd'' and adding in its place ''part 803''.

PART 820—QUALITY SYSTEM REGULATION

■ 3. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383.

■ 4. Amend paragraph (a)(3) of § 820.198 by removing ''or 804''.

Dated: March 24, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 06–3089 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 17

[Public Notice 5311]

Overpayments From the Foreign Service Retirement and Disability Fund

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is revising its regulations regarding overpayments from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System (FSRDS) to reflect internal Department restructuring and realignment of responsibilities and the

creation of the Foreign Service Pension System (FSPS).

DATES: This rule is effective May 1, 2006.

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

- E-mail: *SkipperK@state.gov*
- Mail paper submissions to the Deputy Assistant Secretary for Global Financial Services, Charleston Financial Service Center, P.O. Box 150008, Charleston, S.C. 29415–5008.

Persons with access to the internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Kathryn Nutt Skipper, Office of the Legal Adviser, telephone 202–647–4278.

SUPPLEMENTARY INFORMATION: This rule revises the Department of State's regulations regarding overpayments from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System (FSRDS) to reflect internal Department restructuring and realignment of responsibilities and the creation of the Foreign Service Pension System (FSPS).

This regulation establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

Regulatory Analysis

Administrative Procedures Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice (5 U.S.C. 553(b)(3)(A)).

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandated Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Order 12866

The Department does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This regulation will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department determines that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 12372

This regulation does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 17

Administrative practice and procedure, Annuities, Claims, Debts, Foreign service, Government employee, Hearing and appeal procedures, Pensions, Retirement.

■ In consideration of the foregoing, the State Department amends Title 22 of the Code of Federal Regulations, by revising part 17 to read:

PART 17—OVERPAYMENTS FROM THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM (FSRDS) AND THE FOREIGN SERVICE PENSION SYSTEM (FSPS)

Sec.

17.1 General.
17.2 Conditions for waiver of recovery of an overpayment.
17.3 Fault.
17.4 Equity and good conscience.
17.5 Financial hardship.
17.6 Ordinary and necessary living expenses.
17.7 Waiver precluded.
17.8 Burdens of proof.
17.9 Procedures.

Authority: 22 U.S.C. 4047(d); 22 U.S.C. 4071(b); 5 U.S.C. 8470(b); 5 CFR 845.301–07.

§ 17.1 General.

This part establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

§ 17.2 Conditions for waiver of Recovery of an Overpayment.

(a) *Foreign Service Retirement and Disability System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System may be waived

pursuant to section 4047(d), of title 22, United States Code when the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(b) *Foreign Service Pension System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Pension System may be waived pursuant to section 4071(b) of title 22, United States Code and section 8470(b) of title 5, United States Code when the individual is without fault and recovery would be against equity and good conscience.

(c) When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

§ 17.3 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Department of State or other agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he/she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which he/she should have known to be material; or

(3) Whether he/she accepted a payment which he/she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by the Department of State or a Federal agency may mitigate against finding fault if one or more contributed to his or her submission of an incorrect statement, a statement which did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

§ 17.4 Equity and good conscience.

(a) *Defined.* Recovery is against equity and good conscience when—

(1) It would cause financial hardship to the person from whom it is sought;

(2) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either he/she has relinquished a valuable right or changed positions for the worse; or

(3) Recovery could be unconscionable under the circumstances.

(b) [Reserved]

§ 17.5 Financial hardship.

(a) Waiver of overpayment will not be allowed in any case prior to receipt and evaluation of a completed Statement of Financial Status, duly sworn by the recipient of the overpayment.

(b) Financial hardship may be deemed to exist in, but not limited to, those situations where the recipient from whom collection is sought needs substantially all of his or her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(1) Considerations. Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(i) The individual's financial ability to pay at the time collection is scheduled to be made.

(ii) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the individual.

(c) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness, rather primary emphasis shall be placed upon the individual's liquid assets and current income in making such determinations.

§ 17.6 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the individual is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary.

§ 17.7 Waiver precluded.

(a) Waiver of an overpayment cannot be granted when:

(1) The overpayment was obtained by fraud; or

(2) The overpayment was made to an estate.

(b) [Reserved]

§ 17.8 Burdens of proof.

(a) *Burden of the Department of State.* The Bureau of Resource Management, Department of State, must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of individual.* The recipient of an overpayment must establish by substantial evidence that he or she is eligible for waiver or an adjustment in the recovery schedule.

§ 17.9 Procedures.

(a) *Notice.* The Bureau of Resource Management, Department of State, shall give written notification to any individual who has received an overpayment promptly by first-class mail to the individual at the individual's most current address in the records of the Bureau of Resource Management. The written notice shall inform the individual of:

(1) The amount of the overpayment;

(2) The cause of the overpayment;

(3) The intention of the Department to seek repayment of the overpayment,

(4) The date by which payment should be made to avoid the imposition of interest, penalties, and administrative costs;

(5) The applicable standards for the imposing of interest, penalties, and administrative costs;

(6) The department's willingness to discuss alternative payment arrangements and how the individual may offer to enter into a written agreement to repay the amount of the overpayment under terms acceptable to the Department; and

(7) The name, address and telephone number of a contact person within the Bureau of Resource Management. The written notice also shall inform the individual of their right to contest the overpayment, their right to request a waiver of recovery of the overpayment, and the procedures to follow in case of such contest or request for waiver of recovery. The notification shall allow at least 30 days from its date within which the individual may contest in writing the overpayment or request a waiver of recovery, including with their submission all evidence and arguments in support of their position.

(b) *Administrative File.* The Bureau of Resource Management will prepare an administrative file as a basis for determination in each case where an individual contests a claim to recover overpayment or requests waiver of recovery of the overpayment. On the basis of the administrative file, the Chief Financial Officer or his or her delegate, shall make the final administrative determination.

(c) *Additional Information.* At any time before the final administrative decision, the Department may request the individual to supplement his or her

submission with additional factual information and may request that the individual authorize the Department of State to have access to bank and other financial records bearing on the application of these regulations. If the individual, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(d) *Decision and right of appeal.* The final administrative decision shall be reduced to writing and sent to the individual. If the decision is adverse to the individual, the notification of the decision shall include a written description of the individual's rights of appeal to the Foreign Service Grievance Board. The Foreign Service Grievance Board shall consider any appeal under this part in accordance with the regulations of the Board set forth in 22 CFR part 901.

Dated: February 1, 2006.

Henrietta H. Fore,

Under Secretary for Management, Department of State.

[FR Doc. 06–3136 Filed 3–30–06; 8:45 am]

BILLING CODE 4710–37–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4916–F–02]

RIN 2502–AI20

Change in Default Reporting Period

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations under the single-family mortgage insurance program that require mortgagees to report the status of all single-family mortgages insured by HUD that are 90 or more days delinquent. The rule requires mortgagees to report to HUD mortgages that are 30 or more days delinquent on the last day of the month. The Department believes that the rule would, among other things, provide HUD with more recent delinquency information. The receipt of more up-to-date information will enable HUD to better monitor its loss mitigation program and strengthen the soundness of the Federal Housing Administration (FHA) mortgage insurance funds. This final rule follows publication of a January 21, 2005, proposed rule, and takes into consideration the seven public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without substantive change.

DATES: *Effective Date:* May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The January 21, 2005, Proposed Rule

On January 21, 2005 (70 FR 3266), HUD published a proposed rule to revise the regulations under part 203 that require mortgagees to report the status of all single-family mortgages insured by HUD that are 90 or more days delinquent. The proposed rule indicated that the revision to the regulations would require mortgagees to report to HUD mortgages that are 30 or more days delinquent on the last day of the month.

The January 21, 2005, proposed rule contained a detailed rationale for the proposed revision. HUD stated in the proposed rule that the revisions to the regulations would bring FHA's requirements closer to Fannie Mae, Freddie Mac, the Mortgage Bankers Association, and industry standards for delinquency reporting requirements. As such, FHA would be in a better position to integrate itself, should it choose to do so, into a single platform for industry-wide default data reporting. Additionally, mortgagees should better understand references to payments due and unpaid rather than being required to count days from the due date.

The proposed rule further stated that HUD also believes the revisions would contribute to FHA's efforts in protecting the financial integrity of the FHA Mutual Mortgage Insurance Fund. The effect of the revisions is that the Department would receive more recent and timely delinquency and default information, thereby increasing FHA's ability to forecast default volume, future defaults, and potential insurance losses. More timely information, the proposed rule concluded, would also enable FHA to monitor better its loss mitigation program. Monitoring of the loss mitigation program is important to FHA because FHA insures 100 percent of a mortgage loan as compared to private mortgage insurers, which generally insure only 10 to 20 percent of a loan.

II. This Final Rule

This final rule follows publication of the January 21, 2005, proposed rule, and takes into consideration the seven public comments received in response. The public comment period on the rule closed on February 22, 2005. Comments were received from a state housing finance agency, a state housing authority, a trade association, and mortgage companies. After careful consideration of the public comments, HUD has decided to adopt the January 21, 2005, proposed rule with one minor change. For clarification purposes, the clause ''or that were reported as delinquent the previous month'' is being added to each section. This makes it clear that mortgages previously reported as delinquent or in default the previous month must be reported again in the latest reporting month. Except for that clarification, the proposed rule and this final rule are substantively identical.

III. Discussion of Public Comments Received on the January 21, 2005, Proposed Rule

Comment: Expanded default reporting would provide minimal benefit. The commenter wrote that the proposal would significantly increase the number of reportable events each month. The majority of delinquent loans never get to 90-day delinquent status, thus additional data will provide minimal benefit to HUD in terms of determining potential insurance losses.

HUD Response. HUD acknowledges that requiring mortgagees to report 30- and 60-day delinquencies will result in an increase in the total volume of reportable events. However, most mortgage servicing computer systems are capable of providing this additional data and are in fact currently providing similar data on 30-day plus delinquencies to trade associations, such as the Mortgage Bankers Association, to various private investors and insurers, and to the housing-related Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac.

HUD has expanded and updated the capacity of its own system to accommodate the anticipated increase in overall data volume as well as status and default code changes. These changes were implemented to bring the data requested by HUD in line with what Fannie Mae and Freddie Mac currently require. One of the previous industry complaints was that HUD's

status and default reason codes were different from those required by Fannie Mae and Freddie Mac. This effort will bring additional uniformity to the information reported by mortgagees.

The Department believes that the benefits of early delinquency reporting are similar to the benefits derived by early delinquency intervention for the mortgagor. The earlier in the delinquency that intervention is provided, the higher the success percentage. HUD believes that this improved information will enable HUD to better monitor its loss mitigation program, perform more accurate trend analysis, and better secure the soundness of the FHA Mortgage Insurance Fund.

Comment: The proposed change would not bring HUD requirements closer to industry standards. The commenter wrote that the proposed change actually would be more burdensome than the reporting requirements imposed by Fannie Mae and Freddie Mac.

HUD Response. As mentioned earlier, the Department has upgraded and improved its computer systems. Included in these system improvements are the system changes to support the new requirement to begin reporting delinquencies at 30 days. In addition, the Department has implemented changes to simplify the mortgagee's reporting process. The Department also has implemented changes to ensure, to the extent possible, that the delinquency reporting required by HUD is as uniform as possible with the reporting required by both Fannie Mae and Freddie Mac. The Department will provide adequate lead-time for all industry participants to incorporate the new requirements into their computer system.

Comment: HUD grossly underestimates the additional burden in cost and man-hours involved in reporting the additional information. The commenter estimates that the rule would add approximately 387,808 new reportable 30- and 60-day events each month. Thus, the real reporting burden will be four times higher than HUD estimates. The true costs will only be known when the housing industry has more complete information identifying the exact elements that will be required to be reported.

HUD Response. HUD is unable to determine how the commenter arrived at the conclusion that the rule would result in 387,808 new reportable events and that the reporting burden would be four times higher than the burden estimated by HUD. HUD is aware that the volume of reportable events will increase to at least three times the current volume. However, the Department has been careful to maintain, for the most part, the existing reporting structure. Most of the system changes relate to the addition of some status codes and default reason codes that are all defined within the Electronic Data Interchange (EDI) standard Transaction Set 264, Version 4010 and 4040, which most of the housing industry currently uses. The key system logic change will have the various industry systems test for a different level of delinquency. As a result, servicers will be required to do a one-time reprogramming of their systems to identify accounts that have become 30 days delinquent on the last day of the month to begin reporting, rather than selecting accounts that have become 90 days delinquent on the last day of the month. Thereafter, the information will be automatically generated by the updated system without requiring the investment of additional time of the servicers' employees. The computer systems in use today are very efficient and are already selecting accounts for reporting for various purposes that are 30- and 60-days delinquent.

Comment: The rule would require costly systems upgrades.

HUD Response. HUD disagrees to the extent that it was careful to keep new data fields to a minimum and maintain for the most part the existing reporting requirements. The test for when to begin reporting an account will change. At the housing industry's request, many of the status and default reason codes currently in use by Fannie Mae and Freddie Mac will be integrated into HUD's to provide an updated listing that is as uniform as possible. HUD also has removed five status codes that are no longer needed or that the industry found confusing. HUD believes that implementing the changes will result in only a negligible cost to the mortgagee and that the ongoing monthly reporting will generate only a small increase over what is currently incurred.

Comment: The proposed change would increase reporting burdens and increase the opportunity for error to occur. Because the Single Family Default Monitoring System (SFDMS) is currently unable to accept more than one default event per month, the potential for errors to occur and for earlier reportable events to be lost will be greater. Manually inputting the information is both risky and expensive. The commenter recommends that SFDMS allow for complete reporting without supplemental reporting through the FHA Internet Connection when multiple events occur in the same month.

HUD Response. As mentioned earlier, HUD has updated its computer systems not only to incorporate the new requirement but also to accept more than one status code during the month. This will be particularly helpful for those accounts where first legal action to initiate foreclosure was taken and before the last day of the month the mortgagor filed bankruptcy. HUD will be able to accept both codes, and both will be a part of HUD's delinquency history for the account. Mortgagees will need to ensure that they update their systems so that they do not erroneously block one or the other code from being correctly reported.

Comment: The limitations of SFDMS puts servicers at greater risk of delaying, losing, or missing a ''first legal'' action. This delay may result in a loss of debenture interest amounting to several thousands of dollars per case. The commenter requests that, in connection with 30- and 60-day delinquencies, HUD waive any curtailment of debenture interest penalties until the SFDMS is enhanced to accept multiple default events.

HUD Response. As stated previously, HUD anticipated a need for accepting multiple codes for each month, and has updated its system to accommodate this need. HUD will provide sufficient advance notification for all industry participants to complete the required system changes before requiring the new information to be reported.

Comment: The mortgage industry has technology constraints limiting its quick compliance with the rule. According to a number of commenters, most servicers use platforms and software provided by third parties. These providers need time to update and redesign the systems/programs to allow for expanded reporting. A commenter asked whether a lender or mortgagee that develops its own automated client system would be required to submit it to HUD for approval.

HUD Response: As previously mentioned, HUD will provide sufficient notification and time for all industry participants to upgrade and test their systems. For those mortgagees that use EDI, the Department will support some form of beta testing of the revised reporting requirements.

Comment: The use of data fields for reporting the delinquencies. HUD should not utilize the same set of data fields on the 90-day delinquencies to report the 30-day delinquencies because items such as occupancy status and reason for default are often not known at that time. The commenter requested that HUD avoid creating new default codes for 30- and 60-day delinquencies.

The commenter also requested that HUD clarify what information is needed and when it would be needed in light of the expanded reporting requirements. The commenter supports efforts to revise the ''usage definition'' of code 42.

HUD Response. As stated before, HUD has updated its computer systems not only to incorporate the new 30-day delinquency requirement but also to accept more than one status code for the monthly reporting cycle. HUD recognizes that the level of detail secured from the mortgagor by the time the account has become 90 or more days delinquent will exceed the level of detail known about an account that has just become 30 days delinquent. Therefore, it will be acceptable to advise the Department that the reason for the default is unknown and/or that the mortgagor had not yet been contacted to determine the reason for the delinquency when reporting on 30-or 60-day delinquent accounts. There will not be new codes established for reporting 30- and 60-day accounts. Where the loan is in default but there is no other reportable status (such as a payment plan, etc.), the servicer will report the default using status code 42. HUD will calculate the number of months the loan is delinquent based on the date of the oldest unpaid installment, as reported by the servicer. HUD intends, immediately following the publication of this final rule, to issue administrative guidelines with respect to codes and data elements that it will require in light of the reporting requirements established by this rule.

Comment: Clarify whether HUD will be adjusting the current deadline for reporting. The commenter requests that the current ''reporting cycles'' not be shortened at this time.

HUD Response. The reporting cycles will remain the same. Reporting will be required once a month and mortgagees will be allowed the first five business days of each month to complete the reporting for the prior month. With the exception of the first five business days of the month, which are set aside to allow servicers to report the status of loans as of the last day of the previous month, mortgagees are free to report specific events as soon as they happen. For example, if the first legal action to initiate foreclosure occurs on July 18, 2005, the mortgagee may submit status code 68 advising HUD that the first legal action to initiate foreclosure occurred. The mortgagee need not wait until the last day of the month.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection at the Department of Housing and Urban Development, Office of General Counsel, Regulations Division, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0060. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this final rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
24 CFR 203.330, 24 CFR 203.331, 24 CFR 203.439.	Via EDI =120 lenders	12	1.5	2,160
24 CFR 203.466, 24 CFR 203.467	Via FHAC =120 lenders	12	3.5	5,040
Total				7,200

The number of lenders that is currently servicing single-family FHA-insured mortgages has decreased greatly due to many mergers, acquisitions, and consolidations within the mortgage industry. The top 10 lenders (by volume serviced) now service approximately 90 percent of the active FHA-insured mortgages. The larger lenders utilize Electronic Data Interchange (EDI) to submit their delinquency data to HUD. This process means that those lenders must submit only one electronic report to HUD each month to comply with the reporting requirement. In October and November 2005, approximately 120 lenders reported delinquency data to HUD via EDI. There should be very little additional time required for those lenders submitting via EDI as the process will continue to require submission of a single electronic report to HUD, even with an increase of accounts within the report. HUD increased the average burden to 1.5 hours for reporting via EDI to ensure that adequate time is provided.

The remaining lenders utilize an Internet-based application, the FHA Connection (FHAC) to report. Again, with respect to October and November 2005 reporting, approximately 120 lenders submitted delinquency data to HUD via the FHAC with more than 80 of those lenders submitting fewer than 10 accounts per month. Reporting delinquent loans to HUD that previously required approximately an hour on average to report now may require 2 or more hours to complete. As several commenters indicated that the burden may triple, HUD has increased the estimated time for reporting via FHAC to 3.5 hours. The total estimated hours remains at 7,200 hours per year.

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). In keeping with the

exclusion provided for in 24 CFR 50.19(c)(1), this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(2), this rule is categorically excluded because it amends an existing document where the existing document as a whole would not fall within the exclusion in 24 CFR 50.19(c)(1) but the amendment by itself would do so.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, nor on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule will not materially affect many small businesses participating in the FHA single-family mortgage insurance programs. More than 90 percent of the servicing of FHA single-family mortgage loans is done by a few large entities. There are a very few small lenders that retain the servicing function in-house; most small lenders contract out the function. Consequently, the rule will not impact a substantial number of small entities. Although the rule will require timelier reporting by servicers of delinquent mortgages, the information that the servicers will report is already in their possession. As a result, any new expense to small entities caused by this rule will be negligible. Further, there are no anti-competitive discriminatory aspects of the rule with regard to small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

■ 2. Revise § 203.330 to read as follows:

§ 203.330 Definition of delinquency and requirement for notice of delinquency to HUD.

(a) A mortgage account is delinquent any time a payment is due and not paid.

(b) Once each month on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages insured under this part that were delinquent on the last day of the month, or that were reported as delinquent the previous month. The report shall be made in a manner prescribed by HUD.

■ 3. Revise § 203.331 to read as follows:

§ 203.331 Definition of default, date of default, and requirement of notice of default to HUD.

(a) *Default.* If the mortgagor fails to make any payment or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered as 30 days after:

(1) The first uncorrected failure to perform any obligation under the mortgage; or

(2) The first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(c) *Notice of default.* Once each month, on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages that were in default on the last day of the month, or that were reported as in default the previous month. The report shall be made in a manner prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

§ 203.332 [Removed and reserved]

■ 4. Remove and reserve § 203.332.

■ 5. Amend § 203.439 by revising paragraph (c) to read as follows:

§ 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.

* * * * *

(c) *Notice of delinquency.* Once each month on a day prescribed by HUD, the mortgagee shall notify the Department of Hawaiian Home Lands of all mortgages insured pursuant to section 247 of the National Housing Act on leaseholds of Hawaiian home lands that are delinquent on the last day of the month, or that were reported as delinquent the previous month. The notice is in addition to the requirement in §§ 203.330 and 203.331.

■ 6. Revise § 203.466 to read as follows:

§ 203.466 Definition of delinquency and requirement for notice of delinquency to HUD.

(a) A mortgage account is delinquent any time a payment is due and not paid.

(b) Once each month on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages insured under this part that were delinquent on the last day of the month, or that were reported as delinquent the previous month. The report shall be made in a manner prescribed by HUD.

■ 7. Revise § 203.467 to read as follows:

§ 203.467 Definition of default, date of default, and requirement of notice of default to HUD.

(a) *Default.* If the mortgagor fails to make any payment or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered as 30 days after:

(1) The first uncorrected failure to perform any obligation under the mortgage; or

(2) The first failure to make a monthly payment that subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(c) *Notice of default.* Once each month, on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages that were in default on the last day of the month, or that were reported as in default the previous month. The report shall be made on a form prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

§ 203.468 [Removed and reserved]

■ 8. Remove and reserve § 203.468.

Dated: March 24, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 06–3083 Filed 3–30–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–028]

RIN 1625–AA09

Drawbridge Operation Regulations; Elizabeth River—Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Berkley Bridge across the Eastern Branch of the Elizabeth River, mile 0.4, at Norfolk, Virginia. To facilitate electrical and mechanical repairs, this deviation allows the drawbridge to remain closed to navigation each day, from 7 a.m. to 7 p.m., on April 18, 19, and 20, 2006.

DATES: This deviation is effective from 7 a.m. on April 18, 2006 to 7 p.m. on April 20, 2006.

ADDRESSES: Materials referred to in this docket are available for inspection and copying at the Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The phone number is (757) 398–6629. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION: The Berkley Bridge, a lift-type drawbridge, has a vertical clearance in the closed position to vessels of 48 feet at mean high water.

The bridge owner, the Virginia Department of Transportation, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.1007(c), to effect electrical and mechanical repairs of the draw span.

To facilitate the repairs, the drawbridge will remain closed to navigation each day, from 7 a.m. to 7 p.m., on April 18, 19, and 20, 2006. During these periods, the repairs require immobilizing the operation of the lift span in the closed-to-navigation position. At all other times, the drawbridge will operate in accordance with the current operating regulations outlined in 33 CFR 117.1007(c).

The Coast Guard has informed the known users of the waterway so that they can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 23, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 06–3115 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–PA–0015; FRL–8051–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania's or the Commonwealth's) SIP-approved generic RACT regulations. EPA is approving these revisions in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 1, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–PA–0015. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Pauline De Vose, (215) 814–2186, or by e-mail at *devose.pauline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2005 (70 FR 61750), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of formal SIP revisions submitted by Pennsylvania on August 15, 2003. These SIP revisions consist of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. The following table identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Plan approval (PA #) operating permit (OP #)	Source type	''Major source'' pollutant
The International Metals Reclamation Co.	Lawrence	OP 37–243	Metals Recovery Facility	VOC.
Petrowax PA, Inc	Venango	PA 61–020	Refinery	VOC and NO_X.

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on August 15, 2003 to establish and require VOC and NO_X RACT for two sources pursuant to the Commonwealth's SIP-approved generic RACT regulations.

III. Statutory and Executive Order Reviews

A. General Requirements

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 (Public Law 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.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

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 30, 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 approving source-specific RACT requirements for two sources in the Commonwealth of Pennsylvania 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, Nitrogen dioxide,

Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2006.

William Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for The International Metal Reclamation Co. and Petrowax PA, Inc. at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
The International Metals Reclamation Co.	OP 37–243	Lawrence	8/9/00	3/31/06 [Insert page number where the document begins].	52.2020(d)(1)(m).
Petrowax PA, Inc	PA 61–020	Venango	1/2/96	3/31/06 [Insert page number where the document begins].	52.2020(d)(1)(m).

* * * * *

[FR Doc. 06–3105 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0014; FRL–8051–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of VOC Emissions From Yeast Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to the amendments of a regulation that controls volatile organic compound (VOC) emissions from yeast manufacturing facilities. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or Act).

DATES: This final rule is effective on May 1, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–MD–0014. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 6, 2006 (71 FR 6028), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the amendments to control VOC emissions from yeast manufacturing facilities, COMAR 26.11.19.17. The formal SIP revision was submitted by the Maryland Department of the Environment on October 31, 2005.

II. Summary of SIP Revision

The amendments to COMAR 26.11.19.17 are: (1) To reinstate the requirements for non-nutritional and specialty yeast installations to meet certain operational requirements to minimize VOC emissions, and (2) to clarify the 98 percent compliance demonstration is a 12-month rolling average.

Other specific requirements of COMAR 26.11.19.17 and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the amendments to the control of VOC emissions from yeast manufacturing facilities, COMAR 26.11.19.17, submitted on October 31, 2005, as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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 requirement, 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.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 30, 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 pertaining to Maryland's amendments to the control of VOC emissions from yeast manufacturing facilities, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2006.

William Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.19.17 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
COMAR 26.11.19	Volatile Organic Compounds from Specific Sources			
*	*	*	*	*
COMAR 26.11.19.17	Control of Volatile Organic Compound Emissions from Yeast Manufacturing.	9/12/05	03/31/06 [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. 06–3106 Filed 3–30–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0151; FRL–8051–6]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definition of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of Environment (MDE). The revisions update the SIP's reference to the EPA definition of volatile organic compounds (VOC). EPA is approving these revisions to the State of Maryland's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on May 30, 2006 without further notice, unless EPA receives adverse written comment by May 1, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number R03–OAR–2006–0151 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *frankford.harold@epa.gov.*

C. Mail: EPA–R03–OAR–2006–0151, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0151. 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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revisions

On October 31, 2005, the State of Maryland submitted a formal revision (No. 05–05) to its SIP. The SIP revision consists of a revised reference to the Federal definition of VOC at 40 CFR 51.100(s) which is found at COMAR 26.11.01.01B(53), Maryland's definition for ''volatile organic compounds (VOC)''. These regulatory revisions became effective on September 12, 2005.

II. Description of the SIP Revision

Maryland has amended COMAR 26.11.01.01B(53) to update the Federal reference for incorporation of the EPA definition of VOC found at 40 CFR 51.100(s) from the 2002 edition (the currently SIP-approved version) to the 2004 edition of the Code of Federal Regulations (CFR).

III. Final Action

EPA is approving revisions to COMAR 26.11.01.01B(53) of the Maryland SIP to update the references to the EPA definition of VOC found at 40 CFR 51.100(s) in effect as of 12/31/2004. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the ''Proposed Rules'' section of today's **Federal Register**, 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 on May 30, 2006 without further notice unless EPA receives adverse comment by May 1, 2006. If EPA receives adverse comment, 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. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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 (Public Law 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.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 30, 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 to approve Maryland's revised definition of ''volatile organic compound (VOC)'' 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, Ozone, Volatile organic compounds.

Dated: March 21, 2006.

William Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.01.01B(53) to read as follows:

52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
26.11.01.01 General Administrative Provisions				
*	*	*	*	*
26.11.01.01B(53)	Definitions-definition of volatile organic compound (VOC).	9/12/05	3/1/06 [Insert page number where the document begins].	Definition reflects the version of 40 CFR 51.100(s) in effect as of 12/31/2004.
*	*	*	*	*

* * * * *

[FR Doc. 06–3107 Filed 3–30–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 901 and 970

RIN 1991–AB64

Acquisition Regulation: Make-or-Buy Plans

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to revise its requirements for contractor make-or-buy plans. The Department published a Notice of Proposed Rulemaking on December 15, 2004, proposing to eliminate its program requiring make or buy analyses and plans from its management and operating (M&O) contractors.

DATES: *Effective Date:* May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Langston, U.S. Department of Energy, MA–61, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 287–1339 or submit electronically to *Richard.Langston@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments
III. Section-by-Section Analysis
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under the Small Business Regulatory Fairness Act of 1996
L. Approval by the Office of the Secretary of Energy

I. Background

DOE now has more than eight years of experience with the make-or-buy policy it established in 1997. All M&O contractors have approved make-or-buy plans in place. The Department has evaluated the operation of the make-or-buy policy and the effect that policy has had in achieving the Department's objectives. The make-or-buy program is not delivering value to the Department commensurate with the costs of its implementation.

The Department conducted a number of assessments since establishing the current make-or-buy plan requirements and implemented a number of actions intended to improve the manner in which DOE and its contractors implemented the make-or-buy requirements. The conclusion drawn from the most recent assessment is that there is little evidence that these plans are producing the efficiencies and cost savings anticipated by the Department. The Department has determined that the lack of measurable progress and costs of complying and monitoring compliance with the make-or-buy policy outweigh any potential benefits to the Department.

There are multiple approaches to achieving cost efficiencies and operational effectiveness under a contract, and the Department has made great strides with its other contract reform initiatives. The make-or-buy plan requirements have not increased efficiency and the Department is amending the DEAR to eliminate the requirement that M&O contractors prepare and maintain formal make-or-buy plans.

II. Discussion of Public Comments

Only one comment was received in response to our December 15, 2004 Notice of Proposed Rulemaking. The reviewer suggested that, rather than eliminate the make-or-buy review analysis, the Department introduce a 5-part alternative make-or-buy system which would include consolidation of identified products or services into a DOE-wide plan.

The Department has evaluated the suggested revisions to the make-or-buy process. The make-or-buy process was ideally meant to be a system for categorizing all M&O contract internal work activities as ''make'' or ''buy'' activities. ''Make'' activities are core competencies critical to the mission success that are not available for outsourcing. ''Buy'' activities are non-core work activities that provide strategic support to core competencies that are available for outsourcing. Contractors use their make-or-buy plans to evaluate subcontracting opportunities and improve in-house performance. The objective of the make-or-buy policy is to require M&O contractors to operate the Department's laboratories, weapons production plants, and other facilities in the most cost effective and efficient manner. The suggested alternative does not appear to offer advantages in fulfilling those needs. Accordingly, the Department is not pursuing the suggested alternative.

III. Section-by-Section Analysis

The Department is amending the DEAR as follows.

1. Sections 901.105 is amended to delete the reference to the Office of Management and Budget, OMB control number for make-or-buy plans.

2. Sections 970.1504–4–1 through 970.1504–4–3 are eliminated.

3. Section 970.1504–5(b) is eliminated.

4. Section 970.5203–1 is amended to include outsourcing of functions as a consideration of efficient and effective operations.

5. Section 970.5203–2 is amended to provide a requirement for contractors to consider outsourcing as a mechanism to increase improvement in the management of the contract.

6. Section 970.5215–2 is eliminated.

7. Section 970.5244–1 is amended to remove and reserve paragraph (n).

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the OMB.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6)

addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have a significant economic impact on a substantial number of small entities. The rule would not have a significant economic impact on small entities because no small entities are DOE M&O contractors and because the rule would eliminate the existing burden of preparing make-or-buy analyses.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under Paperwork Reduction Act

Information collection or recordkeeping requirements contained in this rulemaking have been previously cleared under OMB paperwork clearance package number 1910–5102. The existing burden will be removed by this rulemaking.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more in any single year. This rulemaking does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rule will have no impact on family well being.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the OIRA, Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516, note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

L. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 48 CFR Parts 901 and 970

Government procurement.

Issued in Washington, DC, on March 23, 2006.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, the Department of Energy is amending chapter 9 of title 48 of the Code of Federal Regulations as set forth below:

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for part 901 is revised to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101, *et seq.;* 41 U.S.C. 418b; 50 U.S.C. 2401, *et seq.*

■ 2. Section 901.105 is amended by revising the second sentence to read as follows:

901.105 OMB control numbers.

* * * The OMB control number for the collection of information under 48 CFR chapter 9 is 1910–4100 except for Reporting and Recordkeeping Requirements for Safety Management (see 48 CFR 970.5223–1) which is 1910–5103.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 3. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101, *et seq.;* 41 U.S.C. 418b; 50 U.S.C. 2401, *et seq.*

970.1504–4–1–970.1504–4–3 [Removed and Reserved]

■ 4. Sections 970.1504–4–1 through 970.1504–4–3 are removed and reserved.

970.1504–5 [Amended]

■ 5. Section 970.1504–5 is amended by removing paragraph (b), and redesignating paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d) respectively.

970.5203–1 [Amended]

■ 6. Section 970.5203–1 is amended by revising the clause date to read ''May 2006'' and by adding in paragraph (a)(1), second sentence, the words ''including consideration of outsourcing of functions'' after the word ''promoted''.

970.5203–2 [Amended]

■ 7. Section 970.5203–2, is amended by revising the clause date to read ''May 2006'' and by adding in paragraph (a), last sentence, the words ''outsourcing decisions,'' after the words ''changes in organization,''.

970.5215–2 [Removed and Reserved]

■ 8. Section 970.5215–2, Make-or-Buy plan, is removed and reserved.

970.5244–1 [Amended]

■ 9. Section 970.5244–1 is amended by revising the clause date to read ''May 2006'' and by removing and reserving paragraph (n).

[FR Doc. 06–3085 Filed 3–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 060131019–6080–02; I.D. 012006B]

RIN 0648–AU17

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Final rule; fishing season notification.

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

DATES: This rule is effective May 1, 2006. The Atlantic commercial shark fishing season opening and closing dates and quotas for the 2006 second and third trimester seasons by region are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

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

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

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (Amendment 1), finalized in 2003, are implemented by regulations at 50 CFR part 635. Information regarding the rules establishing the regional quotas and the procedures for calculating the quotas was provided in the proposed rule (February 17, 2006; 71 FR 8557) and is not repeated here.

Opening and Closing Dates and Quotas

The final opening and closing dates and quotas for the 2006 second and third trimester seasons by region are provided in Table 1. As described in the proposed rule (February 17, 2006; 71 FR 8557), because opening the LCS fishery in the North Atlantic for even one week could result in an overharvest, NMFS is keeping the North Atlantic LCS fishery closed during the third trimester season.

TABLE 1.—FINAL OPENING AND CLOSING DATES AND QUOTAS

Second Trimester Season				
Species Group	Region	Opening Date	Closing Date	Quota
Large Coastal Sharks	Gulf of Mexico	July 6, 2006	July 31, 2006 11:30 p.m. local time	201.1 mt dw (443,345 lb dw)
	South Atlantic		August 16, 2006 11:30 p.m. local time	151.7 mt dw (334,438 lb dw)
	North Atlantic		August 6, 2006 11:30 p.m. local time	66.3 mt dw (146,165 lb dw)

TABLE 1.—FINAL OPENING AND CLOSING DATES AND QUOTAS—Continued

Second Trimester Season				
Species Group	Region	Opening Date	Closing Date	Quota
Small Coastal Sharks	Gulf of Mexico	May 1, 2006	To be determined, as necessary	38.9 mt dw (85,759 lb dw)
	South Atlantic			333.5 mt dw (735,234 lb dw)
	North Atlantic			24.2 mt dw (53,351 lb dw)
Blue sharks	No regional quotas	May 1, 2006	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

Third Trimester Season				
Species Group	Region	Opening Date	Closing Date	Quota
Large Coastal Sharks	Gulf of Mexico	September 1, 2006	November 7, 2006 11:30 p.m. local time	225.6 mt dw (497,358 lb dw)
	South Atlantic		October 3, 2006 11:30 p.m. local time	50.3 mt dw (123,899 lb dw)
	North Atlantic	CLOSED		
Small Coastal Sharks	Gulf of Mexico	September 1, 2006	To be determined, as necessary	30.8 mt dw (67,902 lb dw)
	South Atlantic			263.7 mt dw (581,353 lb dw)
	North Atlantic			28.2 mt dw (62,170 lb dw)
Blue sharks	No regional quotas	September 1, 2006	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

Response to Comments

Comments on the February 17, 2006, proposed rule (71 FR 8557) received during the public comment period are summarized below, together with NMFS' responses.

Comment 1: NMFS should stop all commercial and recreational shark fishing.

Response: NMFS established a rebuilding plan for LCS in 2003 to stop overfishing and address the overfished status of the LCS complex, thus ensuring a sustainable harvest of LCS consistent with the Magnuson-Stevens Act. SCS, other than finetooth sharks, and pelagic sharks are not overfished and overfishing is not occurring. To stop all fishing would not be consistent with the Magnuson-Stevens Act. NMFS does not believe that stopping all commercial and recreational shark fishing is warranted because fishermen, processors, suppliers, and dealers could be forced out of business and a number of communities, including recreational fishing communities, would be adversely affected. The Magnuson-Stevens Act requires, among other things, that NMFS manage fisheries to achieve optimum yield and minimize, to the extent practicable, adverse economic impact on fishing communities.

Comment 2: NMFS should consider opening the LCS second trimester season on July 1 rather than July 6, particularly in the South Atlantic region where the lobster fishery opens on August 1. The July 6 start date effectively shortens the shark fishing season by one week in the South Atlantic because most shark fishermen in the region will switch to lobster fishing when that fishery opens. Commenters expressed a preference for a particular date due to a combination of potential shark availability, marketing concerns, other fishery openings and closings such as lobster and grouper, and other economic considerations.

Response: NMFS believes that a season opening date of July 6 would improve marketing opportunities

because it does not conflict with the Fourth of July holiday. In previous seasons, commenters have pointed out that a July 6 season start date would prevent a glut of shark product on the market prior to the Fourth of July holiday when the market for sharks has historically been low. Although NMFS is aware of potential conflicts with other fisheries, NMFS believes that the July 6 start date for the second trimester LCS season strikes a balance between the various competing interests regarding shark availability and equitable distribution of the quota. Furthermore, postponing the start date until July 6 provides a greater opportunity for fishermen off North Carolina to fish after the mid-Atlantic shark closed area reopens on August 1. If the season were to open on July 1, the season would close on August 11, thus allowing only 11 days of fishing in the mid-Atlantic shark closed area after it reopens. If the season were to open on July 6, the season would close on August 16, allowing 16 days of fishing in the mid-Atlantic shark closed area. Thus, allowing the season to stay open until August 16 provides fishermen impacted by the time/area closure an additional five days of fishing off North Carolina. NMFS will continue to monitor the situation regarding the closed area and the Fourth of July holiday market and propose adjustments for 2nd season of 2007, as necessary.

Comment 3: NMFS should consider postponing the start of the third trimester season until October 1 because there is so little time between the end of the second trimester season and beginning of the third trimester season.

Response: NMFS agrees that, depending on the region, there may be a limited amount of time between the second and third trimester seasons. However, the Gulf of Mexico for example, has a month-long break between the second and third seasons. The South Atlantic and North Atlantic periods are two and three weeks, respectively. NMFS may consider a later start date in future years as more catch rate data for the third trimester becomes available with which to estimate appropriate season lengths. Since 2005 was the first year in which trimester seasons were implemented, NMFS used average estimates from August and September in previous years to estimate the season length during the 2005 third trimester season. Beginning in 2006, NMFS had data available from the 2005 third trimester season, which ran through October and early November for the first time, upon which to base season lengths. As data continues to be collected from the third trimester season in future years, NMFS will have a better idea of appropriate season lengths.

Comment 4: NMFS should consider extending the second trimester season closing date in the Gulf of Mexico an additional week beyond the current date of July 31, and NMFS should shorten the third trimester season by one week from the proposed date of November 15 to prevent an overharvest similar to the one that occurred in the South Atlantic last year.

Response: NMFS based the season opening and closing dates on the most recent landings data and catch rates available for the Gulf of Mexico. For example, data from the Gulf of Mexico from July and August 2002–2005 were used to estimate the 2006 second trimester season duration. Based on these data, NMFS estimated that 82 percent of the quota would likely be taken in three weeks, and 108 percent of the quota in four weeks. Following a similar approach used in previous years, and as a precautionary measure, NMFS proposed to close the season after three and a half weeks to reduce the likelihood of an overharvest. Allowing the fishery to remain open an additional week beyond July 31 could potentially result in an overharvest. For the third trimester season, since this season has been in effect for only one year (2005), NMFS has less information available upon which to make a determination of season length. Hence, NMFS agrees with the comment that a precautionary approach may be warranted, and as a result, the Gulf of Mexico third trimester season will close on November 7, 2006, rather than on November 15, 2006, as proposed. NMFS took a similar action to shorten the season in the South Atlantic for the 2005 third trimester season based on public comment.

Changes From the February 17, 2006, Proposed Rule (71 FR 8557)

In the proposed rule, NMFS proposed a third trimester season closing date of November 15 for LCS in the Gulf of Mexico. In the final rule, NMFS will shorten the duration of the third trimester season by one week in the Gulf of Mexico from November 15 to November 7, 2006. NMFS is taking this action as a precautionary measure based on public comment, and limited data availability on catch rates during that time of year, and to prevent an overharvest similar to the one that resulted in the South Atlantic during the third trimester in 2005. In addition, the LCS third trimester season quotas for Gulf of Mexico and South Atlantic were reduced by 1 mt dw and 6 mt dw, respectively due to updated landings reports that were received after publication of the proposed rule. These changes did not effect the closing dates for either region.

Classification

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

The factual basis for this certification was published in the February 17, 2006, proposed rule (71 FR 8557). No comments were received regarding the certification or the economic impact of this rule, and no changes to the certification were made. As a result, no Final Regulatory Flexibility Act analysis was prepared. This final rule will not increase overall quotas, landings, or regional percentages for LCS or SCS, or implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions.

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

NMFS has determined that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal stateson the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters were sent on February 15, 2006, to Atlantic and Gulf of Mexico coastal states including Puerto Rico and the U.S. Virgin Islands asking for their concurrence when the proposed rule filed with the **Federal Register**. Mississippi, New Hampshire, North Carolina, and Rhode Island have replied affirmatively regarding the consistency determination. NMFS presumes that the remaining states that have not yet responded concur with the determination.

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

Dated: March 27, 2006.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–3145 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 62
Friday, March 31, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 724

RIN 3206–AK55

Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002—Reporting and Best Practices

AGENCY: Office of Personnel Management.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On January 25, 2006, the Office of Personnel Management (OPM) issued proposed rules regarding the reporting and best practices requirements of Title II of the No FEAR Act (71 FR 4053). The proposed rule contained a 60-day comment period. In response to requests by the No Fear Coalition and Members of Congress to extend the comment period, OPM has reopened the initial comment period until May 1, 2006.

DATES: Comments must be received on or before May 1, 2006.

ADDRESSES: Send or deliver written comments to Ana A. Mazzi, Deputy Associate Director for Workforce Relations and Accountability Policy, Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415; by FAX at (202) 606–2613; or by e-mail at *NoFEAR@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2930; by FAX at (202) 606–2613; or by e-mail at *NoFEAR@opm.gov*.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 06–3166 Filed 3–29–06; 1:13 pm]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24145; Directorate Identifier 2006–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45 and CF6–50 Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines. This proposed AD would require inspecting and reworking certain forward and aft center bodies of the long fixed core exhaust nozzle (LFCEN) assembly. This proposed AD results from reports of separation of LFCEN assembly forward and aft center bodies, due to high imbalance engine conditions during flight. We are proposing this AD to prevent the forward and aft center body of the LFCEN assembly from separating, leading to additional damage to the engine and airplane, possible damage to other airplanes, and to objects on the ground.

DATES: We must receive any comments on this proposed AD by May 30, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from General Electric Company via GE–Aviation, Attn: Distributions, 111 Merchant St., Room 230, Cincinnati, Ohio 45246, telephone (513) 552–3272; fax (513) 552–3329.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2006–24145; Directorate Identifier 2006–NE–06–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DOT 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 Docket Management Facility receives them.

Discussion

Since 1975, 45 events of forward and aft center bodies separating from the engine have been reported. GE's investigation of the earlier events identified nut plate corrosion, and loose and missing fasteners as causes for the center body separations. In 1987, GE issued Service Bulletin (SB) No. CF6–50 S/B 78–216 to inspect for these conditions and add improved fasteners. In 2001, GE issued a Fleet Highlight and an All Operators Wire to remind operators of the availability of SB No. CF6–50 S/B 78–216. In 2003, GE issued SB No. CF6–50 S/B 78–241 for improved fastener torque.

In 2000, two separation events occurred. Investigation by GE and the FAA determined that bird strikes or other similar events can result in high engine imbalance conditions. These conditions can result in high stress and movement at the joint between the forward and aft center bodies, degrading the structural integrity of the joint, and separating the center bodies from the engine.

GE and the FAA determined that additional improvements are necessary to ensure structural integrity of the center body joints during high imbalance events. GE completed certification in 2004 of improved forward and aft center bodies. GE's improvement adds doublers, larger nuts and bolts, and higher strength corrosion resistant nut plates.

This condition, if not corrected, could result in the forward and aft center body of the LFCEN assembly separating, leading to additional damage to the engine and airplane, possible damage to other airplanes, and to objects on the ground.

Relevant Service Information

We have reviewed and approved the technical contents of GE SB No. CF6–50 S/B 78–0242, dated September 26, 2005, that identifies disassembly, inspection, rework, and reassembly procedures for the forward and aft center body, to add doublers, larger nuts and bolts, and higher strength corrosion resistant nut plates.

FAA's Determination and Requirements of the Proposed AD

We evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which will require reworking the forward and aft center bodies to add doublers, larger nuts and bolts, and higher strength corrosion resistant nut plates. This rework is required the next time the forward center body and aft center body are removed from the engine after the effective date of this proposed AD. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 238 CF6–45 and CF6–50 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 22 work hours per engine to perform the proposed actions, and that the average labor rate is $80 per work hour. Required parts would cost about $6,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,846,880.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2006–24145; Directorate Identifier 2006–NE–06–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 30, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–45A, CF6–45A2, CF6–50C, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, CF6–50E2, and CF6–50E2B series turbofan engines with long fixed core exhaust nozzle (LFCEN) assembly forward center body, part number (P/N) 1313M55G01 or G02, P/N 9076M28G09 or G10, and aft center body P/N 1313M56G01 or 9076M46G05, installed. These engines are installed on, but not limited to, Airbus A300 series, Boeing 747 series, McDonnell Douglas DC–10 series, and DC–10–30F (KC–10A, KDC–10) airplanes.

Unsafe Condition

(d) This AD results from reports of separation of LFCEN assembly forward and

aft center bodies, due to high imbalance engine conditions during flight. We are issuing this AD to prevent the forward and aft center body of the LFCEN assembly from separating, leading to additional damage to the engine and airplane, possible damage to other airplanes, and to objects on the ground.

Compliance

(e) You are responsible for having the actions required by this AD performed the next time the forward and aft center bodies are removed from the engine after the effective date of this AD, unless the actions have already been done.

(f) Rework the forward and aft center bodies to add doublers, larger nuts and bolts, and higher strength corrosion resistant nut plates. Use paragraph 3, Accomplishment Instructions, of GE Service Bulletin No. CF6–50 S/B 78–0242, dated September 26, 2005, to identify the procedures required to do these actions.

Definition

(g) For the purposes of this AD, ''next time the forward and aft center bodies are removed from the engine'' includes when the center bodies are removed from the engine to take the engine off-wing.

Alternative Methods of Compliance

(h) 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.

Issued in Burlington, Massachusetts, on March 27, 2006.

Peter A. White,

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

[FR Doc. E6–4702 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT7–5, –7, and –9 Series Turboprop Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for General Electric Company (GE) CT7–5A2, –5A3, –7A, –7A1, –9B, –9B1, and –9B2 turboprop engines, with certain part number (P/N) and serial number stage 2 turbine aft cooling plates installed. That AD currently requires a onetime eddy current inspection (ECI) of boltholes in certain P/N stage 2 turbine aft cooling plates. This proposed AD would expand the population of affected CT7 turboprop engine models, but would reduce the number of cooling plates affected. It would also require a onetime ECI of boltholes in certain P/N stage 2 turbine aft cooling plates. This proposed AD results from the manufacturer identifying the affected stage 2 turbine aft cooling plates by serial number. We are proposing this AD to prevent separation of the stage 2 turbine aft cooling plate, resulting in uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by May 30, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Mark Bouyer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7755; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the DMS 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.

Discussion

On April 19, 2005, the FAA issued AD 2005–18–01, Amendment 39–14247 (70 FR 54835, September 19, 2005). That AD requires a onetime ECI of boltholes in certain P/N stage 2 turbine aft cooling plates. That AD resulted from reports of six stage 2 turbine aft cooling plate boltholes found cracked during inspection. That condition, if not corrected, could result in stage 2 turbine aft cooling plate separation, resulting in uncontained engine failure and damage to the airplane.

Actions Since AD 2005–18–01 Was Issued

Since that AD was issued, GE determined that it is necessary to expand the population of affected CT7 turboprop engine models to include CT7–9C/–9C3/–9D/–9D2 turboprop engines with stage 2 turbine aft cooling plate P/N 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. GE also defined the affected population of cooling plates by serial number. This proposed AD includes these model engines.

Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin CT7–TP S/B 72–A0464, Revision 4, dated December 12, 2005, that describes procedures for performing an ECI of boltholes in certain P/N stage 2 turbine aft cooling plates and replacing the cooling plate, if necessary, with one with a serial number not listed in Section 4, Appendix A, of the SB.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would expand the population of affected CT7 turboprop engine models, but would reduce the actual cooling plate population by specifying the affected cooling plates by serial number. This proposed AD would also require a onetime ECI of boltholes in certain P/N stage 2 turbine aft cooling plates, and replacement of the cooling plates if necessary. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 494 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 work hour per engine to perform the proposed actions, and that the average labor rate is $80 per work hour. Based on the number of cracks found in the inspected engines, we estimate that 2.5% of the 494 engines will require replacing stage 2 turbine aft cooling plates because of rejection by the onetime ECI. Required parts would cost about $17,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $243,520.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14247 (70 FR 54835, September 19, 2005) and by adding a new airworthiness directive, to read as follows:

General Electric Company: Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 30, 2006.

Affected ADs

(b) This AD supersedes AD 05–18–01, Amendment 39–14247.

Applicability

(c) This AD applies to General Electric Company (GE) CT7–5A2/–5A3/–7A/–7A1/–9B/–9B1/–9B2/–9C/–9C3/–9D/–9D2 turboprop engines with stage 2 turbine aft cooling plates, part number (P/N) 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. These engines are installed on, but not limited to, Construcciones Aeronauticas, SA CN–235 series and SAAB Aircraft AB SF340 series airplanes.

Unsafe Condition

(d) This AD results from the manufacturer identifying the affected stage 2 turbine aft cooling plates by serial number. We are issuing this AD to prevent separation of the stage 2 turbine aft cooling plate, resulting in uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next engine or hot section module shop visit, but before accumulating an additional 6,000 cycles-in-service after the effective date of the AD, unless already done.

Onetime Eddy Current Inspection (ECI)

(f) Perform a onetime ECI of the stage 2 turbine aft cooling plates P/N 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01, that are listed by serial number in Section 4, Appendix A, of GE Alert Service Bulletin No. CT7–TP S/B 72–A0464, Revision 04, dated December 12, 2005. Use 3.(1) through 3.B.(3) of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 4, dated December 12, 2005 to perform the inspection.

(g) For stage 2 turbine aft cooling plates that do not pass the Return to Service Criteria, do either of the following:

(1) Replace the stage 2 turbine aft cooling plate with a new cooling plate that has a serial number that is not listed in Section 4, Appendix A, of GE Alert Service Bulletin No. CT7–TP S/B 72–A0464, Revision 04, dated December 12, 2005, or

(2) Replace the stage 2 turbine aft cooling plate with a cooling plate that meets the acceptance criteria of 3.B.(1) through 3.B.(3) of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 4, dated December 12, 2005.

(h) After the effective date of this AD, do not install any stage 2 turbine aft cooling plates with serial numbers identified in Section 4, Appendix A, without inspecting the cooling plate as specified in 3.B.(1) through 3.B.(3) of GE Alert Service Bulletin No. CT7–TP S/B 72–A0464 Revision 04, December 12, 2005.

Previous Credit

(i) Eddy current inspections of the stage 2 turbine aft cooling plate boltholes done before the effective date of this AD that use GE ASB No. CT7–TP S/B 72–A0464, dated February 25, 2003; or Revision 1, dated March 12, 2003; or Revision 2, dated May 9,

2003; or Revision 3, dated July 23, 2004, comply with the requirements specified in this AD.

Definition of Engine or Hot Section Module Shop Visit

(j) For the purposes of this AD, an engine or hot section module shop visit is defined as the introduction of the engine or hot section module into a shop that includes separating major case flanges.

Alternative Methods of Compliance

(k) 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

(l) None.

Issued in Burlington, Massachusetts, on March 24, 2006.

Thomas Boudreau,

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

[FR Doc. E6–4700 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–23157; Airspace Docket 05–ANM–15]

RIN 2120–AA66

Proposed Amendment to Class E Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proosed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E surface airspace at Kalispell, MT. This action is necessary for the safety of Instrument Flight Rules (FR) aircraft executing Instrument Landing System (ILS) approach procedures to the newly extended runway at Kalispell/Glacier Park International Airport, Kalispell, MT.

DATES: Comments must be received on or before May 15, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–23157 and Airspace Docket No. 05–ANM–15, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. 2005–23157 and Airspace Docket No. 05–ANM–15) and be submitted in triplicate to the Docket Management System (See **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.got.gov.*

Commenters wishing to FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. 2005–23157 and Airspace Docket No. 05–ANM–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by revising the Class E surface airspace area at Kalispell, MT. The runway was recently extended at Kalispell/Glacier International Airport. Since the runway threshold was relocated, this created a requirement for additional surface airspace to accommodate aircraft arriving via the redesigned ILS approach procedure. This action is necessary for the safety of IFR aircraft executing ILS approach procedures at Kalispell/Glacier International Airport, Kalispell, MT.

Class E airspace designations are published in paragraph 6000 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002—Class E Airspace

ANM MT E Kalispell, MT [Revised]

Kalispell/Glacier Park International Airport, MT
(Lat. 48°18′38″ N., long. 114°15′22″ W.)
Smith Lake NDB
(Lat. 48°06′30″ N., long. 114°27′40″ W.)

Within a 4.3-mile radius of the Kalispell/Glacier Park International Airport, and within 1.8 miles each side of the 17°(M) 035°(T) bearing from the Smith Lake NDB extending southwest from the 4.3-mile radius to the Smith Lake NBD.

* * * * *

Issued in Seattle, Washington, on March 9, 2006.

R.D. Engelke,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 06–3111 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 404, 405, 406, 413, 420, 431, 437

[Docket No. FAA–2006–24197]

RIN 2120–AI56

Experimental Permits for Reusable Suborbital Rockets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to amend its commercial space transportation regulations under the Commercial Space Launch Amendments Act of 2004. The FAA proposes application requirements for an operator of a reusable suborbital rocket to obtain an experimental permit. The FAA also proposes operating requirements and restrictions on launch and reentry of reusable suborbital rockets operated under a permit.

DATES: Send your comments on or before May 30, 2006.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–24197 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randy Repcheck, Office of Commercial Space Transportation, Systems Engineering and Training Division, AST–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8760; facsimile (202) 267–5463, e-mail *randy.repcheck@faa.gov*. For legal information, contact Laura Montgomery, Senior Attorney, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971, e-mail *laura.montgomery@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/regulations_policies*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

The FAA's authority to issue rules regarding space transportation safety is found under the general rulemaking authority, 49 U.S.C. 322(a), of the Secretary of Transportation to carry out 49 U.S.C. Subtitle IX, chapter 701, 49 U.S.C. 70101–70121 (Chapter 701). Additionally, the recently enacted Commercial Space Launch Amendments Act of 2004 (the CSLAA) mandates this rulemaking through section 70105, which creates the FAA's new permit authority, and section 70120, which requires that this rulemaking be complete by June 23, 2006. If the FAA does not issue a final rule by December 23, 2007, Congress prohibits the FAA from issuing any permits for launch or reentry until the final regulations are issued.

Background

Chapter 701 authorizes the Secretary of Transportation and, through delegations, the FAA's Associate Administrator for Commercial Space Transportation, to oversee, license, and regulate both launches and reentries of launch and reentry vehicles, and the operation of launch and reentry sites when carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105; U.S. Federal Aviation Administration, Commercial Space Transportation Delegations of Authority, N1100.240 (Nov. 21, 1995). Chapter 701 directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States, and to encourage, facilitate, and promote commercial space launch and reentry by the private sector. 49 U.S.C. 70103, 70105.

On December 23, 2004, President Bush signed into law the Commercial Space Launch Amendments Act of 2004 (CSLAA). The CSLAA changes current law in several significant ways. One such change, which establishes an experimental permit regime for developmental reusable suborbital rockets, is the subject of this rulemaking. The FAA is implementing other provisions of the CSLAA in a companion rulemaking entitled, ''Human Space Flight Requirements for Crew and Space Flight Participants.''

A permit is available as an alternative to licensing for operators of reusable suborbital rockets. The CSLAA defines a suborbital rocket as a vehicle, rocket-propelled in whole or in part, intended for flight on a suborbital trajectory, and the thrust of which is greater than its lift for the majority of the rocket-powered portion of ascent. 49 U.S.C. 70102. To be eligible for an experimental permit, a reusable suborbital rocket must be flown for the following purposes:

- Research and development to test new design concepts, new equipment, or new operating techniques,
- Showing compliance with requirements as part of the process for obtaining a license under Chapter 701, or
- Crew training before obtaining a license for a launch or reentry using the design of the rocket for which the permit would be issued.[1]

49 U.S.C. 70105a(d).

The reusable suborbital rocket must also be flown on suborbital trajectory, which the CSLAA defines as the intentional flight path of a launch vehicle, reentry vehicle, or any portion thereof, whose vacuum instantaneous impact point (the location on Earth where a vehicle would impact if it were to fail, calculated in the absence of atmospheric drag effects) does not leave the surface of the Earth. 49 U.S.C. 70102.

For operators of airplane-like vehicles, the CSLAA's definitions of suborbital rocket and suborbital trajectory establish the circumstances under which the operator will be required to conduct vehicle flights under an experimental permit or launch license, rather than through a special airworthiness certificate in the experimental category. For some vehicles, the proposed rule would make it possible to conduct early test flights, including glide tests or flights under jet power only, under a special airworthiness certificate, prior to transitioning to an experimental permit. The FAA will make the authorization process for operators of these vehicles as seamless as possible.

References

The FAA has cited the following references in this NPRM. Copies of each have been placed in the docket.

Amateur-Built Aircraft and Ultralight Flight Testing Handbook, AC 90–89A

Department of Defense Standard Practice: System Safety, MIL–STD–882D

Equipment, Systems, and Installations in Part 23 Airplanes, AC 23.1309

Guide to the Identification of Safety-Critical Hardware Items for Reusable Launch Vehicle (RLV) Developers, American Institute of Aeronautics and Astronautics (AIAA)

Guidelines for Experimental Permits for Reusable Suborbital Rockets, May, 2005

Reusable Launch and Reentry Vehicle System Safety Process, AC 431.35–2

Current Guidelines

Currently, the FAA issues an experimental permit on a case-by-case basis. To that end, the FAA issued Guidelines for Experimental Permits for Reusable Suborbital Rockets (May 2005) to assist applicants and the FAA pending implementation of regulations.

General Discussion of the Proposals

A. FAA Approach to Experimental Permits

Congress enacted an experimental permit regime to streamline the authorization process for developmental reusable suborbital rockets. As the legislative history states, Congress intended that, ''[a]t a minimum, permits should be granted more quickly and with fewer requirements than licenses.'' H.Rep. 108.429 Sec. VII. Congressman Rohrabacher, chairman of the House Subcommittee on Space and Aeronautics, also clarified the intent of the experimental permit by noting that the experimental flight permits should make it easier for an operator to launch. Even more significantly, the House Science Committee questioned whether the FAA should use its traditional risk measure of expected casualty when issuing permits.[2]

Congress intends an experimental permit regime to reduce the regulatory burden on developers of reusable suborbital rockets. Accordingly, while still maintaining public safety, the FAA proposes to reduce the number of

[1] The CSLAA defines crew as any employee of a licensee or transferee, or of a contractor or subcontractor of a licensee or transferee, who performs activities in the course of that employment directly relating to the launch, reentry, or other operation of or in a launch vehicle or reentry vehicle that carries human beings. 49 U.S.C. 70102.

[2] The CSLAA shares legislative history with H.R. 3752, for which the House prepared a conference report, H. Rep. 108–429. Although the Senate made significant changes to this bill, and no conference report was prepared, the original House report remains helpful.

requirements for a permit when compared to a license, and to model its experimental permit regime for space transportation on the special airworthiness certificates granted to experimental aircraft. The FAA does not propose to require satisfaction of its risk criteria for a permit as it does for a license. Likewise, of all the system safety management and engineering requirements the FAA requires for a license, the FAA only proposes to require a hazard analysis to obtain a permit. Containing a vehicle within an operating area, as proposed here, is similar to the approach used in granting special airworthiness certificates to experimental aircraft.

The FAA examined, for purposes of streamlining, the three-pronged approach currently used to license the launch of reusable launch vehicles (RLVs). The safety strategy for licensing launch and reentry consists of the following three interdependent safety requirements:

1. Quantified limits on individual and collective risk to the general public,
2. A system safety process that requires an operator to use a logical, disciplined approach to identifying hazards and mitigating and removing risks,[3] and
3. Implementation of operating requirements.

Just as system redundancy may compensate for failure or flawed design or performance, the three-pronged approach protects the health and safety of the general public through these different yet interrelated means. The FAA proposes to apply a simplified version of this approach as discussed below.

1. Quantitative Risk Analysis

Under a launch license, a licensee must demonstrate that the risk from a launch falls below specified collective and individual risk criteria. The FAA proposes to relieve a launch operator from the requirement to calculate collective or individual risk under an experimental permit. An applicant would instead propose one or more operating areas that meet qualitative criteria.

Under the license regime, an applicant must demonstrate to the FAA that its launch will meet certain individual and collective risk criteria. Individual risk is the risk to an individual member of the public. Under a license, the risk level to an individual must not exceed 1×10^{-6} per mission. Collective risk is the risk to a population. Under a license, the risk level to the collective members of the public exposed to vehicle debris impact hazards must not exceed an expected average number of 30×10^{-6} casualties per mission (commonly referred to as expected casualty).

Risk analysis accounts for vehicle reliability, effective casualty areas, the probability of impact, populations at risk, and potential consequences. The strength of any quantitative risk analysis lies not only in the resulting values, but also in the decisions reached during the analysis, where the decisions limit risk to the public. In that regard, a quantitative risk criterion may serve as an indicator of when sufficient mitigation measures and operating requirements have been applied. However, uncertainties in launch vehicle reliability, operating environments, and the extent of the consequences of a failure prevent such a straightforward application when addressing research, development, and flight-testing of new technologies, such as developmental reusable suborbital rockets. Because of the uncertainties, any risk analysis would need to include conservative assumptions in order to demonstrate that the criteria are met. Greater knowledge and certainty about expendable launch vehicle (ELV) reliability and operations, coupled with the benefits of operating from coastal sites, allows ELVs to be held to a criterion of 30 casualties per one million launches.

Most RLVs are intended to launch from inland launch sites near significant populations, such as airports. Even though the reusable suborbital rockets currently proposed are typically much smaller than their expendable counterparts,[4] reusable launch vehicles operating from these sites under the same risk criterion would be required to have a lower probability of failure than those expendable counterparts. Preliminary calculations using the characteristics of several proposed and operational suborbital vehicles have shown that a probability of failure of 5% or less would have to be achieved to meet the criterion of 30 in one million. Unlike with ELVs, which have a historical probability of failure of approximately 10%, there is little operational experience and data available to support or refute that low a value for probability of failure.

The FAA considered requiring the operators of reusable suborbital rockets to produce the data needed to demonstrate the necessary probability of failure. This is the current approach for vehicles applying for a launch license. However, the data necessary to determine reliability does not yet exist for developmental suborbital rockets. This reliability data typically can be obtained by the very research and development testing that Congress intends permits to enable.

Alternatively, the FAA could have increased the risk threshold for research and development vehicles to reflect the lack of data. In an effort to determine a new risk criterion, the FAA researched the risks from similar activities, such as the risks to persons living near airports. Our research concluded that the involuntary risks to people living near a major U.S. airport are most similar to the risks to people living near a spaceport. However, in order to do a true one-to-one comparison, the empirical involuntary risks data, expressed as an annual risk to individuals living near a major U.S. airport, would have to be converted to a per-mission collective risk.

Converting annual individual risk data into a per-mission collective risk criterion for permitted activities is sensitive to the assumptions applied in the conversion. In particular, the flight rate (the number of flights in a given time period) of permitted vehicles and the extent of the population exposed are difficult to predict. Because of this sensitivity, the FAA could reasonably propose risk values spanning an order of magnitude from the same underlying data. Such uncertainty in the proper value has the potential for producing a value that would be too easy to meet, thus failing to require the safety decisions that make quantitative risk analyses so valuable, and perhaps leading to a false sense of safety. On the other hand, if the value was too difficult to meet, it could create a regulatory environment that would be too burdensome to be conducive to research and development activities. Accordingly, the FAA chose not to pursue a new criterion for allowable quantitative risk in the absence of conclusive data to support a particular value.

Nonetheless, quantitative risk analyses facilitate safety decision-making, and for that reason, the FAA will continue to conduct these quantitative risk analyses for the industry as a whole as well as recommend that launch operators perform these analyses for their own use. The FAA will continue to conduct

[3] A hazard is an activity or condition that poses a threat. Risk is the potential for an undesirable consequence.

[4] Vehicle size is relevant to risk because a smaller vehicle, in general, will have less of a potential for harm to people and property on the ground than a larger vehicle.

these analyses to provide further insight into safety issues, identify trends, and collect data that may assist in defining future criteria. In addition, the FAA will provide guidance and tools to assist the industry in performing its own quantitative analyses.

2. System Safety

To obtain an experimental permit, the FAA proposes that an applicant be required only to conduct a hazard analysis instead of, as for a launch license, establishing a comprehensive system safety program consisting of both system safety management and system safety engineering.[5] A hazard analysis, which is typically part of a detailed system safety engineering process, identifies and characterizes hazards and qualitatively assesses risks. A license applicant uses this analysis to identify risk elimination and mitigation measures to reduce risk to an acceptable level.

The FAA realizes that by not requiring system safety engineering methods, other than a hazard analysis, some hazards may not be uncovered. A more rigorous approach would entail both ''bottoms-up'' subsystem analyses, such as a failure modes, effects, and criticality analysis, and ''top-down'' system analyses such as fault tree analysis and event tree analysis. However, containment within an FAA-approved operating area will ameliorate many of these unknown risks.

Unlike the system safety management requirements of a license, the FAA does not propose explicit requirements for documenting the system safety organization or for identifying specific safety personnel in the permit regime. Pioneers within the commercial RLV industry need freedom to organize their companies in various innovative ways to conduct launches. In these organizations the emphasis should not be on the management structure but on the commitment to safety throughout the organization. Effective safety organizations are created not only by identifying individuals responsible for safety, but also through developing a strong and effective safety culture. In a strong safety culture, responsibility for safety is spread throughout the organization, upper-level management is committed to public safety, employees have a voice in safety decisions, and safe behavior is rewarded. Therefore, a permittee should establish an organization that has a strong safety culture to achieve safe operations.

An operator with a strong safety culture would incorporate prudent approaches to ensuring safe flight based on lessons learned from launch industry mishaps and experimental aircraft testing and inspection, such as those described in AC 90–89A, ''Amateur-Built Aircraft and Ultralight Flight Testing Handbook.'' Permittees should familiarize themselves with and implement the guidance that the FAA has available for system safety management, particularly AC 431.35–2, ''Reusable Launch and Reentry Vehicle System Safety Process.'' Copies of these documents have been placed in the docket for this rulemaking.

The FAA may reevaluate the need for prescriptive system safety management requirements if there are weaknesses in the industry's safety culture.

3. Operating Requirements

The FAA proposes only those operating requirements that directly involve activities authorized under an experimental permit. To operate under a license, a licensee must comply with the operating requirements of part 431.[6] The FAA examined each operating requirement under part 431, as well as operating requirements derived from lessons learned from recent RLV launches conducted under a license. Many part 431 operating requirements involve preparatory activities. Preparatory activities would not be addressed in a permit application. For example, the FAA would still require flight rules; however, the FAA proposes not to require a mission readiness review where, among other things, flight rules are discussed. Operating requirements are discussed in detail later in this preamble.

4. Effect of a Less Burdensome Permitting Regime

The FAA's proposed permitting regime is designed so that a permittee will implement adequate safety measures. Ultimately, however, public health and safety will depend on each operator adopting a strong safety culture and using proven system safety principles that go beyond the FAA's regulatory requirements.

Imposing fewer requirements on permittees than licensees creates the potential for an increase in risk to the public compared to a similar launch or reentry licensed under part 431 or part 435. The FAA will carefully monitor the safety of space flight that takes place under a permit to ensure that the proposed approach does not result in inappropriate levels of risk. The FAA requests public comment on this approach, particularly the exclusion of quantitative risk criteria, the streamlining of system safety management and engineering, and the streamlined operating requirements.

B. Organization and Requirements of Proposed Rule

The FAA proposes a new part 437 with requirements for obtaining and maintaining an experimental permit. The proposed rule has been organized into four subparts. Subpart A would contain general information about an experimental permit, including eligibility, scope, and duration. Subpart B would contain demonstration and information requirements that an applicant must meet to obtain an experimental permit. The FAA would use selected information submitted for subpart B for an interagency review that allows government agencies such as the Department of Defense and the Department of State to examine the proposed mission from their unique perspectives. Subpart C would contain the safety standards with which a permittee would have to comply while conducting permitted activities.

Subparts B and C are necessarily interrelated. Subpart B would require a permit applicant to demonstrate how it would comply with certain subpart C requirements. An applicant would have to show how it would comply with the general performance-based safety standards proposed in subpart C, but would not have to demonstrate compliance with prescriptive subpart C requirements. For example, proposed rest rules for vehicle safety operations personnel are prescriptive and very specific. The FAA would not require an applicant to demonstrate in its application how it will implement those rules. Instead, the FAA would monitor the permit holder to verify that the permit holder is meeting the subpart C requirements. This should further ease the application burden in accordance with the streamlining goals of the CSLAA.

Last, subpart D would contain other responsibilities that would apply to a permittee. This subpart would include requirements for the continuing accuracy of the permit application, allowable design changes, maintaining records related to the permit application and operations, pre-flight reporting, for-hire prohibition, and compliance monitoring.

[5] The mitigation measures and safety requirements resulting from systematic approaches to identifying and reducing risk serve to protect individuals and society through prudent safety measures that assist in preventing mishaps.

[6] Operating requirements are often derived from the system safety process. Others, required by regulation, are based on historical best practices that mitigate the inherent uncertainty in the system safety process.

1. Subpart A—General Information

Subpart A would contain rules concerning the scope and organization of part 437, definitions, eligibility for an experimental permit, the scope of an experimental permit, issuance of an experimental permit, and the duration of an experimental permit. The duration of a permit would be one year from the date of issuance. A permittee could conduct an unlimited number of launches and reentries for a particular suborbital rocket design during that time. A permittee would be able to apply to renew its permit on a yearly basis. Subpart A would also note that the FAA may modify an experimental permit at any time during its term, that an experimental permit is not transferable, and that the issuance of an experimental permit does not relieve a permittee of its obligation to comply with any requirement of law that applies to its activities.

2. Subpart B—Application Requirements

a. Requirements for an Experimental Permit

This subpart would require an applicant to submit a program description, flight test plan, and operational safety documentation. The program description would include a description of the purpose for which the reusable suborbital rocket would be operated, dimensions, weights, thrust profiles, payloads, propellants, hazardous materials, and systems. An applicant would also have to describe any foreign ownership.

The flight test plan would include a description of the applicant's proposed flight test program, including estimated number of flights, key flight-safety events, and the maximum altitude of the reusable suborbital rocket. An applicant would have to propose and obtain FAA approval of an operating area for its flight tests.

Through operational safety documentation, an applicant would show how it would comply with the general performance standards proposed in subpart C.

b. Environmental Considerations

The FAA proposes to require an applicant to provide sufficient information for the FAA to analyze the environmental impacts associated with issuing reusable suborbital rocket launch and reentry permits. The information provided by an applicant would be used by the FAA to complete an appropriate environmental analysis and associated documentation to comply with the statutory requirements that address public health and safety (e.g., the Clean Air Act), as well as the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508. These requirements would be similar to those associated with a license, but the FAA is preparing a means of lessening the burden on a permit applicant.

The FAA is developing a programmatic environmental impact statement (PEIS) concurrent with this rulemaking. The PEIS will analyze potential environmental impacts (impacts on the human environment include social, economic, cultural and natural environmental impacts) associated with experimental permitting of launches of reusable suborbital rockets. The PEIS will address environmental issues, including potential impacts on human health and safety, and provide information common to all permits. The PEIS is designed to allow an individual applicant's environmental analysis to focus on the environmental effects specific to the permit application for launch and reentry of the applicant's reusable suborbital rocket. The FAA will use the PEIS and subsequent permit specific analyses to determine the appropriate level of NEPA analysis and documentation that can be used to substantiate FAA action on permits. The PEIS will assist the FAA by compiling trend data and focusing environmental monitoring efforts in the coming years.

An applicant will use the PEIS to develop analyses specific to its subsequent permit application. The FAA will obtain, use, and refine the data and information to meet the FAA's obligations under the National Environmental Policy Act and Chapter 701 when issuing permits authorizing reusable suborbital rocket launches and reentries.

c. Financial Responsibility

With the exception of eligibility for indemnification, the financial responsibility regime of Chapter 701 applies to permittees. Therefore, a permittee under this part would have to comply with the financial responsibility requirements of part 440 and as specified in its permit. Under Chapter 701, Congress establishes risk sharing for licensees by providing for the conditional payment of claims by the United States Government of those claims in excess of the required financial responsibility up to $1,500,000,000, as adjusted for inflation, for third party liability. After those limits, the licensee is responsible for all claims. The U.S. Government waives its claims for Government range property damage in excess of required maximum probable loss (MPL)-based property insurance.

Under a permit, the CSLAA provides that the Government is responsible for claims in excess of the required insurance amount for Government range property claims and the holder of the permit is responsible for all other claims. In short, the Government property provisions remain the same for both licensees and permittees. A licensee remains eligible for indemnification from third party claims; however, under the CLSAA a permittee is not. An applicant would provide the information required by part 3 of appendix A of part 440 for the FAA to conduct a maximum probable loss analysis.

d. Operation of a Private Launch Site

Under § 401.5 the operation of a launch site means the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads. A reusable suborbital rocket operator operating a private launch site that contains permanent facilities or supports continuous operations would have to obtain a launch site operator license in accordance with part 420, which contains licensing and operational requirements. Compliance with part 420 would require an explosive site plan and lightning protection and compliance with part 437.

Requiring a launch site operator license marks a slight shift from FAA policy to date. In the past, the FAA announced that a launch operator who operated a private site for its own launches did not need a license to operate a launch site. This is because its launch license would cover the safety issues associated with operating the launch site. *Licensing and Safety Requirements for Operation of a Launch Site,* 65 FR 62812, 62815 (October 19, 2000). The FAA has never issued such a license,[7] but the FAA finds that it

[7] Sea Launch offers its own unique circumstances. Because its launches take place outside the United States, Chapter 701 does not require that Sea Launch's launch license encompass activities in preparation for flight. Accordingly, Sea Launch's license did not cover activities in preparation for flight at the platform in the Pacific Ocean. Nor did the FAA require Sea Launch to obtain a license to operate a launch site. This determination was correct, in light of the discussion above, because Sea Launch was not conducting continuous operations or establishing permanent facilities at its launch point. Both the ship and the

Continued

must revisit this issue for both licenses and permits. The existing approach may leave safety issues unaddressed. A launch license would not, after all, cover the safety issues associated with operating a launch site, and perhaps the FAA should not have said so when promulgating part 420. Part 420, which governs operating a launch site, contains requirements for the storage of explosives and for mitigating lightning effects. Those requirements are necessary regardless of whether a launch vehicle is present at the launch site. Additionally, because the scope of a permit may be even more narrow than the scope of a license, the FAA could fail to address other safety issues as well.

When it issued part 420, the FAA noted in its discussion of the new requirements, if not in the regulations themselves, that ''[a] launch operator proposing to launch from its own launch site need only obtain a launch license because a launch license will address safety issues related to a specific launch and because a launch license encompasses ground operations.'' 65 FR at 62815. The FAA did not memorialize this exception in section 420.3, which describes those to whom part 420 applies, because the FAA anticipated that there would be select provisions in part 420 which the FAA would apply to a launch licensee through its license. Upon further reflection, the FAA proposes to abandon that approach as an incomplete method of fulfilling its mandate to oversee the operation of a launch site.

The existing approach neglects to take into account safety considerations that fall outside the scope of a launch license. Under 49 U.S.C. 70102(4), Congress defines launch to include activities involved in the preparation of a launch vehicle for launch when those activities take place at a launch site in the United States. This means that when a launch vehicle is not present at a launch site, the other activities at a launch site are not licensed. Some of those activities, such as the storage of explosives and mitigating the effects of lightning, create potential hazards addressed by part 420.

The question of whether a license to operate a launch site is necessary at a private site is especially relevant now because there are operators who hope to operate under an experimental permit on private land without having to obtain a license to operate a launch site. Under the existing definition of operation of a launch site, it may not be necessary in all cases for launch operators at a private site to obtain a license to operate the site. The FAA defines operation of a launch site as the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads. 14 CFR 401.5. The FAA recently interpreted this to mean that a launch operator proposing to launch from a private site would not require a launch site operator license. *See* FAA Interpretation to Armadillo Aerospace (February 24, 2006). Because Armadillo planned to use a privately owned site intermittently, and build no infrastructure, it would be using a temporary site and thus not require a license to operate a launch site. The other avenue that must be explored is what it means to ''conduct approved safety operations.'' When promulgating section 401.5, the Department of Transportation observed that ''the operation of a launch site involves continuing operations at a permanent location.'' Licensing Regulations, 64 FR 11004, 1007 (April 4, 1988). This suggests that approved safety operations must be continuous. Although the 1988 rulemaking that created this test did not define or discuss what the agency meant by approved safety operations, the FAA has given flesh to these terms in later years. In 2000, when the FAA issued its regulations governing licensing the operation of a launch site, the FAA noted that, in addition to explosive siting and lightning mitigation requirements, ''[t]he operational requirements * * * address, among other things, control of public access, [and] scheduling of operations at the site.'' 65 FR at 62834. The FAA expects to further refine the meaning of operation as future questions arise.

e. Human Space Flight

An applicant proposing to conduct a reusable suborbital rocket launch or reentry with flight crew or a space flight participant on board would have to demonstrate compliance with part 460, Human Space Flight Requirements, which is being proposed under a separate notice.

f. Inspection Before Permit Issuance

Before issuing a permit, an FAA representative would inspect a built vehicle to ensure compliance with application representations. For example, the FAA would examine systems required for maintaining the vehicle's instantaneous impact point (IIP) within an operating area. As with an experimental aircraft, any additional reusable suborbital rocket of the same design could be launched or reentered under the permit after inspection by the FAA.

g. Other Requirements

The FAA may require additional analyses, information, or agreements if necessary to protect public health and safety, safety of property, and national security and foreign policy interests of the United States. This option is necessary because future reusable suborbital rocket concepts may entail unprecedented and unforeseen characteristics. The regulations proposed in this NPRM may not adequately cover all characteristics relevant to public safety and other U.S. interests.

3. Subpart C—Safety Requirements

a. Vehicle Safety Operations Personnel Rest Rules

The FAA would require that vehicle safety operations personnel adhere to specified rest rules. Under current regulations, vehicle safety operations personnel are those persons whose job performance is critical to public health and safety or the safety of property during RLV or reentry operations. They include personnel on board the vehicle and on the ground.

Risk elimination and mitigation measures, no matter how well thought out or implemented, can be undone if personnel performing safety-critical functions are not physically and mentally capable of performing their assigned function. The Federal government and private entities performing launches have historically imposed rest rules for safety-critical personnel.

b. Pre-Flight and Post-Flight Operations

A permittee would have to protect the public from adverse effects of hazardous operations and systems associated with preparing a permitted vehicle for flight at a launch site in the United States, and with returning the vehicle to a safe condition after flight. A permittee would have to establish a safety clear zone large enough to contain the adverse effects of each hazardous operation. A safety clear zone would, for example, have to contain the hazards of propulsion system testing or propellant loading. A permittee would have to verify that the public was outside that safety clear zone before and during a hazardous operation. Systems such as high pressure gas facilities and facilities for storing liquid and solid propellant are hazardous even when operations are not being performed. An applicant would have to demonstrate in its

launch platform depart after each launch. Although the FAA has said that Sea Launch did not require a site license because it was not offering its site to others, the lack of permanence provides a better reason.

application to the FAA how it would meet these requirements.

The ground activities covered by these requirements would depend on the scope of activities covered by an experimental permit. For launch of expendable launch vehicles, the FAA defines launch to begin with the arrival of a vehicle at a launch site in the United States. 14 CFR 401.5. The FAA proposes to change that definition for reusable suborbital rockets operating under a permit. The FAA proposes to use a four-part test to determine the scope of a permit. The House Science Committee originated the four-part test in 1995, as guidance to the FAA to assist it in defining a ''launch'' for purposes of exercising licensing jurisdiction under Chapter 701. H.R. Rep. No. 233, 104th Cong., 1st Sess., at 60 (1995). The Committee report recommended that there are pre-flight activities that may properly be regulated as part of a ''launch,'' because they—

(1) Are closely proximate in time to ignition or lift-off;

(2) Entail critical steps preparatory to initiating flight;

(3) Are unique to space launch; and

(4) Are inherently so hazardous as to warrant the FAA's regulatory oversight under 49 U.S.C. chapter 701.

The same committee later explained that this test was the basis for changing the definition of ''launch'' in the Commercial Space Act of 1998. Public Law 105–303, 112 Stat. 2843 (1998), 49 U.S.C. 70102(3). In that Act, Congress revised the definition of launch to include activities ''involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States.'' 49 U.S.C. 70102(3).

Although the four-part test is not a statutory requirement, the FAA believes that it provides a rational approach to determining whether a pre-flight activity should be authorized under a permit.

c. Hazard Analysis

An applicant must perform a hazard analysis and provide the results to the FAA. A hazard analysis is an integral part of a system safety engineering process, which applies scientific and engineering principles necessary to identify and eliminate hazards and reduce the associated risk to the public. Typical elements of a hazard analysis include:

- Identifying and describing hazards,
- Assessing risk using qualitative severity and likelihood levels,
- Identifying and describing risk elimination and mitigation measures to reduce the risk to acceptable levels, as defined below, and
- Demonstrating that the risk elimination and mitigation measures are correct, complete, and achieve an acceptable reduction in risk through validation and verification.

The FAA proposes the following criteria to determine the acceptability of the risks:

- The occurrence of any hazardous condition that may cause death or serious injury to the public must be extremely unlikely, and
- The likelihood of an occurrence of any hazardous condition that may cause major property damage to the public, major safety-critical system damage or reduced capability, decreased safety margins, or increased workload must be remote.

In developing qualitative criteria to assess risk, the FAA examined industry practice and existing government standards. The FAA based its criteria on MIL–STD–882D, ''Department of Defense Standard Practice: System Safety,'' and FAA AC 23.1309, ''Equipment, Systems, and Installations in Part 23 Airplanes.'' The U.S. Department of Defense, the National Aeronautics and Space Administration, and the aerospace industry have successfully used hazard analyses for decades to reduce risks to acceptable levels. The FAA proposes that an operator provide the results of the hazard analysis to FAA during the application process. An acceptable hazard analysis could be a Preliminary Hazard Analysis, as described in MIL–STD–882D, a Failure Modes, Effects, and Criticality Analysis, as described in FAA's ''Guide to Reusable Launch and Reentry Vehicle Reliability Analysis'' and AC 431.35–2, or a Functional Hazard Analysis, as described in AC 23.1309. Other analyses that provide an equivalent level of fidelity may be acceptable.

A key step in the hazard analysis process is to identify and describe either risk elimination or risk mitigation measures. The recommended order of precedence for eliminating or mitigating risk is as follows:

- Design for minimum risk. The first priority should be to eliminate risks through appropriate design or operation choices.
- Incorporate safety devices. If risks cannot be eliminated through design or operation selection, an operator should reduce risks through the use of active and passive safety devices. The operator should make provisions for periodic functional checks of safety devices.
- Provide warning devices. When neither design nor safety devices can effectively eliminate identified risks or adequately reduce risks, an operator should use devices to detect the condition and produce an adequate warning signal. The operator should design warning signals and their application to minimize the likelihood of inappropriate human reaction and response.
- Develop and implement procedures and training. When it is impractical to eliminate risks through design selection or specific safety and warning devices, an applicant should develop and implement procedures and training.

Selection of a risk elimination or mitigation approach is usually based on a number of factors, such as the type of operation, the feasibility of implementing the approach, the effectiveness of the approach, and the impact on system performance. The applicant's analysis should also consider whether the risk mitigation measures introduce new hazards.

The mitigation measures of procedures and training deserve special mention. These may include the following:

- Conducting dress rehearsals to ensure crew readiness under nominal and non-nominal flight conditions;
- Creating and using current and consistent checklists that ensure safe conduct of flight operations during nominal and non-nominal flights;
- Consolidating flight rules, procedures, checklists, contingency abort plans, and emergency plans in a safety directive, notebook, or other compilation;
- Establishing communication protocols, including defined radio communications terminology and a common intercom channel for communications; and
- Conducting flight readiness reviews.

To allow flexibility in reducing risk and to encourage innovation in improving safety, the FAA is not mandating any one particular approach, such as checklists or dress rehearsals. Nevertheless, the FAA notes that these could become permit requirements if the characteristics of a permittee's operations make them necessary for safety. For example, a permittee conducting a procedurally simple operation might not need to conduct dress rehearsals. A permittee with a highly complex operation might have to do so.

d. Operating Area Containment

The FAA would require that a permittee operate its reusable suborbital rocket such that its IIP remained within an operating area and outside any

exclusion areas. An operating area would be a three-dimensional region where permitted flights could take place. The FAA would approve an operating area based on the following criteria:

- No densely populated area could be present within or adjacent to an operating area,
- An operating area would have to be large enough to contain each of an applicant's planned trajectories, accounting for expected dispersions,
- An operating area would have to contain enough unpopulated or sparsely populated area to perform key flight-safety events, and
- The operating area could not contain significant automobile traffic, railway traffic, waterborne vessel traffic, or large concentrations of members of the public.

The FAA would use the above criteria to prohibit the operation of reusable suborbital rockets over areas where the consequences of an uncontrolled impact of the vehicle or its debris would be catastrophic. Given the number of people in a densely populated area and their proximity to each other, the likelihood of multiple casualties from an uncontrolled impact of a vehicle or its debris would be much higher in densely populated areas than in sparsely populated areas.

The FAA has not proposed definitions for unpopulated, sparsely populated, or densely populated area. The FAA does not have sufficient experience with reusable suborbital rocket flight activity at this time to define these terms. The FAA did consider, but does not propose to adopt, the following definitions:

Unpopulated means devoid of people.

Sparsely populated means a population density of less than 10 people per square statute mile in an area of at least one square statute mile.

Densely populated area means a census designated place, as defined by the United States Census Bureau, with a population in excess of 100,000 people, or any area with a population density in excess of 1,000 people per square statute mile and an area of at least one square statute mile.

Although proposing precise definitions may be premature, the FAA offers the following observations as preliminary guidance. The term ''unpopulated'' would mean no people, period. The term ''sparsely populated'' suggests an area with a few scattered people where the risk to those few persons from the overflight of a suborbital rocket, even one being tested, would likely be negligible. The term ''densely populated area'' would have two characteristics. One would be strictly related to numbers of people, without regard to population density. Any area with 100,000 people is not a good area to test rockets. The second characteristic would be density—an area would have to be large enough to allow an applicant to find a workable operating area in certain parts of the country, but small enough to keep the risk to the people within the area negligible, given the flight constraints discussed below. The FAA requests comments on the definitions that it considered and on its preliminary observations.

Proposed agreements between a permittee and Air Traffic Control would influence the size and location of the operating area. An operating area might also include ''exclusion areas,'' defined by the FAA, which would consist of areas where a reusable suborbital rocket's IIP could not traverse. The operating area proposed here is similar to that used in granting special airworthiness certificates to experimental aircraft, in that the FAA would allow an applicant to propose an area. An operator could also propose different operating areas for different flight tests in its application.

During the application process, an applicant would identify and describe the methods and systems used to meet the requirement to contain its reusable suborbital rocket's IIP within the operating area and outside any exclusion area. Acceptable methods and systems would include:

- Proof of physical limitations on a vehicle's ability to leave the operating area, and
- Abort criteria and safety measures derived from a system safety process.

Proof of physical limitations on a vehicle's ability to leave the operating area could be obtained through an analysis that showed that the maximum achievable range of the reusable suborbital rocket from the launch point was within the boundaries of the operating area, assuming the rocket flew a trajectory optimized for range and that all safety systems failed. Such a proof would simplify an operator's requirements considerably when compared to the use of active containment methods.

An applicant could use its hazard analysis to determine safety measures that keep a reusable suborbital rocket's IIP within its operating area. Alternatively, an applicant could perform a separate and more comprehensive system safety analysis solely for containment. For example, an operator could use a hazard analysis to identify the safety measures necessary to avoid the hazards of a propulsion shutdown system not operating properly. Such a hazard analysis would use qualitative risk criteria approved by the FAA. An applicant could also use the American Institute of Aeronautics and Astronautics (AIAA) ''Guide to the Identification of Safety-Critical Hardware Items for Reusable Launch Vehicle (RLV) Developers' to assist in the analysis of hardware. The FAA also plans to provide guidance in the future for the analysis of hazards created by errors in software and computing systems.

Specific safety measures obtained from a system safety process could include a dedicated flight safety system or other safety measures derived from the hazard analysis that are not necessarily dedicated only to flight safety. A dedicated flight safety system could protect the public and property from harm, if a vehicle did not stay on its intended course, by stopping the vehicle's flight. A flight safety system consists of all components that provide the ability to end a launch vehicle's flight in a controlled manner. For example, a reusable suborbital rocket may use a thrust termination system in combination with other measures, such as propellant dumping, to keep a vehicle from reaching a populated area. Safety measures may also include systems and procedures that, while not dedicated exclusively to flight safety, help to protect the public. For example, an operator may choose to use a real-time IIP ground or cockpit display. The display may include the real-time IIP, and an operator would use abort criteria to assist in containment of the IIP.

The FAA proposes to require an applicant to show that the system or method selected will contain the vehicle's IIP. That demonstration could include flight demonstration test data; component, system, or subsystem test data; inspection results; or analysis. The FAA would determine whether the proposed containment approach was acceptable, and might require more detailed analyses or verification for that containment approach. The FAA might also require additional safety measures to protect the public, such as propellant dumping to reduce explosive potential or fire hazards.

Note that permits, as well as licenses, are available to the public on request. For permits, the FAA will publish approved operating areas on its web site.

e. Key Flight-Safety Event Limitations

Operating within an acceptable operating area and implementing safety measures obtained from a hazard analysis are only part of what would be

necessary to maintain public safety. The FAA would also impose additional operating requirements for flight events with an increased likelihood of failure compared to other portions of flight. These operating requirements would include requiring an operator to perform key flight-safety events over unpopulated or sparsely populated areas. Events such as rocket engine ignition (for air-dropped and multi-mode propulsion vehicles), staging, and envelope expansion have historically had the highest probability of catastrophic failure for rocket-propelled vehicles. In its application, an operator would have to identify and describe how it would keep these key flight-safety events over unpopulated or sparsely populated areas and demonstrate to the FAA that it had verified the operation of these systems.

The FAA would also require an operator to conduct each reusable suborbital rocket flight so that the reentry impact point would not loiter over a populated area. The reentry impact point is the location of a reusable suborbital rocket's IIP during the period of unpowered suborbital flight outside the atmosphere.

f. Landing and Impact Locations

The FAA would require an operator to use a location for nominal landing, any contingency abort landing, or any reusable suborbital rocket component impact or landing that—

- Is of sufficient size to contain an impact, including any debris dispersion on impact; and
- At the time of landing or impact, does not contain any members of the public.

Subpart B would require an applicant to demonstrate that the identified sites were suitable.

g. Agreements

To obtain a permit, the FAA would require an applicant to complete certain written agreements. The FAA would require that an applicant enter into an agreement with a Federal launch range, a licensed launch site operator or anyone else who provides access to and use of property and services required to support a permitted flight. Public safety related support would include the use of a local fire department for emergency response or a local police department for crowd control.

If an applicant proposed to launch over water, the FAA would require an applicant to complete an agreement with the local United States Coast Guard (USCG) district to establish procedures for issuing a Notice to Mariners before a permitted flight. The FAA would also require an applicant to complete an agreement with the responsible Air Traffic Control authority having jurisdiction over the airspace through which a flight was to take place. That agreement would contain measures necessary to ensure the safety of aircraft, including procedures for notices to airmen and temporary flight restrictions. An applicant would not have to complete these two agreements if a Federal launch range or a licensed launch site operator already had agreements addressing these procedures in place. Federal launch ranges already coordinate these matters for range users. A licensed launch site operator is required, under part 420, to have agreements with the FAA and USCG for launches taking place from its launch site.

h. Collision Avoidance

Based on an analysis of a catalog of orbiting objects performed by the U.S. Strategic Command (USSTRATCOM), the FAA proposes a collision avoidance analysis for a suborbital launch with a planned maximum altitude greater than 150 kilometers. The collision avoidance analysis would establish each period of time during which a permittee could not initiate flight in order to ensure that a permitted vehicle and any jettisoned components did not pass closer than 200 kilometers to a manned or mannable orbital object throughout the flight. This analysis would be performed by USSTRATCOM based on information provided by the permittee. The FAA may approve the use of an alternate separation distance on a case-by-case basis.

i. Tracking

The FAA would require a permittee to operate a reusable suborbital rocket in a manner that provided Air Traffic Control with the real time position and velocity of the reusable suborbital rocket while operating in the National Airspace System (NAS). Air traffic controllers will require this information to integrate reusable suborbital rockets into the NAS. At this time, the FAA does not propose explicit requirements for the necessary tracking methods.

The FAA would also require a permittee to operate a reusable suborbital rocket in a manner that provides position and velocity data for post-flight use. The FAA would use this data for compliance monitoring. The FAA would also use this data to focus on the continuous improvement of the safety of this industry. The CSLAA, 49 U.S.C. § 70103(c), states, ''[i]n carrying out the responsibilities under subsection (b), the Secretary shall encourage, facilitate, and promote the continuous improvement of the safety of launch vehicles designed to carry humans, and the Secretary may, consistent with this chapter, promulgate regulations to carry out this subsection.'' An applicant would have to demonstrate to the FAA how it would meet these tracking requirements in its application.

j. Communications

The FAA would require that a permittee be in contact with Air Traffic Control while operating in the NAS. The FAA would also require a permittee to record communications affecting the safety of flight. Recording communication is necessary for mishap investigations. Some suborbital operators will use a central control room for communications, while others plan to rely solely on a pilot communicating with Air Traffic Control. In either case, the FAA proposes that the permit holder record these communications. The FAA would verify that the permit holder is in compliance with this requirement during inspections.

k. Flight Rules

The FAA continues to find that the use of flight rules and procedures by a launch operator contribute significantly to the overall safety of the flight during all phases of flight. Therefore, the FAA would require an operator to implement flight rules associated with—

- Conducting operations within a pre-approved operating area;
- Conducting key flight-safety events over unpopulated or sparsely-populated areas;
- Using suitable locations for nominal landing, any contingency abort landing, or any reusable suborbital rocket component impact or landing; and
- Implementing the hazard analysis process.

In addition, the FAA would require that, before initiating flight, the operator check that all systems required for safe flight are within acceptable limits. An applicant must provide its flight rules to the FAA in its application.

The FAA would require certain flight rules similar to those used in aviation. A permittee would be forbidden to operate a reusable suborbital rocket in a careless or reckless manner so as to endanger members of the public. A permittee would also be forbidden to operate a reusable suborbital rocket within Class A, Class B, Class C, or Class D airspace or within the boundaries of the surface area of Class E airspace designated for an airport, unless the permittee has prior authorization from the air traffic control

facility having jurisdiction over that airspace. A permittee would not be permitted to operate a reusable suborbital rocket in areas designated in a Notice to Airmen under § 91.137, § 91.138, § 91.141, or § 91.145 of this title, unless authorized by air traffic control or a Flight Standards Certificate of Waiver or Authorization.

Lastly, for phases of flight where a reusable suborbital rocket is operated like an aircraft in the National Airspace System, the FAA may specify in the permit those portions of 14 CFR part 91 necessary to protect public health and safety and safety of property. 14 CFR part 91 prescribes rules governing the operation of aircraft within the United States, including the waters within 3 nautical miles of the U.S. coast.

l. Anomaly Recording and Reporting

The FAA proposes to require that a permittee record anomalies, analyze the root cause of each anomaly, and implement corrective actions for those anomalies. An operator would have to report to the FAA any anomaly to any system or process associated with containing the vehicle's IIP within an operating area, restricting the location of key flight-safety events, and the mitigation and safety measures obtained from a hazard analysis. The permittee would have to report to the FAA any anomaly or failure of those systems or processes during verification (including ground test and inspection) or flight.

Analyses of mishaps often show that clues existed prior to the mishap in the form of anomalies during the project life cycle. Examination and understanding of launch vehicle system and subsystem anomalies throughout the life cycle can warn of an impending mishap and can provide important information about what conditions need to be controlled to mitigate risk to the public.

The FAA requires reporting of certain anomalies so it can analyze and evaluate operations under permits and verify that the operator is making informed safety decisions. Anomaly reporting to the FAA also facilitates continuous improvement of the safety of launch vehicles.

m. Mishap Reporting, Responding, and Investigating

The FAA proposes to require a permittee to respond to mishaps in accordance with a mishap response plan. The FAA would require that the plan be submitted as part of an application. The FAA would also require a permittee to report mishaps to the FAA, to investigate mishaps, and to cooperate with any FAA or National Transportation Safety Board (NTSB) investigation.

n. Additional Safety Requirements

Applicants proposing activities creating hazards not otherwise addressed in proposed part 437, such as the use of toxic materials or solid propellants, may be subject to additional requirements. These hazards may pose risks to the public that may require additional analyses or mitigation measures.

4. Subpart D—Terms and Conditions of an Experimental Permit

a. Public Safety Responsibility

A permittee would be responsible for ensuring the safe conduct of a launch or reentry conducted under an experimental permit, and for protecting public health and safety and the safety of property during the conduct of the launch or reentry.

b. Compliance With Experimental Permit

As is the case for a licensee, a permittee would have to conduct all launches and reentries under an experimental permit in accordance with representations made in its application, with subparts C and D, and with terms and conditions contained in the permit. A permittee would be responsible for the continuing accuracy of representations contained in its application for the entire term of the experimental permit and would have to inform the FAA of any proposed changes.

c. Permit Modifications

The FAA will identify in a permit the type of modifications that the permittee may make to the vehicle design without invalidating the permit. The FAA will work closely with applicants on a case-by-case basis to determine what modifications may be made.

Once a permit has been issued, except for the allowable design changes, the permittee must apply to the FAA for modification of the permit. If a permittee proposes to conduct permitted activities in a manner not authorized by the permit, it must apply to the FAA to modify the permit. It must also apply to the FAA to modify the permit if any representation contained in the permit application that is material to public health and safety or the safety of property is no longer accurate or complete.

The FAA realizes that a flight test program may also entail frequent operational changes throughout the term of a permit. If an applicant desires, the FAA will work with the applicant to set up an alternate method for applying for modifications to the permit.

d. Records

The FAA would require a permittee, like a licensee, to maintain for three years all records, data, and other material necessary to verify that a permitted launch is conducted in accordance with representations contained in the permittee's application. In the event of a launch accident or launch incident, a permittee must preserve all records related to the event. Records would be retained until completion of any Federal investigation and the FAA advised the permittee that the records no longer need to be retained. The permittee would make all records required to be maintained under the regulations available to Federal officials for inspection and copying.

e. Pre-Flight Reporting

The FAA proposes that not later than 30 days before each flight or series of flights conducted under an experimental permit, a permittee would provide the FAA with the following information:

- Any payload to be flown, including any payload operations during the flight,
- When the flight or series of flights are planned,
- The operating area for each flight, and
- The planned maximum altitude for each flight.

Not later than 15 days before each permitted flight planned to reach greater than 150 km altitude, a permittee would need to provide its planned trajectory to the FAA. This information is needed for a USSTRATCOM collision avoidance analysis.

f. For-Hire Prohibition

Under 49 U.S.C. 70105a(h), no person may operate a reusable suborbital rocket under a permit for carrying any property or human being for compensation or hire. With one exception, the definition of ''compensation or hire'' is the same as that used in the aviation context where it is broadly interpreted and includes an operator furthering his economic interest by transporting persons or property by air. For aviation, it is not necessary that there be an actual payment of cash for the flight or that there be actual profit to constitute compensation. Compensation may include—

- Any form of payment—including payment of operating costs such as fuel and oil;
- A tax deduction—if a flight is for charity;

• Goodwill—a person is carried without any payment of cash but the operator expects or receives paying customers because of the free flight;
• Payment by a third party, such as when a third party arranges and pays for the flight;
• A non-monetary exchange—for carrying a person for free the operator receives free advertising, parts, maintenance, etc; or
• Any exchange of value, including bartering goods or services in exchange for the transportation.

The FAA proposes to allow the launch of a space flight participant so long as the space flight participant or a representative does not provide compensation to the holder of a permit. With the exception of allowing goodwill, the FAA proposes to use the aviation approach to determining when compensation is provided for a flight. An operator would also be able to receive payment for the display of logos because it is a service and thus not a person or property launched for compensation. Events such as the X Prize Cup provide an incentive for research and development. The FAA does not propose to consider as compensation any prize money won at such events.

g. Compliance Monitoring

As is the case for a licensee, a permittee would have to allow access by, and cooperate with, Federal officers or employees or other individuals authorized by the FAA to observe any activities of the permittee, or of the permittee's contractors or subcontractors, associated with the conduct of permitted pre-flight and flight operations.

C. Changes to Existing Regulations

In addition to the requirements to obtain and operate under an experimental permit, the FAA proposes to amend existing regulations to reflect the CSLAA's new authority. Many of the proposed amendments consist simply of replacing the term ''license'' with ''license or permit.'' Other changes are minor, such as updating references to a ''Director'' to the ''Associate Administrator.'' The FAA proposes to revise the definition of amateur rocket activities, which do not require a license or permit, to encompass only unmanned activities because the CSLAA prohibits the FAA from authorizing the launch or reentry of a launch vehicle or a reentry vehicle without a license or permit if a human being will be on board. The FAA proposes to add application procedures for experimental permits to part 413, including a review period of 120 days for permits as congressionally mandated, in addition to the licensing review period of 180 days.

The FAA proposes to revise the launch site location review of part 420. Currently, a launch site operator applicant must demonstrate that its proposed launch site can support the launch of a launch vehicle meeting a specified collective risk criteria. The FAA proposes that for any launch site operated solely for permitted flights, an FAA-approved operating area will be sufficient demonstration.

D. Other Issues and Recommendations

1. Contrasts Between Licenses and Permits

Before the CSLAA, a launch license was the only mechanism available to the FAA to authorize the launch of a launch vehicle. Although the FAA proposes here a number of ways that a permit will be different from a license, there are also those that are mandated by statute and of which an operator should be aware. Under the CSLAA, an experimental permit differs from a license in several ways.

• The FAA must determine whether to issue an experimental permit within 120 days of receiving an application. For a license, the FAA must make a similar determination within 180 days of receiving an application.
• No person may operate a reusable suborbital rocket under a permit for carrying any property or human being for compensation or hire. No such restriction applies for a license.
• A permit is not transferable. A license is transferable from one entity to another. This is usually sought after a merger or acquisition.
• Damages arising out of a permitted launch or reentry are not eligible for ''indemnification,'' the provisional payment of claims under 49 U.S.C. 70113. To the extent provided in an appropriation law or other legislative authority, damages caused by licensed activities are eligible for the provisional payment of claims.
• A permit must authorize an unlimited number of launch and reentries for a particular reusable suborbital rocket design. Although licenses can be structured to authorize an unlimited number of launches, no statutory mandate to do so exists.

2. Considerations for Obtaining a License After Operating Under a Permit

One purpose of conducting operations under a permit would be for an operator to show compliance with the requirements for obtaining a license. The FAA recommends that all permit applicants be well versed in the requirements of both the RLV mission license and the experimental permit. The FAA particularly recommends that a permittee plan the flight test program under a permit to collect all the validation and verification data on systems and subsystems needed to provide to the FAA during the license application process.

It should be noted that a reusable suborbital rocket operator would not be required to get a permit before applying for a license. However, applicants proposing certain vehicle operations may not be capable of demonstrating compliance with the collective and individual risk criteria of a license without the flight test data obtained under a permit. This is particularly true for operations at inland launch sites.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget (OMB) for its review. Persons are not required to respond to a collection of information unless it displays a currently valid OMB number.

Title: Experimental Permits for Reusable Suborbital Rockets.

Summary: The Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration (FAA), Department of Transportation, proposes to amend the FAA's commercial space transportation regulations under the Commercial Space Launch Amendments Act of 2004. The FAA proposes application requirements for an operator of a reusable suborbital rocket to obtain an experimental permit. The FAA also proposes operating requirements and restrictions on permitted launch and reentry.

Use of: The information collected will be used by the FAA to decide whether or not to issue an experimental permit to an applicant, and to monitor a permittee's compliance with its permit and with applicable regulations.

Respondents (including number of): The likely respondents to this proposed information requirement are private entities planning to conduct developmental testing of reusable suborbital rockets. The FAA estimates that there will be eight to twelve private operators who would obtain permits over ten years.

Frequency: The frequency of this collection is determined by the respondents. They notify the FAA on

the occasion of launching or applying for a permit.

Annual Burden Estimate: This rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the annual burden are shown below.

Estimated Burden: The FAA expects that private entities would incur reporting and recordkeeping costs when applying for and operating under a permit, as follows:

- Permittees would take 178.4 to 267.6 hours annually to submit materials to the FAA to renew their permits at an annual cost of $12,381 to $18,571.
- Permit applicants would spend 432 to 648 hours annually to provide information for the FAA to analyze environment impacts and to conduct a maximum probable loss analysis at a cost of $29,981 to $44,971 annually.
- Permit applicants would need 7.68 to 11.52 hours annually to describe methods used to meet tracking requirements at a cost of $533 to $799 annually.
- Permit applicants would need 1,248 to 1,872 hours annually to demonstrate to the FAA that their operations would protect public safety at an annual cost of $86,611 to $129,917.
- Permit applicants would need 96 to 144 hours annually to prepare a mishap response plan at a cost of $6,662 to $9,994 annually.
- Permittees would need 91 to 182 hours annually to provide the FAA with pre-flight information at an annual cost of $6,315 to $12,631.

The total estimated industry annual paperwork burden would range from 2,053 to 3,125 at a cost ranging from $142,483 to $216,883. The estimated average annual hour burden would be 2,589 at an estimated average cost of $179,683.

The proposed rule would also increase paperwork costs for the Federal government because the FAA would have to spend hours on the following activities.

- The FAA would spend 4,992 to 7,488 hours annually at an annual cost of $259,784 to $389,676 consulting with applicants and reviewing and approving permit applications.
- The FAA would spend 57.6 to 86.4 hours annually at an annual cost of $5,651 to $8,475 (including travel expenses) to travel to and inspect suborbital rockets.
- The FAA would spend 96 to 144 hours annually at an annual cost of $4,996 to $7,494 identifying the types of changes that may be made to each reusable suborbital rocket without invalidating its permit.
- The FAA would spend 84 to 132 hours annually at an annual cost of $4,371 to $6,869 to re-inspect a vehicle during the permit renewal process.
- The FAA would require 436.8 to 686.4 hours annually at an annual cost of $22,731 to $35,721 to conduct the reviews required to determine whether a permit can be renewed.

The total estimated FAA annual paperwork burden would range from 5,666 to 8,537 hours at a cost ranging from $297,533 to $448,235. The estimated average annual hour burden to the Federal government would be 7,102 at an estimated average cost of $372,884.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by May 30, 2006, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51736, September 30, 1993) directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act, (19 U.S.C. 2531–2533), prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to use the international standards as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually as adjusted for inflation.

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; (4) will have a neutral impact on international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Potentially Impacted Parties

Private Sector

- Operators who would be conducting reusable suborbital rocket launches for the three purposes mentioned above.
- The public who might be exposed to more risk.

Government

- Federal Aviation Administration that would be reviewing and approving applications, inspecting the vehicles and permitted operations, identifying allowable changes to the vehicle, and renewing permits.

Assumptions and Ground Rules Used in Analysis (Discount Rate, Period of Analysis, Value of Life, Cost of Injuries)

- All monetary values are expressed in 2004 dollars.
- The time horizon for the analysis is 10 years (2006 to 2016).
- Costs are discounted at 7%.
- Hourly burdened industry rate is $69.40.
- Hourly burdened government rate is $52.04.
- 8 to 12 private sector entities would obtain permits over ten years.
- Permit issued to an entity is used for one year. It is renewed only once for the following year.

• Each permit holder would construct one vehicle to carry out all flights under the permit.
• Private sector entities would perform from 455 to 910 flights under experimental permits over ten years.
• Requirements fulfilled by Scaled Composites to license SpaceShipOne launches are considered current practice.

Some provisions would cause a private sector entity to incur additional costs over the requirements of a license. The estimated additional person hours required per permit for each proposed rule section are as follows:

Proposed section		Person-hours incurred per permit
§ 437.21	General	24
§ 437.37	Tracking	96
§ 437.67	Tracking.	
§ 413.23	License or permit renewal	24

Some provisions would allow a private sector entity to realize cost savings over the licensing regime. The estimated person hours saved per permit under each proposed rule section are as follows:

Proposed rule section		Person-hours avoided per permit or per flight
§ 437.25	Flight test plan	4,680
§ 437.27	Pre-flight and post-flight operations.	
§ 437.29	Hazard analysis.	
§ 437.31	Verification evidence of operating area containment and key flight-safety event limitations.	
§ 437.53	Pre-flight and post-flight operations.	
§ 437.55	Hazard analysis.	
§ 437.57	Operating area containment.	
§ 437.59	Key flight-safety event limitations.	
§ 437.41	Mishap response plan	120
§ 437.75	Mishap reporting, responding and investigating.	
§ 437.69	Communications	160
§ 431.33	Safety organization	2,080
§ 431.37	Mission readiness [a]	40
§ 431.43	Reusable launch vehicle mission operational requirements and restrictions	2,080

[a] Person hours avoided are per flight.

Some provisions would cause the FAA to incur additional costs over the requirements of a license. The estimated additional person hours required per permit for each proposed rule section are as follows:

Proposed rule section		Person-hours incurred per permit
§ 437.21	General	72
§ 437.85	Allowable design changes; Modification of an experimental permit	120
§ 413.23	License or permit renewal	120

Some provisions would allow the FAA to realize cost savings over the launch licensing regime. The estimated person hours saved per permit for each proposed rule section are as follows:

Proposed rule	Person-hours avoided per permit
Pre-application consultation, and permit application review and issuance activities	10,400

Benefits

The proposed rule would provide an expeditious avenue for experimental commercial space transportation initiatives that would enhance and accelerate advances in this arena. This could lead to significant engineering breakthroughs that would benefit public consumption of commercial space transportation. Further, the cost savings realized by the commercial space transportation industry could be used to advance the overall safety of reusable suborbital rocket technology.

The FAA solicits comments and any other information to help validate and derive quantitative estimates pertaining to the costs and benefits of this rulemaking.

Total Net Costs

SUMMARY OF INCREMENTAL COST IMPACTS AND COST SAVINGS ATTRIBUTABLE TO THE PROPOSED RULE FOR THE TEN-YEAR PERIOD, 2006 THROUGH 2015

[In 2004 dollars]

Category	Upper bound		Lower bound	
	Undiscounted	Discounted [a]	Undiscounted	Discounted [a]
Commercial Space Transportation Industry Compliance Costs	$141,058	$97,469	$93,483	$63,475
Federal Aviation Administration Administrative Costs	264,862	180,919	173,387	116,757
Total Costs	405,920	278,388	266,870	180,232
Commercial Space Transportation Industry Cost Savings	11,709,168	8,049,830	7,336,968	4,976,830
Federal Aviation Administration Cost Savings	6,494,592	4,512,659	4,329,728	2,951,467
Total Cost Savings	18,203,760	12,562,489	11,666,696	7,928,297
Total Net Cost Savings	17,797,840	12,284,101	11,399,826	7,748,065

[a] Calculated using a discount factor of seven percent over a ten-year period. (See Tables A–5 to A–30 in the Appendix.)

Comparison of Benefits and Costs

The proposed rule would result in a net cost savings of $11.4 million ($7.7 million discounted) to $17.8 million dollars ($12.3 million discounted). The proposed rule is expected to enhance and accelerate advances in commercial space transportation. It would do so by making it less costly for the industry to fly research and development missions to test new design concepts, new equipment or new operating techniques, to perform crew training, and to demonstrate compliance with license requirements. Without the new availability of a permit, an operator would have to obtain a license, which imposes more costs for these activities.

The proposed rule might increase risk to public safety because it would require fewer safety analyses and would eliminate other requirements such as mission readiness review, a communications plan prepared in advance of the launch (the proposed rule would require the private sector entity to be in contact with Air Traffic), and a safety organization that are required under a launch license. At this stage of industry development, and the FAA having yet to issue a permit, it is premature to quantify any potential risk increase because too little is known about the safety impacts these measures may have. Additionally, the FAA has attempted to counterbalance any negative effects on safety of the more lenient permitting requirements by requiring operations to occur within a specified area where risk of harming others is reduced even further. The FAA anticipates that it will eventually obtain the experience and information necessary to quantify any increase in risk in a measurable fashion. This is because the FAA plans to monitor the safety of permitted launches to ensure that the proposed approach is adequate to protect public safety.

Regulatory Flexibility Determination

The proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA concludes that a substantial number of firms in the human space flight industry would be affected by the rule because many of the companies in the fledgling industry are small. The proposed rule would allow these entities to realize cost savings that they would otherwise not have gained under a license-only regime. Because, with the exception of Virgin Galactic, all the entities assessed in the regulatory evaluation are small entities, the same analysis used there applies to the regulatory flexibility determination. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA Administrator certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities launching from the U.S. under an experimental permit, and thus would have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed rule does not contain an unfunded mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, October 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

• Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?

• Would the regulations be easier to understand if they were divided into more (but shorter) sections?

• Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 401

Organization and functions (Government agencies), Space safety, Space transportation and exploration.

14 CFR Part 404

Administrative practice and procedure, Space safety, Space transportation and exploration.

14 CFR Part 405

Investigations, Penalties, Space safety, Space transportation and exploration.

14 CFR Part 406

Administrative practice and procedure, Space safety, Space transportation and exploration.

14 CFR Part 413

Confidential business information, Human space flight, Reporting and recordkeeping requirements, Space safety, Space transportation and exploration.

14 CFR Part 420

Airspace, Human space flight, Space safety, Space transportation and exploration.

14 CFR Part 431

Aviation safety, Environmental protection, Investigations, Human space flight, Reporting and recordkeeping requirements, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 437

Aviation safety, Airspace, Human space flight, Rockets, Space safety, Space transportation and exploration.

The Proposed Amendment

V. The Proposed Amendment

For the reasons discussed above, the Federal Aviation Administration proposes to amend Chapter III of Title 14, Code of Federal Regulations, as follows:

TITLE 14—AERONAUTICS AND SPACE

CHAPTER III—COMMERCIAL SPACE TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 401—ORGANIZATION AND DEFINITIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

2. Revise § 401.3 to read as follows:

§ 401.3 The Associate Administrator of Commercial Space Transportation.

The Office is headed by an Associate Administrator to exercise the Secretary's authority to license or permit and otherwise regulate commercial space transportation and to discharge the Secretary's responsibility to encourage, facilitate, and promote commercial space transportation by the United States private sector.

3. Amend § 401.5 as follows:

A. Add definitions for ''experimental permit'', ''validation'', and ''verification'' in alphabetical order to read as set forth below.

B. Revise the definitions for ''amateur rocket activities'', ''launch'', ''launch incident'', and ''reentry incident'' to read as set forth below.

§ 401.5 Definitions.

* * * * *

Amateur rocket activities means unmanned launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—that is, gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

* * * * *

Experimental permit or *permit* means an authorization by the FAA to a person to launch or reenter a reusable suborbital rocket.

* * * * *

Launch means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes preparing a launch vehicle for flight at a launch site in the United States. Launch includes the flight of a launch vehicle and pre-flight ground operations beginning, under a license, with the arrival of a launch vehicle or payload at a U.S. launch site. For launch of an expendable launch vehicle (ELV), flight ends after the licensee's last exercise of control over its launch vehicle. For launch of an orbital reusable launch vehicle (RLV) launch with a payload, flight ends after deployment of the payload. For any other orbital RLV, flight ends upon completion of the first sustained, steady-state orbit of an RLV at its intended location. For a suborbital RLV launch, flight ends after vehicle landing or impact on Earth, and after activities necessary to return the reusable suborbital rocket to a safe condition on the ground end.

* * * * *

Launch incident means an unplanned event during the flight of a launch vehicle, other than a launch accident, involving a malfunction of a flight safety system or safety-critical system, or a failure of the licensee's or permittee's safety organization, design, or operations.

* * * * *

Reentry incident means any unplanned event occurring during the reentry of a reentry vehicle, other than a reentry accident, involving a malfunction of a reentry safety-critical system or failure of the licensee's or permittee's safety organization, procedures, or operations.

* * * * *

Validation means an evaluation to determine that each safety measure derived from a system safety process is correct, complete, consistent, unambiguous, verifiable, and technically feasible. Validation ensures that the right safety measure is implemented, and that the safety measure is well understood.

Verification means an evaluation to determine that safety measures derived from a system safety process are effective and have been properly implemented. Verification provides measurable evidence that a safety measure reduces risk to acceptable levels.

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

4. The authority citation for part 404 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

5. Revise § 404.1 to read as follows:

§ 404.1 Scope.

This part establishes procedures for issuing regulations to implement 49 U.S.C. Subtitle IX, chapter 701, and for eliminating or waiving requirements for licensing or permitting of commercial space transportation activities under that statute.

6. Revise § 404.3 to read as follows:

§ 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to:

(1) Issue, amend, or repeal a regulation to eliminate as a requirement for a license or permit any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites;

(2) Waive any such requirement in the context of a specific application for a license or permit; or

(3) Waive the requirement for a license or permit.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, or the licensing or permitting requirement to be eliminated or waived, or the type of license or permit to be waived;

(3) In the case of a petition for a waiver of a particular licensing or permitting requirement, explain the nature and extent of the relief sought;

(4) Contain any facts, views, and data available to the petitioner to support the action requested; and

(5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section must contain a summary, which the Associate Administrator may cause to be published in the **Federal Register**, which includes:

(1) A brief description of the general nature of the action requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

7. Revise § 404.17 to read as follows:

§ 404.17 Additional rulemaking proceedings.

The FAA may initiate other rulemaking proceedings, if necessary or desirable. For example, it may invite interested people to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

PART 405—INVESTIGATIONS AND ENFORCEMENT

8. The authority citation for part 405 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

9. Revise § 405.1 to read as follows:

§ 405.1 Monitoring of licensed and other activities.

Each licensee or permittee must allow access by and cooperate with Federal officers or employees or other individuals authorized by the Associate Administrator to observe licensed facilities and activities, including launch sites and reentry sites, as well as manufacturing, production, testing, and training facilities, or assembly sites used by any contractor, licensee, or permittee to produce, assemble, or test a launch or reentry vehicle and to integrate a payload with its launch or reentry vehicle. Observations are conducted to monitor the activities of the licensee, permittee, or contractor at such time and to such extent as the Associate Administrator considers reasonable and necessary to determine compliance with the license or permit or to perform the Associate Administrator's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

10. Revise § 405.3(a), (b), and (d) to read as follows:

§ 405.3 Authority to modify, suspend or revoke.

(a) The FAA may modify a license or permit issued under this chapter upon application by the licensee or permittee or upon the FAA's own initiative, if the FAA finds that the modification is consistent with the requirements of the Act.

(b) The FAA may suspend or revoke any license or permit issued to such licensee or permittee under this chapter if the FAA finds that a licensee or permittee has substantially failed to comply with any requirement of the Act, any regulation issued under the Act, the terms and conditions of a license or permit, or any other applicable requirement, or that public health and safety, the safety of property, or any national security or foreign policy interest of the United States so require.

* * * * *

(d) Whenever the FAA takes any action under this section, the FAA immediately notifies the licensee or permittee in writing of the FAA's finding and the action, which the FAA has taken or proposes to take regarding such finding.

11. Revise § 405.5, introductory text and paragraph (a) to read as follows:

§ 405.5 Emergency orders.

The Associate Administrator may immediately terminate, prohibit, or suspend a licensed or permitted launch, reentry, or operation of a launch or reentry site if the Associate Administrator determines that—

(a) The licensed or permitted launch, reentry, or operation of a launch or reentry site is detrimental to public health and safety, the safety of property, or any national security or foreign policy interest of the United States; and

* * * * *

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

12. The authority citation for part 406 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

13. Revise § 406.1 heading and paragraphs (a)(2) through (3), and add paragraphs (a)(4) and (5) to read as follows:

§ 406.1 Hearings in license, permit, and payload actions.

(a) * * *

(2) An owner or operator of a payload regarding any decision to prevent the launch or reentry of the payload;

(3) A licensee regarding any decision to suspend, modify, or revoke a license or to terminate, prohibit, or suspend any licensed activity therefore;

(4) An applicant for a permit regarding an FAA decision to issue a permit with conditions or to deny the issuance of the permit; and

(5) A permittee regarding any decision to suspend, modify, or revoke a permit

or to terminate, prohibit, or suspend any permitted activity.

* * * * *

14. Revise § 406.3 heading and paragraph (a) to read as follows:

§ 406.3 Submissions; oral presentation in license, permit, and payload actions.

(a) The FAA will make decisions about license, permit, and payload actions under this subpart based on written submissions unless the administrative law judge requires an oral presentation.

* * * * *

§ 406.5 Administrative law judge's recommended decision in license, permit, and payload actions.

15. Revise § 406.5 heading to read as set forth above.

16. Revise § 406.9(a), (c) introductory text, and (f)(3) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 49 U.S.C. 70115(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $100,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

* * * * *

(c) *Notice of proposed civil penalty.* A civil penalty action is initiated when the agency attorney advises a person, referred to as the respondent, of the charges or other reasons upon which the FAA bases the proposed action and allows the respondent to answer the charges and to be heard as to why the civil penalty should not be imposed. A notice of proposed civil penalty states the facts alleged; any requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act allegedly violated by the respondent; and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty the respondent may elect to proceed by one or more of the following:

* * * * *

(f) * * *

(3) The compromise order may not be used as evidence of a prior violation in any subsequent civil penalty action, license, or permit action.

* * * * *

17. Revise § 406.127(a)(3)(ii) to read as follows:

§ 406.12 Complaint and answer in civil penalty adjudications.

(a) * * *

(3) * * *

(ii) Any requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act allegedly violated by the respondent.

* * * * *

PART 413—LICENSE AND EXPERIMENTAL PERMIT APPLICATION PROCEDURES

18. The authority citation for part 413 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

19. Revise § 413.1 to read as follows:

§ 413.1 Scope of this part.

(a) This part explains how to apply for a license or experimental permit. These procedures apply to all applications for issuing a license or permit, transferring a license, and renewing a license or permit.

(b) Use the following table to locate specific requirements:

Subject	Part
Obtaining a Launch License	415
License to Operate a Launch Site	420
Launch and Reentry of a Reusable Launch Vehicle (RLV)	431
License to Operate a Reentry Site	433
Reentry of a Reentry Vehicle other than a Reusable Launch Vehicle (RLV)	435
Experimental Permits	437

20. Revise § 413.3 to read as follows:

§ 413.3 Who must obtain a license or permit.

(a) A person must obtain a license in accordance with this section, unless eligible for an experimental permit under paragraph (f) of this section.

(b) A person must obtain a license to—

(1) Launch a launch vehicle from the United States;

(2) Operate a launch site within the United States;

(3) Reenter a reentry vehicle in the United States; or

(4) Operate a reentry site within the United States.

(c) A person who is a U.S. citizen or an entity organized under the laws of the United States or any State must obtain a license to—

(1) Launch a launch vehicle outside the United States;

(2) Operate a launch site outside of the United States;

(3) Reenter a reentry vehicle outside of the United States; or

(4) Operate a reentry site outside of the United States.

(d) A foreign entity in which a United States citizen has a controlling interest must obtain a license to launch a launch vehicle from or to operate a launch site in—

(1) Any place that is outside the territory or territorial waters of any nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation has jurisdiction over the launch or the operation of the launch site; or

(2) The territory of any foreign nation, including its territorial waters, if there is an agreement in force between the United States and that foreign nation providing that the United States has jurisdiction over the launch or the operation of the launch site.

(e) A foreign entity in which a U.S. citizen has a controlling interest must obtain a license to reenter a reentry vehicle or to operate a reentry site in—

(1) Any place that is outside the territory or territorial waters of any nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation has jurisdiction over the reentry or the operation of the reentry site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States has jurisdiction over the reentry or the operation of the reentry site.

(f) A person, individual, or foreign entity otherwise requiring a license under this section may instead obtain an experimental permit to launch or reenter a reusable suborbital rocket under part 437 of this chapter.

21. Revise § 413.5 to read as follows:

§ 413.5 Pre-application consultation.

A prospective applicant must consult with the FAA before submitting an application to discuss the application process and possible issues relevant to the FAA's licensing or permitting decision. Early consultation helps an applicant to identify possible regulatory issues at the planning stage when changes to an application or to proposed licensed or permitted activities are less likely to result in significant delay or costs to the applicant.

22. Revise § 413.7(b)(3) and (c)(1) and (3) to read as follows:

§ 413.7 Application.

* * * * *

(b) * * *

(3) The type of license or permit for which the applicant is applying.

(c) * * *

(1) For a corporation: An officer or other individual authorized to act for the corporation in licensing or permitting matters.

* * * * *

(3) For a joint venture, association, or other entity: An officer or other individual authorized to act for the joint venture, association, or other entity in licensing or permitting matters.

23. Revise § 413.11 to read as follows:

§ 413.11 Acceptance of an application.

The FAA will initially screen an application to determine whether it is complete enough for the FAA to start its review. After completing the initial screening, the FAA will notify the applicant in writing of one of the following:

(a) The FAA accepts the application and will initiate the reviews required to make a decision about the license or permit; or

(b) The application is so incomplete or indefinite that the FAA cannot start to evaluate it. The FAA will reject it and notify the applicant, stating each reason for rejecting it and what action the applicant must take for the FAA to accept the application. The FAA may return a rejected application to the applicant or may hold it until the applicant takes those actions.

24. Revise § 413.13 to read as follows:

§ 413.13 Complete application.

The FAA's acceptance of an application does not mean it has determined that the application is complete. If, in addition to the information required by this chapter, the FAA requires other information necessary for a determination that public health and safety, safety of property, and national security and foreign policy interests of the United States are protected during the conduct of a licensed or permitted activity, an applicant must submit the additional information.

25. Revise § 413.15 to read as follows:

§ 413.15 Review period.

(a) *Review period duration.* Unless otherwise specified in this chapter, the FAA reviews and makes a decision on an application within 180 days of receiving an accepted license application or within 120 days of receiving an accepted permit application.

(b) *Review period tolled.* If an accepted application does not provide sufficient information to continue or complete the reviews or evaluations required by this chapter for a licensing or permitting determination, or an issue exists that would affect a determination, the FAA notifies the applicant, in writing, and informs the applicant of any information required to complete the application. If the FAA cannot review an accepted application because of lack of information or for any other reason, the FAA will toll the 180-day or 120-day review period until the FAA receives the information it needs or the applicant resolves the issue.

(c) *Notice.* If the FAA does not make a decision within 120 days of receiving an accepted license application or within 90 days of receiving an accepted permit application, the FAA informs the applicant, in writing, of any outstanding information needed to complete the review, or of any issues that would affect the decision.

26. Revise § 413.17 to read as follows:

§ 413.17 Continuing accuracy of application; supplemental information; amendment.

(a) An applicant must ensure the continuing accuracy and completeness of information furnished to the FAA as part of a pending license or permit application. If at any time the information an applicant provides is no longer accurate and complete in all material respects, the applicant must submit new or corrected information. As part of this submission, the applicant must recertify the accuracy and completeness of the application under § 413.7. If an applicant does not comply with any of the requirements set forth in this paragraph, the FAA can deny the license or permit application.

(b) An applicant may amend or supplement a license or permit application at any time before the FAA issues or transfers the license or permit.

(c) Willful false statements made in any application or document relating to an application, license, or permit are punishable by fine and imprisonment under section 1001 of Title 18, United States Code, and by administrative sanctions in accordance with part 405 of this chapter.

27. Revise § 413.19 to read as follows:

§ 413.19 Issuing a license or permit.

After the FAA completes its reviews and makes the decisions required by this chapter, the FAA issues a license or permit to the applicant.

28. Revise § 413.21 (a), (b) introductory text, and (b)(1) to read as follows:

§ 413.21 Denial of a license or permit application.

(a) The FAA informs an applicant, in writing, if it denies an application and states the reasons for denial.

(b) If the FAA has denied an application, the applicant may either:

(1) Attempt to correct any deficiencies identified and ask the FAA to reconsider the revised application. The FAA has 60 days or the number of days remaining in the review period, whichever is greater, within which to reconsider the decision; or

* * * * *

29. Revise § 413.23 to read as follows:

§ 413.23 License or permit renewal.

(a) *Eligibility.* A licensee or permittee may apply to renew its license or permit by submitting to the FAA a written application for renewal at least 90 days before the license expires or at least 60 days before the permit expires.

(b) *Application.* (1) A license or permit renewal application must satisfy the requirements set forth in this part and any other applicable part of this chapter.

(2) The application may incorporate by reference information provided as part of the application for the expiring license or permit, including any modifications to the license or permit.

(3) An applicant must describe any proposed changes in its conduct of licensed or permitted activities and provide any additional clarifying information required by the FAA.

(c) *Review of application.* The FAA reviews the application to determine whether to renew the license or permit for an additional term. The FAA may incorporate by reference any findings that are part of the record for the expiring license or permit.

(d) *Renewal of license or permit.* After the FAA finishes its reviews, the FAA issues an order modifying the expiration date of the license or permit. The FAA may impose additional or revised terms and conditions necessary to protect public health and safety and the safety of property and to protect U.S. national security and foreign policy interests.

(e) *Denial of license or permit renewal.* The FAA informs a licensee or permittee, in writing, if the FAA denies the application for renewal and states the reasons for denial. If the FAA denies an application, the licensee or permittee may follow the procedures of section 413.21 of this part.

PART 415—LAUNCH LICENSE

30. The authority citation for part 415 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

31. Revise § 415.1 to read as follows:

§ 415.1 Scope.

This part prescribes requirements for obtaining a license to launch a launch

vehicle, other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are in part 413 of this subchapter.

PART 420—LICENSE TO OPERATE A LAUNCH SITE

32. The authority citation for part 420 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

33. Revise the definition of ''public'' in § 420.5 to read as follows:

§ 420.5 Definitions.

* * * * *

Public means people and property that are not involved in supporting a licensed or permitted launch, and includes those people and property that may be located within the boundary of a launch site, such as visitors, any individual providing goods or services not related to launch processing or flight, and any other launch operator and its personnel.

* * * * *

34. Revise § 420.25(b) to read as follows:

§ 420.25 Launch site location review—risk analysis.

* * * * *

(b) For licensed activities, if the estimated expected casualty exceeds $30x10^{-6}$, the FAA will not approve the location of the proposed launch point.

35. Add § 420.30 to read as follows:

§ 420.30 Launch site location review for permitted launch vehicles.

If an applicant plans to use its proposed launch site solely for launches conducted under an experimental permit, the FAA will approve a launch site location if the FAA has approved an operating area under part 437 for launches from the proposed launch site.

PART 431—LICENSE FOR LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

36. The authority citation for part 431 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

37. Revise § 431.35(d)(7) to read as follows:

§ 431.35 Acceptable reusable launch vehicle mission risk.

* * * * *

(d) * * *

(7) Provide data that verifies the applicant's system safety analyses required by paragraph (c) of this section; and

* * * * *

38. Add part 437 to read as follows:

PART 437—EXPERIMENTAL PERMITS

Subpart A—General Information

Sec.

437.1 Scope and organization of this part.
437.3 Definitions.
437.5 Eligibility for an experimental permit.
437.7 Scope of an experimental permit.
437.9 Issuance of an experimental permit.
437.11 Duration of an experimental permit.
437.13 Additional experimental permit terms and conditions.
437.15 Transfer of an experimental permit.
437.17 Rights not conferred by an experimental permit.

Subpart B—Requirements to Obtain an Experimental Permit

437.21 General.

Program Description

437.23 Program description.

Flight Test Plan

437.25 Flight test plan.

Operational Safety Documentation

437.27 Pre-flight and post-flight operations.
437.29 Hazard analysis.
437.31 Verification of operating area containment and key flight-safety event limitations.
437.33 Landing and impact locations.
437.35 Agreements.
437.37 Tracking.
437.39 Flight rules.
437.41 Mishap response plan.

Subpart C—Safety Requirements

437.51 Rest rules for vehicle safety operations personnel.
437.53 Pre-flight and post-flight operations.
437.55 Hazard analysis.
437.57 Operating area containment.
437.59 Key flight-safety event limitations.
437.61 Landing and impact locations.
437.63 Agreements with other entities involved in a launch or reentry.
437.65 Collision avoidance analysis
437.67 Tracking a reusable suborbital rocket.
437.69 Communications.
437.71 Flight rules.
437.73 Anomaly recording and reporting.
437.75 Mishap reporting, responding, and investigating.
437.77 Additional safety requirements.

Subpart D—Terms and Conditions of an Experimental Permit

437.81 Public safety responsibility.
437.83 Compliance with experimental permit.
437.85 Allowable design changes; Modification of an experimental permit.
437.87 Records.
437.89 Pre-flight reporting.
437.91 For-hire prohibition.
437.93 Compliance monitoring.
437.95 Inspection of additional reusable suborbital rockets.

Authority: 49 U.S.C. 70101–70102.

Subpart A—General Information

§ 437.1 Scope and organization of this part.

(a) This part prescribes requirements for obtaining an experimental permit. It also prescribes post-permitting requirements with which a permittee must comply to maintain its permit. Part 413 of this subchapter contains procedures for applying for an experimental permit.

(b) Subpart A contains general information about an experimental permit. Subpart B contains requirements to obtain an experimental permit. Subpart C contains the safety requirements with which a permittee must comply while conducting permitted activities. Subpart D contains terms and conditions of an experimental permit.

§ 437.3 Definitions.

Anomaly means an apparent problem or failure that occurs during verification or operation and affects a system, a subsystem, a process, support equipment, or facilities.

Envelope expansion means any portion of a flight where planned operations will subject a reusable suborbital rocket to the effects of altitude, velocity, acceleration, or burn duration that exceed a level or duration successfully verified during an earlier flight.

Exclusion area means an area, within an operating area, that a reusable suborbital rocket's instantaneous impact point may not traverse.

Failure means any anomalous condition that causes or potentially causes a reusable suborbital rocket, its components, or its debris to impact the Earth or leave the operating area during a flight.

Instantaneous impact point means an impact point, following thrust termination of a launch vehicle, calculated in the absence of atmospheric drag effects.

Key flight-safety event means a permitted flight activity that has an increased likelihood of causing a failure compared with other portions of flight.

Operating area means a three-dimensional region where permitted flights may take place.

Permitted vehicle means a reusable suborbital rocket operated by a launch operator under an experimental permit.

Reentry impact point means the location of a reusable suborbital rocket's instantaneous impact point during its unpowered exoatmospheric suborbital flight.

§ 437.5 Eligibility for an experimental permit.

The FAA will issue an experimental permit to a person to launch or reenter a reusable suborbital rocket only for—

(a) Research and development to test new design concepts, new equipment, or new operating techniques;

(b) A showing of compliance with requirements for obtaining a license under this subchapter; or

(c) Crew training before obtaining a license for a launch or reentry using the design of the rocket for which the permit would be issued.

§ 437.7 Scope of an experimental permit.

An experimental permit authorizes launch and reentry of a reusable suborbital rocket. The authorization includes pre- and post-flight ground operations as defined in this section.

(a) A pre-flight ground operation includes each operation that—

(1) Takes place at a U.S. launch site; and

(2) Meets the following criteria:

(i) Is closely proximate in time to flight,

(ii) Entails critical steps preparatory to initiating flight,

(iii) Is unique to space launch, and

(iv) Is inherently so hazardous as to warrant the FAA's regulatory oversight.

(b) A post-flight ground operation includes each operation necessary to return the reusable suborbital rocket to a safe condition after it lands or impacts.

§ 437.9 Issuance of an experimental permit.

The FAA issues an experimental permit authorizing an unlimited number of launches or reentries for a suborbital rocket design for the uses described in § 437.5.

§ 437.11 Duration of an experimental permit.

An experimental permit lasts for one year from the date it is issued. A permittee may apply to renew a permit yearly under part 413 of this subchapter.

§ 437.13 Additional experimental permit terms and conditions.

The FAA may modify an experimental permit at any time by modifying or adding permit terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, ch. 701.

§ 437.15 Transfer of an experimental permit.

An experimental permit is not transferable.

§ 437.17 Rights not conferred by an experimental permit.

Issuance of an experimental permit does not relieve a permittee of its obligation to comply with any requirement of law that applies to its activities.

Subpart B—Requirements To Obtain an Experimental Permit

§ 437.21 General.

To obtain an experimental permit an applicant must make the demonstrations and provide the information required by this section.

(a) *This subpart.* An applicant must provide a program description, a flight test plan, and operational safety documentation as required by this subpart.

(b) *Other regulations.* (1) *Environmental.* An applicant must provide enough information for the FAA to analyze the environmental impacts associated with proposed reusable suborbital rocket launches or reentries. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508.

(2) *Financial responsibility.* An applicant must provide the information required by part 3 of appendix A of part 440 for the FAA to conduct a maximum probable loss analysis.

(3) *Operation of a private launch site.* An applicant proposing to launch from a private launch site that contains permanent facilities or supports continuous operations must obtain a launch site operator license under part 420.

(4) *Human space flight.* An applicant proposing launch or reentry with flight crew or a space flight participant on board a reusable suborbital rocket must demonstrate compliance with §§ 460.5, 460.7, 460.11, 460.13, 460.15, 460.17, 460.51 and 460.53 of this subchapter.

(c) *Inspection before issuing a permit.* Before the FAA issues an experimental permit, an applicant must make each reusable suborbital rocket planned to be flown available to the FAA for inspection. The FAA will determine whether each reusable suborbital rocket is built as represented in the application.

(d) *Other requirements.* The FAA may require additional analyses, information, or agreements if necessary to protect public health and safety, safety of property, and national security and foreign policy interests of the United States.

Program Description

§ 437.23 Program description.

(a) An applicant must provide—

(1) Dimensioned three-view drawings or photographs of the reusable suborbital rocket; and

(2) Gross liftoff weight and thrust profile of the reusable suborbital rocket.

(b) An applicant must describe—

(1) All reusable suborbital rocket systems, including structural, flight control, thermal, pneumatic, hydraulic, propulsion, electrical, environmental control, software, avionics, and guidance systems used in the reusable suborbital rocket;

(2) The types and quantities of all propellants used in the reusable suborbital rocket;

(3) Any hazardous materials in the reusable suborbital rocket;

(4) The purpose for which a reusable suborbital rocket is to be flown; and

(5) Each payload or payload class planned to be flown.

(c) An applicant must identify any foreign ownership of the applicant as follows:

(1) For a sole proprietorship or partnership, identify all foreign ownership,

(2) For a corporation, identify any foreign ownership interests of 10% or more, and

(3) For a joint venture, association, or other entity, identify any participating foreign entities.

Flight Test Plan

§ 437.25 Flight test plan.

An applicant must—

(a) Describe any flight test program, including estimated number of flights, key flight-safety events, and maximum altitude.

(b) Identify and describe the geographic boundaries of one or more proposed operating areas where it plans to perform its flights and that satisfy § 437.57(b) of subpart C. The FAA may designate one or more exclusion areas in accordance with § 437.57(c) of subpart C.

Operational Safety Documentation

§ 437.27 Pre-flight and post-flight operations.

An applicant must demonstrate how it will meet the requirements of § 437.53(a) and (b) to establish a safety clear zone and verify that the public is outside that zone before and during any hazardous operation.

§ 437.29 Hazard analysis.

(a) An applicant must perform a hazard analysis that complies with § 437.55(a).

(b) An applicant must provide to the FAA all the results of each step of the hazard analysis required by paragraph (a) of this section.

§ 437.31 Verification of operating area containment and key flight-safety event limitations.

(a) An applicant must identify, describe, and provide verification evidence of the methods and systems used to meet the requirement of § 437.57(a) to contain its reusable suborbital rocket's instantaneous impact point within an operating area and outside any exclusion area. The description must include, at a minimum—

(1) Proof of physical limits on the ability of the reusable suborbital rocket to leave the operating area; or

(2) Abort procedures and other safety measures derived from a system safety engineering process.

(b) An applicant must identify, describe, and provide verification evidence of the methods and systems used to meet the requirements of § 437.59 to conduct any key flight-safety event so that the reusable suborbital rocket's instantaneous impact point, including its expected dispersions, is over unpopulated or sparsely populated areas, and to conduct each reusable suborbital rocket flight so that the reentry impact point does not loiter over a populated area.

§ 437.33 Landing and impact locations.

An applicant must demonstrate that each nominal landing, contingency abort landing, and reusable suborbital rocket component impact or landing location satisfies § 437.61.

§ 437.35 Agreements.

The applicant must complete the agreements required by § 437.63, and provide a copy to the FAA.

§ 437.37 Tracking.

An applicant must identify and describe each method or system used to meet the tracking requirements of § 437.67.

§ 437.39 Flight rules.

An applicant must provide flight rules as required by § 437.71.

§ 437.41 Mishap response plan.

An applicant must provide a mishap response plan that meets the requirements of § 437.75(b).

Subpart C—Safety Requirements

§ 437.51 Rest rules for vehicle safety operations personnel.

A permittee must ensure that all vehicle safety operations personnel adhere to the work and rest standards in this section during permitted activities.

(a) No vehicle safety operations personnel may work more than:

(1) 12 consecutive hours,

(2) 60 hours in the 7 days preceding a permitted activity, and

(3) 14 consecutive work days.

(b) All vehicle safety operations personnel must have at least 8 hours of rest after 12 hours of work.

(c) All vehicle safety operations personnel must receive a minimum 48-hour rest period after 5 consecutive days of 12-hour shifts.

§ 437.53 Pre-flight and post-flight operations.

A permittee must protect the public from adverse effects of hazardous operations and systems in preparing a reusable suborbital rocket for flight at a launch site in the United States and returning the reusable suborbital rocket and any support equipment to a safe condition after flight. At a minimum, a permittee must—

(a) Establish a safety clear zone that will contain the adverse effects of each operation involving a hazard; and

(b) Verify that the public is outside of the safety clear zone before and during any hazardous operation.

§ 437.55 Hazard analysis.

(a) A hazard analysis must identify and characterize each of the hazards and assess the risk to public health and safety and the safety of property resulting from each permitted flight. A hazard analysis must—

(1) Identify and describe hazards, including but not limited to each of those that result from—

(i) Component, subsystem, or system failures or faults;

(ii) Software errors;

(iii) Environmental conditions;

(iv) Human errors;

(v) Design inadequacies; or

(vi) Procedural deficiencies.

(2) Determine the likelihood of occurrence and consequence for each hazard.

(3) Identify and describe the risk elimination and mitigation measures necessary to ensure that the likelihood and consequence of each hazard meets the criteria of paragraph (a)(3)(i) of this section.

(i) Criteria:

(A) Any hazardous condition that may cause death or serious injury to the public must be extremely unlikely.

(B) The likelihood of any hazardous condition that may cause major property damage to the public, major safety-critical system damage or reduced capability, decreased safety margins, or increased workload must be remote.

(ii) Risk elimination and mitigation measures include one or more of the following:

(A) Designing for minimum risk,

(B) Incorporating safety devices,

(C) Providing warning devices, or

(D) Developing and implementing procedures and training.

(4) Demonstrate that the risk elimination and mitigation measures achieve the risk levels of paragraph (a)(3)(i) of this section through validation and verification. Verification includes:

(i) Test data,

(ii) Inspection results, or

(iii) Analysis.

(b) During permitted activities, a permittee must carry out the risk elimination and mitigation measures derived from its hazard analysis.

(c) A permittee must ensure the continued accuracy and validity of its hazard analysis throughout the term of its permit.

§ 437.57 Operating area containment.

(a) During each permitted flight, a permittee must contain its reusable suborbital rocket's instantaneous impact point within an operating area determined in accordance with paragraph (b) and outside any exclusion area defined by the FAA in accordance with paragraph (c) of this section.

(b) An operating area—

(1) Must be large enough to contain each planned trajectory and all expected vehicle dispersions;

(2) Must contain enough unpopulated or sparsely populated area to perform key flight-safety events as required by § 437.59;

(3) May not contain or be adjacent to a densely populated area; and

(4) May not contain significant automobile traffic, railway traffic, waterborne vessel traffic, or large concentrations of members of the public.

(c) The FAA may prohibit a reusable suborbital rocket's instantaneous impact point from traversing certain areas within an operating area, by designating one or more areas as exclusion areas, if necessary to protect public health and safety, safety of property, or foreign policy or national security interests of the United States. An exclusion area may be confined to a specific phase of flight.

§ 437.59 Key flight-safety event limitations.

(a) A permittee must conduct any key flight-safety event so that the reusable suborbital rocket's instantaneous impact point, including its expected dispersion, is over an unpopulated or sparsely populated area. At a minimum, a key flight-safety event includes:

(1) Ignition of any primary rocket engine,

(2) Any staging event, or

(3) Any envelope expansion.

(b) A permittee must conduct each reusable suborbital rocket flight so that the reentry impact point does not loiter over a populated area.

§ 437.61 Landing and impact locations.

A permittee must use a location for nominal landing, any contingency abort landing, or any reusable suborbital rocket component impact or landing that—

(a) Is big enough to contain an impact, including debris dispersion upon impact; and

(b) At the time of landing or impact, does not contain any members of the public.

§ 437.63 Agreements with other entities involved in a launch or reentry.

A permittee must enter into and comply with the agreements required by this section.

(a) An applicant must enter into a written agreement with a Federal launch range operator, a licensed launch site operator, or any other party that provides access to or use of property and services required to support a permitted flight.

(b) Unless otherwise addressed in agreements with a licensed launch site operator or a Federal launch range, an applicant must complete the following:

(1) For overflight of water, a written agreement between the applicant and the local USCG district to establish procedures for issuing a Notice to Mariners before a permitted flight, and

(2) A written agreement between the applicant and responsible Air Traffic Control authority having jurisdiction over the airspace through which a flight is to take place, for measures necessary to ensure the safety of aircraft.

§ 437.65 Collision avoidance analysis

(a) For a permitted flight with a planned maximum altitude greater than 150 kilometers, a permittee must obtain a collision avoidance analysis from United States Strategic Command.

(b) The collision avoidance analysis must establish each period during which a permittee may not initiate flight to ensure that a permitted vehicle and any jettisoned components do not pass closer than 200 kilometers to a manned or mannable orbital object. A distance of less than 200 kilometers may be used if the distance provides an equivalent level of safety, and if the distance accounts for all uncertainties in the analysis.

§ 437.67 Tracking a resuable suborbital rocket.

A permittee must operate a reusable suborbital rocket to provide—

(a) Air Traffic Control with the ability to know the real time position and velocity of the reusable suborbital rocket while operating in the National Airspace System; and

(b) Position and velocity data for post-flight use.

§ 437.69 Communications.

(a) A permittee must be in communication with Air Traffic Control during all phases of flight.

(b) A permittee must record communications affecting the safety of the flight.

§ 437.71 Flight rules.

(a) Before initiating rocket-powered flight, a permittee must confirm that all systems and operations necessary to ensure that safety measures derived from §§ 437.55, 437.57, 437.59, 437.61, 437.63, 437.65, 437.67, and 437.69 are within acceptable limits.

(b) During all phases of flight, a permittee must—

(1) Follow flight rules that ensure compliance with §§ 437.55, 437.57, 437.59, and 437.61; and

(2) Abort the flight if it would endanger the public.

(c) A permittee may not operate a reusable suborbital rocket in a careless or reckless manner that would endanger any member of the public during any phase of flight.

(d) A permittee may not operate a reusable suborbital rocket within Class A, Class B, Class C, or Class D airspace or within the boundaries of the surface area of Class E airspace designated for an airport unless the permittee has prior authorization from the air traffic control facility having jurisdiction over that airspace.

(e) A permittee may not operate a reusable suborbital rocket in areas designated in a Notice to Airmen under § 91.137, § 91.138, § 91.141, or § 91.145 of this title, unless authorized by:

(1) Air traffic control; or

(2) A Flight Standards Certificate of Waiver or Authorization.

(f) For any phase of flight where a permittee operates a reusable suborbital rocket like an aircraft in the National Airspace System, a permittee must comply with the provisions of part 91 of this title specified in an experimental permit issued under this part.

§ 437.73 Anomaly recording and reporting.

(a) A permittee must record anomalies and implement corrective actions for those anomalies.

(b) A permittee must report to the FAA any anomaly of any system that is necessary for complying with §§ 437.55(a)(3), 437.57, and 437.59 and the corrective action for that anomaly. A permittee must take each corrective action before the next flight.

§ 437.75 Mishap reporting, responding, and investigating.

A permittee must report, respond to, and investigate mishaps that occur during permitted activities.

(a) Reporting requirements. A permittee must—

(1) Immediately notify the FAA Washington Operations Center if there is a launch or reentry accident or incident or a mishap that involves a fatality or serious injury, as defined in 49 CFR 830.2;

(2) Notify within 24 hours the FAA's Office of Commercial Space Transportation if there is a mishap that does not involve a fatality or serious injury, as defined in 49 CFR 830.2; and

(3) Submit within 5 days of the event a written preliminary report to the FAA's Office of Commercial Space Transportation if there is a launch or reentry accident or incident during a permitted flight. The report must identify the event as a launch or reentry accident or incident, and must include:

(i) The date and time of occurrence,

(ii) A description of the event and sequence of events leading to the launch or reentry accident, or launch or reentry incident, to the extent known,

(iii) The intended and actual location of launch or reentry, including landing or impact on Earth,

(iv) A description of any payload,

(v) The number and general description of any fatalities and injuries,

(vi) Property damage, if any, and an estimate of its value,

(vii) A description of any hazardous materials involved in the event, whether on the reusable suborbital rocket or on the ground,

(viii) Action taken by any person to contain the consequences of the event, and

(ix) Weather conditions at the time of the event.

(b) Response requirements. A permittee must—

(1) Immediately—

(i) Ensure the consequences of a mishap are contained and minimized; and

(ii) Ensure data and physical evidence are preserved.

(2) Report to and cooperate with FAA and National Transportation Safety Board (NTSB) investigations and designate one or more points of contact for the FAA or NTSB; and

(3) Identify and adopt preventive measures for avoiding a recurrence of the event.

(c) Investigation requirements. A permittee must—

(1) Investigate the root cause of an event described in paragraph (a) of this section;

(2) Report investigation results to the FAA; and

(3) Identify responsibilities, including reporting responsibilities, for personnel assigned to conduct investigations and for any unrelated persons that the permittee retains to conduct or participate in investigations.

§ 437.77 Additional safety requirements.

The FAA may impose additional safety requirements on an applicant or permittee proposing an activity with a hazard not otherwise addressed in this part. This may include a toxic hazard or the use of solid propellants. The FAA may also require the permittee to conduct additional analyses of the cause of any anomaly and corrective actions.

Subpart D—Terms and Conditions of an Experimental Permit

§ 437.81 Public safety responsibility.

A permittee must ensure that a launch or reentry conducted under an experimental permit is safe, and must protect public health and safety and the safety of property.

§ 437.83 Compliance with experimental permit.

A permittee must conduct any launch or reentry under an experimental permit in accordance with representations made in its permit application, with subparts C and D of this part, and with terms and conditions contained in the permit.

§ 437.85 Allowable design changes; Modification of an experimental permit.

(a) The FAA will identify in the experimental permit the type of changes that the permittee may make to the reusable suborbital rocket design without invalidating the permit.

(b) Except for design changes made under paragraph (a) of this section, a permittee must ask the FAA to modify the experimental permit if—

(1) It proposes to conduct permitted activities in a manner not authorized by the permit; or

(2) Any representation in its permit application that is material to public health and safety or the safety of property is no longer accurate or complete.

(c) A permittee must prepare an application to modify an experimental permit and submit it in accordance with part 413 of this subchapter. If requested during the application process, the FAA may approve an alternate method for requesting permit modifications. The permittee must indicate any part of its permit that would be changed or affected by a proposed modification.

(d) When a permittee proposes a modification, the FAA reviews the determinations made on the experimental permit to decide whether they remain valid.

(e) When the FAA approves a modification, it issues the permittee either a written approval or a permit order modifying the permit if a stated term or condition of the permit is changed, added, or deleted. An approval has the full force and effect of a permit order and is part of the permit record.

§ 437.87 Records.

(a) Except as required by paragraph (b) of this section, a permittee must maintain for 3 years all records, data, and other material necessary to verify that a permittee conducted its launch or reentry in accordance with its permit.

(b) If there is a launch or reentry accident or incident, a permittee must preserve all records related to the event. A permittee must keep the records until after any Federal investigation and the FAA advises the permittee that it may dispose of them.

(c) A permittee must make all records that it must maintain under this section available to Federal officials for inspection and copying.

§ 437.89 Pre-flight reporting.

(a) Not later than 30 days before each flight or series of flights conducted under an experimental permit, a permittee must provide the FAA with the following information:

(1) Any payload to be flown, including any payload operations during the flight,

(2) When the flight or series of flights are planned,

(3) The operating area for each flight, and

(4) The planned maximum altitude for each flight.

(b) Not later than 15 days before each permitted flight planned to reach greater than 150 km altitude, a permittee must provide the FAA its planned trajectory for a collision avoidance analysis.

§ 437.91 For-hire prohibition.

No permittee may carry any property or human being for compensation or hire on a reusable suborbital rocket.

§ 437.93 Compliance monitoring.

A permittee must allow access by, and cooperate with, federal officers or employees or other individuals authorized by the FAA to observe any activities of the permittee, or of its contractors or subcontractors, associated with the conduct of permitted activities.

§ 437.95 Inspection of additional reusable suborbital rockets.

A permittee may launch or reenter additional reusable suborbital rockets of the same design under the permit after the FAA inspects each additional reusable suborbital rocket.

Issued in Washington, DC, on March 22, 2006.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 06–3137 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2006–0151; FRL–8051–5]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. The revisions update the SIP's reference to the EPA definition of volatile organic compounds (VOC). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period.

Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number R03–OAR–2006–0151 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *frankford.harold@epa.gov.*

C. Mail: EPA–R03–OAR–2006–0151, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0151. 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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, 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 in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: March 21, 2006.

William Early,

Acting Regional Administrator, Region III.

[FR Doc. 06–3108 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–220–1020–24 1A]

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Addendum to the Final Environmental Impact Statement (FEIS) to support amendments of the regulations governing grazing administration. The Addendum responds to comments received on the Draft EIS.

DATES: The Addendum to the Final Environmental Impact Statement is available for review through April 29, 2006.

ADDRESSES: Copies of the Addendum are available at BLM State Offices in 10 western states and the BLM Washington DC office. See the **SUPPLEMENTARY INFORMATION** for a table of BLM State Offices.

FOR FURTHER INFORMATION CONTACT: E. Lynn Burkett on (202) 468–4110 for information relating to the Addendum or Ted Hudson at (202) 452–3042 for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may contact these individuals through the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION: Copies of the Addendum are available at the following BLM State Offices:

BLM state offices	Address	Phone Nos.
Arizona	One North Central Ave., Phoenix, AZ 85004–4427	(602) 417–9500
California	2800 Cottage Way, Room W–1834, Sacramento, CA 95825–1886	(916) 978–4600
Colorado	2850 Youngfield St., Lakewood, CO 80215–7093	(303) 239–3700
Idaho	1387 S. Vinnell Way, Boise, ID, 83709–1657	(208) 373–4001
Montana	5001 Southgate Drive, Billings, MT, 59107	(406) 896–5012
Nevada	1340 Financial Blvd., Reno, NV 89502	(775) 861–6590
New Mexico	1474 Rodeo Rd., P.O. Box 27115, Santa Fe, NM, 87507–0115	(505) 438–7501
Oregon	333 S.W. 1st Ave., Portland, OR 97204	(503) 808–6024
Utah	440 West 200 South Suite 500, Salt Lake City, UT 84101	(801) 539–4010
Wyoming	5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82009	(307) 775–6001
Washington, DC	1620 L St., NW., Washington DC 20036	(202) 452–7749

If you have Internet access, you can download the Addendum by going to *http://www.blm.gov/grazing* and follow the directions found at that site.

During the nine years since implementation of the 1995 grazing reforms, a number of discrete concerns have been raised regarding the administration of grazing management. Among other things, the rulemaking addresses a variety of these discrete, administrative issues related to the current regulatory scheme without altering the fundamental structure of the grazing regulations.

The BLM published the proposed rule on December 8, 2003 (68 FR 68452), inviting public comments until February 6, 2004. On January 2, 2004, the BLM issued the Draft EIS for a 60-day public comment period which was extended on January 16, 2004 to March 2, 2004 (69 FR 2559). The Final Environmental Impact Statement was issued December 2004.

Authority: 40 CFR 1506(b).

Julie Jacobson,

Deputy Assistant Secretary of the Interior.

[FR Doc. E6–4662 Filed 3–30–06; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060322083–6083–01; I.D. 032006C]

RIN 0648–AU04

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Recreational Grouper Fishery Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a recreational bag limit for Gulf red grouper of one fish per person per day; prohibit the captain and crew of a vessel operating as a charter vessel or headboat from retaining any Gulf grouper, i.e.,establish a zero bag limit for captain and crew; and establish a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone (EEZ). The intended effect of this proposed rule is to maintain recreational landings at levels consistent with the red grouper rebuilding plan while minimizing potential shift of fishing effort to associated grouper species.

DATES: Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on May 1, 2006.

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

- E-mail: *0648–AU04.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AU04.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Andy Strelcheck, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308; Attention: Andy Strelcheck.

Copies of the regulatory amendment, which includes a Regulatory Impact Review (RIR), an Initial Regulatory Flexibility Analysis (IRFA), and an Environmental Assessment (EA) may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813–348–1630; fax: 813–348–1711; e-mail: *gulfcouncil@gulfcouncil.org*. Copies of the regulatory amendment may also be downloaded from the Council's website at *http://www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Andy Strelcheck, telephone: 727–824–5374, fax: 727–824–5308, e-mail: *andy.strelcheck@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

On July 15, 2004, NMFS implemented Secretarial Amendment 1 to the FMP to establish a red grouper rebuilding plan, including a 5.31 million-lb (2.42 million-kg), gutted weight, commercial quota and a 1.25 million-lb (0.57 million-kg), gutted weight, recreational target catch level for red grouper (69 FR 33315). In 2004, recreational red grouper landings totaled 3.18 million lb (1.44 million kg), gutted weight -significantly exceeding the target catch level. In March 2005, the Council requested NMFS implement interim regulations for the recreational red grouper fishery to return landings to levels specified in Secretarial Amendment 1. NMFS implemented interim regulations in August 2005, to reduce recreational red grouper landings (70 FR 42510, July 25, 2005). Those regulations were amended and extended in January 2006, for an additional 180 days (71 FR 3018, January 19,2006).

Provisions of This Proposed Rule

The purpose of this proposed rule is to establish more permanent management measures for the recreational grouper fishery consistent with the regulatory amendment prepared by the Council. These measures are needed to restrict recreational red grouper landings to levels specified in the rebuilding plan and to prevent or minimize increases in fishing mortality on gag and black grouper resulting from any shift in fishing effort from red grouper to these species because of the more restrictive recreational red grouper regulations. Gag are not overfished or undergoing overfishing, but landings have been above recommended catch levels since 2000; therefore, gag should not be subjected to increased fishing mortality. Black grouper are included in the seasonal closure because they are similar in appearance to gag and are difficult for many recreational fishermen to distinguish from gag. If black grouper were not included in the seasonal closure, compliance with the closure would be compromised because of the species identification problem.

This proposed rule would establish a red grouper recreational bag limit of one fish per person per day; prohibit the captain and crew of a vessel operating as a charter vessel or headboat from retaining any Gulf grouper ,i.e., establish a zero bag limit for captain and crew; and establish a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone (EEZ) from February 15 to March 15 each year. Cumulatively, these measures are expected to reduce recreational red grouper landings by approximately 34 percent and recreational landings of gag and black grouper by 7 percent. The proposed restriction on possession of any grouper by captain and crew while under charter is intended to restrict allowable bag limits on board for-hire vessels to paying clients who are fishing recreationally, excluding captain and

crew, thereby, contributing to a reduction in fishing mortality. With a reduction in the red grouper bag limit to one fish per person per day, there is a greater incentive for captain and crew on for-hire vessels to retain fish and supplement the landings of their clients, thereby negating some of the effect of the lower red grouper bag limit. The Council considered this restriction on captain and crew necessary to make the red grouper bag limit effective. The proposed February 15 to March 15 closure is consistent with the existing seasonal closure of the commercial fishery for gag, red grouper, and black grouper and would make the closure more equitable for both user groups and should help improve compliance and enforceability. The closure occurs during important spawning seasons for all three species. Because red grouper are part of a multispecies fishery, prohibiting the landings of the three species that represent about 97 percent of recreationally caught grouper should reduce red grouper discard mortality during the closure and compensate for any additional gag and black grouper fishing mortality during the open season that would otherwise occur because of more restrictive red grouper regulations.

Additional Consideration of the Seasonal Closure

The proposed February 15 to March 15 closure of the recreational fishery for gag, red grouper, and black grouper is based on the best scientific information currently available. However, NMFS expects a new stock assessment for gag to be completed in July 2006 that might contain new information pertinent to evaluating the need for the seasonal closure. In addition, the Florida Fish and Wildlife Conservation Commission has expressed concerns about implementation of the seasonal closure and has requested an extension of the time period for its review of the proposed action under the Coastal Zone Management Act. Therefore, at the final rule stage, NMFS may through appropriate procedural steps separate the management measures into two separate final rules -one addressing the bag limit provisions, and one addressing the seasonal closure. That approach would allow the bag limit provisions to be implemented in a timely manner, assuming approval, and would allow NMFS to defer implementation of the seasonal closure until the new gag assessment has been completed. Any implications regarding the seasonal closure will have been thoroughly analyzed, and NMFS and the state of Florida can resolve any remaining coastal zone management issues. NMFS and the Council would carefully evaluate the conclusions of the new assessment to determine whether the closure remains justified based on the best scientific information available.

Classification

At this time, NMFS has not determined that the regulatory amendment, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on the regulatory amendment and the comment period on this proposed rule.

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

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows.

This proposed rule would reduce the daily recreational red grouper bag limit, establish a closed recreational season for gag, black grouper, and red grouper, and eliminate the captain and crew daily grouper bag limit. The purpose for this regulatory amendment is to implement management measures for the Gulf of Mexico grouper fishery which will restrict recreational red grouper landings to levels specified in the red grouper-rebuilding plan and minimize impacts on other grouper species resulting from more restrictive recreational red grouper regulations. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

A moratorium on the issuance of new charter vessel/headboat (for-hire) permits for reef fish has been in effect since June 16, 2003, and, currently, approximately 1,625 unique vessels are permitted to operate in this fishery. The for-hire fishery is comprised of charter vessels, which charge fees on a vessel basis, and headboats, which charge fees on an individual angler basis. The average charter vessel is estimated to generate $76,960 in annual revenue and $36,758 in annual ''profit'' (computed as gross revenue minus costs; costs exclude depreciation, fixed costs, and returns to owner/operators). The comparable figures for an average headboat are $404,172 in annual gross revenue and $338,209 in annual profits. Some vessels in the for-hire fleet also participate in the commercial grouper fishery. However, information on the average revenues generated from operation as a commercial vessel and the impacts of these revenues on the overall economic performance of the business operation are unknown.

Although the proposed actions would not directly affect support industries, potential reductions in fishing effort and associated expenditures may have indirect impacts on hotels, restaurants, gear and bait shops, and other associated businesses. It is not possible to enumerate or characterize these businesses.

The proposed rule would not change current reporting, record-keeping and other compliance requirements under the FMP. These requirements include permit qualification criteria and participation in data collection programs if selected by NMFS. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills, and, therefore, are deemed not to be onerous.

The Small Business Administration defines a small business in the for-hire fishery sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $6.5 million. Given the economic profile of the for-hire fleet presented above, NMFS determined that all for-hire fishing entities that would be affected by the proposed action are small business entities. Since all of these entities could be affected, NMFS determined that the proposed action would affect a substantial number of small entities.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is whether the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. All for-hire entities affected by the proposed rule are considered small entities so the issue of disproportionality does not arise in the present case. The profitability question is whether the regulations significantly reduce profit for a substantial number of small entities. For-hire operations will bear the primary burden of the proposed

actions, though spill-over impacts would be expected in associated industries, such as hotels, marinas, and bait and tackle shops. For-hire operations may experience a reduction in bookings, resulting in reduced receipts from for-hire fees, tips, gear rental, food or beverages, and fish-cleaning. The proposed rule is projected to result in a reduction of for-hire fees of up to $2.52 million. Potential reduced receipts from other sources cannot be determined. Although the incidence of cancellation is not expected to be uniform across the Gulf, since the importance of grouper as a target species varies geographically and by business entity, the expected reduction in reduced for-hire fees equates to approximately $1,400 per vessel, or approximately 2 percent of average gross revenues and 4 percent of net revenues. The potential impact of the proposed actions on associated industries cannot be determined.

Six alternatives, including the status quo, were considered in addition to the preferred red grouper bag limit and seasonal closure. The status quo would have allowed continued landing overages in the recreational sector and would, therefore, not meet the Council's objectives.

The second alternative would have reduced the red grouper daily bag limit to one fish per angler or three fish per vessel, whichever is less. This alternative contained no protection for associated grouper species and increased the possibility of excessive redirected effort to these other species and red grouper bycatch mortality. This alternative did not, therefore, meet the Council's objectives.

The third alternative would have increased the red grouper recreational minimum size limit to 22 inches. An increase in the minimum size limit, however, would be expected to increase bycatch and discard mortality, which is inconsistent with the Council's objective of minimizing bycatch and discard mortality. Thus, this alternative would not meet the Council's objectives.

The fourth alternative would have reduced the red grouper recreational bag limit within the aggregate grouper limit to one per person per day and closed the season for all grouper during August. This alternative would have resulted in greater reductions in consumer surplus and potential foregone expenditures than the proposed action, therefore increasing the adverse economic impacts relative to the proposed action.

The fifth alternative would have reduced the red grouper recreational bag limit within the aggregate limit to one per person per day and closed the season for all grouper during April through May. This alternative would also have resulted in greater reductions in consumer surplus and potential foregone expenditures than the proposed action.

The sixth alternative would have reduced the red grouper bag limit within the aggregate limit to one per person per day and increased the minimum recreational size limit to 21 inches. Similar to an increase of the minimum size limit to 22 inches, excessive bycatch mortality was expected to accrue to this alternative.

The final alternative to the proposed red grouper bag limit and seasonal closure would have reduced the red grouper bag limit within the aggregate grouper limit to one fish per angler or three fish per vessel per day, whichever is less, except for reef fish-permitted for-hire vessels with a U.S. Coast Guard Certificate of Inspection. For these vessels, the resultant vessel limit would be one red grouper per two paying passengers. While this alternative is projected to result in reduced short-term reductions in consumer surplus relative to the proposed action, this alternative contained no protection for associated species and, therefore, would not address the Council's concerns for redirection of effort to other grouper species and increased bycatch of red grouper.

One alternative, the status quo, was considered for the proposed 0–fish captain and crew grouper bag limit. The status quo, which would allow captain and crew a bag limit equal to that of the recreational angler, in combination with the other proposed actions, would not achieve the necessary red grouper harvest reductions and would not, therefore, meet the Council's objectives. The 0–fish captain and crew bag limit constrains the potential harvest capacity aboard for-hire vessels, limits allowable bag limits to paying clients who are fishing recreationally, and contributes to some additional reduction in fishing mortality.

Three alternatives to the preferred alternative, the status quo, were considered for the aggregate grouper daily bag limit. The status quo for this action would not impose additional restrictions on the harvest of other grouper species and would not, therefore, result in any direct adverse economic impacts on small entities. Three alternatives would reduce the aggregate grouper daily bag limit to 4, 3, or 2 fish, respectively. The Council has determined that the 1-month closure for red, gag, and black grouper would provide the necessary protection for these other grouper species to compensate for potential redirection of effort in response to the proposed red grouper restrictions. Reducing the aggregate bag limit was determined to be excessive and would increase the adverse economic impacts relative to the proposed action.

Copies of the IRFA are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 28, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (u) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(u) *Seasonal closure of the recreational fishery for gag, red grouper, and black grouper.* The recreational fishery for gag, red grouper, and black grouper in or from the Gulf EEZ is closed from February 15 to March 15, each year. During the closure, the bag and possession limit for gag, red grouper, and black grouper in or from the Gulf EEZ is zero.

3. In § 622.39, the suspensions of paragraphs (b)(1)(ii) and (b)(1)(v) are lifted; paragraphs (b)(1)(viii) and (b)(1)(ix) are removed; and paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper -5 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day or 1 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat -their bag limit is zero.

* * * * *

[FR Doc. E6–4748 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[I.D. 032406D]

RIN 0648–AU37

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program). The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. Amendment 21 would modify the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner crabs (FMP) and the Program to alter the timing for harvesters and processors to match harvesting and processing shares and the timing for initiating arbitration proceedings incorporated in the Program to resolve price and other delivery disputes among harvesters and processors. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before May 30, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Office. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Facsimile: 907–586–7557.
- E-mail: *0648–AU37–NOAKTC21@noaa.gov*. Include in the subject line of the e-mail the following document identifier: Crab Rationalization RIN 0648–AU37. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of Amendment 21 and the and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov/sustainablefisheries.htm*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). Amendments 18 and 19 to the FMP amended the FMP to include the Program. Regulations implementing these amendments were published on March 2, 2005 (70 FR 10174) and are located at 50 CFR part 680. Amendment 20 to the FMP, which would authorize the management of an Eastern and Western Tanner crab (*C. bairdi*), is currently under Secretarial review. A NOA for Amendment 20 was published in the **Federal Register** on February 27, 2006. The comment period on the NOA ends on April 28, 2006. A proposed rule to implement Amendment 20 was published in the **Federal Register** on March 21, 2006 (71 FR 14153). The comment period on the proposed rule ends on May 5, 2006.

The Council submitted Amendment 21 to the FMP for Secretarial review, which would make minor changes to the FMP necessary for the management of the arbitration system under the Program. If approved, Amendment 21 to the FMP would modify the timing of both share matching and initiation of a binding arbitration proceeding by removing the requirement that share matching and binding arbitration must be initiated at a certain point prior to the date of the first crab fishing season. Amendment 21 would require initiation of share matching and binding arbitration after the issuance of individual fishing quota (IFQ) and individual processor quota (IPQ). This revision would provide participants with a reasonable and reliable opportunity to fully use the arbitration system.

The Program includes an arbitration system to resolve price, delivery terms, and other disputes, in the event that holders of Class A IFQ and IPQ are unable to negotiate those terms. Under the existing arbitration system regulations, after the issuance of IFQ and IPQ, harvesters that are not affiliated with a processor through ownership or control linkages (unaffiliated harvesters) are permitted to unilaterally commit delivery of harvests from Class A IFQ to a processor with available IPQ. Once committed, the unaffiliated harvester is permitted to initiate a binding arbitration proceeding if the parties are unable to agree to the terms of delivery. The IFQ holder must initiate binding arbitration proceedings at least 15 days prior to a season opening. This approach is commonly called the ''share match'' approach to binding arbitration.

The share match approach to resolve price disputes does not meet the needs of IFQ holders. Under the current schedule for the stock assessment process and total allowable catch determination, NMFS typically does not issue IFQ and IPQ 15 days prior to a season opening, which limits the ability of IFQ holders to rely on the share match component to achieve a price resolution. Amendment 21 would modify the timing for the initiation of binding arbitration under share matching so that it would be based upon the issuance of IFQ and IPQ, including a five-day assessment period for negotiated commitments, instead of upon the starting date of a crab season. For a period of five days after the issuance of IFQ and IPQ, unaffiliated harvesters holding Class A IFQ and holders of IPQ could voluntarily agree to commit their respective shares. After the five-day assessment period, holders of uncommitted Class A IFQ may unilaterally commit that IFQ to any holder of uncommitted IPQ. During the 10-day period beginning five days after the issuance of IFQ and IPQ, any holder of committed Class A IFQ could unilaterally initiate a binding arbitration proceeding with the IPQ holder to which the IFQ were committed.

Public comments are being solicited on proposed Amendment 21 through the end of the comment period (see **DATES**). NMFS intends to publish a proposed rule that would implement Amendment 21 in the **Federal Register** for public comment, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 21 to be considered in the approval/disapproval decision on Amendment 21. All comments received by the end of the comment period on Amendment 21, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received not just postmarked or otherwise transmitted by the close of business on the last day of the comment period.

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

Dated: March 27, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–4749 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 62
Friday, March 31, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 24, 2006, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at The Segal Company, 101 North Wacker Drive, Suite 500, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at The Segal Company, 101 North Wacker Drive, Suite 500, Chicago, IL on Monday, April 24, 2006, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 10, 2006.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. E6–4671 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 28, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Day Use on the National Forests of Southern California.

OMB Control Number: 0596–0129.

Summary of Collection: Users of urban proximate National Forests in Southern California come from a variety of ethnic/racial, income, age, educational, and other socio-demographic categories. The activities pursued, sources utilized, and site attributes preferred are just some of the items affected by these differences. Additional information is needed for the managers of the National Forests in Southern California, in part to validate previous results and in part because of the continuously changing profile of the visitor population recreating on the National Forests of Southern California. In the absence of the resultant information from the proposed series, the Forest Service (FS) will be ill-equipped to implement management changes required to respond to needs and preferences of day use visitors. FS will collect information using a questionnaire and face-to-face interviews. The statute authorizing the collection of information is the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353).

Need and Use of the Information: FS will collect information on socio-demographic profile; National Forest visitation history and patterns; activity patterns; and why they recreate at particular sites, etc. The information will be used to assist resource managers in their effective management of recreation activities in the region studied. The Wildland Recreation and Urban Cultures Project will use the information to further expand its information base on visitor characteristics, safety, fire management, and mitigation of depreciative behaviors, such as vandalism. If the information is not collected, resource managers will have to make visitor based decisions on limited information.

Description of Respondents: Individuals or households.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 80.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–4704 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Malheur National Forest, Oregon; Malheur National Forest Invasive Plants Treatment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Malheur National Forest proposes to treat approximately 3,800 acres of invasive plants located across the 1.7 million acre National Forest. It is anticipated that approximately 800 acres of both existing and newly discovered sites would be treated in any year. The proposed treatment methods includes: manual pulling or use of hand tools, use of mechanical hand tools, herbicide, cultural methods such as grazing or mulching, and biological controls. The method used would depend on resource protection concerns for a given site.

DATES: Comments concerning the scope of the analysis must be received by May 1, 2006. The draft environmental impact statement is expected in March, 2007 and the final environmental impact statement is expected in September, 2007.

ADDRESSES: Send written comments about this project to Stan Benes, Forest Supervisor, Malheur National Forest, P.O. Box 909, John Day OR 97845. Electronic comments can be mailed to: *comments-pacificnorthwest-malheur@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Carole Holly, Project Leader, Phone: 541–575–3026 or e-mail: *cholly@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Purpose of this action is to provide a rapid and more comprehensive, up to date approach to the treatment of invasive plants that occur on the National Forest. The purpose of treating weed infestations is to maintain or improve the diversity, function, and sustainability of desired native plant communities and other natural resources that can be adversely impacted by invasive plant species. Specifically, there is an underlying need on the Forest to: (1) implement treatment actions to contain and reduce the extent of invasive plants at existing inventoried sites, and (2) rapidly respond to new or expanded invasive plant sites as they may occur in the future.

Proposed Action

A detailed project description can be found on the Malheur National Forest Web page at *http://www.fs.fed.us/r6/mai/projects.*

Various types of treatments would be used to treat invasive plants including the use of herbicides, physical, and biological methods. Treatments are proposed for existing or new infestations including new plant species that currently are not found on the Forest. Potential treatments based on existing mapped sites include: Biological methods on approximately 1 acre; Chemical/non riparian methods on approximately 904 acres; Chemical/riparian methods on approximately 553 acres; and Physical methods on 2,404 acres.

Herbicide Treatments: Any use of Chemicals would be done in accordance with USDA Forest Service policies, regulations and Forest Plan Standards as well as product label requirements. Chemicals approved for use, within or outside riparian areas, are listed in the Pacific Northwest Region Invasive Plant Program Preventing and Managing Invasive Plants FEIS (Regional Invasive Plant EIS), April 2005 and ROD and includes: Chlorosulfuron, clopyralid, glyphosate, imazapic, imazapyr, metsulfuron methyl, picloram, sethroxydim, sulfometuron methyl, and triclopyr. The application rates depend on the presence of the target species, condition of non-target vegetation, soil type, depth to the water table, the distance to open water sources, riparian areas, special status plants, and requirements of the herbicide label. Monitoring of treated sites would determine what follow-up treatments would be needed.

Ground based application methods would be used based on accessibility, topography, and the size of treatment area. The following are examples of the proposed methods of application:

- Spot spraying—This method targets individual plants and is usually applied with a backpack sprayer. Spot Spraying can also be applied using a hose off a truck-mounted or ATV-mounted tank.
- Wicking—This hand method involves wiping a sponge or cloth that is saturated with chemical over the plant. This is used in sensitive areas, such as near water, to avoid getting any chemical on the soil or in contact with non-target vegetation.
- Stem injection—A new hand application technique currently being used on Japanese knotweed in western OR.
- Hand broadcast—Herbicide would be applied by hand using a backpack or hand spreader to cover in area of ground rather than individual plants.
- Boom broadcast—This involves using a hose and nozzle from a tank mounted on a truck or ATV. Herbicide is applied to cover an area of ground rather than individual plants. This method is used when the weed is dense enough that it is difficult to discern individual plants and the area to be treated makes spot spraying impractical. This would be the method used for aerial applications.

When needed to facilitate recovery, native seed would be used to recover the site and increase competition.

Use of Physical Treatments: Physical methods include manual control, hand mechanical and cultural methods.

Manual Control Methods: These methods include non-mechanized approaches, such as hand pulling or using hand tools (e.g., grubbing), to remove plants or cut off seed heads. Where sites are small or there are few individual target species, handsaws, axes, shovel, rakes, machetes, grubbing hoes, mattocks, brush hooks, and hand clippers may all be used to remove invasive plant species. To meet control objectives or reduce the risk of activities spreading invasive plants, seed heads and flowers would be removed and disposed of using proper disposal methods. Developed flowers or seed heads are generally bagged and burned.

Hand Mechanical Control Methods: This method uses hand power tools and includes such actions as mowing, weed whipping, road brushing, root tilling methods, or foaming, steaming, infrared, and other techniques using heat to reduce plant cover and root vigor. Mowing and cutting would be used to reduce or remove above ground biomass. Seed heads and cut fragments of species capable of re-sprouting from stem or root segments would be collected and properly disposed of to prevent them from spreading into uninfested areas.

Cultural Control Methods: Approved methods include any cultural practice known to be useful for treating invasive plants such as mulching with a variety of materials, grazing animals, using fertilizer/soil amendments, competitive planting, or other local remedies that may be determined to be effective (e.g., spraying water/salt/sugar mixtures). Competitive planting would consist of a

combination of methods used with planting native vegetation in small areas of disturbance, less than 100 square feet.

Biological Control: Biological weed control activities typically include the release of parasitic and ''host specific'' insects. Presently, insects are the primary biological control agent in use. Mites, nematodes, and pathogens are used occasionally. Treatments do not eradicate the target species but rather reduce target plant densities and competition with desired plant species for space, water and nutrients. The treated areas would continue to be inventoried and monitored to determine the success of the treatments and when the released bio-control agents have reached equilibrium with the target species.

Responsible Official

The Forest Supervisor, Stan Benes, will be the responsible official for making the decision and providing direction for the analysis. He can be contacted at the address listed above.

Nature of Decision To Be Made

The responsible official will decide what type of methods and how they will be used to control invasive plants on the Malheur National Forest.

Scoping Process

The public is asked to provide the responsible official with written comments describing their concerns about this project. At this time, no public meetings are being planned.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. When reviewing the proposed action, bear in mind that the Forest has been operating under direction found in the 1988 Environmental Impact Statement (EIS) and 1988 & 1992 Records of Decision (ROD) for Competing and Unwanted Vegetation and the associated 1989 Mediated Agreement. Treatments under this agreement have previously been by manual control methods. Monitoring has indicated that this approach is not successful. In 2005 the Forest Service's Pacific Northwest Region completed and implemented the *Pacific Northwest Region Invasive plant Program FEIS* providing new direction and updating the herbicides that would be permitted for use in the Region. The new herbicides offer many advantages over the more limited set allowed previously, including greater selectively, less harm to desired vegetation, reduced application rates, and lower toxicity to animals and people. The proposed treatments will be guided by this FEIS. The most useful comments to developing or refining the proposed action would be site specific concerns and those that can help us develop treatments that would be responsive to our goal to control, contain, or eradicate invasive plants as well as being cost effective. Prevention measures have already been built into the Regional Invasive Plant EIS and will be implemented with all actions occuring on the Forest. The purpose of this proposed action is to begin treatments on known invasive plant sites and provide a mechanism to respond rapidly when new infestations are discovered.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 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 proposed so that it is meaningful and alerts an agency to the reviewer's position and contents. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 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 addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 27, 2006.

Roger W. Williams,

Forest Supervisor.

[FR Doc. 06–3124 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is an open to the public.

DATES: Wednesday, April 19, 2006, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208–392–6681 or e-mail *dgochnour@fs.fed.us.*

Dated: March 23, 2006.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 06–3088 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, April 17, 2006. The meeting will include routine business and review, discussion, and recommendation of submitted project proposals.

DATES: The meeting will be held April 17, 2006, from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, RAC Coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 27, 2006.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 06–3125 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposals/Possible Action, (5) Chairman's Perspective, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on April 13, 2006 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Janet Flanagan, Acting DFO, 825 No. Humboldt Ave., Willows,CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 10, 2006 will have the opportunity to address the committee at those sessions.

Dated: March 27, 2006.

Janet Flanagan,

Acting Designated Federal Official.

[FR Doc. 06–3127 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: USDA, Agricultural Research Service, National Agricultural Library.

ACTION: Notice and Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request renewal of an approved electronic mailing list subscription form from those who work in the nutrition and food safety fields.

DATES: Comments on this notice must be received by June 5, 2006 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Janice Schneider, Information Specialist, Food and Nutrition Information Center, U.S. Department of Agriculture National Agricultural Library, 10301 Baltimore Avenue, Beltsville, Maryland 20705. Comments may be sent by facsimile to (301) 504–6047, fax to (301) 504–6409, or e-mail to *jschneid@nal.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Janice Schneider, telephone (301) 504–6047.

SUPPLEMENTARY INFORMATION:

Title: Electronic Mailing List Subscription Form.

OMB Number: 0518–0036.

Expiration Date: 11/30/2006.

Type of Request: Approval for data collection from individuals working in the areas of nutrition and food safety.

Abstract: This form contains seven items and is used to collect information about participants who are interested in joining an electronic discussion group. The form collects data to see if a person is eligible to join the discussion group. Because these electronic discussion groups are only available to people who work in the areas of nutrition and food safety, it is necessary to gather this information. The questionnaire asks for the person's name, e-mail address, job affiliation, telephone number, and address.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one minute per response.

Respondents: Individuals who are interested in joining an electronic discussion group.

Estimated Number of Respondents: 1,000 per year.

Estimated Total Annual Burden on Respondents: 1,000 minutes or 16.66 hours.

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 the 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 respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: March 10, 2006.

Dr. Antoinette Betschart,

Associate Administrator, USDA ARS.

[FR Doc. E6–4703 Filed 3–30–06; 8:45 am]

BILLING CODE 3410–03–P

ARCTIC RESEARCH COMMISSION

[Docket No. USARC 06–31]

Arctic Research Commission Meeting

March 17, 2006.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 79th meeting in Arlington, VA on April 18–20, 2006. The Business Session, open to the public, will convene at 8 a.m. Tuesday, April 18, 2006. An Executive Session will follow adjournment of the Business Session.

The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 78th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

CONTACT PERSON FOR MORE INFORMATION: Dr. Garrett W. Brass, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Kay Brown,

Office Administrator.

[FR Doc. 06–3134 Filed 3–30–06; 8:45 am]

BILLING CODE 7555–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete from the Procurement List a product previously furnished by such agencies.

DATES: *Effective Date:* April 30, 2006.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly @jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On January 27, and February 3, 2006, the Committee for Purchase From People Who are Blind or Severely Disabled published notice (71 FR 4567, and 5809) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSNs: Specimen Container.
NSN: 6550–00 –NIB–0010—¼ turn cap, sterile.
NSN: 6550–00 –NIB–0011—¼ turn cap, non-sterile.
NSN: 6550–00 –NIB–0013—full turn cap, non-sterile.
NSN: 6550–00 –NIB–0009—¼ turn cap, sterile individually wrapped.
NPA: Alphapointe Association for the Blind, Kansas City, Missouri.
Contracting Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.

Services

Service Type/Location: Basewide Custodial Services (Remaining 51%), Naval Submarine Base New London, Box 26, Bldg. 135, Groton, Connecticut.
NPA: CW Resources, Inc., New Britain, Connecticut.
Contracting Activity: Naval Facilities Engineering Command, Groton, Connecticut.
Service Type/Location: Document Destruction.
NISH, Vienna, Virginia (PRIME CONTRACTOR). Performance to be allocated to the Nonprofit Agencies identified at the following locations.
Internal Revenue Service, 1700 Palm Beach Lakes Boulevard, West Palm Beach, Florida; 7410 South U.S. Highway One, Port St. Lucie, Florida.
NPA: Association for Retarded Citizens of Indian River County, Vero Beach, Florida.
Internal Revenue Service, 2891 Center Point Drive, Fort Myers, Florida; 2201 Cantu Court, Sarasota, Florida; 300 Lock Road, Deerfield Beach, Florida; 51 SW. First Avenue, Miami, Florida; 7850 SW. 6th Court, Plantation, Florida; Royal Palm One, Suite 340, 1000 South Pine Island Road, Plantation, Florida.
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida.
Contracting Activity: U.S. Treasury, IRS, Chamblee, Georgia.

Deletion

On January 27, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 4567) of proposed deletion to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSN: Cloth, Abrasive.
NSN: 5350–00–187–6296—Cloth, Abrasive.
NPA: Louisiana Association for the Blind, Shreveport, Louisiana.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

G. John Heyer,

General Counsel.

[FR Doc. E6–4691 Filed 3–30–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from Procurement List.

SUMMARY: The Committee is proposing to delete a product and services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: April 30, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly @jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Product

PRODUCT/NSN: Computer Accessories.
NSN: 7045–01–483–7838—Comfort Wrist Mouse Pad.
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Services

Service Type/Location: Base Supply Center, Brooks Air Force Base, Texas.
NPA: San Antonio Lighthouse for the Blind, San Antonio, Texas.
Contracting Activity: Department of the Air Force.

Service Type/Location: Base Supply Center, Defense Supply Service—Washington, Skyline #3, 5109 Leesburg Pike, Alexandria, Virginia.
NPA: Virginia Industries for the Blind, Charlottesville, Virginia.
Contracting Activity: Defense Supply Service, Washington DC.

Service Type/Location: Food Service, U.S. Property and Fiscal Officer, Wisconsin, Wisconsin Military Academy, 90 S 10th Avenue, Fort McCoy, Wisconsin.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contracting Activity: U.S. Property and Fiscal Officer for Wisconsin, Camp Douglas, Wisconsin.

G. John Heyer,

General Counsel.

[FR Doc. E6–4692 Filed 3–30–06; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana State Advisory Committee will convene at 6 p.m. (MST) and adjourn at 9 p.m. (MST), Wednesday, April 5, 2006, at the Holiday Inn Parkside, 200 S. Pattee St., Missoula, Montana 59802. The purpose of the meeting is to conduct orientation for new advisory committee members; provide an overview of the USCCR including recent Commission activities and new policies affecting Advisory Committees; facilitate a briefing on regional project ''Confronting Discrimination in Reservation Border Town Communities'' in Montana; and planning through December 2006.

Persons desiring additional information, or planning a presentation to the Committee, should contact John F. Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission. It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

Dated at Washington, DC, March 23, 2006.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. E6–4687 Filed 3–30–06; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 060321082–6082–01]

NIST Electron and Optical Physics Division, Center for Nanoscale Science and Technology (CNST) Financial Assistance Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the NIST Electron and Optical Physics Division, Center for Nanoscale Science and Technology (CNST) Financial Assistance Program is soliciting applications for financial assistance for FY 2006. The primary program objectives of the financial assistance program in Nanoscale Science and Technology is to develop new measurement methods, instrumentation and standards for nanotechnology and explore new areas of nanoscale science and technology in a variety of areas; to assist and train CNST collaborators and nanofabrication facility users in their research; and to conduct other outreach and educational activities that advance the development

of nanotechnology by U.S. university and industrial scientists.

DATES: Complete applications, paper and electronic, must be received by 5 p.m., eastern standard time on April 24, 2006.

ADDRESSES: One signed original and two paper copies of complete paper applications must be submitted to Barbara Coalmon, National Institute of Standards and Technology, Center for Nanoscale Science and Technology, Electron and Optical Physics Division, Mail Stop 8412, Gaithersburg, MD 20899–8412. Electronic applications must be submitted through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity Notice (FFO) at *http://www.grants.gov.* A paper copy of the FFO may be obtained by calling (301) 975–6328. Technical questions should be addressed to Dr. Robert Celotta at National Institute of Standards and Technology, Center for Nanoscale Science and Technology, Electron and Optical Physics Division, 100 Bureau Drive, Stop 8412, Gaithersburg, MD 20899–8412, Tel: (301) 975–3710, E-mail: *Robert.Celotta@nist.gov.* The CNST Web site is: *http://www.physics.nist.gov/cnst.* All grants related administration questions concerning this program should be directed to Joyce Brigham, NIST Grants and Agreements Management Division at (301) 975–6328 or *joyce.brigham@nist.gov.* For assistance with using *Grants.gov contact support@grants.gov.*

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name And Number: Measurement and Engineering Research and Standards—11.609

Program Description: The primary program objectives of the financial assistance program in Nanoscale Science and Technology are to develop new measurement methods, instrumentation and standards for nanotechnology and explore new areas of nanoscale science and technology in a variety of areas including nanofabrication, nanomagnetics, theory and modeling, post-complementary metal oxide semiconductor electronics, nano-electro mechanical systems, nanomotion and nanomanipulation, merging length scales, 2–D and 3–D structural and chemical imaging, electrical and magnetic dynamical response of nanostructures, electrical characterization of nanostructures, nanoscale properties of soft matter, neutron scattering determination of nanoscale properties, nanobiology, and nanomedicine; to assist and train CNST collaborators and nanofabrication facility users in their research; and to conduct other outreach and educational activities that advance the development of nanotechnology by U.S. university and industrial scientists. This will entail collaborative research among the selected financial assistance recipients and CNST staff scientists and visiting scientists to advance these objectives, primarily at CNST's Nanofab, a national user facility for nanoscale science and technology that is described on the Web site cnst.nist.gov.

Applicants and team members must possess the education, experience, and training, to pursue and advance the field of Nanoscale Science and Technology efficiently. In addition, the applicant and team members must possess a demonstrated record of excellence in the development of measurement methods, instrumentation or standards for nanotechnology and in nanotechnology research.

Additional information on the CNST can be found at: *http://www.physics.nist.gov/cnst.*

Funding Availability: Proposals will be considered for cooperative agreements with durations of up to five years, subject to the availability of funds, satisfactory progress, and the continuing relevance to the objectives of the NIST Center for Nanoscale Science and Technology of the Electron and Optical Physics Division. The anticipated level of funding is up to $1,500,000 per year and one or more awards may be approved. Between one and five awards are likely.

NIST will give preference to full-scope proposals. However applicants may choose to submit proposals that are limited to specific program objectives and request an appropriate portion of the total amount available. NIST will determine whether to fund one award for the full amount; to divide available funds into multiple awards of any size, and negotiate scopes of work and budgets as appropriate; or not to select any proposal for funding, upon completing the selection process described in this notice.

Statutory Authority: 15 U.S.C. 272(b) and (c).

Eligibility: The CNST Financial Assistance Program is open to U.S. institutions of higher education.

Cost Sharing: There is no cost sharing or matching requirement for the program.

Review and Selection Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Responsive proposals will be reviewed by at least four independent, objective individuals who are knowledgeable about nanoscale science and technology research, nanofabrication, and nanotechnology measurement and instrumentation. These individuals will conduct a technical review of proposals based on the evaluation criteria listed below. If non-Federal reviewers are used, any advice provided will be on an individual basis, not as a consensus.

The Physics Laboratory Deputy Director, serving as the Selection Official, will make the award selection. In making the award selection, the Physics Laboratory Deputy Director will take into consideration the reviewers' technical evaluations. The Physics Laboratory Deputy Director, as the selecting official, may choose a proposal out of rank order based upon one or more of the following factors: (1) Availability of funds, (2) Redundancy, (3) Balance/distribution of funds by research areas described above in the Program description of this Notice, (4) Program objectives described above in the Program Description section of this Notice, (5) Logistical concerns, and (6) Preference for full-scope proposals. If an award is made to an applicant that deviates from the scores of the reviewers, the Physics Laboratory Deputy Director shall justify the selection in writing based on selection factors described above. The Physics Laboratory Deputy Director may select all, none, or some of the applications for funding.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final.

Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the Electron and Optical Physics Division—CNST Financial Assistance Program, the technical reviewers will use the following criteria to evaluate the proposals:

1. Qualifications and experience of the Principal Investigator in nanotechnology research, as demonstrated by extensive publications and invited lectures in condensed matter physics, chemistry, material science, macromolecular science or related fields. (25%).

2. Qualifications and experience of the proposed university staff in nanotechnology research or in related scientific or engineering areas that are key to the activities contained in the proposal, as demonstrated by resumes of staff proposed for this program. (10%).

3. Quality of the proposed research and development plan and its potential impact on nanoscale science and technology. (20%).

4. Quality of the plan in terms of providing research assistance to U.S. nanotechnology researchers using the CNST facilities, including related training, education, and outreach. (30%).

5. Quality of the plan to integrate university staff effectively into the activities of the CNST facility, including establishing robust communications between the university and the CNST. (10%).

6. Cost effectiveness of the plan. (5%).

Additional Information:

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389). On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block (68 FR 38402).

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. sec. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section 20 of the Department of Commerce Pre-Award Notification Requirements, published on December 30, 2004 (69 FR 78389). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by the Office of Management and Budget (OMB) under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) registered with DHHS and performed by entities possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) the derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human

being. NIST will follow guidance issued by the National Institutes of Health at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/stemcell.pdf* for funding such research.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: In no event will the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 et seq.

Dated: March 23, 2006.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. E6–4723 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 050601149–5323–02]

Announcing Approval of Federal Information Processing Standard (FIPS) 200, Minimum Security Requirements for Federal Information and Information Systems

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Secretary of Commerce's approval of Federal Information Processing Standard (FIPS) 200, Minimum Security Requirements for Federal Information and Information Systems. The use of FIPS 200 is compulsory and binding on federal agencies for: (i) All information within the federal government other than that information that has been determined pursuant to Executive Order 12958, as amended by Executive Order 13292, or any predecessor order, or by the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure and is marked to indicate its classified status; and (ii) all federal information systems other than those information systems designated as national security systems as defined in 44 United States Code Section 3542(b)(2). FIPS 200 was developed to complement similar standards for national security systems.

DATES: This standard is effective March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Ron Ross, Computer Security Division, Information Technology Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930, telephone (301) 975–5390, e-mail: *ron.ross@nist.gov.*

A copy of FIPS 200 is available electronically from the NIST Web site at: *http://csrc.nist.gov/publications/.*

SUPPLEMENTARY INFORMATION: The Federal Information Security Management Act (FISMA) requires all federal agencies to develop, document and implement agency-wide information security programs and to provide information security for the information and information systems that support the operations and assets of the agency, including those systems provided or managed by another agency, contractor, or other source.

To support agencies conducting their information security program, the FISMA called for NIST to develop federal standards for the security categorization of federal information and information systems according to risk levels, and four minimum security requirements for information and information systems in each security category. FIPS 199, Standards for the Security Categorization of Federal Information and Information Systems, issued in February 2004, was the first standard that was specified by the FISMA. FIPS 199 requires agencies to categorize their information and information systems as low-impact, moderate-impact, or high impact for the security objectives of confidentiality, integrity, and availability.

FIPS 200, which is the second standard that was specified by the FISMA, is an integral part of the risk management framework that NIST has developed to assist federal agencies in providing appropriate levels of information security based on levels of risk. In applying the provisions of FIPS 200, agencies will categorize their systems as required by FIPS 199, and then select an appropriate set of security controls from NIST Special Publication 800–53, Recommended Security Controls for Federal Information Systems, to satisfy their minimum security requirements.

On July 15, 2005, a notice was published in the **Federal Register** (Volume 70, Number 135, 40983–40984) announcing proposed FIPS 200 and soliciting comments on the proposed standard from the public, research communities, manufacturers, voluntary standards organizations, and federal, state, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST web pages. Information was provided about the submission of electronic comments.

Comments, responses, and questions were received from 13 private sector organizations, groups, or individuals and from 14 federal government organizations.

Most of the comments that were received recommended editorial changes; suggested the addition of references; provided general comments concerning the standard and its implementation; and asked questions concerning the implementation of the standard and the use of waivers. Some of the comments expressed concurrence with the standard as proposed, supported the intent, goals, and

presentation of the standard, and complimented NIST on the document. No comments opposed the adoption of the standard.

The primary interests and issues that were raised in the comments included: Time needed for implementation; inclusion of waiver provisions; inclusion of additional references; rearrangement and indexing of the text; addition of text and implementation details already available in other NIST publications; and expansion of definitions.

All of the editorial suggestions and recommendations were carefully reviewed, and changes were made to the standard where appropriate. The text of the standard, the terms and definitions listed in the standard, the references and the footnotes were modified as needed.

Following is an analysis of the major editorial, implementation and related comments that were received.

Comment: Some comments recommended changing the requirement that federal agencies must be in compliance with the standard not later than one year from its effective date. The recommendations received suggested both lengthening the time for compliance because of concerns about the cost of implementing the standard within budget constraints, and shortening the time for compliance to achieve improved security.

Response: NIST believes that the requirement for compliance not later than one year from effective date of the standard is reasonable, and that no changes are needed to either prolong or shorten the time for compliance with the standard.

Comment: A federal agency recommended that a provision be added to the standard to enable federal agencies to waive the standard when they lack sufficient resources to comply by the deadline.

Response: The Federal Information Security Management Act contains no provisions for agency waivers to standards. The FISMA states that information security standards, which provide minimum information security requirements and which are needed to improve the security of federal information and information systems, are required mandatory standards. The Secretary of Commerce is authorized to make information security standards compulsory and binding, and these standards may not be waived.

Comment: Comments were received about regrouping or indexing the seventeen security areas covered by the standard. FIPS 200 specifies minimum security requirements for federal information and information systems in seventeen security-related areas.

Response: NIST believes that indexing would be confusing and would add unnecessary complexity to the standard. The seventeen areas that are defined in the standard represent a broad-based, balanced information security program. The areas, which address the management, operational, and technical aspects of protecting federal information and information systems, are concise and do not require indexing.

Comment: One federal agency recommended that the standard specify a time period for retaining audit records.

Response: NIST believes that requirements about retention of audit records should be defined by agencies, and should not be specified in the standard.

Comment: Several comments suggested additions and changes to the standard concerning risk management procedures, audit controls, baseline security controls, and risks introduced by new technologies.

Response: A section of the proposed FIPS 200 covering these topics has been removed from the final version of the standard, and these comments will be considered when NIST Special Publication (SP) 800–53, Recommended Security Controls for Federal Information Systems, is updated. FIPS 200 specifies that federal agencies use SP 800–53 to select security controls that meet the minimum security requirements in the seventeen security-related areas. The security controls in SP 800–53 represent the current state-of-the-practice safeguards and countermeasures for information systems. NIST plans to review these security controls at least annually and to propose any changes needed to respond to experience gained from using the controls, changing security requirements within federal agencies, and new security technologies. Any changes or additions to the minimum security controls and the security control baselines described in SP 800–53 will be made available for public review before any modifications are made. Federal agencies will have up to one year from the date of the final publication to comply with the changes.

Comment: Some comments suggested the inclusion of expanded definitions for terms such as systems, major applications, and general support systems.

Response: NIST is adhering to the definition of system used in the Federal Information Security Management Act, and believes that attempts to further define these terms and to make distinctions between systems and applications may be confusing.

Comment: One federal agency asked about the security issues related to the use of computerized medical devices. Another commenter asked about inclusion of information on training and certification of information technology professionals.

Response: The issue of computerized medical devices may need to be addressed, but FIPS 200 is not the appropriate document. The issues of training information and the certification of information technology professionals are also outside the scope of FIPS 200.

Authority: Federal Information Processing Standards (FIPS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106) and the Federal Information Security Management Act (FISMA) of 2002 (Pub. L. 107–347).

E.O. 12866: This notice has been determined to be not significant for the purposes of E.O. 12866.

Dated: March 23, 2006.

William Jeffrey,

Director.

[FR Doc. E6–4720 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

RIN 0693–AB56

[Docket No. 050825229–5308–02]

Announcing Approval of Federal Information Processing Standard (FIPS) Publication 201–1, Standard for Personal Identity Verification of Federal Employees and Contractors

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Secretary of Commerce's approval of Federal Information Processing Standard (FIPS) Publication 201–1, Standard for Personal Identity Verification of Federal Employees and Contractors. The changes to Section 2.2, PIV Identify Proofing and Registration Requirements, Section 4.3, Cryptographic Specifications, Section 5.2, PIV Identity Proofing and Registration Requirements, and to Section 5.3.1, PIV Card Issuance, clarify the identity proofing and registration process that departments and agencies

should follow when issuing identity credentials. These changes are needed to make FIPS 201–1 consistent with the Memorandum for All Departments and Agencies (M–05–24), issued by the Office of Management and Budget on August 5, 2005, Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors.

DATES: The approved changes are effective as of March 31, 2006.

ADDRESSES: The approved changes to FIPS Publication 201–1 are available electronically from the NIST Web site at: *http://csrc.nist.gov/piv-program/*. Comments that were received on the proposed changes will also be published electronically at *http://csrc.nist.gov/piv-program/*.

FOR FURTHER INFORMATION CONTACT: W. Curtis Barker, (301) 975–8443, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930, e-mail: *wbarker@nist.gov.*

Information about FIPS 201–1 and the PIV program is available on the NIST Web pages: *http://csrc.nist.gov/piv-program/.*

SUPPLEMENTARY INFORMATION: A **Federal Register** notice (70 FR 17975–78) on April 8, 2005, announced that the Secretary of Commerce had approved FIPS Publication 201, Standard for Personal Identity Verification of Federal Employees and Contractors. HSPD 12, Policy for a Common Identification Standard for Federal Employees and Contractors, dated August 27, 2004, directed the Secretary of Commerce to promulgate, by February 27, 2005, a Government-wide standard for secure and reliable forms of identification to be issued to Federal government employees and contractors (including contractor employees).

FIPS 201 was effective on February 25, 2005, and was made compulsory and binding on Federal agencies for use in issuing a secure and reliable form of personal identification to employees and contractors. The standard does not apply to personal identification associated with national security systems as defined by 44 U.S.C. 3542(b)(2).

A notice was published in the **Federal Register** (70 FR 53346–47) on September 8, 2005, announcing the proposed changes to FIPS 201. The primary goal for the changes are to make FIPS 201–1 consistent with the Memorandum for All Departments and Agencies (M–05–24), issued by the Office of Management and Budget on August 5, 2005, Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors.

The **Federal Register** notice solicited comments on the draft standard from the public, research communities, manufacturers, voluntary standards organizations, and Federal, State, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST Web pages. Information was provided about the submission of electronic comments and an electronic template for the submission of comments was made available.

Comments, responses, and questions were received from private sector organizations, groups, or individuals, and Federal government organizations. These comments have all been made available by NIST at *http://csrc.nist.gov/piv-program/*. Following is an analysis of the comments received, including the interests, concerns, recommendations, and issues considered in the development of FIPS 201–1.

Comment: The requirement to include electronically distinguishable NACI indicator in the identity credential should apply to PIV–II only.

Response: NIST agrees that the NACI indicator does not apply to PIV–1. Moved this requirement to Section 5.2 of FIPS 201–1.

Comment: The exact nature of the electronically distinguishable feature must be defined to ensure adequate interoperability.

Response: NIST specified implementation of the NACI Interim Indicator in the PIV Authentication certificate and updated Section 4.3, Section 5.4.2.1, and the PIV Certificate definition Appendix. Specifically, the Interim Indicator shall be implemented as a non-critical private extension in the PIV Authentication certificate.

Comment: Agencies do not support 5-day waiting period for the completion of the NAC. Agencies strongly disagree with the requirement for the NAC completion prior to an employee or contractor receiving a credential or access to federally controlled facilities or logical access to federally controlled information system. Moreover, agencies believed that the NAC results will not be received within five days in a majority of the cases. In that regard, the agency leadership must delay the hiring process for five additional days with no concomitant security benefit.

Response: NIST removed specific waiting period and NAC without written inquiries as a qualifier in Section 2.2 of FIPS 201–1. The five-day waiting period did introduce artificial delay in the routine card issuance. As a result, pending receipt of the results of the NACI, an agency may issue an identity credential based on the FBI National Criminal History Check (fingerprint check).

Comment: Agencies do not support the inclusion of a NACI indicator within the identity credential. Agencies believe this requirement will be costly to implement because the requirement would require facilities to alter or replace the identity credential when the NAC is complete. They recommend further analysis regarding the intended use, CONOPS, and benefits for this distinguishable element within the identity credential is required before their acceptance.

Response: This requirement is imposed to be consistent with the OMB memorandum M–05–24. The NACI indicator relays the rigor of identity proofing completed on the PIV cardholder when the card was issued. The relying parties, such as federal agencies, may require NACI completion to allow access to their resources. The NACI indicator will enable agencies to make an informed decision about the cardholders binding to the identity credentials.

Authority: In accordance with the Information Technology Management Reform Act of 1996 (Pub. L. 104–106) and the Federal Information Security Management Act (FISMA) of 2002 (Pub. L. 107–347), the Secretary of Commerce is authorized to approve Federal Information Processing Standards (FIPS). Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, dated August 27, 2004, directed the Secretary of Commerce to promulgate, by February 27, 2005, a Government-wide standard for secure and reliable forms of identification to be issued to Federal government employees and contractors.

E.O. 12866: This notice has been determined to be significant for the purposes of E.O. 12866.

Dated: March 23, 2006.

William Jeffrey,

Director.

[FR Doc. E6–4722 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032306B]

International Whaling Commission; 58th Annual Meeting; Announcement of Public Meeting

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

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the public meeting being held prior to the 58th annual International Whaling Commission (IWC) meeting.

DATES: The public meeting will be held May 5, 2006, at 10 a.m.

ADDRESSES: The meeting will be held in the NOAA Science Center Room, 1301 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, 301–713–9090, extension 183.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, Marine Mammal Commission, and by other agencies.

Once the draft agenda for the annual IWC meeting is completed, it will be posted on the IWC Secretariat's Web site at *http://www.iwcoffice.org*.

Each year NOAA holds a meeting prior to the annual IWC meeting to discuss the tentative U.S. positions for the upcoming IWC meeting. Because the meeting discusses U.S. positions, the substance of the meeting must be kept confidential. Any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation.

Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings.

The meeting will be held at 10 a.m. at the NOAA Science Center Room, 1301 East-West Highway, Silver Spring, MD 20910. Photo identification is required to enter the building.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Cheri McCarty, 301–713–9090 by April 28, 2006.

Dated: March 27, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–4719 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032406C]

Endangered Species; File No. 1540

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

ACTION: Notice; receipt of application for modification of a scientific research permit.

SUMMARY: Notice is hereby given that South Carolina Department of Natural Resources (SCDNR), Marine Resources Division, P.O. Box 12559, Charleston, S.C. 29422–2559, has requested a modification to scientific research Permit No. 1540.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 1, 2006.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1540.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1540, issued on February 6, 2006 (71 FR 7019) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1540 currently authorizes the permit holder to study loggerhead (Caretta caretta), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles. The purpose of the research is to continue to document in-water relative abundances, size distributions, sex ratios, genetic contributions, and the health of sea turtles in coastal waters in the southeastern U.S. SCDNR is authorized to capture 146 loggerhead, 48 Kemp's ridley, 15 green, 1 leatherback, and 3 hawksbill sea turtles, during the first year of the permit's five- year period. The permit authorizes research on up to 346 loggerhead, 48 Kemp's ridley, 15 green, 1 leatherback, and 3 hawksbill sea turtles annually for the remaining four-years. Turtles are captured by trawls, handled, blood sampled, measured, flipper and PIT tagged, photographed, and released. A subsample of animals have barnacles and keratin removed from their shell, have cloacal samples taken, have laparoscopic and ultrasound exams, and have satellite transmitters attached. Up to 7 loggerhead and 1 leatherback may potentially be taken as accidental mortalities over the course of the entire permit. Additionally, up to 5 Kemp's ridley, green, or hawksbill sea turtles (combined total but no more than two of any given species) may potentially be

taken as accidental mortalities over the course of the entire permit. The permit is issued for 5 years.

The permit holder requests a modification to the permit that would allow skin biopsy sampling of 125 loggerhead sea turtles. Fifty adult male sea turtles would be sampled offshore of Cape Canaveral, FL and 75 sub-adult sea turtles would be sampled off Charleston, SC. The goal of the additional research would be to assess the potential diversity of diets and foraging habits of loggerheads in the Southeastern United States.

Dated: March 27, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4729 Filed 3–30–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0130]

Federal Acquisition Regulation;Submission for OMB Review; Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0130).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. A request for public comments was published in the **Federal Register** at 71 FR 3826 on January 24, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 1, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Mr. William Clark, Contract Policy Division, GSA, (202) 219–1813.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Free Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and FTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and FTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Respondents: 1,140.
Responses Per Respondent: 5.
Annual Responses: 5,700.
Hours Per Response: .117.
Total Burden Hours: 666.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in all correspondence.

Dated: March 28, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 06–3112 Filed 3–30–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, May 10, 2006.

Place of Meeting: Veterans Affairs Conference room, Room 418, Senate Russell Building, Washington, DC.

Start Time of Meeting: Approximately 9 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Shaun T. Wurzbach, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Spring Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs at the USMA. Sub Committee meetings on Academics, Military/Physical and Quality of Life to be held prior to Organizational meeting. All proceedings are open.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–3141 Filed 3–30–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Article of Footwear With Temperature Regulation Means

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 7,013,579 B2 entitled

''Article of Footwear with Temperature Regulation Means'' issued March 21, 2006. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold Boucher at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233–5431 or E–mail: *Arnold.Boucher@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–3142 Filed 3–30–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Draft Environmental Impact Statement To Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for Mingo Logan Coal Company's (Mingo Logan) Proposal To Construct and Operate Spruce No. 1 Mine, Near Blair in Logan County, WV

AGENCY: Department of the Army; Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) Huntington District, in cooperation with U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Office of Surface Mining and the West Virginia Department of Environmental Protection, has prepared a Draft Environmental Impact Statement (DEIS). This DEIS evaluates potential impacts to the natural, physical and human environment as a result of the proposed mining activities associated with Mingo Logan Coal Company's (Mingo Logan) Spruce No. 1 Mine. The USACE regulates this proposed project pursuant to Section 404 of the Clean Water Act. The proposed activity would involve the discharge of dredged and fill material into waters of the United States associated with the proosed construction and operation of a surface bituminous coal mine.

DATES: Submit comments by May 15, 2006. A public hearing regarding this DEIS will be held May 1, 2006 (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Send written comments and suggestions concerning this proposal to Mrs. Teresa Spagna, Regulatory Project Manager, Regulatory Branch, CELRH–OR–FS, U.S. Army Corps of Engineers, Huntington District, 502 8th Street, Huntington, WV 25701. Telephone (304) 399–5710 or electronic mail at *Teresa.D.Spagna@Lrh01.usace.army.mil.* Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Mrs. Teresa Spagna, Regulatory Project Manager at (304) 399–5710 or electronic mail at *Teresa.D.Spagna@Lrh01.usace.army.mil.*

SUPPLEMENTARY INFORMATION: Discharges of dredged and fill material into the waters of the United States are regulated under Section 404 of the Clean Water Act, with the permitting responsibility administered by the USACE. The proposed project must also address environmental impacts relative to the Clean Air Act, Clean Water Act, Endangered Species Act and the Fish and Wildlife Coordination Act (FWCA). In accordance with the NEPA, the DEIS evaluates reasonable alternatives for the USACE's decision making process. As required by NEPA, the USACE also analyzes the ''no action'' alternative as a baseline for gauging potential impacts.

As part of the public involvement process, notice is hereby given by the USACE-Huntington District of a Public Hearing to be held at the Earl Ray Tomlin Convention Center, in Chapmanville, Logan County, WV, from 7 to 10 p.m. on May 1, 2006. The Public Hearing will allow participants the opportunity to comment on the DEIS prepared for the proposed Spruce No. 1 Mine project.

The comments are due 45 days from the date of publication of this notice. Copies of the document may be obtained by contacting USACE Huntington District Regulatory Branch at 304–399–5210 or 304–399–5710.

Copies of the Draft EIS are also available for inspection at the locations identified below:

(1) Blair Post Office, P.O. Box 9998, Blair, WV 25022–9998.

(2) Kanawha County Public Library, 123 Capital Street, Charleston, WV 25301.

(3) Logan County Public Library, 16 Wildcat Way, Logan, WV 25601.

After the public comment period ends, USACE will consider all comments received, revise the DEIS as appropriate, and issue a Final Environmental Impact Statement.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–3144 Filed 3–30–06; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Elliott Bay Seawall, WA

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

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (Corps) will prepare an environmental impact statement (EIS) for a proposed seawall rehabilitation project along the Elliott Bay shoreline in Seattle, WA. The seawall, known as the Alaskan Way Seawall, is experiencing significant decay and deterioration, leading to structural instability along the Seattle waterfront and central business district. Seawall structural instability is putting a tremendous amount of public and private infrastructure, development, and transportation linkages at risk of damage due to wave and tidal erosion, and hence potential for undermining and collapse. In addition, the failure of the seawall would result in a high risk to public safety and substantial environmental degradation. The purpose of the proposed rehabilitation effort is to protect the public facilities and economic activities along the Elliott Bay shoreline from storm damages associated with failure of the existing seawall.

DATES: Submit comments on the scope of issues to be addressed in the Draft Environmental Impact Statement (DEIS) by April 30, 2006.

ADDRESSES: Address all comments concerning this notice to Ms. Aimee Kinney, U.S. Army Corps of Engineers, Seattle District, Environmental Resources Section, PO Box 3755, Seattle, WA 98124–3755. Submit electronic comments and other date to *aimee.t.kinney@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the DEIS may be directed to Ms. Aimee Kinney, telephone (206) 764–3634, e-mail *aimee.t.kinney@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The Alaskan Way Seawall extends for a distance of approximately 7900 feet along Seattle's central waterfront, between Washington Street to the south and Bay Street to the north. The proposed action would involve an extensive structural rebuild or replacement of the seawall in order to reduce damage resulting from storms and erosion. The proposed action is closely related to the proposed replacement of the State Route (SR) 99 Alaskan Way Viaduct, which runs parallel to a portion of the seawall. The SR 99 Alaskan Way Viaduct and Seawall Replacement Project Draft Environmental Impact Statement (AWVSRP DEIS) was issued by the U.S. Department of Transportation Federal Highway Administration (FHWA), Washington State Department of Transportation (WSDOT), and City of Seattle on April 9, 2004 (69 FR 18898). The AWVSRP DEIS evaluated the rebuilding of the Alaskan Way Seawall because it is essential to the function of transportation facilities and is at risk of collapsing in a large earthquake. The geographic area covered in the AWVSRP DEIS is virtually the same as the Corps study area. However, the Corps' EIS will evaluate the seawall from a storm damage reduction perspective; the seawall will be the primary focus of the analysis rather than a secondary project element, as in the AMVSRP DEIS. The Corps is reviewing the existing body of work and coordinating closely with the city of Seattle, FHWA, and WSDOT to incorporate all relevant material from their NEPA efforts, share information, and reduce duplication of efforts.

2. *Alternatives:* There are currently four alternatives which will receive consideration in the EIS: (1) The no action alternative; (2) construction of a vertical face wall with structural frame; (3) construction of a drilled shaft wall with soil improvements; and (4) replacing the portion of the seawall adjacent to the Alaskan Way viaduct with the outer wall of the new tunnel identified as the preferred alternative for the AWVSRP. These alternatives are the same as the rebuild, frame, and tunnel wall seawall alternatives evaluated in the AWVSRP DEIS. The development of seawall study alternatives has been and will continue to be closely coordinated with the AWVSRP through the City of Seattle, WSDOT, and FHWA. The selection of the Corps tunnel wall alternative could not occur unless FHWA signed a record of decision for the AWVSRP selecting the tunnel alternative. Opportunities will be sought to incorporate measures for improvement of habitat values, as well as recreation and public access. Public input is specifically invited regarding the reasonableness of the build alternatives and whether any additional alternatives are appropriate for consideration.

3. *Scoping and Public Involvement:* This notice of intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Native American Tribes, private organizations, and the public are invited to comment on the scope of the EIS. To date, the following issues of concern have been identified for in depth analysis in the draft EIS: (1) Construction impacts, particularly those related to noise, water quality, transportation, and effects to businesses and residences within/adjacent to the construction zone; (2) impacts associated with potential deviation of the existing seawall alignment; and (3) potential impacts to historical properties.

4. *Scoping Meetings:* Two public Scoping meetings will be held to identify issues of major concern, identify studies that might be needed in order to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. Both meetings will be conducted on April 18, 2006 in the Lopez Room at Seattle Center, 305 Harrison Street, Seattle, WA 98109. The first meeting will be held from 1 to 3:30 p.m. An informal open house will be held between 1 and 2 p.m. A brief presentation will be made between 2 and 2:30 p.m. Then testimony will be taken between 2:30 and 3:30 p.m. The second meeting will be held from 4:30 to 7 p.m. Another informal open house will be held between 4:30 and 5:30 p.m. The presentation will be made again between 5:30 and 6 p.m. Then testimony will be taken between 6 and 7 p.m. Verbal or written comments will be accepted at the Scoping meetings, or written comments may be sent by regular or electronic mail to Aimee Kinney (see **ADDRESSES**). Ongoing communication with agencies, Native American tribes, public interest groups, and interested citizens will take place throughout the EIS development through the use of public meetings, mailings, and the Internet. Additional meetings will be scheduled upon completion of the DEIS.

5. *Other Environmental Review, Coordination and Permit Requirements:* The environmental review process will be comprehensive and will integrate and satisfy the requirements of NEPA, and other relevant Federal, State and local environmental laws. Other environmental review, coordination, and permit requirements may include preparation of a Clean Water Act, Section 404 evaluation by the Corps.

Dated: March 17, 2006.

Debra M. Lewis,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 06–3140 Filed 3–30–06; 8:45 am]

BILLING CODE 3710–ER–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplement to the Environmental Impact Statement To Evaluate Construction of Authorized Improvements to the Federal Gulfport Harbor Navigation Project in Harrison County, MS

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Supplement to the Environmental Impact Statement (DSEIS) to address the potential impacts associated with construction of authorized improvements to the Federal Gulfport Harbor Navigation Project in Harrison County, MS. The DSEIS will be used as a basis for ensuring compliance with the National Environmental Policy Act (NEPA) and evaluating the following two alternative plans: ''No Action'' and widening to the authorized project dimensions. Gulfport Harbor is authorized to (a) A channel 38 feet deep by 400 feet wide and about 8 miles long across Ship Island Bar; (b) a channel 36 feet deep by 300 feet wide and about 12 miles long through Mississippi Sound; and (c) a stepped anchorage basin at Gulfport Harbor 32 to 36 feet deep by 1,120 feet wide and 2,640 feet long.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DSEIS should be addressed to Dr. Susan Ivester Rees, Coastal Environment Team, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628 by telephone (251) 694–4141 or e-mail her at *susan.i.rees@sam.usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. Gulfport Harbor is located in Harrison County, MS, on Mississippi Sound about equidistant (80 miles) from New Orleans, LA, and Mobile, AL. The existing project was adopted by the River and Harbor Act approved July 3, 1930 (House Document Number 692, 69th. Congress, 2nd. Session) and the

River and Harbor Act approved June 30, 1948 (House Document Number 112, 81st. Congress, 1st Session). Construction of the existing federal project commenced in 1932, and was completed in 1950. The River and Harbor Act approved July 3, 1958 (Senate Document Number 123, 84th. Congress, 2nd. Session) adopted the small boat harbor as part of the existing federal project. Deepening improvements to the existing Federal project at Gulfport Harbor was authorized in the Supplemental Appropriations Act of 1985 (Pub. L. 99–88), which was approved on August 15, 1985. The project was also authorized in the Water Resources Development Act of 1986 (Pub. L. 99–662), which was approved November 17, 1986, and provided for development to deepen and widen the existing ship channel 36 by 300 feet in Mississippi Sound, and 38 by 400 feet across the bar, with changes in the channel alignment and entrance to the anchorage basin for safe and unrestricted navigation.

The 1976 Feasibility Report considered a number of improvement plans, such as widening the Mississippi Sound channel to 300 feet at the existing 30-foot depth and deepening the channel in 2-foot increments to a maximum depth of 36 feet. In addition, widening the channel across the bar into the Gulf of Mexico to 400 feet at the existing 32-foot depth and deepening the channel in 2-foot increments to a maximum depth of 38 feet were also evaluated. The Corps analyzed realignment of the Ship Island channel, adjustment of the turning basin's width, and enlargement of the channel entrance into the turning basin. A number of disposal options were considered including: open-water alongside of the channels, island creation within Mississippi Sound, and use of specially designed equipment to transport the dredged material to sites within the Gulf of Mexico. The 1976 Feasibility Report recommended enlarging the Bar channel to 38 feet by 400 feet from the 38-foot depth contour in the Gulf of Mexico for a distance of about 9.1 miles to a point in Mississippi Sound near the western end of Ship Island; enlarging the channel through Mississippi Sound near the western end of Ship Island; and enlarging the Mississippi Sound channel to 36 feet by 300 feet for a distance of about 11.8 miles between the inner end of the Gulf Entrance channel and the turning basin at Gulfport; realigning the Bar channel through Ship Island Pass to a location generally parallel to and about 1,000 feet west of that presently authorized, with a deposition basin for littoral drift 38 feet deep, 300 feet wide and 2,000 feet long adjacent to the east side of the channel at the west end of Ship Island; and enlarging and adjusting the dimensions of the turning basin and channel entrance by extending the southern limits of the basin seaward about 1,180 feet along the west pier and 2,300 feet along the west side of the Ship channel, decreasing the width of the turning basin from 1,320 feet, as presently authorized, to 1,120 feet, and deepening the basin and adjusted channel approach to 36 feet. Improvements of the Gulfport Harbor navigation project was initially authorized by the Fiscal Year 1985 Supplemental Appropriations Act (Pub. L. 99–88) in accordance with the 1976 Feasibility Report. As a result of this authorization, studies were initiated relative to the island construction within the Sound and the impacts of thin-layer disposal of new work material. This initial authorization was subsequently modified by the Water Resources Development Act (WRDA) of 1986. A revised Draft Environmental Impact Statement (DEIS), circulated in 1988, considered widening and deepening the existing Gulfport Harbor navigation channel to the authorized dimensions. In addition, five alignments for the channel segment through Ship Island Pass were also considered. Material from the construction and maintenance of the project were to be disposed of in the ocean sites. The WRDA of 1988 further modified the authorized project to include disposing of construction material via thin-layer disposal in Mississippi Sound under a demonstration program. The maintenance material would be disposed of in Mississippi Sound under a plan developed by the Secretary and approved by the Administrator of the Environmental Project Agency. The Corps published an Environmental Impact Statement (EIS) in June 1989 evaluating deepening and widening Gulfport Harbor with subsequent placement via thin-layer and ocean disposal. The proposed Draft Supplemental Environmental Impact Statement (DSEIS) uses the 1989 EIS as a reference during its evaluation of constructing Gulfport Harbor to authorized project dimensions. The DSEIS will evaluate any new conditions that were not previously addressed in the 1989 EIS.

2. Alternative scenarios to be considered include the ''No action'' alternative and widening to the federally authorized dimension of 300 feet in the Mississippi Sound channel and 400 feet in the Bar channel. In addition, an array of disposal options are also being evaluated for the new work as well as for the maintenance material including island creation, littoral zone disposal, disposal in the existing Ocean Dredged Material Disposal Site (ODMDS), and disposal in a new ODMDS. Currently, the U.S. Environmental Protection Agency (EPA) is preparing an EIS for the ''Designation of a New Gulfport Harbor Offshore ODMDS.''

3. *Scoping:* a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. Public meetings will be held to help identify significant issues and to receive public input and comment.

b. The DSEIS will analyze the potential social, economic, and environmental impacts to the local area resulting form construction of authorized improvements. Specifically, the following major issues will be analyzed in depth in the DSEIS: Hydrologic and hydraulic regimes, threatened and endangered species, essential fish habitat and other marine habitat, air quality, cultural resources, wastewater treatment capacities and discharges, drainage discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups) (Executive Order 12898), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DSEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DSEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior—Fish and Wildlife Service, National Oceanic and Atmospheric Administration Fisheries, U.S. Department of Commerce—National Marine Fisheries Service, Mississippi Department of Environmental Quality, Mississippi Department of Marine Resources, Mississippi State Port Authority at Gulfport, City of Gulfport, and State Historic Preservation Officer.

4. It is anticipated that the first scoping meeting will be held in the April 2006 time frame in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Corps by

issuance of a public notice and/or notices in the local media.

5. It is anticipated that the DSEIS will be made available for public review in May 2006.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 06–3146 Filed 3–30–06; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Proposed BNSF Cajon Subdivision Third Main Track Project Keenbrook to Summit, San Bernardino County, CA

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

ACTION: Notice of Intent.

SUMMARY: The Los Angeles District intends to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to analyze the environmental effects of, and support the permit decision related to, the proposed construction of a third main track through a 15.9 mile section of the Cajon Subdivision, between Keenbrook (the southerly entrance to Cajon Pass) and Summit. The third track would be constructed on either the east or the west side of the existing tracks, depending on constraints at any given location, and would parallel the western/northern track alignment (Main Track 1), between Cajon and Summit. The purpose of the EIS/EIR is to evaluate alternative approaches to increase sustainable daily capacity of train movement along the portion of the mainline through Cajon Pass to meet demand for freight movement for the present and the future. The benefits of the additional third main track include increasing operational flexibility, increasing operational efficiency, reducing severe congestion during peak travel periods, and allowing for sufficiently frequent movements of trains and goods through the Cajon Pass. Alternatives include the addition of a third main track adjacent to the existing BNSF Main 1 through Cajon Pass with the installation of retaining walls and improvements to culverts and wildlife linkages; construction of a third main track within the existing BNSF right-of-way without environmentally sensitive design features; and the No Action/No Federal Action Alternative. The EIS/EIR will analyze the potential direct, indirect and cumulative impacts of the environmental range of alternatives, including the proposed project.

DATES: Submit comments on or before May 1, 2006.

ADDRESSES: Ms. Susan A. Meyer, Senior Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Susan A. Meyer, (213) 452-3412; or e-mail: *susan.a.meyer@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers intends to prepare a joint EIS/EIR to assess the environmental effects associated with the proposed BNSF Cajon Subdivision Third Main Track project Keenbrook to Summit, San Bernardino County, CA. Pursuant to the California Environmental Quality Act (CEQA), the County of San Bernardino is the state lead agency for the EIR pursuant to the California Environmental Quality Act (CEQA).

1. *Project Description.* The applicant, BNSF, now maintains two tracks that travel northerly from Keenbrook through Cajon Pass towards Barstow (Cajon Subdivision). The proposed third main track would be installed from Keenbrook to Summit, a distance of approximately 15.9 miles. Presently, there are three main tracks at Keenbrook and south the BNSF rail yards in San Bernardino. There are three main tracks at Summit and north for approximately 14,671 feet, or 2.77 miles. The applicant, BNSF, proposes to install the new track from Keenbrook to Summit on a 15-foot center (15 feet from the center line of the existing track to the center line of the new track), except for alignments on bridges. At bridges, the centerline would be set 25 feet from the centerline of the adjacent track. Most of the new track would be installed on either side of the existing tracks, depending on the existing right-of-way (ROW) and topographic constraints. Crossover points would be installed at Keenbrook, Cajon, Alray, and Silverwood/Summit. Most of the realignment would occur within the existing BNSF right-of-way on previously disturbed areas. The proposed project has been designed to minimize the footprint and minimize or avoid potential impacts to floodplains and wetlands, by using retaining wall structures along portions of the rail embankment.

Most of the new track alignment would follow existing cleared areas and maintenance roads. A new access road would be built adjacent to the new track for maintenance activities and to protect the track against rock fall and erosion. Existing maintenance roads would be maintained in areas where construction does not impact the current road, reestablished adjacent to the new track in impacted areas where possible, or eliminated where topography limits the footprint.

2. *Corps Action.* The U.S. Army Corps of Engineers has received an application from BNSF for a permit under Section 404 of the Clean Water Act. The proposed project includes activities (to widen existing culverts and some bridges), which are expected to result in the discharge of fill material into waters of the U.S. There are approximately 67 crossings subject to Section 404 jurisdiction included in the proposed project area. A number of these crossings are along Cajon Creek, which is a tributary to Lytle Creek, and which is a tributary to the Santa Ana River.

3. *Alternatives.* Three alternatives including the ''No Action/No Federal Action'' are currently being considered. The alternatives initially being considered for the proposed project include:

a. *Alternative 1 (Environmental Optimal).* Alternative 1 would be constructed from Summit (Milepost 55.82) to Keenbrook (Milepost 69.4), a distance of approximately 15.9 miles. BNSF is proposing to install the new track on a 15-foot center. The new track would be installed on either side of the existing Main Track 1 (west or east), depending upon the availability of the existing ROW and topographic constraints, including the 2.2% grade. Most of the realignment would occur within the existing BNSF ROW on previously disturbed areas. Retaining wall structures would be places in environmentally sensitive areas to reduce the footprint of disturbance to biological resources, including jurisdictional waters of the U.S. In addition, design features would be installed to enhance existing drainage structures for increased wildlife movement through existing linkages.

b. *Alternative 2 (Engineering Optimal).* The Engineering Optimal alternative would be similar in configuration to Alternative 1. However, optimal rail engineering and design methods would be utilized that do not include the more extensive, complex, and environmentally sensitive design features that are proposed with Alternative 1. Construction of the Engineering Optimal alternative would be less expensive and less difficult to implement than the Proposed Project, but would increase impacts to wetlands, floodplains, and other sensitive environmental resources. Alternative 2

would not include improvements to drainage structures or wildlife linkages.

c. *Alternative 3 (No Action/No Federal Action).* With the No Action/No Federal Action alternative a new third main track through Cajon Pass would not be constructed and present railroad operations in the region would continue. The No Federal Action (*i.e.*, no 404 permits issued) would require construction of a third main track that would avoid the discharge of fill material in approximately 67 jurisdictional waterways/drainages. However, the placement and design of the third main track is necessarily limited by the narrow width of the existing ROW. As well, the area available for new track is constrained by terrain, changes in elevation, and jurisdictional waterways, including floodplains and wetlands. Lands immediately outside the BNSF ROW are owned by the U.S. Government, under the management of the U.S. Forest Service. Because of these limiting conditions, neither the existing Main Track 1 nor the proposed third main track can avoid impacting the approximate 67 jurisdictional waterways/drainages throughout the length of the project area. Therefore, if no Federal action is taken (*i.e.*, no Section 404 permit is issued), then the third main track could not be built in the Cajon Pass.

4. *Scoping.* a. Potential impacts associated with the proposed action will be fully evaluated. Resource categories that will be analyzed are: Biology, air quality, hydrology, water quality, noise, vibration, cultural resources, paleontological resources, geology, land use, recreational resources, public services, hazards and hazardous materials, public health and safety, and socioeconomics (environmental justice).

b. The U.S. Army Corps of Engineers does not intend to hold a public scoping meeting for the EIS/EIR, however, scoping will be conducted prior to preparing an EIS/EIR to aid in the determination of significant environmental issues associated with the proposed project. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that could be addressed in the analysis, and potential mitigation measures associated with the proposed project.

c. Individual and agencies may offer information or data relevant to the environmental or socioeconomic impacts by submitting comments, suggestions, and requests to be placed on the mailing list for announcements to (see **ADDRESSES**) or the following e-mail address:

susan.a.meyer@usace.army.mil.

5. Availability of the Draft EIS/EIR: The Draft EIS/EIR is scheduled to be published and circulated in July 2006. Pursuant to CEQA, a public hearing on the EIS/EIR will be held by the County of San Bernardino following its publication.

Dated: March 23, 2006.

David J. Castanon,

Chief, Regulatory Branch.

[FR Doc. 06–3143 Filed 3–30–06; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 27, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services Office of Management.

Office of Innovation and Improvement

Type of Review: New.

Title: Charter Schools Program Data Collection Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 76.
Burden Hours: 76.

Abstract: This project will create a data-reporting template that will meet needs, and gather data related to program effectiveness and efficiency based on recommendations.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3009. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–4667 Filed 3–30–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of closed teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed teleconference meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 14, 2006.

Time: 11 a.m. to 11:45 a.m. (closed).

Location: National Assessment Governing Board, 800 North Capitol Street, NW., Suite #825, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operation Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite #825, Washington, DC 20002–4233; telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended. The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons. On April 14, 2006 the Executive Committee will hold a closed teleconference meeting from 11 a.m.–11:45 a.m. to discuss independent government cost estimates developed for modifications to current National Assessment of Educational Progress (NAEP) contracts. These modifications, proposed by the National Center for Education Statistics, have direct implications for current NAEP contracts and future NAEP operations.

At the March 2–4, 2006 Board meeting, the National Assessment Governing Board delegated authority to the Executive Committee to take action on the proposed contract modifications, which requires consideration of independent government cost estimates. This delegation of authority was necessary due to the urgent requirement to make contract modification decisions to ensure that the assessment operations are conducted in a timely manner. These decisions need to be made prior to the next Board meeting scheduled to take place in May 2006. The discussion of independent government cost estimates prior to the execution of contract modifications is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP assessment.

This teleconference meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to the affected contractors. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed teleconference, and other related matters which are informative to the public and consistent with the policy of the section 5 U.S.C. 552b(c), will be available to the public within 14 days after meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: March 27, 2006.

Charles Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 06–3102 Filed 3–30–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Electricity Delivery and Energy Reliability

Public Scoping Meeting on Study of Energy Rights-of-Way on Tribal Lands

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of Public Scoping Meeting and Request for Public Comment.

SUMMARY: This notice advises the public that the Department of Energy (''DOE'') and Department of the Interior (''DOI'') (collectively referred to as the ''Departments'') intend to jointly hold a three-day public scoping meeting in connection with the Department's ongoing study of energy rights-of-way on tribal land pursuant to section 1813 of the Energy Policy Act of 2005. Through these meetings, the Departments invite the public to provide additional oral or written comments about how to proceed with the implementation of section 1813.

DATES: A three-day meeting will be held April 18, 19 and 20, 2006, at the Hyatt Regency Denver, 650 15th Street, Denver Colorado, 80202; Tel. (303) 486–4402. We have reserved a block of rooms at the hotel for the meeting on a first-come first-served basis. Please inform the hotel that you are attending the ''Energy Policy Act—Section 1813 Meeting.'' If you are representing a 638 Tribe, you can request the government rate, which we have obtained for some of the rooms in the reserved block. All written comments should be submitted to the contacts below before May 1, 2006.

ADDRESSES: Please send written comments by regular mail to Attention: Section 1813 ROW Study, Office of Indian Energy and Economic Development, 1849 C St., NW., Mail Stop 2749–MIB, Washington, DC, 20240 or by e-mail to *IEED@bia.edu.*

FOR FURTHER INFORMATION CONTACT: Mr. Darryl Francois, Office of Indian Energy and Economic Development, 1849 C St., NW., Mail Stop 2749–MIB, Washington, DC, 20240. He can also be reached by telephone at (202) 219–0740 or by electronic mail at *darryl.francois@mms.gov.* Please contact Mr. David Meyer via mail at, Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Ave., SW., Washington, DC 20585, via phone at (202) 586–3118, or via electronic mail at *david.meyer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 1813 of Energy Policy Act of 2005 requires the Secretaries of the Departments of the Interior and Energy to jointly conduct a study of energy rights-of-way on tribal land. Specifically, section 1813 requires the Departments submit to Congress a report on the findings of the study, including:

(1) An analysis of historic rates of compensation paid for energy rights-of-way on tribal land;

(2) recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals for energy rights-of-way on tribal land;

(3) an assessment of the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, or renewal of energy rights-of-way on tribal land; and

(4) an analysis of relevant national energy transportation policies relating to grants, expansions, and renewals of energy rights-of-way on tribal land.

At the April meetings, the Departments seek the public's input on the types of information related to the historic rates of compensation paid for energy rights-of-way on tribal land that are important for the Departments to consider in the study. While the Departments are making good progress in this regard, we continue to seek factual information from the public to support specific case studies that members of the public regard as relevant to one or more elements of the study.

The overall purpose of the April meeting is to advance the dialogue that took place at the scoping meetings in Denver, March 7–8, 2006, and provide an additional opportunity for the public to supply oral and/or written comments about each of the four elements of the study. The April meetings will also provide an opportunity for the Departments to present preliminary progress made with respect to each of the study elements.

Issued in Washington, DC, on March 27, 2006.

Kevin M. Kolevar,

Director, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy.

[FR Doc. E6–4711 Filed 3–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–94–000, et al.]

Crescent Ridge LLC et al.; Electric Rate and Corporate Filings

March 24, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Crescent Ridge LLC, Eurus Wind Partner 2003 LLC, Eurus Wind Member 2003 Inc., Crescent Ridge Holdings LLC

[Docket No. EC06–94–000]

Take notice that on March 16, 2006, Crescent Ridge LLC (Crescent Ridge), Eurus Wind Partner 2003 LLC, a Delaware limited liability company (f/k/a TPC Crescent Ridge LLC) (Eurus Partner), Eurus Wind Member 2003 Inc., a Delaware corporation and Crescent Ridge Holdings LLC, a Delaware limited liability company (collectively, Applicants) filed with the Commission an application seeking authorization pursuant to section 203 of the Federal Power Act in connection with the sale of Crescent Ridge to Crescent Ridge Holdings.

Comment Date: 5 p.m. eastern time on April 6, 2006.

2. FR Ingenco Acquisition, LLC; Industrial Power Generation Corporation

[Docket No. EC06–95–000]

Take notice that on March 17, 2006, FR Ingenco Acquisition, LLC and Industrial Power Generation Corporation (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of the transfer of jurisdictional facilities resulting from the merger transaction under which Ingenco will merge with and into FR Acquisition with FR Acquisition as the surviving entity. The application contains a request for privileged treatment of the merger agreement governing the transaction and other confidential agreements that will be transferred as part of the transaction.

Comment Date: 5 p.m. eastern time on April 7, 2006.

3. CalPeak Power—Border LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—Midway LLC, CalPeak Power, LLC, UT California Power LLC and CP Power, LLC

[Docket No. EC06–96–000]

Take notice that on March 16, 2006, CalPeak Power—Border LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise, LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC (together CalPeak Entities), CalPeak Power—Midway LLC (Midway), UT California Power LLC (UT California), CalPeak Power, LLC and CP Power, LLC (CP) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization for the disposition of jurisdictional facilities in connection with: (i) The sale by the CalPeak Entities to CP of all of the issued and outstanding membership interests in the CalPeak Entities, which own electric generation facilities located in California; and (ii) an internal corporate restructuring of Midway. Applicants have requested privileged treatment of portions of the Application.

Comment Date: 5 p.m. eastern time on April 6, 2006.

4. Rumford Falls Power Company, Rumford Falls Hydro LLC, Rumford Paper Company

[Docket No. EC06–97–000]

Take notice that on March 17, 2006, Rumford Falls Power Company, Rumford Paper Company and Rumford Falls Hydro LLC (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act requesting authorization for the sale of the Rumford Falls Hydroelectric Project from RFPC to Rumford Falls Hydro LLC, including the transfer of an undivided joint ownership interest in certain inside-the-fence electric delivery facilities from Rumford Paper Company to Rumford Falls Hydro LLC. In addition, Rumford Falls Hydro LLC requested authorization for the future transfer of an undivided ownership interest in certain inside-the-fence electric delivery facilities that will be used as temporary interconnection facilities to Rumford Paper Company once a permanent interconnection facility becomes operational.

Comment Date: 5 p.m. eastern time on April 7, 2006.

5. Astoria Energy, LLC; EIF Astoria III, LLC; Sigma AE Investor LLC; Leonard Riggio

[Docket Nos. EC06–98–000, ER01–3103–011]

Take notice that on March 14, 2006, Astoria Energy, LLC, EIF and Astoria III, LLC, (collectively, Applicants); Sigma AE Investor LLC, and Leonard Riggio (collectively, Sellers) pursuant to section 203 of the Federal Power Act, request authorization for the sale and transfer of substantially all of Sellers' indirect interest in Astoria to EIF Astoria.

Comment Date: 5 p.m. eastern time on April 6, 2006.

6. Tyr Energy, LLC; Green Country Energy, LLC; Lincoln Generating Facility, LLC and Tor Power, LLC

[Docket No. EC06–99–000]

Take notice that on March 16, 2006, Tyr Energy, LLC (Tyr), Green Country Energy, LLC (Green Country), Lincoln Generating Facility, LLC (Lincoln) and Tor Power, LLC (Tor), (collectively Applicants), filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization to engage in an internal corporate reorganization. Applicants state that the jurisdictional facilities involved include the generation facilities of Green Country and Lincoln, Applicants'

market-based rate schedules, the wholesale power sales agreements there under and those facilities necessary to interconnect with the transmission grid.

Comment Date: 5 p.m. eastern time on April 6, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4694 Filed 3–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 28, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER04–805–004.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc submits revision to its market-based rate tariff.

Filed Date: 3/17/2006.

Accession Number: 20060324–0037.

Comment Date: 5 p.m. eastern time on Friday, April 7, 2006.

Docket Numbers: ER05–1230–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to Sheet 208 to FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: 3/15/2006.

Accession Number: 20060324–0033.

Comment Date: 5 p.m. eastern time on Wednesday, April 5, 2006.

Docket Numbers: ER06–321–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits the signature page for the City Water Light and Power, IL signed by the Mayor of Springfield, IL in reference to December 14, 2005 filing.

Filed Date: 3/15/2006.

Accession Number: 20060324–0034.

Comment Date: 5 p.m. eastern time on Wednesday, April 3, 2006.

Docket Numbers: ER06–360–002; ER06–361–002; ER06–362–002; ER06–363–002; ER06–366–002; ER06–372–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc & Midwest ISO Transmission Owners submit proposed revisions to Schedule 23 of Midwest ISO's OAT and Energy Market Tariff.

Filed Date: 3/20/2006.

Accession Number: 20060324–0038.

Comment Date: 5 p.m. eastern time on Monday, April 10, 2006.

Docket Numbers: ER06–503–001.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits a revision to Annex A, which includes the pro forma Large Generator Interconnection Procedures and Large Generator Interconnection Agreement.

Filed Date: 3/17/2006.

Accession Number: 20060324–0035.

Comment Date: 5 p.m. eastern time on Friday, April 7, 2006.

Docket Numbers: ER06–523–001.

Applicants: Ohio Valley Electric Corporation.

Description: Ohio Valley Electric Corp submits an amendment to the First Supplemental Agreement to the Facility Agreement with Cinergy Services, Inc.

Filed Date: 3/17/2006.

Accession Number: 20060324–0036.

Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–690–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Substitute Third Revised Sheet No. 207 to FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: 3/16/2006.

Accession Number: 20060324–0032.

Comment Date: 5 p.m. eastern time on Thursday, April 6, 2006.

Docket Numbers: ER06–763–000.

Applicants: Motiva Enterprises LLC—Port Arthur Refinery.

Description: Motiva Enterprises LLC submits its proposed market-based rate tariff for its qualifying cogeneration facility.

Filed Date: 3/16/2006.

Accession Number: 20060324–0023.

Comment Date: 5 p.m. eastern time on Thursday, April 6, 2006.

Docket Numbers: ER06–768–000.

Applicants: Akula Energy, LLC.

Description: Akula Energy LLC submits a petition for acceptance of initial rate schedule, waivers and blanket authority.

Filed Date: 3/20/2006.

Accession Number: 20060324–0028.

Comment Date: 5 p.m. eastern time on Monday, April 10, 2006.

Docket Numbers: ER06–770–000; ER03–478–000.

Applicants: PPM Energy, Inc.

Description: PPM Energy, Inc submits proposed amendments to its market-based rate schedule to remove the prohibition against transactions with PacifiCorp as well as the codes of conduct.

Filed Date: 3/20/2006.

Accession Number: 20060324–0067.

Comment Date: 5 p.m. eastern time on Monday, April 10, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding,

interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4706 Filed 3–30–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–100–000, et al.]

Dominion Nuclear Marketing III, L.L.C., et al.; Electric Rate and Corporate Filings

March 27, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Dominion Nuclear Marketing III, L.L.C.; Dominion Nuclear Connecticut, Inc. and Dominion Energy Marketing, Inc.

[Docket Nos. EC06–100–000, ER06–778–000]

Take notice that on March 21, 2006, Dominion Nuclear Marketing III, L.L.C. (''DNM III''), Dominion Nuclear Connecticut, Inc. (''DNC'') and Dominion Energy Marketing, Inc. (''DEMI'') submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities as a result of an internal corporate reorganization where DNC interest will be transferred to DEMI and DNM III's market-based rate schedule Original Volume No. 1 shall be cancelled, effective upon the date of reorganization.

Comment Date: 5 p.m. eastern time on April 11, 2006.

2. Granite Ridge I SPE LLC; Granite Ridge Energy, LLC; Merrill Lynch Credit Products, LLC; Electron Holdings, LLC; Cargill Financial Services International, Inc.; Stonehill Institutional Partners, L.P.

[Docket No. EC06–101–000]

Take notice that on March 23, 2006, Granite Ridge I SPE LLC, Granite Ridge Energy, LLC, Merrill Lynch Credit Products, LLC, Electron Holdings, LLC, Cargill Financial Services International, Inc. and Stonehill Institutional Partners, L.P. filed an application pursuant to section 203 of the Federal Power Act seeking authorization to transfer equity and voting interests in Granite Ridge I to and/or from MLCP, Electron, Cargill Financial and Stonehill.

Comment Date: 5 p.m. eastern time on April 13, 2006.

3. PPM Energy, Inc.; PPM Wind Energy LLC; Aeolus Wind Power I LLC; Moraine Wind LLC; Klondike Wind Power LLC; Mountain View Power Partners III, LLC; Flying Cloud Power Partners, LLC

[Docket No. EC06–102–000]

Take notice that on March 23, 2006, PPM Energy, Inc., PPM Wind Energy LLC, Aeolus Wind Power I LLC, Moraine Wind LLC, Klondike Wind Power LLC, Mountain View Power Partners III, LLC and Flying Cloud Power Partners, LLC, filed a joint application pursuant to section 203 of the Federal Power Act for authorization for an intra-corporate reorganization and for the sale to FC Energy Finance I, Inc. of Class B membership interests in Aeolus Wind Power.

Comment Date: 5 p.m. eastern time on April 13, 2006.

4. ISO New England Inc.

[Docket No. ER06–647–001]

Take notice that on March 24, 2006, ISO New England Inc. and the New England Power Pool (NEPOOL) Participants Committee hereby joint submit a response to the deficiency letter issued on March 23, 2006 in the above-referenced proceeding to the February 16, 2006 joint filing.

Comment Date: 5 p.m. eastern time on April 3, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4712 Filed 3–30–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6673–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section

102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050342, ERP No. D–NOA–E91016–00, Consolidated Atlantic Highly Migratory Species Fishery Management Plan for Atlantic Tunas, Swordfish, and Shark and the Atlantic Billfish Fishery Management Plan, Implementation, Atlantic Coast, Caribbean and Gulf of Mexico.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20050523, ERP No. D–AFS–D65033–PA, West Branch of Tionesta Project, Road Construction and Vegetation Management, State Game Lands No 29 and Chapman Dam State Park, Sheffield, Warren County, PA.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20060024, ERP No. DS–AFS–F65039–WI, McCaslin Project, Vegetation Management Activities that are Consistent with Direction in the Nicolet Forest Plan, New Information to Address Inadequate Disclosure of the Cumulative Effect Analysis for Six Animal and Eight Plant Species, Lakewood/Lasna District, Chequamegaon-Nicolet National Forest, Oconto and Forest Counties, WI.

Summary: EPA expressed environmental concerns because the cumulative impact analysis does not include all reasonably foreseeable actions, and requested that the analysis be expanded to include all reasonable cumulative impacts, including non-USFS actions. Rating EC2.

Final EISs

EIS No. 20050537, ERP No. F–AFS–K61162–CA, Ansel Adams and John Muir Wildernesses, Trail and Commercial Pack Stock Management, Implementation, Inyo, Mono, Madera and Fresno Counties, CA.

Summary: EPA continues to have concerns about impacts relating to streams, meadows and trails and recommended destination quotas and maximum stock nights be aligned with the recovery needs of the resource. EPA also requested that the ROD describe public involvement and environmental analysis requirements for adaptive management decisions and clearly commit to the site-specific analysis of pack station locations and their impacts.

EIS No. 20050550, ERP No. F–AFS–K65287–CA, North Fork Eel Grazing Allotment Management Project, Proposing to Authorize Cattle Grazing on Four Allotment, Six Rivers National Forest, Mad River Ranger District, North Fork Eel river and Upper Mad River, Trinity County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060019, ERP No. F–FHW–C50014–NY, Willis Avenue Bridge Reconstruction, Proposing Reconstruction of 100-year Old Willis Avenue Bridge over the Harem River between Manhattan and the Bronx, New York and Bronx Counties, NY.

Summary: EPA does not object to the proposed project.

EIS No. 20060044, ERP No. F–SFW–H65024–IA, Driftless Area National Wildlife Refuge Comprehensive Conservation Plan, to Recover and Conserve the Northern Monkshood and Iowa Pleistocene Snail, IA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060059, ERP No. F–USA–D11038–PA, Pennsylvania Army National Guard's 56th Brigade Transformation into a Stryker Brigade Combat Team (SBCT), Proposal to Comply with this Directive, near Annville, PA.

Summary: EPA's previous comments have been adequately addressed; therefore, EPA does not object to the proposed action.

Dated: March 28, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–4726 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6673–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed March 20, 2006 through March 24, 2006

Pursuant to 40 CFR 1506.9.

EIS No. 20060098, Final EIS, FHW, OR, Spencer Creek Bridge U.S. Highway 101 Replacement Project, To Maintain the Connectivity and Highway Functions of U.S. 101 between Otter rock and Watt Creek, Funding, Lincoln County, OR, Wait Period Ends: May 1, 2006, Contact: Michelle Eraut 503–587–4716.

EIS No. 20060099, Final EIS, AFS, CO, Vail Valley Forest Health Project, Landscape-Scale Vegetation Management and Fuels Reduction, White River National Forest, Holy Cross Ranger District, Eagle County, CO, Wait Period Ends: May 1, 2006, Contact: Peech Keller 970–262–3495.

EIS No. 20060100, Final EIS, FRC, WA, Lewis River Hydroelectric Projects, Relicensing the Swift No. 1 (FERC No. 2111–018), Swift No. 2 (FERC No. 2213–011), Yale (FERC No. 2071–013), Merwin (FERC No. 935–053) Project, Application for Relicense, North Fork Lewis River, Cowlitz, Clark and Shamania Counties, WA, Wait Period Ends: May 1, 2006, Contact: Todd Sedmark 1–866–208–3372.

EIS No. 20060101, Revised Draft EIS, UAF, FL, Eglin Air Force Base and Hurlburt Field, New Revision to Preferred Alternatives, Military Family Housing Demolition, Construction, Renovation, and Leasing (DCR & L) Program, Okaloosa County, FL, Comment Period Ends: May 15, 2006, Contact: Shari Kilbourne 937–656–2926.

EIS No. 20060102, Final EIS, NOA, WV, Canaan Valley Institute Office Complex, Proposes to Construct: Offices, Classrooms, Laboratories, 250-Seat Auditorium, Parking Facilities, Outdoor Classrooms and Interpretive Areas, U.S. Army COE Section 404 Permit, Southeast of the Towns of Davis and Thomas, Tucker County, WV, Wait Period Ends: May 1, 2006, Contact: Jim Rawson 800–922–3601.

EIS No. 20060103, Final EIS, BLM, ID, Cotterel Wind Power Project and Draft Resource Management Plan Amendment, To Build a 190–240 megawatt, Wind-Powered Electrical Generation Facility, Right-of-Way Application, City of Burley, Towns of Albion and Malta, Cassia County, ID, Wait Period Ends: May 1, 2006, Contact: Scott D. Barker 208–677–6678.

EIS No. 20060104, Final EIS, BLM, 00, Programmatic—Proposed Revision to Grazing Regulations for the Public Lands, 42 CFR part 4100, in the Western Portion of the United States, Wait Period Ends: May 1, 2006, Contact: E. Lynn Burkett 202–785–6594.

EIS No. 20060105, Draft EIS, COE, WV, Spruce No. 1 Mine, Construction and Operation, Mining for 2.73 Million Ton of Bituminous Coal, NPDES

Permit and U.S. Army COE Section 404 Permit, Logan County, WV, Comment Period Ends: May 15, 2006, Contact: Teresa Spagna 304–399–5710.

EIS No. 20060106, Draft EIS, AFS, ID, Clear Prong Project, Timber Harvest, Temporary Road Construction, Road Maintenance, Road Decommissioning, Thinning of Sub-Merchantable Tree, and Prescribed Fire, Boise National Forest, Cascade Ranger District, Valley County, ID, Comment Period Ends: May 15, 2006, Contact: Richard A. Smith 208–373–4100.

EIS No. 20060107, Final EIS, AFS, VT, Green Mountain National Forest, Propose Revised Land and Resource Management Plan, Implementation, Forest Plan Revision, Addison, Bennington, Rutland, Washington, Windham and Windsor Counties, VT, Wait Period Ends: May 1, 2006, Contact: Jay Strand 802–767–4261.

Amended Notices

EIS No. 20060004, Final EIS, FHW, MD, Intercounty Connector (ICC) from I–270 to US–1, Funding and US Army COE Section 404 Permit, Montgomery and Prince George's Counties, MD, Wait Period Ends: April 11, 2006, Contact: Dan Johnson 410–779–7154.

Revision of FR Notice Published on January 16, 2006: Comment Period Extended from March 23, 2006 to April 11, 2006.

EIS No. 20060045, Draft EIS, AFS, ID, Payette National Forest Travel Management Plan, Designate a System of Road, Trails and Areas Open to Motorized and Non-Motorized Use, Implementation, Adam, Washington, Idaho, Valley Counties, ID, Comment Period Ends: May 19, 2006, Contact: Ana Egnew 208–634–0600.

Revision to FR Notice Published February 17, 2006: Comment Period Extended from April 3, 2006 to May 19, 2006.

Dated: March 28, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–4727 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0217; FRL–7771–8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to review an analysis of a refuge of non-cotton hosts for Monsanto Bollgard II® cotton. Specifically, the Agency is seeking input from the Scientific Advisory Panel on whether a natural refuge of non cotton hosts is an effective refuge to delay the potential for tobacco budworm resistance to the proteins (Cry1Ac and Cry2Ab2) expressed in Bollgard II® cotton.

DATES: The meeting will be held on June 13–15, 2006, from 8:30 a.m. to approximately 5 p.m, eastern time.

Comments. For the deadlines for the submission of requests to present oral comments and submission of written comments, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of scientific experts to serve as *ad hoc* members of the FIFRA SAP for this meeting should be provided on or before April 12, 2006.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Holiday Inn - National Airport, 2650 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Holiday Inn - National Airport is (703) 684–7200.

Comments. Submit your comments, identified by docket ID number EPA–HQ–OPP–2006–0217, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Hand Delivery. Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0217. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2006–0217. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/*.

Docket. All documents in the docket are listed in the regulation.gov index. Although, listed in the index, some information is not publicly available, i.e., 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 Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the docket facility is (703) 305–5805.

Nominations, requests to present oral comments, and special accomodations. See Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8498; fax number: (202) 564–8382; e-mail addresses: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). 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 DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

When preparing and submitting comments, remember to use these tips:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. 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.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2006–0217 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, June 6, 2006, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution at the meeting to the FIFRA SAP.

2. *Written comments.* Although, written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than noon, eastern time, May 30, 2006, to provide FIFRA SAP the time necessary to consider and review the written comments. It is requested that persons submitting comments directly to the docket also notify the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Persons wishing to submit written comments at the meeting should bring 30 copies. There is no limit on the extent of written comments for consideration by the FIFRA SAP.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as *ad hoc* members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Insect resistance management for Bt crops, specifically, Bt cotton; IRM modelers. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before April 12, 2006. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of *ad hoc* members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In

order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 *ad hoc* scientists.

If a prospective candidate for service on FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–485–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality, and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website or may be obtained by contacting PIRIB at the address or telephone number listed under **ADDRESSES**.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an *ad hoc* basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review an analysis of a natural refuge of non-cotton hosts for Monsanto Bollgard II® cotton. Specifically, the Agency is seeking input from the Scientific Advisory Panel on whether a natural refuge of non-cotton hosts is an effective refuge to delay the potential for tobacco budworm resistance to the proteins (Cry1Ac and Cry2Ab2) expressed in Bollgard II® cotton. Monsanto Company has submitted an application for the extension of the FIFRA section 3 registration of the plant-incorporated protectants (PIP) *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production PV-GHBK11 in event MON 15985 cotton and *Bacillus thuringiensis* Cry1Ac protein and the genetic material necessary for its production PV-GHBK04 in event MON 15985 cotton. This product is intended to provide protection against tobacco budworm, cotton bollworm, pink bollworm, loopers, armyworms, and other lepidopteran pests. The data submitted include the productivity of tobacco budworm on each alternative host, timing and synchrony of production on each alternative host, the spatial and temporal scale of alternative hosts, and modeling efforts to simulate the likelihood of resistance under different regional scenarios.

C. FIFRA SAP Documents and Meeting Minutes

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available by mid May 2006. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov website and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately (90) days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained by contacting the PIRIB at the address or telephone number listed under **ADDRESSES**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated:March 24, 2006.

Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. E6–4731 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8051–4]

National Drinking Water Advisory Council's Working Group on Public Education Requirements of the Lead and Copper Rule Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the fourth public meeting of the Working Group of the National Drinking Water Advisory Council (NDWAC) on the Public Education Requirements of the Lead and Copper Rule (WGPE). The purpose of this meeting is to provide an opportunity for the WGPE members to continue discussions on the public education requirements of the Lead and Copper Rule.

DATES: The fourth meeting of the WGPE will be held in Washington, DC, on April 19, 2006, from 8:30 a.m. to 5 p.m. and April 20, 2006, from 8 a.m. to 3 p.m.

ADDRESSES: The WGPE meeting will take place at RESOLVE, Inc., 1255 23rd St., NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Elizabeth McDermott, Designated Federal Officer, National

Drinking Water Advisory Council Working Group on Public Education, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Drinking Water Protection Division (Mail Code 4606M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Elizabeth McDermott at *mcdermott.elizabeth@epa.gov* or call 202–564–1603 to receive additional details.

SUPPLEMENTARY INFORMATION:

Background: The charge for the Working Group on the Public Education Requirements of the Lead and Copper Rule (WGPE) is to (1) Review the current public education requirements on lead in drinking water to find and define the need for improvements and make recommendations to the full NDWAC accordingly; (2) develop language for communicating the risk of lead in drinking water and a suggested response to the public; and (3) define the delivery means to the public. The NDWAC established a target date of May 2006 to complete these tasks. The WGPE is comprised of 16 members from drinking water industries, stakeholder organizations, State and local officials, public health officials, environmental organizations, and risk communication experts.

Public Comment: An opportunity for public comment will be provided during the WGPE meeting. Oral statements will be limited to five minutes; it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent by mail to Elizabeth McDermott, Designated Federal Officer for the WGPE, at the mail or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Special Accommodations: For information on access or services for individuals with disabilities, please contact Elizabeth McDermott at 202–564–1603 or *mcdermott.elizabeth@epa.gov*. To request accommodation of a disability, please contact Elizabeth McDermott, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 24, 2006.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E6–4681 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8052–5; Docket ID No. EPA–HQ–ORD–2006–0223]

Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects; External Review Draft

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 45-day public comment period for the draft document titled, ''Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects'' (EPA/600/R–06/013A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 45-day public comment period begins March 31, 2006, and ends May 15, 2006. Technical comments should be in writing and must be received by EPA by May 15, 2006.

ADDRESSES: The draft document, ''Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects,'' is available primarily via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*.

A limited number of paper copies are available from Ms. Donna Tucker, Technical Information Manager, NCEA-Cincinnati; telephone: 513–569–7257; facsimile: 513–569–7916; e-mail: *tucker.donna@epa.gov*. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects,'' and its EPA publication number, EPA/600/R–06/013A.

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For technical information, contact Linda K. Teuschler, NCEA-Cincinnati; telephone: 513–569–7573; facsimile: 513–487–2539; or e-mail: *teuschler.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

In EPA's 2003 ''Framework for Cumulative Risk Assessment,'' cumulative risk assessment is defined as the evaluation of risks from exposures to multiple chemicals and other stressors, and having a population focus rather than a source-to-receptor focus. Several reports and environmental justice concerns published over the past 11 years have highlighted the importance of estimating cumulative risks. EPA has published several guidance documents dealing with specific aspects of cumulative risk, such as chemical mixture risk assessment, planning and scoping, stakeholder involvement, and the toxicity from a mixture of pesticides sharing a common mode of action. This draft document is one contribution to EPA's efforts to address issues related to cumulative health risk assessment.

Existing EPA guidance addresses some of the combination aspects of cumulative risk, but none addresses all of the multiples included in this report, such as consideration of the composite impact of multiple health effects. Among the distinctive new approaches are those for grouping chemicals based on exposure characteristics and toxic endpoints, multi-route combination of relative potency factors, integration of categorical regression modeling of multiple effects with additivity approaches, and the emphasis on the iteration and collaboration between exposure assessment and dose-response assessment to ensure compatible and relevant information. Major findings and conclusions in this document are as follows:

- This draft report provides a set of approaches that deal with certain complications in cumulative risk assessment, specifically those caused by multiple chemicals, exposures and effects, including toxicological interactions and environmental

transformations of mixture component chemicals.

- The scope is focused on the evaluation of health risks from exposures to multiple chemicals, including multiple exposure routes and times as well as multiple health endpoints.
- Areas of cumulative health risk assessment emphasized in this report can often be performed with existing information.
- Exposure and toxicity characterizations of mixtures are strongly dependent on mixture composition (chemicals and concentrations) and timing of exposures and health effects.
- Qualitative and semiquantitative approaches provided can simplify the number of potential combinations of chemicals, exposures, and effects to make the cumulative health risk assessment more feasible.

II. How to Submit Technical Comments to *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0223 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov*.
- Fax: 202–566–1753.
- Mail: Office of Environmental Information Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752; facsimile: 202–566–1753.
- Hand Delivery: The Office of Environmental Information (OEI) Docket in the EPA Headquarters Docket Center, Room B102, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0223. 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 in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: March 27, 2006.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–4746 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–RO4–SFUND–2006–0289, FRL–8052–4]

Davis Refining Superfund Site Tallahassee, Leon County, FL Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into a settlement for the partial reimbursement of past response costs concerning the Davis Refining Superfund Site in Tallahassee, Leon County, Florida.

DATES: The Agency will consider public comments on the proposed settlement until May 1, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the proposed settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0289 or Site name Davis Refining, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov.*
- Fax: 404/562–8842.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0289. 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 in *http://www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: March 22, 2006.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 06–3131 Filed 3–30–06; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Notice of Sunshine Act Meetings

SPECIAL EXECUTIVE SESSION: *Tuesday, March 28, 2006, 10 a.m.* This Meeting Was Closed To The Public Pursuant To 11 CFR 2.4(b)(1) and 2.4(b)(2).

PREVIOUSLY SCHEDULED OPEN MEETING ON WEDNESDAY, MARCH 29, 2006: *The Meeting Hour Was Changed To 2 p.m.*

DATE AND TIME: *Friday, April 7, 2006 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This Meeting Will Be Open To The Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Final Rules on Coordinated Communications.
Routine Administrative Matters.

DATE AND TIME: *Monday, April 10, 2006 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This Meeting Will Be Open To The Public.

ITEMS TO BE DISCUSSED:

Advisory Opinion 2006–07: Representative J. D. Hayworth on behalf of J. D. Hayworth for Congress.
Advisory Opinion 2006–08: Matthew Brooks by counsel, Craig Engle.
Advisory Opinion 2006–09: The American Institute for Certified Public Accountants and The American Institute for Certified Public Accounts Political Action Committee by counsel, Russell L. Smith.
Audit Status—Title 26.

OPEN MEETING, CONTINUED:

Final Audit Report on CWA COPE Political Contributions Committee.
Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission

[FR Doc. 06–3153 Filed 3–29–06; 10:38 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that on February 28, 2006, the Department of Health and Human Services (HHS) Debarring Official, on behalf of the Secretary of HHS, issued a final notice of debarment based on the scientific misconduct findings of the U.S. Public Health Service (PHS) in the following case:

Susan M. Aronica, PhD, Indiana University Purdue University Indianapolis: Based on the evidence and findings of an investigation report by Indiana University Purdue University Indianapolis (IUPUI) and additional analysis conducted by the Office of Research Integrity (ORI) in its oversight review, ORI found that Susan M. Aronica, Ph.D., former Postdoctoral Student/Fellow, IUPUI, committed 21 acts of scientific misconduct by knowingly and intentionally falsifying and fabricating data in her notebooks, in 17 figures and figure panels, in two tables published in the *Journal of Biological Chemistry* (*J. Biol. Chem.* 270:21998–22007, 1995) and *Blood* (*Blood* 89:3582–3595, 1997), and in two figures in a manuscript submitted for publication to *Blood* in August 1997.

ORI issued a charge letter enumerating the above findings of scientific misconduct. However, Dr. Aronica requested a hearing to dispute these findings to the Departmental Appeals Board. Based upon the insufficiency of Dr. Aronica's hearing request, ORI filed a Motion to Dismiss.

On February 10, 2006, the Administrative Law Judge (ALJ) ruled in ORI's favor by dismissing Dr. Aronica's request for a hearing. ORI's research misconduct regulation specifically delineates the requisite content for an acceptable hearing request. A sustainable hearing request must admit or deny each finding of research misconduct, and each denial must be detailed and substantive. 42 CFR 93.501(c). Dr. Aronica's hearing request contained only a general denial of the proposed findings. The regulation states that a general denial is not sufficient to establish a genuine dispute. 42 CFR 93.503. The regulation also states that the ALJ must dismiss a hearing request if the respondent does not raise a genuine dispute over facts or law material to the research misconduct findings. 42 CFR 93.504(a)(2). The ALJ concluded that the determination of whether the hearing request raises a genuine dispute is a threshold jurisdictional determination. Thus, the ALJ decided that Dr. Aronica's request did not show a genuine dispute, because it did not specifically deny any allegation. As a result, the ALJ concluded that Dr. Aronica's hearing request could not be granted, but was required to be dismissed pursuant to 42 CFR 93.504(a)(2).

Specifically, ORI found that Dr. Aronica falsified and fabricated data in:

• Figures 1, 2, 3, 4, 5A, 5B, 5C, 6A, and 6B, and Tables III and IV in: Aronica, S.M., Mantel, C., Gonin, R., Marshall, M.S., Sarris, A., Cooper, S.,

Hague, N., Zhang, X., & Broxmeyer, H.E. ''Interferon-inducible Protein 10 and Macrophage Inflammatory Protein-1 α Inhibit Growth Factor Stimulation of Raf-1 Kinase Activity and Protein Synthesis in a Human Growth Factor-dependent Hematopoietic Cell Line.'' *JBC* 270:21998–22007, 1995 (September 15) (''*JBC* paper'').

• Figures 1 (both panels), 3A, 3B, 3D, 3E, 4A, and 8A in: Aronica, S.M., Gingras, A.C., Sonenberg, N., Cooper, S., Hague, N., & Broxmeyer, H.E. ''Macrophage Inflammatory Protein-1 α and Interferon-inducible Protein 10 Inhibit Synergistically Induced Growth Factor Stimulation of MAP Kinase Activity and Suppress Phosphorylation of Eukaryotic Initiation Factor 4E and 4E Binding Protein 1.'' *Blood* 89:3582–3595, 1997 (May 15) (''*Blood* paper'').

• Figures 1B and 2B in: Aronica, S.M., Reid, S.L., & Broxmeyer, H.E. ''Chemokine Inhibition of Stress-Activated Kinase Activity in a Human Hematopoietic Cell Line.'' *Blood,* submitted August 4, 1997 (''*Blood* manuscript'').

The research was supported by or reported in the following U.S. Public Health Service (PHS) grants from the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) and the National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health:

• RO1 HL49202, ''Myeloid Regulation by Growth-Suppressing Cytokines.''

• R01 HL54037, ''Stem Cell Transduction of SLF/FLT–3–Ligand Genes by AAV.''

• R01 HL56416, ''Mechanisms of Synergistic Regulation of Stem/Progenitors.''

• T32 DK07519, ''Regulation of Hematopoietic Cell Production.''

The following administrative actions have been implemented:

(1) Dr. Aronica has been debarred from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' as defined in the debarment regulations at 45 CFR part 76 for a period of five (5) years, beginning on February 10, 2006;

(2) Dr. Aronica is prohibited from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as consultant for a period of five (5) years, beginning on February 10, 2006; and

(3) Within 60 days of February 10, 2006, the authors of the following papers will be requested to submit a letter to the editors of *Journal of Biological Chemistry* and *Blood*, requesting their retraction of:

• Aronica, S.M., Mantel, C., Gonin, R., Marshall, M., Sarris, A., Cooper, S., Hague, N., Zhang, X-f., & Broxmeyer, H.E. ''Interferon-Inducible Protein 10 and Macrophage Inflammatory Protein-1 α inhibit Growth Factor Stimulation of Raf–1 Kinase Activity and Protein Synthesis in a Human Growth Factor-Dependent Hematopoietic Cell Line.'' *J. Biol. Chem.* 270:21998–22007, 1995.

• Aronica, S.M., Gingras, A.-C., Sonenberg, N., Cooper, S., Hague, N., and Broxmeyer, H.E. ''Macrophage Inflammatory Protein–1 α and Interferon-Inducible Protein 10 Inhibit Synergistically Induced Growth Factor Stimulation of MAP Kinase Activity and Suppress Phosphorylation of Eukaryotic Initiation Factor 4E and 4# Binding Protein 1.'' *Blood* 89:3582–3595, 1997.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. (240) 453–8800.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. E6–4688 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Semi-Annual and Final Reporting Requirements for the Older Americans Act Title IV Discretionary Grant Program

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of Information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Performance Progress Reports for Title IV grantees.

DATES: Submit written or electronic comments on the collection of information by May 30, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *greg.case@aoa.hhs.gov.* Submit written comments on the collection of information to Greg Case, Administration on Aging, Washington, DC 20201 or by fax to (202) 357–3469.

FOR FURTHER INFORMATION CONTACT: Greg Case at (202) 357–3442 or *greg.case@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

AoA plans to submit to the Office of Management and Budget for approval *Guidelines for Preparing Performance Reports for Grants Supported by Title IV of the Older Americans Act.* These guidelines provide instructions for semi-annual and final performance reporting pursuant to requirements in Title IV of the Older Americans Act. Through its Title IV Program, the Administration on Aging (AoA) supports projects for the purpose of developing and testing new knowledge and program innovations with the potential for contributing to the well-

being of older Americans. Deliverables required by the AoA of all Title IV grantees are the semi-annual and final reports, as provided for in Department of Health and Human Services regulations, 45 CFR Part 74, Section 74.51. The proposed guidelines may be found on the Administration on Aging Web site at *http://www.aoa.gov/doingbus/grantrep/grantrep.asp.*

AoA estimates the burden of this collection of information as follows: Semi-annual submission with the final report taking the place of the semi-annual report at the end of the final year of the grant. *Respondents:* States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations. *Estimated Number of Responses:* 600. *Total Estimated Burden Hours:* 12,000.

Dated: March 28, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–4696 Filed 3–30–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Member Conflict: Safety and Occupational Health, Program Announcements PA–04–038, PA–04–021, PA–04–030, and PAR–04–105

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Member Conflict: Safety and Occupational Health, Program Announcements PA–04–038, PA–04–021, PA–04–030, and PAR–04–105.

Time and Date: 2 p.m.–5 p.m., April 20, 2006 (Closed).

Place: National Institute for Occupational Safety and Health, CDC, 24 Executive Park Drive NE, MS E–74, Room 1429, Atlanta, GA 30329; Telephone Number 404.498.2582.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Member Conflict: Safety and Occupational Health, Program Announcements PA–04–038, PA–04–021, PA–04–030, and PAR–04–105.

For Further Information Contact: Charles N. Rafferty, PhD, Designated Federal Official, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E–74, Atlanta, GA 30333; Telephone Number 404.498.2582. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 27, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–4708 Filed 3–30–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 71 FR 6777, dated February 9, 2006) is amended to reflect the reorganization of the Division of Birth Defects and Developmental Disabilities, within the National Center on Birth Defects and Developmental Disabilities.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the *Division of Birth Defects and Developmental Disabilities (CUBB),* insert the following:

Office of the Director (CUBB1). (1) Manages, directs, and coordinates the research agenda and activities of the division; (2) provides leadership and guidance on strategic planning, policy, program and project priority planning and setting, program management, and operations; (3) establishes division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) plans, allocates, and monitors resources; (6) provides management, administrative, and support services, and coordinates with appropriate NCBDDD offices on program and administrative matters; (7) provides liaison with other CDC organizations, other governmental agencies, international organizations, and other outside groups; (8) provides support for internal scientific advisory groups; (9) provides scientific leadership and guidance to the division to assure highest scientific quality and professional standards; and (10) provides coordinative support for CDC's efforts to reduce adverse consequences from birth defects, developmental disabilities, and pediatric genetic conditions.

Birth Defects Branch (CUBBB). (1) Designs and conducts epidemiologic and genetic research to identify causes and risk factors of birth defects; (2) conducts evaluates interventions to improve infant and child health by preventing or reducing the adverse consequences of birth defects; (3) designs and conducts surveillance of selected birth defects to identify rates, trends, and patterns of occurrence, and to evaluate the effectiveness of prevention programs; (4) disseminates findings of studies to the scientific and public health communities, and to the general public; (5) provides technical assistance to state and local agencies on surveillance of birth defects, epidemiologic research, prevention program design and evaluation, and prevention effectiveness research; (6) funds and coordinates grant and cooperative agreement programs and other extramural activities to improve the knowledge base for the prevention of birth defects through surveillance, epidemiologic research, and applies research of preventive interventions; (7) coordinates activities with other CDC functional units, HHS, other federal agencies,and appropriate private organizations regarding research and prevention programs for birth defects; (8) works with international organizations in developing strategies for the prevention of birth defects; and (9) disseminates findings of research through direct contact with health authorities, publication and distribution of special reports, publication in scientific and technical journals, conference presentations, and other appropriate means.

Prevention Research Branch (CUBBC). (1) Modifies the impact of prenatal exposures leading to adverse physical and developmental impairments in infants, children, and adults including integrating successful prevention programs into social and medical

environments, and evaluating innovative, effective, and strategic health promotion programs; (2) develops, implements, evaluates, and disseminates education and communication interventions that lead to the prevention of birth defects and developmental disabilities; (3) designs and conducts surveillance of preventable birth defects and developmental disabilities to identify rates, trends, and patterns of occurrence, and to evaluate the effectiveness of prevention programs; (4) disseminates findings of epidemiologic studies to the scientific and public health communities, and to the general public; (5) conducts prevention effectiveness research to evaluate interventions strategies for the prevention of birth defects and developmental disabilities; (6) identifies and monitors major preconception, prenatal and perinatal risks, and protective factors for fetal alcohol spectrum disorders (FASD) and other prenatal alcohol-attributable conditions; (7) provides technical assistance to state and local agencies on surveillance, epidemiologic research, prevention program design and evaluation, and prevention effectiveness research; (8) funds and coordinates grant and cooperative agreement programs and other extramural activities to improve the knowledge base for the prevention of birth defects and developmental disabilities through surveillance, epidemiologic research, and applies research of preventive interventions; (9) coordinates activities with other CDC functional units, HHS, other federal agencies and appropriate private organizations regarding research and prevention programs for birth defects and developmental disabilities; (10) works with international organizations in developing strategies for the prevention of birth defects and developmental disabilities; and (11) disseminates finding of research through direct contact with health authorities, publication and distribution of special reports, publication in scientific and technical journals, conference presentations, and other appropriate means.

Developmental Disabilities Branch (CUBBD). (1) Designs and conducts surveillance of developmental disabilities to identify rates, trends, and patterns of occurrence, and to evaluate the effectiveness of prevention programs; (2) conducts epidemiologic studies of developmental disabilities to identify causes and risk factors for these conditions; (3) disseminates findings of epidemiologic studies to the scientific and public health communities and to the general public; (4) conducts prevention effectiveness research to evaluate interventions strategies for the prevention of developmental disabilities; (5) conducts epidemiologic studies to identify and describe specific conditions and long-term outcomes of developmental disabilities; (6) provides technical assistance to state and local agencies on surveillance of developmental disabilities, epidemiologic research, prevention program design and evaluation, and prevention effectiveness research; (7) funds and coordinates grant and cooperative agreement programs and other extramural activities to improve the knowledge base for the prevention of developmental disabilities through surveillance, epidemiologic research, and applies research of preventive interventions; (8) coordinates activities with other CDC functional units, HHS, other Federal agencies and appropriate private organizations regarding research and prevention programs for developmental disabilities; (9) collaborates with international organizations in developing strategies for the prevention of developmental disabilities; (10) disseminates findings of research through direct contact with health authorities, publication and distribution of special reports, publication in scientific and technical journals, conference presentations, and other appropriate means; and (11) provides training in the epidemiology of developmental disabilities to professionals throughout the United States and abroad.

Dated: March 22, 2006.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 06–3123 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS 250–254 and CMS 10171]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 411.25, 489.2, and 489.20; *Form Number:* CMS 250–254 (OMB#: 0938–0214); *Use:* Medicare Secondary Payer Information (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. Medicare Fiscal Intermediaries, Carriers, and now Part D plans, need information about primary payers in order to perform various tasks to detect and process MSP cases and make recoveries. MSP information is collected at various times and from numerous parties during a beneficiary's membership in the Medicare Program. Collecting MSP information in a timely manner means that claims are processed correctly the first time, decreasing the costs associated with adjusting claims and recovering mistaken payments.; *Frequency:* Reporting—On Occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 134,553,682; *Total Annual Responses:* 134,553,682; *Total Annual Hours:* 1,611,303.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Coordination of Benefits between Part D Plans and Other Prescription Coverage Providers; *Form Number:* CMS 10171 (OMB#: 0938–0978); *Use:* Section 1860D–23 and 1860D–24 of the Social Security Act requires the Secretary to establish requirements for prescription drug plans to ensure effective coordination between Part D plans, State pharmaceutical

assistance programs and other payers. The requirements must relate to the following elements: (1) Enrollment file sharing; (2) claims processing and payment; (3) claims reconciliation reports; (4) application of the protections against high out-of-pocket expenditures by tracking true out-of-pocket (TrOOP) expenditures; and (5) other processes that the Secretary determines. This information will be used by Part D plans, other health insurers or payers, pharmacies and CMS to coordinate prescription drug benefits provided to the Medicare beneficiary.; *Frequency:* Reporting—Monthly; *Affected Public:* Business or other for-profit, Federal, State, local and or tribal government; *Number of Respondents:* 56,320; *Total Annual Responses:* 2,153,767,270; *Total Annual Hours:* 1,017,914.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: March 24, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–4631 Filed 3–30–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–30, CMS–10117,10118,10119,10135,10136 and CMS–R–206

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in the Hospice Conditions for Coverage and Supporting Regulations at 42 CFR 418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.83, 418.96, and 418.100; *Use:* The information collection requirements contained in the Hospice Conditions for Coverage information collection request (ICR) serve to ensure compliance with the hospice conditions of participation. The State survey agencies utilize the furnished information during the certification and re-certification periods to assist in determining compliance with the statute and regulations. In addition, data collected will be used to produce statistical reports to the Congress, to establish reimbursement rates, and to provide increased information on the hospice industry.; *Form Number:* CMS–R–30 (OMB#: 0938–0302); *Frequency:* Reporting—Other—depending on program areas and data requirements; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal government; *Number of Respondents:* 2,874; *Total Annual Responses:* 2,874; *Total Annual Hours:* 9,930,912.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Qualification—Medicare Advantage Application For Coordinated Care, Private Fee-For-Service, Regional Preferred Provider Organization, Service Area Expansion For Coordinated Care and Private Fee-For-Service Plans, Medical Savings Account Plans; *Use:* An entity seeking a contract as an MA organization must be able to provide Medicare's basic benefits plus meet the organizational requirements set out under 42 CFR part 422. An applicant must demonstrate that it can meet the benefit and other requirements within the specific geographic area it is requesting. The application forms are designed to provide the information needed to determine the health plan's compliance. The regulatory requirements are incorporated into the MA applications. The MA application forms will be used to determine if an entity is eligible to enter into a contract to provide services to Medicare beneficiaries; *Form Number:* CMS–10117, 10118, 10119, 10135, 10136 (OMB#: 0938–0935); *Frequency:* Reporting: One time submission; *Affected Public:* Business or other for-profit, Not-for-profit institutions and State, local or tribal government; *Number of Respondents:* 80; *Total Annual Responses:* 110; *Total Annual Hours:* 3,400.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Referenced in HIPAA, Title 1, for the Group Market, Supporting Regulations at 45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, and 146.180, and forms/instructions; *Use:* The requirements of this information collection will ensure that group health plans and issuers in the group market comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA). These requirements include providing individuals with certificates of creditable coverage, notifying individuals about their status with respect to preexisting condition exclusions, and giving individuals the special enrollment rights to which they are entitled. In addition, this collection gives states and the Federal government the flexibility necessary to enforce these HIPAA requirements.; *Form Number:* CMS–R–206 (OMB#: 0938–0702); *Frequency:* Recordkeeping, Third party disclosure and Reporting: On occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions and Federal, State, Local or Tribal Government; *Number of Respondents:* 2,800; *Total Annual Responses:* 37,002,217; *Total Annual Hours:* 446,679.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to

Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on May 30, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 24, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–4633 Filed 3–30–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0226]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 014

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 014'' (Recognition List Number: 014), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of ''Modifications to the List of Recognized Standards, Recognition List Number: 014'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: *standards@cdrh.fda.hhs.gov*. This document may also be accessed on FDA's Web site at *http://www.fda.gov/cdrh/fedregin.html*. See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 014 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20857, 301–827–0021.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled ''Recognition and Use of Consensus Standards.'' The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617), July 12, 1999 (64 FR 37546), November 15, 2000 (65 FR 69022), May 7, 2001 (66 FR 23032), January 14, 2002 (67 FR 1774), October 2, 2002 (67 FR 61893), April 28, 2003 (68 FR 22391), March 8, 2004 (69 FR 10712), June 18, 2004 (69 FR 34176), October 4, 2004 (69 FR 59240), May 27, 2005 (70 FR 30756), and November 8, 2005 (70 FR 67713), FDA modified its initial list of FDA recognized consensus standards. These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains ''hypertext markup language'' (HTML) and ''portable document format'' (PDF) versions of the list of ''FDA Recognized Consensus Standards.'' Both versions are publicly accessible at the agency's Web site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 014

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the agency's searchable database. FDA will use the term ''Recognition List Number: 014'' to identify these current modifications.

In table 1 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1.

Old Item No.	Standard	Change	Replacement Item No.
A. Anesthesia			

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
32	ISO 7767: 1997: Oxygen Monitors for Monitoring Patient Breathing Mixtures—Safety Requirements	Withdrawn	
33	ISO 9918: 1993: Capnometers for Use with Humans—Requirements	Withdrawn	
41	NFPA 99: 2005: Standard for Health Care Facilities Chapter 20—Hyperbaric Facilities	Withdrawn and replaced with newer version	67
B. Dental/Ear, Nose, and Throat			
52	ANSI/ADA Specification No. 27: 1997, Resin-Based Filling Materials	Date	
60	ANSI/ADA Specification No. 96: 2000, Dental-Water-Based Cements—Adoption of ISO 9917: 1991	Date and title	
114	ANSI/ADA Specification No. 48: 2004, Ultraviolet Activator and Disclosing Lights	Date	
C. General Hospital/General Plastic Surgery			
47	ASTM D5712–05 Standard Test Method for Analysis of Aqueous Extractable Protein in Natural Rubber and Its Products Using the Modified Lowry Method	Withdrawn and replaced with newer version	144
77	ASTM F1862–00a Standard Test Method for Resistance of Medical Face Masks to Penetration by Synthetic Blood (Horizontal Projection of Fixed Volume at a Known Velocity)	Contact person	
86	ASTM D3578–05 Standard Specification for Rubber Examination Gloves	Withdrawn and replaced with newer version	145
96	ASTM F2101–01 Standard Test Method for Evaluating the Bacterial Filtration Efficiency (BFE) of Medical Face Mask Materials, Using a Biological Aerosol of Staphylococcus Aureus	Contact person	
112	AAMI/ANSI PB70: 2003 Liquid barrier performance and classification of protective apparel and drapes intended for use in health care facilities	Contact person	
113	ASTM F2100–04 Standard Specification for Performance of Materials Used in Medical Face Masks	Contact person	
120	ASTM F1054–01 Standard Specification for Conical Fittings	Withdrawn	
128	ASTM F1670–03 Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	Contact person	
D. Materials			
14	ASTM F688–05: Standard Specification for Wrought Cobalt–35Nickel–20Chromium–10Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035)	Withdrawn and replaced with newer version	119
38	ASTM F2005–00: Standard Terminology for Nickel-Titanium Shape Memory Alloys	Withdrawn	
78	ASTM F560–05: Standard Specification for Unalloyed Tantalum for Surgical Implant Applications (UNS R05200, UNS R05400)	Withdrawn and replaced with newer version	120
100	ASTM F2005–05: Standard Terminology for Nickel-Titanium Shape Memory Alloys	Withdrawn and replaced with newer version	121
E. OB-GYN/Gastroenterology			

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
19	ISO 8600–1: 2005 Optics and photonics—Medical endoscopes and endotherapy devices—Part 1: General requirements	Withdrawn and replaced with newer version	37
F. Orthopedic/Physical Medicine			
162	ASTM F564–02: Standard Specification and Test Methods for Metallic Bone Staples	Extent of recognition, type of standard, contact person and related Code of Federal Regulations citation and product codes	
164	ASTM F1541–02: Standard Specification and Test Methods for External Skeletal Fixation Devices	Devices affected, processes affected, extent of recognition, type of standard, and contact person	
182	ASTM F1800–04: Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Total Knee Joint Replacements	Processes affected and relevant guidance	
G. Radiology			
1	ISO 9236–1: 2004 Photography—Sensitometry of screen/film systems for medical radiography—Part 1: Determination of sensitometric curve shape, speed and Average Gradient	Withdrawn and replaced with newer version	136
2	ISO 4090: 2001 Photography—Medical radiographic cassettes/screens/films and hard-copy imaging films—Dimensions and specifications	Withdrawn and replaced with newer version	137
5	ISO 5799: 1991 Photography—Direct-exposing medical and dental radiographic film/process systems—Determination of ISO Speed and ISO average gradient	Withdrawn and replaced with newer version	138
37	IEC 60601–2–11–2004 Amendment 1—Medical electrical equipment—Part 2–11: Particular requirements for the safety of gamma beam therapy equipment	Withdrawn and replaced with newer version	133
44	AOMS–2005 Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment	Withdrawn and replaced with newer version	139
46	RTD1–2005 Standard for Real-Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment Revision 1	Withdrawn and replaced with newer version	140
101	ANSI/IESNA RP–27.1–1996 Recommended Practice for Photobiological Safety for Lamps and Lamp Systems—General Requirements	Title	
102	ANSI/IESNA RP–27.2–2000 Recommended Practice for Photobiological Safety for Lamps and Lamp Systems—Measurement Techniques	Title	
103	ANSI/IESNA RP–27.3–1996 Recommended Practice for Photobiological Safety Lamps—Risk Group Classification and Labeling	Title	
128	IEEE N42.13–2004 Calibration and Usage of ''Dose Calibrator'' Ionization Chambers for the Assay of Radionuclides	Withdrawn and replaced with newer version	141
H. Sterility			
53	ANSI/AAMI ST66, Sterilization of health care products—Chemical indicators—Part 2: Indicators for Air Removal Test Sheets and Packs	Relevant guidance	
74	ANSI/AAMI ST60, Sterilization of health care products—Chemical indicators—Part 1: General requirements	Extent of recognition and relevant guidance	

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
92	ASTM F2097–05, Standard Guide for Design and Evaluation of Primary Packaging for Medical Products	Withdrawn and replaced with newer version	167
151	ASTM F2338–05, Standard Test Method for Nondestructive Detection of Leaks in Packages by Vacuum Decay Method	Withdrawn and replaced with newer version	168

III. Listing of New Entries

The listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 014, follows:

TABLE 2.

Item No.	Title of Standard	Reference No. and Date
A. Cardiovascular/Neurology		
58	Cardiovascular implants—Cardiac valve prostheses	ANSI/AAMI/ISO 5840: 2005
B. General Hospital/General Plastic Surgery		
146	Medical electrical equipment—Part 2: Particular requirements for safety of infant radiant warmers	ANSI/AAMI/IEC 60601–2–21 and 60601–2–21 amendment 1: 2000
147	Standard Practice for Assessment of Resistance of Medical Gloves to Permeation by Chemotherapy Drugs	ASTM D6978–05
148	Sterile hypodermic syringes for single use—Part 3: Auto-disable syringes for fixed-dose immunization	ISO 7886–3: 2005
149	Standard Practice for Determination of Expiration Dating for Medical Gloves	ASTM D7160–05
150	Standard Practice for Determination of Real Time Expiration Dating of Mature Medical Gloves Stored Under Typical Warehouse Conditions	ASTM D7161–05
C. Orthopedic/Physical Medicine		
183	Standard Practice for Fretting Corrosion Testing of Modular Implant Interfaces: Hip Femoral Head-bore and Cone Taper Interface	ASTM F1875–98 (2004)
184	Implants for Surgery—Staples with parallel legs for orthopaedic use—General requirements	ISO 8827: 1988
185	Standard Test Method for Measuring Load Induced Subsidence of an Intervertebral Body Fusion Device Under Static Axial Compression	ASTM F2267–04
186	Test Methods for Intervertebral Body Fusion Devices	ASTM F2077–03
187	Standard Specifications and Test Methods for Components Used in the Surgical Fixation of the Spinal Skeletal System	ASTM F2193–02
188	Implants for surgery—Wear of total knee-joint prostheses—Part 1: Loading and displacement parameters for wear-testing machines with load control and corresponding environmental conditions for test	ISO 14243–1: 2002
189	Implants for surgery—wear of total knee-joint prostheses—Part 2: Methods of measurement	ISO 14243–2: 2000
190	Implants for surgery—wear of total knee-joint prostheses—Part 3: Loading and displacement parameters for wear-testing machines with displacement control and corresponding environmental conditions for test	ISO 14243–3: 2004
191	Implants for surgery—Total knee-joint prostheses—Part 1: Determination of endurance properties of knee tibial trays	ISO 14879–1: 2000
192	Standard Test Method for Determination of Total Knee Replacement Constraint	ASTM F1223–05
193	Standard Specification for Total Knee Prosthesis	ASTM F2083–04

TABLE 2.—Continued

Item No.	Title of Standard	Reference No. and Date
D. Radiology		
142	Lasers and laser-related equipment—Test methods for laser beam widths, Divergence angles, and beam propagation ratios—Part 2: General astigmatic beams	ISO 11146–2: 2005
143	Lasers and laser-related equipment—Test methods for determination of the shape of a laser beam wavefront—Part 2: Shack-Hartmann sensors	ISO 15367–2: 2005
E. Sterility		
169	Standard Test Method for Measuring Package and Seal Integrity Using Helium as Tracer Gas	ASTM F2391–05
170	Standard Guide for Biocompatibility Evaluation of Medical Device Packaging Materials	ASTM F2475–05
171	Chemical Indicators—Guidance on the selection, use, and interpretation of results	ANSI/AAMI/ISO 15882: 2003

IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Web site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfstandards/search.cfm*. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

In order to receive ''Guidance on the Recognition and Use of Consensus Standards'' on your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign. Follow the remaining voice prompts to complete your request.

You may also obtain a copy of ''Guidance on the Recognition and Use of Consensus Standards'' by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing ''Modifications to the List of Recognized Standards, Recognition List Number: 014'' will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/cdrh*.

You may access ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable database for ''FDA Recognized Consensus Standards'' through the hyperlink at *http://www.fda.gov/cdrh/stdsprog.html*.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.fda.gov/cdrh/fedregin.html*.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 014. These modifications to the list of recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: March 23, 2006

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–4695 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0128]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Orphan-Drug and Humanitarian Use Device Designation Requests and Related Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Orphan-Drug and Humanitarian Use Device Designation Requests and Related Submissions.'' This is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. This guidance discusses issues related to the electronic submission of orphan-drug and humanitarian use device (HUD) designation requests and related submissions to the Office of Orphan Products Development (OPD). The submission of these documents in electronic format should improve the agency's efficiency in processing, archiving, and reviewing them.

DATES: Submit written or electronic comments on the draft guidance by May 30, 2006. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Electronic Submissions Coordinator, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6A–55, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: James D. Bona, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Orphan-Drug and Humanitarian Use Device Designation Requests and Related Submissions.'' This draft document provides guidance to industry regarding submissions of designation requests and related submissions to OPD in electronic format. It describes the two methods by which submissions can be made electronically to OPD. The first is totally electronic through use of FDA's electronic submission gateway pathway and the second is directly to OPD through the use of physical media (e.g., CD–ROMs). Recommendations are described for the formatting and organization of these submissions. A listing of agency contacts for assistance is also provided.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on providing designation requests and related submissions in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for designation requests and related submissions is already covered by the regulations for orphan-drugs under 21 CFR 316.20 and for HUDs under 21 CFR 814.102. This notice announces the availability of a guidance that provides applicants with an alternative mechanism for submitting designation requests and related submissions to the agency. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/orphan/esub/esub.htm* or at *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4709 Filed 3–30–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Proposed Project: Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB No. 0915–0174)—Extension

The Division of Facilities and Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under section 621 of Title VI and section 1601 of Title XVI of the Public Health Service Act, as well as loans insured under the section 242 Hospital Mortgage Insurance Program of the National Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to

capital through the assumption of the mortgage credit risk by the Federal Government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract. No changes in the form are proposed.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Hospital Facility Data Abstract	80	1	1	80

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received with 60 days of this notice.

Dated: March 27, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–4689 Filed 3–30–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Cancellation of Previously Announced Grant Opportunities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Cancellation.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the cancellation of the following grant opportunities that were initially published on Grants.gov Find, in the HRSA *Preview,* and on the HRSA Web site (*http://www.hrsa.gov/grants/preview/*).

DATES: *Effective Date:* March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Gail Lipton, Director, Division of Grants Policy, Office of Federal Assistance Management, Telephone (301) 443–6509. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Based on funds made available through the final fiscal year (FY) 2006 appropriation and a redirection of priorities, HRSA hereby withdraws the following programs and announcements from FY 2006 competition:

HRSA–06–002	Mental Health/Substance Abuse, Oral Health and Comprehensive Pharmacy Services in Section 330-funded Health Centers. *Applications Due:* January 13, 2006.
HRSA–06–004	New Access Points. *Applications Due:* February 10, 2006.
HRSA–06–014	Residency Training in Primary Care. *Applications Due:* February 17, 2006.
HRSA–06–015	Academic Administrative Units in Primary Care. *Applications Due:* February 17, 2006.
HRSA–06–016	Physician Assistant Training in Primary Care. *Applications Due:* February 17, 2006.
HRSA–06–017	Residency Training in General and Pediatric Dentistry. *Applications Due:* February 17, 2006.
HRSA–06–018	Pre-Doctoral Training in Primary Care. *Applications Due:* February 17, 2006.
HRSA–06–019	Faculty Development in Primary Care. *Applications Due:* February 17, 2006.
HRSA–06–022	Health Careers Opportunity Program. *Applications Due:* February 21, 2006.
HRSA–06–024	Center for Health Workforce. *Applications Due:* August 1, 2006.
HRSA–06–025	Quentin N. Burdick Program For Rural Interdisciplinary Training. *Applications Due:* January 13, 2006.
HRSA–06–029	Geriatric Education Centers. *Applications Due:* February 1, 2006.
HRSA–06–031	Allied Health Projects. *Applications Due:* January 13, 2006.
HRSA–06–036	Pathways to Health Professions. *Applications Due:* October 3, 2005.
HRSA–06–052	New Access Points in High Poverty Counties. *Applications Due:* March 15, 2006.
HRSA–06–053	Planning Grants in High Poverty Counties. *Applications Due:* March 30, 2006.
HRSA–06–055	Health Center Consortia. *Applications Due:* April 3, 2006.
HRSA–06–056	Healthy Communities Access Program. *Applications Due:* February 2, 2006.
HRSA–06–057	Health Center Controlled Networks (HCCN). *Applications Due:* February 17, 2006.
HRSA–06–058	Operational Network Grants (OPN). *Applications Due:* March 1, 2006.

HRSA–06–068	Trauma-EMS Systems Program. *Applications Due:* April 11, 2006.
HRSA–06–073	State Planning Grants Program (SPGP). *Applications Due:* March 31, 2006.
HRSA–06–106	Rural Emergency Medical Services Training and Assistance Cooperative Agreement. *Applications Due:* April 15, 2006.
HRSA–06–111	Graduate Geropsychology Education Program. *Applications Due:* March 1, 2006.

These cancellations are effective immediately upon publication of this **Federal Register** notice, and the appropriate changes have already been made to Grants.gov Find and the HRSA Web site. HRSA will not accept any FY 2006 competitive applications for these funding opportunities, and any applications previously submitted will not be considered. Further information about HRSA programs will be provided both through the HRSA Web site at *http://www.hrsa.gov/grants/preview* and through *http://www.grants.gov,* the official E-Grants Web site where applicants can find and apply for Federal funding opportunities.

Dated: March 27, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–4690 Filed 3–30–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Privacy Act of 1974; Report of Modified or Altered System—Medical Staff Credentials and Privileges Records

AGENCY: Indian Health Service (IHS).

ACTION: Notice of proposed modification or alteration to a System or Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Indian Health Service (IHS) is proposing to modify or alter an SOR, ''Medical Staff Credentials and Privileges Records,'' System No. 09–17–0003. We propose to modify the SOR to reflect current program changes, technology changes, statutory and implementation changes. Under the system name, we propose to change to the current program office name. We are proposing to update the categories of individuals covered by the system with minor edits to the Active, Temporary and Courtesy or Associate. We are proposing to update the Authority for maintenance by including the Federal Records Act and the Privacy Act. We are proposing to update the Purposes to reflect the new program title of the National Practitioner Data Bank to include the Healthcare Integrity and Protection Data Bank and the inclusion of authorizing statute. We are proposing to update the Routine Uses to reflect the new program title of the National Practitioner Data Bank to include the Healthcare Integrity and Protection Data Bank and the inclusion of authorizing statute for routine use numbers 2 and 3. We will also take the opportunity to update any sections of the system notice to provide clarity on the changing environment to include for digital records and the initiative of transitioning from a paper-based record to a computerized-based or electronic medical record.

DATES: The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure that all parties have adequate time in which to comment, the modified system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless IHS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Mr. William Tibbitts, IHS Privacy Act Officer, Division of Regulatory, Records Access and Policy Liaison, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–1116; send via facsimile to (301) 443–2316, or send your email requests, comments, and return address to: *wtibbitt@hqe.ihs.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen Heath, IHS Risk Management Consultant, Headquarters East (HQE) Office of Clinical and Preventative Services, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106, Telephone (505) 248–4047.

SUPPLEMENTARY INFORMATION: A. Major Modification of 09–17–0003, is to reflect the statutory change in routine use numbers 2 and 3 of the National Practitioner Data Bank and the Healthcare and Integrity Protection Data Bank.

In addition to updating and making editorial corrections to improve the clarify of the system notice, this alteration requires the updating of the system manager listing, and revisions of the Categories of Records, Purposes, Authority, Safeguard, Retention and Disposal, Notification and Access Procedures sections.

Dated: March 23, 2006.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service, Department of Health and Human Services.

09–17–0003

SYSTEM NAME:

Indian Health Service Medical Staff Credentials and Privileges Records, HHS/IHS/OCPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Each Indian Health Service (IHS) Area Office and each IHS Service Unit (Appendix 1). Records may also be located at hospitals and offices of health care providers who are under contract with IHS. A current list of contractor sites is available by writing to the appropriate System Manager (Area or Service Unit Director) at the address shown in Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current and former IHS medical staff members. The term IHS medical staff includes fully licensed individuals permitted by law to provide patient care services independently and without concurrent professional direction or supervision, within the scope of his/her license and in accordance with individually granted clinical privileges. The IHS medical staff includes physicians (M.D. and D.O.) and dentists and may include other health care practitioners such as psychologists, optometrists, podiatrists, audiologists, and, in some states, certified nurse midwives. Types of assignment categories of current and former IHS medical staff members include the following:

Provisional—Those new members of the medical staff who are serving a required initial probationary period, as specified in the local medical staff bylaws. During this time, their qualifications for membership on the active or courtesy IHS medical staff are assessed.

Active—Those members who are Federal employees and/or spend at least fifty percent of their professional time providing patient care related services in the facility.

Temporary—Those members who provide services on a short-term basis or have applied for active medical staff membership and are awaiting a full credential review.

Courtesy or Associate—Those members who generally provide services on a periodic or episodic basis (e.g., consultants for specialty clinics).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, Social Security number, IHS medical staff membership and privileges applications and associated forms, employment data, liability insurance coverage, credentialing history of licensed health professionals, personal, educational, and demographic background information, professional performance information consisting of continuing education, performance awards, and adverse or disciplinary actions, and evaluations and approvals completed by IHS medical staff reviewers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act (44 U.S.C. 2901), Privacy Act of 1974, as amended (5 U.S.C. 552a), Indian Self Determination and Education and Assistance Act (25 U.S.C. 450), Snyder Act (25 U.S.C. 13), Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), Indian Health Service Transfer Act ((42 U.S.C. 2001–2004).

PURPOSE(S):

The purposes of this system are:

1. To ensure that IHS medical staff members are qualified, competent and capable of delivering quality health services consistent with those of the medical community at large and that they are granted privileges commensurate with their training and competence and with the ability of the facility to provide adequate support equipment, services, and staff.

2. To inform health care practitioner(s) and staff of health care facilities, state or county health professional societies or licensing boards to whom the subject individual may apply for clinical privileges, membership or licensure, of the subject individual's professional competence, character and ethical qualifications. This may include information regarding drug or alcohol abuse or dependency. Within the Department such releases may be made to personnel staffs of DHHS Regional Offices.

3. To provide adverse health care practice information to the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank (NPDB–HIPDB) established under Title IV of Public Law 99–660, the Health Care Quality Improvement Act of 1986, as amended, and Section 221(a) of Public Law 104–191, the Heath Insurance Portability and Accountability Act of 1996. The purpose of such a release is to provide information concerning a current or former IHS medical staff member whose professional health care activity failed to conform to generally accepted standards of professional medical practice.

4. To provide health care practice information concerning current or former members of the IHS medical staff with Commissioned Corps status to the Division of Commissioned Personnel, U.S. Public Health Service, so that an informed decision may be made concerning the promotion, retention, or reassignment of the subject individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records may be disclosed to organizations authorized to conduct evaluation studies concerning the delivery of health care services by the IHS (*e.g.*, Joint Commission on the Accreditation of Healthcare Organizations).

2. IHS may disclose records consisting of name, Social Security number, employment history and any professional qualification information concerning medical staff membership and privileges, professional competence, clinical judgment and personal character to a state or local government health professional licensing board, to the Federation of State Medical Boards, to the NPDB–HIPDB, and/or to a similar entity which has the authority to maintain records concerning the issuance, retention or revocation of licenses or registrations necessary to practice a health professional occupation or specialty. The purpose of this disclosure is to inform medical profession licensing boards and appropriate entities about the health care practices of a current, terminated, resigned, or retired IHS medical staff member whose professional health care activity significantly failed to conform to generally accepted standards of professional medical practice. This will be done within the guidelines for notice, hearing, and review as delineated in the medical staff bylaws for the IHS facility and/or within other HHS or IHS regulations or policies.

3. IHS may disclose biographic data and information supplied by potential applicants to (a) references listed on the IHS medical staff and/or privileges application and associated forms for the purpose of evaluating the applicant's professional qualifications, experience, and suitability, and (b) a state or local government health profession licensing board, to a health-related professional organization, to the Federation of State Medical Boards, and to the NPDB–HIPDB or a similar entity for the purpose of verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing.

4. Records may be disclosed to other Federal agencies (including the Office of Personnel Management for subject individuals applying for or maintaining Civil Service appointments), to state and local governmental agencies, and to organizations in the private sector to which the subject individual applies for clinical privileges, membership or licensure for the purpose of documenting the qualifications and competency of the subject individual to provide health services in his/her health profession based on the individual's professional performance while employed by the IHS.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof, or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. Records may be disclosed to a congressional office from the record of

an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

7. In the event that a system of records maintained by the IHS to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, state, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computer-based or electronic files.

RETRIEVABILITY:

Indexed and retrieved by name, Social Security number, and any other identifying numbers necessary to establish the identity of an individual whose record is maintained in the system of records.

SAFEGUARDS:

1. Authorized Users: Access is limited to authorized personnel for use in the performance of their official duties. Authorized personnel include: Physician Recruitment and other Health Professions Branch Staff and Area Governing Board Members at IHS Area Offices, and Service Unit Directors, Clinical Directors and members of the Credentials and Privilege Committee of each IHS Service Unit. At each location where records in this system will be maintained, a list of personnel or categories of personnel having an official need-to-know has been developed and is maintained.

2. Physical Safeguards: Records are kept in locked metal filing cabinets or in locked desk drawers in secured rooms at all times when not actually in use during working hours and at all times during non-working hours. Record storage areas, including file cabinets and desks, are not left unattended or unlocked during office hours, including lunch hours. Computer-based or electronic records are password protected security and any additional internal security for database (linked or unlinked).

3. Procedural Safeguards: Persons who have an official need-to-know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records and to destroy all copies or to return such records when the need to know has expired. Instructions include the statutory penalties for noncompliance. Proper charge-out procedures are followed for the removal of records from the area in which they are maintained. Before an employee who will control disclosure of records can work with the records (i.e., employees who report to the system manager) the system manager or designee ensures that the employee has received training in the safeguards applicable to the records and is aware of the actions to take to restrict disclosure. When copying records for authorized purposes, care is taken to ensure that any imperfect pages are not left in the reproduction room where they can be read but are destroyed or obliterated.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf:45–13 of the General Administration Manual; DHHS, ''Automated Information System Security Program Handbook,'' as amended; DHHS IRM Policy HHS–IRM–2000–0005, ''IRM Policy for IT Security for Remove Access; OMB Circular A–130 ''Management of Federal Information Resources''; and E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. Ch. 36).

RETENTION AND DISPOSAL:

Records are maintained by IHS for at least ten years after the individual's termination of employment or association with IHS. Records of unsuccessful applicants for medical staff membership will be retained for three years after his/her rejection. After these periods of retention expire, records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix 1.

POLICY COORDINATING OFFICIAL:

Director, Office of Clinical and Preventive Services, IHS, 801 Thompson Avenue, Suite 300, Rockville, Maryland 20852. The IHS Clinical Directors at all IHS Service Units listed in Appendix 1 are System Managers. IHS medical staff credentials and privileges files are stored at these locations. Other addresses listed in Appendix 1 are locations at which all or parts of these records may also be stored (Physician Recruiter at IHS Area Offices). Post Office Box designations appearing in Appendix 1 should be specified when making requests by mail.

NOTIFICATION PROCEDURE:

Requests must be made to the appropriate System Manager (Clinical Director for the appropriate Service Unit) listed in Appendix 1.

REQUESTS BY MAIL:

Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain, at a minimum, the name, signature, Social Security number, and address of the requester, and for unsuccessful applicants the date when the application was submitted, and for current or former IHS health care providers the dates and locations of service. We may request additional identification when we hold records for different persons with the same name or where an apparent discrepancy exists between information contained in the record and that provided by the individual requesting access to the record.

OTHER NAMES USED:

Where an individual is seeking to obtain information about himself/herself which may be retrieved by a different name than his/her current name, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks.

REQUESTS IN PERSON:

A subject individual who appears in person at a specific location (where he or she currently works or formerly worked) seeking access or disclosure of records contained in this system of records relating to him/her shall provide the information described in ''Requests by mail'' (above) and at least one piece of tangible identification such as a driver's license or passport.

REQUESTS BY TELEPHONE:

Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

SAME AS NOTIFICATION PROCEDURE:

Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the appropriate Service Unit Clinical Director at the address specified

in Appendix 1 and reasonably identify the record, specify the information being contested, and state the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individual, IHS health care personnel, references supplied by the subject individual, professional societies or associations, specialty boards, colleges and universities attended by the subject individual, former employers, health facilities or health providers with which the subject individual was associated, liability insurance carriers, organizations providing cardiopulmonary resuscitation (CPR) training to the subject individual, state and local health and health care licensing or certifying organizations, and organizations which serve as repositories of information on health care professionals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System Managers and IHS Locations Under Their Jurisdiction Where Records are Maintained

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401
Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, P.O. Box 1012, Eagle Butte, South Dakota 57625
Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, P.O. Box 200, Ft. Thompson, South Dakota 57339
Director, Fort Berthold Service Unit, Fort Berthold Indian Health Center, P.O. Box 400, New Town, North Dakota 58763
Director, Carl T. Curtis Health Center, P.O. Box 250, Macy, Nebraska 68039
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, P.O. Box 200, Fort Totten, North Dakota 58335
Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752
Director, Lower Brule Indian Health Center, P.O. Box 191, Lower Brule, South Dakota 57548
Director, McLaughlin Indian Health Center, P.O. Box 879, McLaughlin, South Dakota 57642
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770
Director, Rapid City Service Unit, Rapid City Indian Hospital, 3200 Canyon Lake Drive, Rapid City, South Dakota 57701
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, P.O. Box 189, Sisseton, South Dakota 57262
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, P.O. Box J, Fort Yates, North Dakota 58538
Director, Trenton-Williston Indian Health Center, P.O. Box 210, Trenton, North Dakota 58853
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, P.O. Box 160, Belcourt, North Dakota 58316
Director, Wanblee Indian Health Center, 100 Clinic Drive, Wanblee, South Dakota 57577
Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, 110 Washington Street, Wagner, South Dakota 57380
Director, Youth Regional Treatment Center, P.O. Box #68, Mobridge, South Dakota 57601
Director, Sac & Fox Health Center, 307 Meskwaki Road, Tama, Iowa 52339
Director, Santee Health Center, 425 Frazier Avenue, Main Street #2, Niobrara, Nebraska 68760
Director, Alaska Area Native Health Service, 4141 Ambassador Drive, Suite 300, Anchorage, Alaska 99508–5928
Director, Albuquerque Area Health Service, 5300 Homestead Road, NE., Albuquerque, New Mexico 87110
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049
Director, To-Hajille Health Center, P.O. Box 3528, Canoncito, New Mexico 87026
Director, New Sunrise Treatment Center, P.O. Box 219, San Fidel, New Mexico 87049
Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87049
Director, Albuquerque Indian Dental Clinic, P.O. Box 67830, Albuquerque, New Mexico 87193
Director, Alamo Navajo Health Center, P.O. Box 907, Magdalena, New Mexico 87825
Director, Jemez PHS Health Center, P.O. Box 279, Jemez, New Mexico 87024
Director, Santa Ana PHS Health Center, P.O. Box 37, Bernalillo, New Mexico 87004
Director, Sandia PHS Health Center, P.O. Box 6008, Bernalillo, New Mexico 87004
Director, Zia PHS Health Center, 155 Capital Square, Zia, New Mexico 87053
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501
Director, Santa Clara Health Center, RR5, Box 446, Espanola, New Mexico 87532
Director, San Felipe Health Center, P.O. Box 4344, San Felipe, New Mexico 87001
Director, Cochiti Health Center, P.O. Box 105, 255 Cochiti Street, Cochiti, New Mexico 87072
Director, Santo Domingo Health Center, P.O. Box 340, Santo Domingo, New Mexico 87052
Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137
Director, Ignacio Indian Health Center, P.O. Box 889, Ignacio, Colorado 81137
Director, Towaoc Ute Health Center, Towaoc, Colorado 81334
Director, Jicarilla Indian Health Center, P.O. Box 187, Dulce, New Mexico 87528
Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340
Director, Taos/Picuris Indian Health Center, P.O. Box 1956, 1090 Goat Springs Road, Taos, New Mexico 87571
Director, Zuni Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327
Director, Pine Hill Health Center, P.O. Box 310, Pine Hill, New Mexico 87357
Director, Bemidji Area Indian Health Service, 522 Minnesota Avenue, NW., Bemidji, Minnesota 56601
Director, Red Lake Service Unit, PHS Indian Hospital, Highway 1, Red Lake, Minnesota 56671
Director, Leech Lake Service Unit, PHS Indian Hospital, 425 7th Street, NW., Cass Lake, Minnesota 56633
Director, White Earth Service Unit, PHS Indian Hospital, P.O. Box 358, White Earth, Minnesota 56591
Director, Billings Area Indian Health Service, P.O. Box 36600, 2900 4th Avenue North, Billings, Montana 59101
Director, Blackfeet Service Unit, Browning Indian Hospital, P.O. Box 760, Browning, Montana 59417
Director, Heart Butte PHS Indian Health Clinic, Heart Butte, Montana 59448
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022
Director, Lodge Grass PHS Indian Health Center, Lodge Grass, Montana 59090
Director, Pryor PHS Indian Health Clinic, P.O. Box 9, Pryor, Montana 59066
Director, Fort Peck Service Unit, Poplar Indian Hospital, Poplar, Montana 59255
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526
Director, Hays PHS Indian Health Clinic, Hays, Montana 59526
Director, Northern Cheyenne Service Unit, Lame Dear Indian Health Center, Lame Deer, Montana 59043
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510
Director, Chief Redstone Indian Health Center, Wolf Point, Montana 59201
Director, California Area Indian Health Service, John E. Moss Federal Building, 650 Capitol Mall, Suite 7–100, Sacramento, California 95814
Director, Nashville Area Indian Health Service, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214–2634
Director, Catawba PHS Indian Nation of South Carolina, P.O. Box 188, Catawba, South Carolina 29704
Director, Unity Regional Youth Treatment Center, P.O. Box C–201, Cherokee, North Carolina 28719
Director, Navajo Area Indian Health Service, P.O. Box 9020, Highway 264, Window Rock, Arizona 86515–9020
Director, Chinle Service Unit, Chinle Comprehensive Health Care Facility, P.O. Drawer PH, Chinle, Arizona 86503
Director, Tsaile Health Center, P.O. Box 467, Navajo Routes 64 & 12, Tsaile, Arizona 86556

Director, Rock Point Field Clinic, c/o Tsaile Health Center, P.O. Box 647, Tsaile, Arizona 86557
Director, Pinon Health Station, Pinon, Arizona 86510
Director, Crownpoint Service Unit, Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313
Director, Pueblo Pintado Health Station, c/o Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313
Director, Fort Definance Service Unit, Fort Definance Indian Hospital, P.O. Box 649, Intersection of Navajo Routes N12 & N7, Fort Defiance, Arizona 86515
Director, Nahata Dziil Health Center, P.O. Box 125, Sanders, Arizona 86512
Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Nizhoni Boulevard, Gallup, New Mexico 87305
Director, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325
Director, Ft. Wingate Health Station, c/o Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87305
Director, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033
Director, Inscription House Health Center, P.O. Box 7397, Shonto, Arizona 86054
Director, Dennhotso Clinic, c/o Kayenta Health Center, P.O. Box 368, Kayenta, Arizona 86033
Director, Shiprock Service Unit, Northern Navajo Medical Center, P.O. Box 160, U.S. Hwy 491 North, Shiprock, New Mexico 87420
Director, Dzilth-Na-O-Dith-Hle Indian Health Center, 6 Road 7586, Bloomfield, New Mexico 87413
Director, Teecnospos Health Center, P.O. Box 103, N5114 BIA School Road, Teecnospos, Arizona 86514
Director, Sanostee Health Station, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420
Director, Toadlena Health Station, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420
Director, Teen Life Center, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420
Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 NW. 56th Street, Oklahoma City, Oklahoma 73112
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard and Moore, Claremore, Oklahoma 74017
Director, Clinton Service Unit, Clinton Indian Hospital, Route 1, Box 3060, Clinton, Oklahoma 73601–9303
Director, El Reno PHS Indian Health Clinic, 1631A E. Highway 66, El Reno, Oklahoma 73036
Director, Watonga Indian Health Center, Route 1, Box 34–A, Watonga, Oklahoma 73772
Director, Haskell Service Unit, PHS Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044
Director, Lawton Service Unit, Lawton Indian Hospital, 1515 Lawrie Tatum Road, Lawton, Oklahoma 73501
Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005
Director, Carnegie Indian Health Center, P.O. Box 1120, Carnegie, Oklahoma 73150
Director, Holton Service Unit, PHS Indian Health Center, 100 West 6th Street, Holton, Kansas 66436
Director, Pawnee Service Unit, Pawnee Indian Service Center, RR2, Box 1, Pawnee, Oklahoma 74058–9247
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056
Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464
Director, Wewoka Indian Health Center, P.O. Box 1475, Wewoka, Oklahoma 74884
Director, Phoenix Area Indian Health Service, Two Renaissance Square, 40 North Central Avenue, Phoenix, Arizona 85004
Director, Colorado River Service Unit, Chemehuevi Indian Health Clinic, P.O. Box 1858, Havasu Landing, California 92363
Director, Colorado River Service Unit, Havasupai Indian Health Station, P.O. Box 129, Supai, Arizona 86435
Director, Colorado River Service Unit, Parker Indian Health Center, 12033 Agency Road, Parker, Arizona 85344
Director, Colorado River Service Unit, Peach Springs Indian Health Center, P.O. Box 190, Peach Springs, Arizona 86434
Director, Colorado River Service Unit, Sherman Indian High School, 9010 Magnolia Avenue, Riverside, California 92503
Director, Elko Service Unit, Newe Medical Clinic, 400 ''A'' Newe View, Ely, Nevada 89301
Director, Elko Service Unit, Southern Bands Health Center, 515 Shoshone Circle, Elko, Nevada 89801
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85366
Director, Keams Canyon Service Unit, Hopi Health Care Center, P.O. Box 4000, Polacca, Arizona 86042
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Phoenix Service Unit, Salt River Health Center, 10005 East Osborn Road, Scottsdale, Arizona 85256
Director, San Carlos Service Unit, Bylas Indian Health Center, P.O. Box 208, Bylas, Arizona 85550
Director, San Carlos Service Unit, San Carlos Indian Hospital, P.O. Box 208, San Carlos, Arizona 85550
Director, Schurz Service Unit, Schurz Service Unit Administration, Drawer A, Schurz, Nevada 89427
Director, Fort McDermitt Clinic, P.O. Box 315, McDermitt, Nevada 89421
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Fort Duchesne, Utah 84026
Director, Whiteriver Service Unit, Cibecue Health Center, P.O. Box 37, Cibecue, Arizona 85941
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, P.O. Box 860, Whiteriver, Arizona 85941
Director, Desert Vision Youth Wellness Center/RTC, P.O. Box 458, Sacaton, AZ 85247
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2829
Director, Colville Service Unit, Colville Indian Health Center, P.O. Box 71–Agency Campus, Nespelem, Washington 99155
Director, Fort Hall Service Unit, Not-Tsoo Gah-Nee Health Center, P.O. Box 717, Fort Hall, Idaho 83203
Director, Neah Bay Service Unit, Sophie Trettevick Indian Health Center, P.O. Box 410, Neah Bay, Washington 98357
Director, Warm Springs Service Unit, Warm Springs Indian Health Center, P.O. Box 1209, Warm Springs, Oregon 97761
Director, Wellpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Wellpinit, Washington 99040
Director, Western Oregon Service Unit, Chemawa Indian Health Center, 3750 Chemawa Road, NE., Salem, Oregon 97305–1198
Director, Yakama Service Unit, Yakama Indian Health Center, 401 Buster Road, Toppenish, Washington 98948
Director, Tucson Area Indian Health Service, 7900 South ''J'' Stock Road, Tucson, Arizona 85746–9352
Director, Pascua Yaqui Service Unit, Division of Public Health, 7900 South ''J'' Stock Road, Tucson, Arizona 85746
Director, San Xavier Indian Health Center, 7900 South ''J'' Stock Road, Tucson, Arizona 85746
Director, Sells Service Unit, Santa Rosa Indian Health Center, HCO1, Box 8700, Sells, Arizona 85634
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634
Director, Sells Service Unit, West Side Health Station, P.O. Box 548, Sells, Arizona 85634

[FR Doc. 06–3091 Filed 3–30–06; 8:45 am]
BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2007 National Survey on Drug Use and Health—(OMB No. 0930–0110)—Revision

The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

With the exception of the addition of several follow-up questions on methamphetamine use, no changes to the questionnaire are proposed for the 2007 NSDUH. The proposed additional questions (age at first use and frequency of use in the past 12 months) will be asked of respondents who denied use of methamphetamine in the ''core'' NSDUH because they didn't think of it as a prescription drug, but in a later series of questions admit to use (Respondents who report use of methamphetamine in the ''core'' already receive questions on age at first use and frequency of use). The additional burden associated with the new questions will be negligible because only a small subset of the sample will receive them.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2007 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

Activity	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Household Screening	182,250	1	.083	15,127
Interview	67,500	1	1.0	67,500
Screening Verification	5,559	1	.067	372
Interview Verification	10,125	1	.067	678
Total	182,250			83,677

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 24, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–4705 Filed 3–30–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–06–008]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Tuesday, April 25, 2006, from 9 a.m. to 12 noon. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before April 11, 2006. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before April 11, 2006.

ADDRESSES: The meeting will be held in the New Orleans Board of Trade, 316 Board of Trade Place, First Floor, Main Trading Room, New Orleans, Louisiana 70130. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Assistant Committee Administrators ENS Ashana Hopson at e-mail *ahopson@msoneworleans.uscg.mil* or Lieutenant Junior Grade (LTJG) Thao Nguyen at e-mail *TNugyen@grunola.uscg.mil.* Written materials and requests to make presentations should be mailed to Commander, USCG Sector New Orleans, Attn: WATERWAYS Dept, LMRWSAC Assistant Committee Administrator, 201 Hammond Highway, Metairie, LA 70005.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.
(2) Opening Remarks.
(3) Approval of the November 15, 2005 minutes.
(4) Old Business:
  (a) Captain of the Port status report.
  (b) VTS update report.
  (c) Subcommittee/Working Group update reports.
(5) New Business.
(6) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than April 11, 2006. Written material for distribution at the meeting should reach the Coast Guard no later than April 11, 2006. If you would like a copy of your material distributed to each member of the

committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than April 11, 2006.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: March 15, 2006.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. E6–4717 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

[DHS–2005–0050]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Immigration and Customs Enforcement; Department of Homeland Security

ACTION: Notice of Privacy Act system of records.

SUMMARY: The Bureau of Immigration and Customs Enforcement in the Department of Homeland Security is creating a new system of records to be used in the management of case and document information by attorneys working for the Office of the Principal Legal Advisor in the preparation and presentation of cases for a court or adjudicative body before which the Bureau of Immigration and Customs Enforcement or the Department of Homeland Security is authorized or required to appear.

DATES: The new system of records will be effective May 1, 2006, unless comments are received that result in a contrary determination.

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

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Mail: William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536; Chief Privacy Officer, Department of Homeland Security, 601 South 12th Street, Arlington, VA 22202–4220.

• Fax: (202) 514–0455 (not toll-free).

• Hand Delivery/Courier: Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536, at (202) 514–6761.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice. Comments that will provide the most assistance to the Bureau of Immigration and Customs Enforcement in developing these procedures will reference a specific portion of the notice, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Bureau of Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) is giving notice that it proposes to implement a new system of records entitled ''the General Counsel Electronic Management System'' (GEMS). This system will consist of information that is created and used by attorneys working for ICE in the preparation and presentation of cases for a court or adjudicative body before which ICE or DHS is authorized or required to appear. The system will supplement and ultimately replace the current attorney work product paper files that are primarily stored and managed in the hardcopy alien file commonly known as the ''A-file.''

The ICE Office of the Principal Legal Advisor (OPLA) is responsible for the prosecution and/or management of cases before the federal courts, immigration courts, and other tribunals where immigration case matters are presented. Because of its significant caseload, OPLA is presented with a tremendous data management problem. Recent changes to the immigration laws and increasing numbers of cases require changes and improved efficiency in the maintenance of case records and attorney work product regarding immigration matters. The proposed system will provide OPLA attorneys and other DHS and Department of Justice (DOJ) attorneys, who have a need for this information in the performance of their duties representing the agency real time, access to documents and attorney notes concerning the status and processing of immigration matters to multiple authorized users at their desktops and greatly reduce their reliance on the need to access the paper A-file.

GEMS consists of customized off-the-shelf software that has been developed to meet the growing needs for information management in the attorney field operations and attorney management offices of ICE. Although records will be maintained in GEMS by alien registration number, GEMS will provide attorneys and their supervisors with the ability to collect and locate case information without complete reliance on the physical A-file. In addition to maintaining investigative materials collected for the adjudication of immigration cases, GEMS will allow attorneys to store their case notes, other hearing related information, and briefs and memoranda related to cases. This should not only facilitate the work of the ICE attorneys involved in the case, but should also provide a legal resource for other attorneys who may be working on similar matters. The system will also provide management capabilities for tracking time and effort expended in the preparation and presentation of cases for a court or adjudicative body before which the ICE or DHS is authorized or required to appear.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system

to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations (6 CFR 5.21). ICE is hereby publishing the description of the GEMS system of records. In accordance with 5 U.S.C. 552a(r), a report of this new system of records has been provided to the Office of Management and Budget (OMB) and to the Congress.

DHS/ICE/OPLA–001

SYSTEM NAME:

General Counsel Electronic Management System (GEMS).

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

This system of records is under the control of the Principal Legal Advisor, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, in Washington, DC and in the field offices for the Office of Principal Legal Advisor located throughout the United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act.

B. Individuals who are under investigation, or who were investigated by ICE in the past, or who are suspected of violating the criminal or civil provisions of statutes, treaties, Executive Orders, and regulations administered by ICE, and witnesses and informants or other third parties who may have knowledge of such violations.

C. ICE attorneys and other employees who have been assigned to represent the agency in litigation relating to aliens and other individuals whose files are contained in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The system will contain attorney work product consisting of pre-trial notes, trial notes, post-trial notes, memoranda stating positions for litigation in draft or final form, notes to investigators, and information from hardcopy and online research.

B. The system will contain personal identification data such as the A-file number, date, and place of birth, date and port of entry, as well as the location of each official hardcopy paper file known as the ''A-file.''

C. The system will contain subsets or complete sets of information also contained in the hard copy A-file that may include the alien's official record material, such as naturalization certificates; various forms (and attachments such as photographs); applications and petitions for benefits under the immigration and nationality laws; reports of investigations; statements; arrest reports; correspondence; and memoranda on each individual for whom ICE has created a record under the Immigration and Nationality Act.

PURPOSE:

The system is for the benefit of ICE attorneys and attorney management to be used for the tracking, processing, and reporting on the preparation and presentation of cases for a court or adjudicative body before which the ICE or the DHS is authorized to appear. The system will enable ICE to carry out its assigned national security, law enforcement, immigration control, and other mission related functions and to provide associated management reporting, planning and analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To other federal, state, tribal, and local government law enforcement and regulatory agencies and foreign governments, individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws, to elicit information required by ICE to carry out its functions and statutory mandates.

B. To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that disclosure is relevant and necessary to the litigation.

C. To a Federal, state, tribal, local or foreign government agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

E. To the news media and the public when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of the Department's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To the National Archives and Records Administration or other federal government agencies in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

H. To appropriate government agencies or organizations (regardless of whether they are Federal, state, territorial, local, foreign, international, or tribal), lawfully engaged in collecting law enforcement (whether civil, criminal, or administrative) or intelligence information and/or charged with investigating, prosecuting, enforcing, or implementing civil and/or criminal laws, related rules, regulations, or orders, to enable these entities to carry out their law enforcement and intelligence responsibilities.

I. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former

employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Records in the system will be stored in a central computer database.

RETRIEVABILITY:

Records in the system are indexed and retrieved by an individual's alien number, name, case information (such as hearing location and type of hearing), and other criteria that can identify an individual in proceedings in a court or adjudicative body before which ICE or the DHS is authorized to appear.

SAFEGUARDS:

ICE offices are located in buildings under security guard, and access to premises is by official identification. All electronic records are stored in systems that are in offices that are locked during non-duty office hours. Access to electronic records is controlled by passwords and name identification and access to this system is monitored. The system is protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

The retention and disposal requirements for the GEMS database are pending approval by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is located in the Office of the Principal Legal Advisor, Chief of the Knowledge Management Division, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager identified above.

RECORD ACCESS PROCEDURE:

To determine whether this system contains records relating to you, you may write to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at the Immigration and Customs Enforcement, Information Disclosure Office, 425 I Street, NW., Washington, DC 20536. Requests should conform to the requirements of 6 CFR part 5, subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS, including the following: The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. The envelope and letter shall be clearly marked Privacy Access Request. The request must include a description of the general subject matter, the related file number if known, and any other identifying information that may be of assistance in locating the record.

CONTESTING RECORDS PROCEDURES:

Same as ''Record Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

The information in this system is supplied by attorneys and others providing legal support to ICE for the adjudication of cases. Other information in this system is derived from the alien file maintained on individuals, and may include investigative material that provides the basis for the legal proceedings.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

The Secretary has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy Act. These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. Sections 552a (j)(2) and (k)(1) and (k)(2).

Dated: March 23, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. E6–4699 Filed 3–30–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2374–05; USCIS–2006–0002]

RIN 1615—ZA32

Extension of the Designation of Temporary Protected Status for Honduras; Automatic Extension of Employment Authorization Documentation for Honduras TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of extension of temporary protected status for Honduras.

SUMMARY: The designation of Honduras for Temporary Protected Status (TPS) will expire on July 5, 2006. This Notice alerts the public that TPS for Honduras has been extended for 12 months, until July 5, 2007, and sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on January 5, 1999) or who ''late initial registered'' and also timely re-registered under each subsequent extension of the designation. In accordance with the original designation, eligible aliens must also have maintained continuous physical presence in the United States since January 5, 1999, and continuous residence in the United States since December 30, 1998. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the large number of Hondurans affected by this Notice, the Department of Homeland Security (DHS) recognizes that many re-registrants may not receive an extension sticker or new EAD until after their current EADs expire on July 5, 2006. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Honduras for 6 months until January 5, 2007, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: The extension of TPS for Honduras is effective July 5, 2006, and will remain in effect until July 5, 2007. The 60-day re-registration period begins April 1, 2006, and will remain in effect until June 1, 2006. To facilitate processing of their applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period (April 1, 2006).

FOR FURTHER INFORMATION CONTACT: Jonathan Crawford, Residence and Status Services, Office of Programs and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272–8350. This is not a toll-free call.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
USCIS—U.S. Citizenship and Immigration Services

What authority does the Secretary of Homeland Security have to extend the designation of TPS for Honduras?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state (or part thereof) for TPS. 8 U.S.C. 1254a(b)(1). The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultations with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of the TPS designation. 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, he must terminate the designation. 8 U.S.C. 1254a(b)(3)(B).

Why did the Secretary of Homeland Security decide to extend the TPS designation for Honduras?

On January 5, 1999, the Attorney General published a Notice in the **Federal Register** at 64 FR 524, designating Honduras for TPS due to the devastation resulting from Hurricane Mitch. Subsequent to that date, the Attorney General and the Secretary of Homeland Security have extended TPS for Honduras five times, determining in each instance that the conditions warranting the designation continued to be met. 65 FR 30438, 66 FR 23269, 67 FR 22451, 68 FR 23744, 69 FR 64084. To notify individuals of the current extension, the Secretary published a Notice in the **Federal Register** on November 3, 2004, at 69 FR 64084. That extension became effective on January 5, 2005, and is due to end on July 5, 2006.

Since the date of the current extension, DHS and the Department of State (DOS) have continued to review conditions in Honduras. In particular, the Secretary of Homeland Security considered whether there continues to be a substantial, but temporary, disruption of living conditions in Honduras resulting from Hurricane Mitch and that Honduras is unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on environmental disasters. 8 U.S.C. 1254a(b)(1)(B)(i–iii).

The DOS Recommendation of February 2006 (''DOS Recommendation'') reports that conditions that initially gave rise to the designation continue to exist and that Honduras cannot provide adequate housing for its nationals currently residing in the U.S. and has yet to recover fully from Hurricane Mitch. The USCIS Office of Refugee, Asylum, and International Operations Report of February 2006 (''ORAIO Report'') indicates that although a number of the reconstruction projects in Honduras have been completed, some of the projects are still incomplete.

The housing shortage is a critical deficiency when considering whether Honduras could adequately handle the return of its nationals currently living in the United States under TPS (DOS Recommendation). Housing construction was not completed in many areas and in those cases that required relocation, infrastructure, and personnel for health and education services, as well as employment opportunities, was reported to be unavailable (ORAIO Report).

More recently, Honduras was devastated by Hurricane Beta and other serious storms in 2005 (DOS Recommendation). Honduras' continuing vulnerability from Hurricane Mitch was evident when Hurricane Beta flooded the northeastern departments of Honduras in October 2005 (ORAIO Report). Roads and many key bridges have been destroyed, hampering additional recovery efforts (DOS Recommendation). Hurricane Beta affected approximately 50 communities, causing the displacement of 11,000 Hondurans, evacuation of 7,600 to temporary shelters (DOS Recommendation) and damage to bridges and crops (ORAIO Report).

Based upon this review, the Secretary of Homeland Security, after consultation with appropriate Government agencies, determined that the conditions that prompted designation of Honduras for TPS continue to be met. *See* 8 U.S.C. 1254a(b)(3)(A) (describing procedures for periodic review of TPS designations). There continues to be a substantial, but temporary, disruption in living conditions in Honduras as the result of an environmental disaster, and Honduras continues to be unable, temporarily, to handle adequately the return of its nationals. *See* 8 U.S.C. 1254a(b)(1)(B) (describing conditions that justify TPS designation). On the basis of these findings, the Secretary concluded that the TPS designation for Honduras should be extended for an additional 12-month period. *See* 8 U.S.C. 1254a(b)(3)(C) (providing the Secretary of Homeland Security with discretion to determine the length of an extension).

If I currently have benefits through the TPS designation of Honduras for TPS, do I need to re-register for TPS?

Yes. If you already have received TPS benefits through the TPS designation of Honduras, your benefits will expire on July 5, 2006. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain TPS benefits through July 5, 2007. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period. 8 U.S.C. 1254a(a)(1) and 1254a(f). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

All persons previously granted TPS under the designation of Honduras who would like to maintain such status and those whose applications remain pending but who wish to renew their benefits must re-register by filing the following:

(1) Form I–821, Application for Temporary Protected Status, without fee;

(2) Form I–765, Application for Employment Authorization (see the chart below to determine whether you must submit the one hundred and eighty dollar ($180) filing fee with Form I–765, or a fee waiver request);

(3) A biometric services fee of seventy dollars ($70) if you are 14 years of age or older, or if you are under 14 and requesting an EAD extension. The biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

(4) A photocopy of the front and back of your EAD if you received an EAD during the most recent registration period.

You do not need to submit photographs with your TPS application because a photograph will be taken, if needed, when you appear at a USCIS Application Support Center (ASC) for collection of biometrics.

Aliens who have previously registered for TPS but whose applications remain pending should follow these instructions if they wish to renew their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicant.

What edition of the Form I–821 should be submitted?

Form I–821 has been revised. Only the Form I–821 with revision dates of November 5, 2004, or October 26, 2005, will be accepted. The bottom of each page of the revised form reads, ''Form I–821 (Rev. 11/05/04)N'' or ''Form I–821 (Rev. 10/26/05)Y.'' Submissions of older versions of Form I–821 will be rejected. You may obtain immigration forms on the Internet at *http://uscis.gov* or by calling the USCIS forms hotline at 1–800–870–3676.

Who must submit the $180 filing fee for the Form I–765, Application for Employment Authorization?

If	Then
You are applying for an extension of your EAD valid until July 31, 2007, regardless of your age.	You must complete and file the Form I–765, Application for Employment Authorization, with the $180 fee.
You are not requesting an extension of your EAD	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.
You are applying for a TPS-related EAD under the late initial registration provisions and are under age 14 or over age 65.	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.
You are applying for an extension of your EAD and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other supporting information) in accordance with 8 CFR 244.20.

Who must submit the $70 biometric services fee?

The $70 biometric services fee must be submitted by all aliens 14 years of age and older who (1) have previously been granted TPS and are now re-registering for TPS; (2) have an initial application for TPS currently pending, have an EAD bearing the notification ''C–19'' on the face of the card under ''Category'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law,'' and wish to renew temporary treatment benefits; or (3) are applying for TPS under the late initial registration provisions. In addition, any alien, including one who is under the age of 14, choosing to apply for a new EAD or an extension of an EAD must submit the $70 biometric services fee. This biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

When should an applicant submit his or her application for TPS?

Applications must be filed during the 60-day re-registration period from April 1, 2006 to June 1, 2006. Applicants are strongly encouraged to file the application as soon as possible after the start of the 60-day re-registration period.

Where should an applicant submit his or her application for TPS?

USCIS has designated two post office (P.O.) boxes with the Chicago Lockbox for the filing of TPS applications under this extension in order to facilitate efficient processing. Please note that applications should only be filed at the appropriate P.O. Box and should not be filed with a USCIS Service Center or District Office. Failure to submit a TPS application to the correct P.O. Box may result in a delay of adjudication. In addition, applicants will not be able to file their applications electronically (''E-file'') for this designation.

The type of TPS filing the applicant has to submit will determine the P.O. Box he or she must use to file; see below for instructions as to which of the two P.O. Boxes to utilize. Failure to file your application with the correct P.O. Box may result in a delay of the processing of your application.

1. Applications for re-registration that do not require the submission of additional documentation or a renewal of temporary treatment benefits must be filed at this address: U.S. Citizenship and Immigration Services, P.O. Box 6943, Chicago, IL 60680–6943. Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Honduras, 427 S. LaSalle—3rd Floor, Chicago, IL 60605.

2. Aliens who are filing applications for re-registration that require the submission of supporting documentation or are filing for the first time as a late initial registrant must use the address below. Applications for re-registration require the submission of supporting documentation under the following circumstances:

(A) If one or more of the questions listed in Part 4, Question 2 of Form I–821 apply to the alien, then the submission of an explanation, on a separate sheet(s) of paper, and/or additional documentation must be provided.

(B) If the alien was granted TPS by an Immigration Judge or the Board of Immigration Appeals, then the alien must include evidence of the grant of TPS (such as an order from the Immigration Judge) with his or her application package.

Aliens who are filing a re-registration application that requires the submission of additional documentation or for the first time as a late initial registrant should file at the P.O. Box listed below: U.S. Citizenship and Immigration Services, P.O. Box 8631, Chicago, IL 60680–8631. Or, for non-United States

Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Honduras—[EOIR/Additional Documents] or [Late Initial Registrant], 427 S. LaSalle—3rd Floor, Chicago, IL 60605.

Note: Make sure to use either EOIR/Additional Documents or Late Initial Registrant on the ''Attn:'' line, after Honduras, above.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. 8 U.S.C. 1254a (c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A), 8 U.S.C. 1254a(c)(2)(B)(ii). Aliens should also note that an individual granted TPS will have his/her TPS withdrawn if the alien is not in fact eligible for TPS, if an alien fails to timely re-register for TPS without good case, or if the alien fails to maintain continuous physical presence in the United States. 8 U.S.C. 1254a(c)(3)(A)–(C).

Who is eligible to receive an automatic extension of his or her EAD from July 5, 2006 to January 5, 2007?

To receive an automatic extension of his or her EAD, an individual must be a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who has applied for and received an EAD under the TPS designation of Honduras and who has not had TPS withdrawn or denied. This automatic extension is limited to EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of July 5, 2006. The EAD must also be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category''.

If I am currently registered for TPS under the designation of Honduras and am re-registering for TPS, how do I receive an extension of my EAD after the 6 months granted by the automatic extension?

As a TPS re-registrant you will receive a notice in the mail with instructions to appear at an ASC for biometrics collection. When you report to the ASC, you must bring your receipt notice for your re-registration application, ASC appointment notice, and current EAD. When you appear at an ASC for biometrics collection, USCIS will either affix a sticker to your current EAD extending the validity of the card through the end of July 2007 or advise you that your case requires further resolution. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If those issues are resolved and your re-registration application is approved, you will receive a new EAD in the mail with an expiration date of July 31, 2007. Because the extension stickers include only the month and year, rather than a specific date, all EADS extended by sticker or issued anew pursuant to this extension of the TPS designation for Honduras will be valid through July 31, 2007.

Will I receive a new EAD in the mail if I am given an extension sticker at the ASC?

No. Because the sticker affixed to your card at the ASC will extend the validity of your current EAD through July 2007 there will be no need for you to obtain additional employment authorization documentation during the remainder of this extension of the designation of Honduras for TPS.

If I am not eligible to receive a sticker extending my EAD, can I receive an interim EAD at my local District Office?

No. USCIS will not be issuing interim EADs to TPS applicants and re-registrants at District Offices.

How may employers determine whether an EAD has been automatically extended for six months through January 5, 2007, and is therefore acceptable for completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until January 5, 2007, employers of Honduran TPS beneficiaries whose EADs have been automatically extended by this Notice must accept the EAD if presented. An EAD that has been automatically extended for six months by this Notice to January 5, 2007, will actually contain an expiration date of July 5, 2006, and must be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' New EADs or extension stickers showing the January 5, 2007, expiration date of the six-month auto-extension will not be issued.

Employers should not request proof of Honduran citizenship. Employers presented with an EAD that has been extended pursuant to this **Federal Register** Notice, if it reasonably appears on its face to be genuine and appears to relate to the employee, should accept the EAD as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by the Secretary of Homeland Security through this **Federal Register** Notice does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements, see 8 CFR 274a.2(b)(1)(vii) . For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

How may employers determine an employee's eligibility for employment once the automatic extension has expired, between January 6, 2007, and the end of the TPS extension on July 5, 2007?

Eligible TPS aliens will possess either an EAD with an expiration date of July 31, 2007, or an EAD with an expiration date of July 5, 2006 and a sticker affixed to it extending the validity of the EAD through July 2007. In either case, the EAD will be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' Either of these EADs must be accepted for the purposes of verifying identity and employment authorization. Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force, as described above.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9, Employment Eligibility Verification?

During the first 6 months of this extension of the TPS designation for Honduras, employees may submit the following to their employer for completion of the Form I–9 at the time of hire or re-verification. Qualified individuals who have received a 6-month extension of their EADs by virtue of this **Federal Register** Notice may present a TPS-based EAD to their employer, as described above as proof of identity and employment authorization until January 5, 2007. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation to January 5, 2007.

After the first six months of TPS employment authorization for this designation extension, and continuing until the end of the extension period, July 5, 2007, a qualified individual will receive one of the following as evidence of employment authorization: a sticker affixed to the EAD extending the validity of the EAD through July 2007, or a new EAD valid through July 31, 2007. Either an EAD with the extension sticker or a newly issued EAD may be presented as evidence of employment authorization.

In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

Does TPS lead to lawful permanent residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence by itself or confer any other immigration status. 8 U.S.C. 1254a(e), (f)(1), (h) . When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected to plan for their departure from the United States and may wish to apply for immigration benefits for which they may be eligible.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status, from filing for adjustment of status based on an immigrant petition, or from applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. 8 U.S.C. 1254a(f)(4).

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii) ; 8 U.S.C. 1254a(c)(2)(B)(ii).

Does this extension allow nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who entered the United States after December 30, 1998, to file for TPS?

No. This is a Notice of an extension of TPS, not a Notice of re-designation of TPS for Honduras. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those beyond the current TPS eligibility requirements of Honduras. To be eligible for benefits under this extension, nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) must have continuously resided in the United States since December 30, 1998, and been continuously physically present in the United States since January 5, 1999, the date of the most recent designation of TPS for Honduras.

What is late initial registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A)(iv) and 8 CFR 244.2(f)(2) and (g). In order to be eligible for late initial registration an applicant must:

(1) Be a national of Honduras (or alien who has no nationality and who last habitually resided in Honduras);

(2) Have continuously resided in the United States since December 30, 1998;

(3) Have been continuously physically present in the United States since January 5, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the initial registration period (from January 5, 1999 to August 20, 1999), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the TPS designation of Honduras, should be submitted to the aforementioned Lockbox address in Chicago, Illinois.

What happens when this extension of TPS expires on July 5, 2007?

At least 60 days before this extension of TPS designation of Honduras expires on July 5, 2007, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, will review conditions in Honduras and determine whether the conditions for TPS designation continue to be met at that time, or whether the TPS designation should be terminated. 8 U.S.C. 1254a(b)(3). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

Notice of Extension of Designation of TPS for Honduras

By the authority vested in DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, DHS has

determined, after consultation with the appropriate Government agencies, that the conditions that prompted designation of Honduras for TPS continue to be met. Accordingly, DHS orders as follows:

(1) The designation of Honduras under section 244(b)(1)(B) of the Act is extended for an additional 12-month period from July 5, 2006, to July 5, 2007. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 75,000 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have been granted TPS and who may be eligible for re-registration.

(3) To maintain TPS, a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who was granted TPS during the initial designation period and the subsequent extensions of this designation, or who was granted TPS during late initial registration, must re-register for TPS during the 60-day re-registration period from April 1, 2006 until June 1, 2006.

(4) To re-register, aliens must follow the aforementioned filing procedures set forth in this Notice.

(5) At least 60 days before this extension ends on July 5, 2007, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, will review the designation of Honduras for TPS and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register.** *Id.*

(6) Information concerning the extension of designation of Honduras for TPS will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://uscis.gov.*

Dated: March 22, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6–4685 Filed 3–30–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2373–05; USICS–2006–0001]

RIN 1615–ZA33

Extension of the Designation of Temporary Protected Status for Nicaragua; Automatic Extension of Employment Authorization Documentation for Nicaragua TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of extension of temporary protected status for Nicaragua.

SUMMARY: The designation for Nicaragua for Temporary Protected Status (TPS) will expire on July 5, 2006. This Notice alerts the public that TPS for Nicaragua has been extended for 12-months, until July 5, 2007, and sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on January 5, 1999) or who ''late initial registered'' and also timely re-registered under each subsequent extension of the designation. In accordance with the original designation, eligible aliens must also have maintained continuous physical presence in the United States since January 5, 1999, and continuous residence in the United States since December 30, 1998. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the large number of Nicaraguans affected by this Notice, the Department of Homeland Security (DHS) recognizes that many re-registrants may not receive an extension sticker or new EAD until after their current EADs expire on July 5, 2006. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Nicaragua for 6 months until January 5, 2007, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

EFFECTIVE DATES: The extension of TPS for Nicaragua is effective July 5, 2006, and will remain in effect until July 5, 2007. The 60-day re-registration period begins April 1, 2006, and will remain in effect until June 1, 2007. To facilitate processing of their applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period (April 1, 2006).

FOR FURTHER INFORMATION CONTACT: Jonathan Crawford, Residence and Status Services, Office of Programs and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272–8350. This is not a toll-free call.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
USCIS—U.S. Citizenship and Immigration Services

What authority does the Secretary of Homeland Security have to extend the designation of TPS for Nicaragua?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state (or part thereof) for TPS. 8 U.S.C. 1254a(b)(1). The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultations with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of the TPS designation. 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, he must terminate the designation. 8 U.S.C. 1254a(b)(3)(B).

Why did the Secretary of Homeland Security Decide to Extend the TPS Designation for Nicaragua?

On January 5, 1999, the Attorney General published a Notice in the **Federal Register** at 64 FR 526, designating Nicaragua for TPS due to the devastation resulting from Hurricane Mitch. Subsequent to that date, the Attorney General, and the Secretary of Homeland Security, have extended TPS for Nicaragua five times, determining in each instance that the conditions warranting the designation continued to be met. 65 FR 30440, 66 FR 23271, 67 FR 22454, 68 FR 23748, 69 FR 64088. To notify individuals of the current extension, the Secretary published a Notice in the **Federal Register** on November 3, 2004, at 69 FR 64088. That extension became effective on January 5, 2005, and is due to end on July 5, 2006.

Since the date of the current extension, DHS and the Department of State (DOS) have continued to review conditions in Nicaragua. In particular, the Secretary of Homeland Security considered whether there continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch and that Nicaragua is unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on environmental disasters. 8 U.S.C. 1254a(b)(1)(B)(i–iii).

While progress has been made in reconstruction from Hurricane Mitch, Nicaragua has not been able to fully recover, in part due to follow-on natural disasters that have severely undermined progress towards an economic recovery that would enable Nicaragua to adequately handle the return of its nationals. (DOS Recommendation, February 2006). Continuing high rates of unemployment and underemployment estimated at 40 percent and coupled with scarce government resources spread thin by Hurricane Mitch recovery severely limit current employment opportunities for returning migrants. *Id.*

According to the USCIS Office of Refugee, Asylum, and International Operations Report of February 2006 (''ORAIO Report''), agriculture remained devastated, housing projects had not been completed, and parts of the country continued to suffer. For example, at a July 2005 news briefing, a U.S. Department of State representative reported that two provinces in northwest Nicaragua, Leon and Chinandega, continued to suffer from the devastating effects of Hurricane Mitch. *Id.* To help address that situation, a U.S. $175 million, five-year aid pact was announced. *Id.*

Living conditions in Nicaragua have worsened since the United States last extended TPS on November 3, 2004 due to Hurricane Beta and another serious storm. *Id.* Flooding from Hurricane Beta and Tropical Storm Stan in October 2005 exacerbated Nicaragua's continuing vulnerability. *Id.* Thousands of people were severely affected and houses, churches, medical centers, and schools in several communities were destroyed. *Id.* According to one source, 80 percent of the buildings on the central Atlantic coast, where Hurricane Beta hit, were heavily damaged or destroyed. *Id.*

Based upon this review, the Secretary of Homeland Security, after consultation with appropriate Government agencies, determined that the conditions that prompted designation of Nicaragua for TPS continue to be met. *See* 8 U.S.C. 1254a(b)(3)(A) (describing procedures for periodic review of TPS designations). There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as the result of an environmental disaster, and Nicaragua continues to be unable, temporarily, to handle adequately the return of its nationals. *See* 8 U.S.C. 1254a(b)(1)(B) (describing conditions that justify TPS designation). On the basis of these findings, the Secretary concluded that the TPS designation for Nicaragua should be extended for an additional 12-month period. *See* 8 U.S.C. 1254a(b)(3)(C) (providing the Secretary of Homeland Security with discretion to determine the length of an extension).

If I Currently Have Benefits Through the TPS Designation of Nicaragua for TPS, do I Need to Re-Register for TPS?

Yes. If you already have received TPS benefits through the designation of Nicaragua, your benefits will expire on July 5, 2006. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain TPS benefits through July 5, 2007. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period. 8 U.S.C. 1254a(a)(1) and 1254a(f). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C).

If I am Currently Registered for TPS or Have a Pending Application for TPS, how do I Re-Register to Renew my Benefits for the Duration of the Extension Period?

All persons previously granted TPS under the designation of Nicaragua who would like to maintain such status and those whose applications remain pending but who wish to renew their benefits must re-register by filing the following:

(1) Form I–821, Application for Temporary Protected Status, without fee;

(2) Form I–765, Application for Employment Authorization (see the chart below to determine whether you must submit the one hundred and eighty dollar ($180) filing fee with Form I–765 or a fee waiver request;

(3) A biometric services fee of seventy dollars ($70) if you are 14 years of age or older, or if you are under 14 and requesting an EAD extension. The biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii); and

(4) A photocopy of the front and back of your EAD if you received an EAD during the most recent registration period.

You do not need to submit photographs with your TPS application because a photograph will be taken, if needed, when you appear at a USCIS Application Support Center (ASC) for collection of biometrics.

Aliens who have previously registered for TPS but whose applications remain pending should follow these instructions if they wish to renew their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicant.

What Edition of the Form I–821 Should be Submitted?

Form I–821 has been revised. Only the Form I–821 with revision dates of November 5, 2004, or October 26, 2005, will be accepted. The bottom of each page of the revised form reads, ''Form I–821 (Rev. 11/05/04)N'' or ''Form I–821 (Rev. 10/26/05)Y.'' Submissions of older versions of Form I–821 will be rejected. You may obtain immigration forms on the Internet at http://uscis.gov or by calling the USCIS forms hotline at 1–800–870–3676.

Who Must Submit the $180 Filing fee for the Form I–765, Application for Employment Authorization?

If	Then
You are applying for an extension of your EAD valid until July 31, 2007, regardless of your age.	You must complete and file the Form I–765, Application for Employment Authorization, with the $180 fee.
You are not requesting an extension of your EAD	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.
You are applying for a TPS-related EAD under the late initial registration provisions and are under age 14 or over age 65.	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.
You are applying for an extension of your EAD and are requesting a fee waiver.	You must complete and file: 1) Form I–765 and 2) a fee waiver request and affidavit (and any other supporting information) in accordance with 8 CFR 244.20.

Who Must Submit the $70 Biometric Services fee?

The $70 biometric services fee must be submitted by all aliens 14 years of age and older who (1) have previously been granted TPS and are now re-registering for TPS; (2) have an initial application for TPS currently pending, have an EAD bearing the notification ''C–19'' on the face of the card under ''Category'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law,'' and wish to renew temporary treatment benefits; or (3) are applying for TPS under the late initial registration provisions. In addition, any alien, including one who is under the age of 14, choosing to apply for a new EAD or an extension of an EAD must submit the $70 biometric services fee. This biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

When Should an Applicant Submit his or her Application for TPS?

Applications must be filed during the 60-day re-registration period from April 1, 2006 to June 1, 2006. Applicants are encouraged to file the application as soon as possible after the start of the 60-day re-registration period.

Where should an applicant submit his or her application for TPS?

USCIS has designated two post office (P.O.) boxes with the Chicago Lockbox for the filing of TPS applications under this extension in order to facilitate efficient processing. Please note that applications should only be filed at the appropriate P.O. Box and should not be filed with a USCIS Service Center or District Office. Failure to submit a TPS application to the correct P.O. Box may result in a delay of adjudication. In addition, applicants will not be able to file their applications electronically (''E-file'') for this designation.

The type of TPS filing the applicant has to submit will determine the P.O. Box he or she must use to file; see below for instructions as to which of the two P.O. Boxes to utilize. Failure to file your application with the correct P.O. Box may result in a delay of the processing your application.

1. Applications for re-registration that do not require the submission of additional documentation or a renewal of temporary treatment benefits must be filed at this address: U.S. Citizenship and Immigration Services, P.O. Box 6943, Chicago, IL 60680–6943. Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Nicaragua, 427 S. LaSalle—3rd Floor, Chicago, IL 60605.

2. Aliens who are filing applications for re-registration that require the submission of supporting documentation or are filing for the first time as a late initial registrant must use the address below. Applications for re-registration require the submission of supporting documentation under the following circumstances:

(A) If one or more of the questions listed in Part 4, Question 2 of Form I–821 apply to the alien, then the submission of an explanation, on a separate sheet(s) of paper, and/or additional documentation must be provided.

(B) If the alien was granted TPS by an Immigration Judge or the Board of Immigration Appeals, then the alien must include evidence of the grant of TPS (such as an order from the Immigration Judge) with his or her application package.

Aliens who are filing a re-registration application that requires the submission of additional documentation or for the first time as a late initial registrant should file at the P.O. Box listed below: U.S. Citizenship and Immigration Services, P.O. Box 8631, Chicago, IL 60680–8631. Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Nicaragua—[EOIR/Additional Documents] *or* [Late Initial Registrant], 427 S. LaSalle—3rd Floor, Chicago, IL 60605.

Note: Make sure to use either EOIR/Additional Documents or Late Initial Registrant on the ''Attn:'' line, after Nicaragua, above.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A), 8 U.S.C. 1254a(c)(2)(B)(ii). Aliens should also note that an individual granted TPS will have his/her TPS withdrawn if the alien is not in fact eligible for TPS, if an alien fails to timely re-register for TPS without good case, or if the alien fails to maintain continuous physical presence in the United States. 8 U.S.C. 1254a(c)(3)(A)–(C).

Who is eligible to receive an automatic extension of his or her EAD from July 5, 2006 to January 5, 2007?

To receive an automatic extension of his or her EAD, an individual must be a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who has applied for and received an EAD under the TPS designation of Nicaragua and who has not had TPS withdrawn or denied. This automatic extension is limited to EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of July 5, 2006. The EAD must also be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category''.

If I am currently registered for TPS under the designation for Nicaragua and am re-registering for TPS, how do I receive an extension of my EAD after the 6 months granted by the automatic extension?

As a TPS re-registrant you will receive a notice in the mail with instructions to appear at an ASC for biometrics collection. When you report to the ASC, you must bring your receipt notice for your re-registration application, ASC appointment notice, and current EAD. When you appear at an ASC for biometrics collection, USCIS will either affix a sticker to your current EAD extending the validity of the card through the end of July 2007 or advise you that your case requires further resolution. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If those issues are resolved and your re-registration application is approved, you will receive a new EAD in the mail with an expiration date of July 31, 2007. Because the extension stickers include only the month and year, rather than a specific date, all EADS extended by sticker or issued anew pursuant to this extension of the TPS designation for Nicaragua will be valid through July 31, 2007.

Will I receive a new EAD in the mail if I am given an extension sticker at the ASC?

No. Because the sticker affixed to your card at the ASC will extend the validity of your current EAD through July 2007 there will be no need for you to obtain additional employment authorization documentation during the remainder of this extension of the designation of Nicaragua for TPS.

If I am not eligible to receive a sticker extending my EAD, can I receive an interim EAD at my local District Office?

No. USCIS will not be issuing interim EADs to TPS applicants and re-registrants at District Offices.

How may employers determine whether an EAD has been automatically extended for six months through January 5, 2007, and is therefore acceptable for completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until January 5, 2007, employers of Nicaraguan TPS beneficiaries whose EADs have been automatically extended by this Notice must accept the EAD if presented. An EAD that has been automatically extended for six months by this Notice to January 5, 2007, will actually contain an expiration date of July 5, 2006, and must be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' New EADs or extension stickers showing the January 5, 2007, expiration date of the six-month auto-extension will not be issued. In the alternative to the aforementioned options, any legally acceptable documentation or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

Employers should not request proof of Nicaraguan citizenship. Employers presented with an EAD that has been extended pursuant to this **Federal Register** Notice, if it reasonably appears on its face to be genuine and appears to relate to the employee, should accept the EAD as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by the Secretary of Homeland Security through this **Federal Register** Notice does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements, see 8 CFR 274a.2(b)(1)(vii). For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

How may employers determine an employee's eligibility for employment once the automatic extension has expired, between January 6, 2007, and the end of the TPS extension on July 5, 2007?

Eligible TPS aliens will possess either an EAD with an expiration date of July 31, 2007, or an EAD with an expiration date of July 5, 2006 and a sticker affixed to it extending the validity of the EAD through July 2007. In either case, the EAD will be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' Either of these EADs must be accepted for the purposes of verifying identity and employment authorization. Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force, as described above.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9, Employment Eligibility Verification?

During the first 6 months of this extension of the TPS designation for Nicaragua, employees may submit the following to their employer for completion of the Form I–9 at the time of hire or re-verification. Qualified individuals who have received a 6-month extension of their EADs by virtue of this **Federal Register** Notice may present a TPS-based EAD to their employer, as described above as proof of identity and employment authorization until January 5, 2007. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation to January 5, 2007.

After the first six months of TPS employment authorization for this designation extension, and continuing until the end of the extension period, July 5, 2007, a qualified individual will receive one of the following as evidence of employment authorization: A sticker affixed to the EAD extending the validity of the EAD through July 2007, or a new EAD valid through July 31, 2007. Either an EAD with the extension sticker or a newly issued EAD may be presented as evidence of employment authorization.

In the alternative, to the aforementioned options, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented

as proof of identity and employment eligibility; it is the choice of the employee.

Does TPS lead to lawful permanent residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence by itself or confer any other immigration status. 8 U.S.C. 1254a(e), (f)(1), (h). When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected to plan for their departure from the United States and may wish to apply for immigration benefits for which they may be eligible.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status, from filing for adjustment of status based on an immigrant petition, or from applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. 8 U.S.C. 1254a(f)(4).

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii) ; 8 U.S.C. 1254a(c)(2)(B)(ii).

Does this extension allow nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who entered the United States after December 30, 1998, to file for TPS?

No. This is a Notice of an extension of TPS, not a Notice of re-designation of TPS for Nicaragua. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those beyond the current TPS eligibility requirements of Nicaragua. To be eligible for benefits under this extension, nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) must have continuously resided in the United States since December 30, 1998, and been continuously physically present in the United States since January 5, 1999, the date of the most recent designation of TPS for Nicaragua.

What is late initial registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A)(iv) and 8 CFR 244.2(f)(2) and (g). In order to be eligible for late initial registration an applicant must:

(1) Be a national of Nicaragua (or alien who has no nationality and who last habitually resided in Nicaragua);

(2) Have continuously resided in the United States since December 30, 1998;

(3) Have been continuously physically present in the United States since January 5, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the initial registration period (from January 5, 1999 to August 20, 1999), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the TPS designation of Nicaragua, should be submitted to the aforementioned Lockbox address in Chicago, Illinois.

What happens when this extension of TPS expires on July 5, 2007?

At least 60 days before this extension of TPS designation of Nicaragua expires on July 5, 2007, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, will review conditions in Nicaragua and determine whether the conditions for TPS designation continue to be met at that time, or whether the TPS designation should be terminated. 8 U.S.C. 1254a(b)(3). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

Notice of extension of designation of TPS for Nicaragua.

By the authority vested in DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, DHS has determined, after consultation with the appropriate Government agencies, that the conditions that prompted designation of Nicaragua for TPS continue to be met. Accordingly, DHS orders as follows:

(1) The designation of Nicaragua under section 244(b)(1)(B) of the Act is extended for an additional 12-month period from July 5, 2006, to July 5, 2007. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 4,000 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been granted TPS and who may be eligible for re-registration.

(3) To maintain TPS, a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who was granted TPS during the initial designation period and the subsequent extensions of this designation, or who was granted TPS during late initial registration, must re-register for TPS during the 60-day re-registration period from April 1, 2006 until June 1, 2006.

(4) To re-register, aliens must follow the aforementioned filing procedures set forth in this Notice.

(5) At least 60 days before this extension ends on July 5, 2007, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, will review the designation of Nicaragua for TPS and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for

the determination, will be published in the **Federal Register**. *Id.*

(6) Information concerning the extension of designation of Nicaragua for TPS will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://uscis.gov.*

Dated: March 22, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6–4686 Filed 3–30–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–09]

Notice of Proposed Information Collection: Comment Request; Budget-Based Rent Increases

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: May 30, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_L._Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Munson, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Budget-Based Rent Increases.

OMB Control Number, if Applicable: 2502–0324.

Description of the Need for the Information and Proposed Use: This information is necessary to allow certain owners of multifamily housing projects to plan for expected increases in expenditures. The information will be used to determine the reasonableness of expense increases.

Agency Form Numbers, if Applicable: HUD–92547–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 14,493 generating approximately 14,493 annual responses; the frequency of responses is annually; the estimated time to prepare the response is estimated at 5 hours, and the estimated total number of hours needed to prepare the information collection is 72,466.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 24, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–4721 Filed 3–30–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–13]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 23, 2006.

Mark R. Johnston,

Acting Deputy Assistant, Secretary for Special needs.

[FR Doc. 06–2986 Filed 3–30–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–220–5101–ER–D025; IDI–33676]

Notice of Availability (NOA), Final Environmental Impact Statement for the Proposed Cotterel Wind Power Project and Proposed Resource Management Plan Amendment, Burley Field Office, Cassia County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA).

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Burley Field Office of the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) for the Proposed Cotterel Mountain Wind Power Project and Proposed Resource Management Plan Amendment.

DATES: No decision on the Proposed Plan Amendment will be made for at least 30 days after the Environmental Protection Agency (EPA) publishes the NOA of this FEIS/Proposed Plan Amendment in the **Federal Register**. BLM regulations (43 CFR 1610.5–2) state that any person who participated in the planning process and has an interest that may be adversely affected may protest the proposed decision that would be implemented on BLM administered land. The proposed decision which may be protested under this notice is the Proposed Plan Amendment. The protest must be filed within 30 days of the date that the EPA publishes its NOA. Instructions for filing protests are included in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The FEIS/Proposed Plan Amendment has been mailed in hard copy to those who participated in the planning process by providing comments on the Draft Environmental Impact Statement (DEIS)/Draft Plan Amendment. Additional copies in both paper and digital format are available in limited numbers. To receive a copy, refer to the **FOR FURTHER INFORMATION CONTACT** section below. The FEIS/Proposed Plan Amendment is also posted to the Internet at *http://www.id.blm.gov/planning/cotterel*.

FOR FURTHER INFORMATION CONTACT: Scott Barker, Project Manager, BLM Burley Field Office, 15 East, 200 South, Burley, Idaho 83318, phone 208–677–6678, fax (209) 677–6699; or e-mail: *scott_barker@blm.gov*.

SUPPLEMENTARY INFORMATION: Windland, Inc. in partnership with Shell Wind Energy, Inc., a wholly owned subsidiary of the Royal Dutch/Shell Group of Companies, is proposing to construct, operate, and maintain a wind-powered electric generation facility on the ridgeline of Cotterel Mountain, near the towns of Albion, Malta, and Burley, Idaho. The FEIS/Proposed Plan Amendment presents comments received on the DEIS/Draft Plan Amendment and associated responses to those comments. Four alternatives are analyzed in this FEIS/Proposed Plan Amendment and the effects disclosed. Alternative A, the No Action Alternative, reflects existing Resource Management Plan direction. Alternative B is the proponent's Proposed Action as submitted in their right-of-way application. Alternative C, is a modification of the Proposed Action which includes fewer but larger output wind turbines, alternative access, alternative transmission line locations, and alternative turbine types. Alternative D is a modified version of Alternative C with a reduced number of wind turbines.

Alternatives B, C, and D are not consistent with the Cassia RMP, which does not allow for the granting of rights-of-way in the proposed project area. The Proposed Plan Amendment would allow the decision maker to grant a right-of-way should that person decide to do so. The proposed decision is to amend the Cassia RMP by implementing Alternative C. Protests must address the proposed decision to amend the Cassia RMP.

Protests regarding proposed decisions affecting BLM administered lands must be in writing and filed with the BLM Director. Protests may raise only those issues that were submitted for the record during the planning process. Email and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the email or faxed protest as an advance copy, and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM Protest Coordinator at (202) 452–5112 and e-mails to *Brenda_Hudgens-Williams@blm.gov*. Please direct the follow up letters to the appropriate address provided below. To be considered complete, your protest must contain at minimum, the following information: (1) The name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue or issues being protested; (3) a statement of the part or parts of the Proposed Plan Amendment being protested; (4) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and (5) a concise statement explaining why the Director's proposed decision is believed to be wrong. A protest merely expressing disagreement with the Director's proposed decision without providing any supporting data will not be considered a valid protest. All written protests must be sent to one of the following addresses: Regular Mail, Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, P.O. Box 66538, Washington, DC 20035, or Overnight Mail, Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

To be considered timely, your protest must be postmarked no later than the last day of the protest period. Though not a requirement, it is suggested that protests be sent by certified mail, return receipt requested. You are also encouraged, but not required, to forward a copy of your protest to the project manager at the address listed above under **FOR FURTHER INFORMATION CONTACT**. This may allow the BLM to resolve the protest through clarification of intent or discussion with the protestor.

Please note that protests, including names and street addresses are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. Respondents who wish to withhold their name and/or street address from public review or from disclosure under FOIA must state so prominently at the beginning of the written correspondence. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representing organizations or businesses, will be made available for public inspection in their entirety. Following resolution of any protests of the proposed decision, a record of decision (ROD) will be signed by the Assistant Director of the Bureau of Land Management. A NOA of the ROD will be published in the **Federal Register** and through local news media.

Cooperating Agencies: U.S. Fish and Wildlife Service, Interior; Bureau of Reclamation, Interior; Bonneville Power Administration, Energy; Idaho Department of Lands; Cassia County Commissioners. Participating Agency Idaho Department of Fish and Game.

Dated: February 9, 2006.

Kenneth E. Miller,

Burley Field Office Manager, Bureau of Land Management.

[FR Doc. E6–4663 Filed 3–30–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–5101–ER–F851; NVN–79734; 6–08807]

Notice of Intent To Prepare an Environmental Impact Statement and Initiate the Public Scoping Process for Lincoln County Water District Proposed Water Production Wells, Water Transmission Pipeline, Electric Lines, and Communication Lines in Southwestern Lincoln County; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Initiate Scoping.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, notice is hereby given that the Bureau of Land Management (BLM), Nevada State Office and Ely Field Office, will be initiating the preparation of an environmental impact statement (EIS) and conducting public scoping meetings to analyze the proposed Kane Springs Valley (KSV) Groundwater Development Project, which will include production wells, a water transmission pipeline with lateral pipelines, electric lines, and communication lines. The purpose of the project is to develop and convey water from Kane Springs Valley to private land in the Coyote Springs Valley.

DATES: The scoping comment period will commence with the publication of this notice in the **Federal Register** and will end on May 1, 2006. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS must be submitted in writing to the address below and will be accepted throughout the scoping period. There will also be public meetings during the 30-day scoping period. The dates, times, and locations of the public meetings will be announced through the local news media.

ADDRESSES: Please mail written comments to the BLM, Ely Field Office, HC 33 Box 33500, Ely Nevada 89301, (fax (775) 289–1910). Comments submitted during this EIS process, including names and street addresses of respondents will be available for public review at the Ely Field Office during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Penny Woods, BLM Nevada State Office, (775) 861–6466. You may also contact Ms. Woods to have your name added to the EIS mailing list.

SUPPLEMENTARY INFORMATION: The KSV Groundwater Development Project, which is being proposed by the Lincoln County Water District (LCWD), would be located in southwestern Lincoln County. The proposed project would develop and convey groundwater in Kane Springs Valley to private land (formerly known as the Aerojet land) in the Coyote Springs Valley. The volume of water to be transported through the proposed facilities would be approximately 5,000 acre-feet per year.

The proposed facilities include 7 groundwater production wells (16″ diameter), 4-mile long water transmission pipeline (24″ diameter), and lateral pipelines (12″ diameter) to connect the transmission pipeline to the production wells. The pipelines and wells would be located along or near the Kane Springs Road. The proposed width of the permanent right-of-way for the transmission pipeline and lateral pipelines is 20 feet. During construction of the pipelines, a temporary width of 60 feet would be needed. Electric and communication lines would be located within the permanent right-of-way for the pipelines. Access roads approximately 12 feet in width would be needed from the Kane Springs Road to each well site. Each well site would require a temporary construction area of 100 feet × 200 feet.

The facilities would be generally located within and/or across the following public lands about 65 miles northeast of Las Vegas:

Mount Diablo Meridian

T. 11 S., R. 63 E.,
Sections 1, 11, 12, 14 and 15.
T. 11 S., R. 64 E.,
Section 6.

A map of the proposed project is available for viewing at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely NV 89301.

Dated: March 27, 2006.

Amy Lueders,

Associate State Director, Nevada.

[FR Doc. E6–4707 Filed 3–30–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–5101–ER–F852; NVN–79742; 6–08807]

Notice of Intent to Prepare an Environmental Impact Statement and Initiate the Public Scoping Process for Lincoln County Water District Proposed Water Production Wells, Water Transmission Pipeline, Electric Lines, and Communication Lines in Southeastern Lincoln County; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and initiate scoping.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, notice is hereby given that the Bureau of Land Management (BLM), Nevada State Office and Ely Field Office, will be initiating the preparation of an environmental impact statement (EIS) and conducting public scoping meetings to analyze the proposed Lincoln County Land Act (LCLA) Groundwater Development Project, which will include production wells, a water transmission pipeline with lateral pipelines, electric lines, and communication lines. The purpose of the project is to develop and convey water from the Tule Desert area to land sold by the BLM under the LCLA, approximately 2 miles north of Mesquite, Nevada.

DATES: The scoping comment period will commence with the publication of this notice in the **Federal Register** and will end on May 1, 2006. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS must be submitted in writing to the address below and will be accepted throughout the scoping period. There will also be public meetings during the 30-day scoping period. The dates, times, and locations of the public scoping meetings will be announced through the local news media.

ADDRESSES: Please mail written comments to the BLM, Ely Field Office, HC 33 Box 33500, Ely Nevada 89301, (fax (775) 289–1910). Comments submitted during this EIS process, including names and street addresses of

respondents will be available for public review at the Ely Field Office during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Penny Woods, BLM Nevada State Office, (775) 861–6466. You may also contact Ms Woods to have your name added to the EIS mailing list.

SUPPLEMENTARY INFORMATION: The LCLA Groundwater Development Project is being proposed by the Lincoln County Water District (LCWD) and would be located in southeastern Lincoln County. The proposed project would develop and convey groundwater in the Tule Desert and Clover Valley hydrographic basins to land recently sold by the BLM that is approximately 2 miles north of Mesquite, Nevada. This private land comprises the LCLA development area and consists of approximately 13,000 acres. The volume of water to be transported through the proposed facilities would be approximately 23,824 acre-feet per year. The water would be used to support development in the LCLA development area.

The proposed facilities include approximately 8 groundwater production wells (16 inch diameter) located in the Tule Desert and Clover Valley hydrographic basins, a 23-mile long water transmission pipeline (24 inch diameter), and lateral pipelines (12 inch diameter) to connect the transmission pipeline to the productions wells. The proposed width of the right-of-way for the transmission pipeline would be 30 feet with a temporary width of 60 feet during construction. The proposed width of the right-of-way for the lateral pipelines would be 20 feet with a temporary width of 60 feet during construction. The productions well site rights-of-way would be 100 feet × 100 feet with a temporary construction area of 100 feet × 200 feet. Access roads approximately 12 feet in width would be needed from existing roads in the Tule Desert area to each well site.

The proposed production wells would be located in the well field area authorized for the Toquop Energy Project, which is a 1100 MW gas-fired power plant. The proposed transmission pipeline would follow the same alignment as the approved water pipeline for the power plant. From the power plant, the transmission pipeline would proceed to the LCLA development area.

Electric lines, communication lines, and a natural gas pipeline would be located within the proposed transmission pipeline right-of-way. A pipeline bringing reclaimed water from the LCLA development area to the already authorized Toquop Energy Project site would also be in the proposed right-of-way.

The facilities would be located within and/or across the following public lands north of Mesquite, Nevada:

Mount Diablo Meridian

Tps. 6 to 12 S., Rgs. 69 and 71 E., various sections.

A map of the proposed project is available for viewing at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely NV 89301.

Dated: March 21, 2006.

Amy Lueders,

Associate State Director, Nevada.

[FR Doc. 06–2932 Filed 3–30–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed National Natural Landmark Designation for the Irvine Ranch Land Reserve, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed National Natural Landmark designation.

SUMMARY: The National Park Service has evaluated and determined that the Irvine Ranch Land Reserve, located forty-five miles south of downtown Los Angeles, in Orange County, California appears to meet the criteria for national significance and proposes to recommend the site for designation as a National Natural Landmark. The public is invited to comment on this recommendation. The proposal will be considered by the National Park System Advisory Board at a meeting to be held on June 8, 2006 at Zion National Park, in the Majestic View Lodge, 2400 Zion Park Blvd., Springdale, Utah.

DATES: Written comments will be accepted until May 30, 2006.

ADDRESSES: Written comments should be sent to Steve Gibbons, National Natural Landmarks Coordinator, North Cascades National Park, 810 State Route 20, Sedro Woolley, Washington 98284, or to his Internet address: *Steve_Gibbons@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Gibbons at 360–856–5700, extension 306.

SUPPLEMENTARY INFORMATION: The Irvine Ranch Land Reserve represents significant biological resources of Mediterranean shrublands, including extensive areas of chaparral and coastal sage scrub associations. These chaparral and coastal sage scrub areas present one of the largest extant areas of this association remaining in the South Pacific Border Province. It is the presence of these large and relative undisturbed ecosystems and their inherent biological diversity that provide the uniqueness of this area. In commensurate with its biological significance the Irvine Ranch Land Reserve geologically represents a remarkably unique, long time-range stratigraphic succession that shows the linkage between tectonic framework, provenances, sedimentology, paleoenvironments, paleontology, paleoclimate, landscape evolution and geologic history. In this regard it is not only outstanding, but represents one of the most critical time intervals and locations in the evolution of the South Pacific Border Province.

Information on the National Natural Landmarks Program can be found in 36 CFR Part 62 or on the Internet at *http://www.nature.nps.gov/nnl.*

Dated: March 28, 2006.

Fran Mainella,

Director, National Park Service.

[FR Doc. 06–3161 Filed 3–30–06; 8:45 am]

BILLING CODE 4312–HJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead, Particularly Under Low Reservoir Conditions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public availability of a Scoping Summary Report on the development of Lower Basin shortage guidelines and coordinated management strategies for the operation of Lake

Powell and Lake Mead, particularly under low reservoir conditions.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Department of the Interior (Department) has issued a Scoping Summary Report on the development of Lower Basin shortage guidelines and coordinated management strategies for the operation of Lake Powell and Lake Mead, particularly under low reservoir conditions. The Scoping Summary Report provides a summary of the issues raised during the scoping process and describes the Department's current assessment of the proposed scope of the environmental analysis to be included in the draft environmental impact statement (EIS). The Department anticipates that the Draft EIS will be published in December 2006. The report also includes a summary of the issues raised and comments received during the scoping process. Among other things, the report identifies how the Department anticipates addressing these issues.

Dates and Addresses: The Department will accept, review, and incorporate, as appropriate, any additional public comments on the information contained in the Scoping Summary Report as part of the development of the Draft EIS, which the Department anticipates will be published in December 2006. The Department would prefer that any such comments be received by May 1, 2006, in order to allow full consideration during the development of the Draft EIS. Send written comments to: Regional Director, Bureau of Reclamation, Lower Colorado Region, Attention: BCOO–1000, P.O. Box 61470, Boulder City, Nevada 89006–1470; faxogram at (702) 293–8156; or e-mail at *strategies@lc.usbr.gov.*

The Scoping Summary Report is available on the Bureau of Reclamation's Web site at *http://www.usbr.gov/lc/region/g4000/strategies/index.html.* If you would like a printed copy of the report, please contact Nan Yoder at telephone (702) 293–8500; facsimile (702) 293–8156; e-mail: *strategies@lc.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Terrance J. Fulp, Ph.D., at (702) 293–8500 or e-mail at *strategies@lc.usbr.gov;* and/or Randall Peterson at (801) 524–3633 or e-mail at *strategies@lc.usbr.gov.*

SUPPLEMENTARY INFORMATION: The Department is publishing the Scoping Summary Report as a voluntary effort to assist in public understanding of this important process. Based upon information presented in the report and all information submitted to the Department as part of this process, the Department is now undertaking preparation of a Draft EIS.

Proposed Federal Action

The Bureau of Reclamation, acting on behalf of the Secretary of the Interior (Secretary), proposes to take action to adopt specific Colorado River Lower Basin shortage guidelines and coordinated reservoir management strategies to address operations of Lake Powell and Lake Mead, particularly under low reservoir conditions. This action will provide a greater degree of certainty to all water users and managers in the Colorado River Basin by providing more detailed objective guidelines for the operation of Lake Powell and Lake Mead and by allowing water users in the Lower Basin to know when, and by how much, water deliveries will be reduced in drought and other low reservoir conditions. In addition, this action is designed to delay the onset and magnitude of shortages and maximize the protection afforded to water supply, hydropower production, recreation, and environmental benefits by water storage in Lakes Powell and Mead. As a result of analysis of comments and public input received to date, the Department anticipates that the elements of the proposed action will include:

(1) Adoption of guidelines that will identify those circumstances under which the Secretary would reduce the annual amount of water available for consumptive use from Lake Mead to the Lower Division states (Arizona, California, and Nevada) below 7.5 million acre-feet (maf) (a ''Shortage'') pursuant to Article II(B)(3) of the Supreme Court Decree in *Arizona* v. *California*; [1]

(2) adoption of guidelines for the coordinated operation of Lake Powell and Lake Mead that are designed to provide improved operation of the two reservoirs, particularly under low reservoir conditions;

(3) adoption of guidelines for the storage and delivery of water in Lake Mead to increase the flexibility to meet water use needs from Lake Mead, particularly under low reservoir conditions. These guidelines are anticipated to address the storage and delivery of non-system water, exchanges, and water conserved by extraordinary measures; and

(4) modification of the substance and term of the existing Interim Surplus Guidelines, published in the **Federal Register** on January 25, 2001 (66 FR 7772–7782), from 2016 to coincide with the proposed new guidelines described above.

The Secretary proposes that these guidelines will be interim in nature and will extend through 2025. Adoption of new guidelines along with modification of existing operational guidelines for a consistent interim period will provide the opportunity to gain valuable experience for operating the reservoirs under the modified operations and should improve the basis for making additional future operational decisions, whether during the interim period or thereafter.

It is the intent of the Department to adopt and implement the above proposed action in a manner that is consistent with applicable Federal law,[2] and further, in a manner that does not require any additional statutory authorization. In this regard, Reclamation proposes to implement the proposed action consistent with the Colorado River Compact of 1922, the Decree entered by the United States Supreme Court in the case of *Arizona* v. *California,* and other provisions of applicable Federal law. It is the intent of the Department that the proposed action will be consistent with and provide implementing guidance that would be used each year by the Department in implementing the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Long-Range Operating Criteria or LROC).

Purpose and Need for the Proposed Federal Action

The purpose of the proposed action is to adopt additional operational strategies to improve the Department's annual management and operation of key Colorado River reservoirs while also providing mainstream users of Colorado River water, particularly those in the Lower Division states of Arizona, California, and Nevada, a greater degree

[1] The Department intends to meet any consultation requirements identified in Article II(B)(3) of the Supreme Court Decree in *Arizona* v. *California* through the ongoing NEPA process initiated by the **Federal Register** Notice of September 30, 2005 (70 FR 57322–57323).

[2] The treaties, compacts, decrees, statutes, regulations, contracts, and other legal documents and agreements applicable to the allocation, appropriation, development, exportation, and management of the waters of the Colorado River Basin are often referred to as the ''Law of the River.'' There is no single, universally-agreed upon definition of the ''Law of the River,'' but it is useful as a shorthand reference to describe this longstanding and complex body of legal agreements governing the Colorado River.

of predictability with respect to the amount of annual water deliveries in future years, particularly under low reservoir conditions.

The need for the proposed action is based on a number of important considerations including the following reasons:

- The Colorado River flows through the driest portion of the continental United States and is the primary source of water to a region that has experienced continued population growth over recent decades.
- The Colorado River is of strategic importance in the southwestern United States for water supply, hydropower production, flood control, recreation, fish and wildlife habitat, and other benefits. In addition, the United States has a delivery obligation to the Republic of Mexico for certain waters of the Colorado River pursuant to the 1944 U.S.-Mexico Water Treaty.
- The Colorado River Basin experienced the worst five-year drought in recorded history in 2000 through 2004. This drought has impacted system storage, while demands for Colorado River water supplies have continued to increase. During the period from October 1, 1999, to October 1, 2004, storage in Lakes Powell and Mead fell from 47.6 maf (approximately 95% of capacity) to 23.1 maf (approximately 46% of capacity). This drought was also the worst sustained drought experienced in the Colorado River Basin at a time when all major storage facilities were in place, and when use by the Lower Division states met or exceeded the annual ''normal'' apportionment of 7.5 maf pursuant to Article II(B)(1) of the Decree. Moreover, entering the five year drought period with Lake Powell and Lake Mead reservoir storage capacity at 95% fortuitously provided for sufficient water supplies to meet basin demands. This may not be the case in the future. Among other factors, these conditions led the Department to conclude that additional management guidelines are necessary and desirable for the efficient, and coordinated, management of the major mainstem Colorado River reservoirs.
- In the future, low reservoir conditions will likely not be limited to drought periods because of anticipated future demands on Colorado River water supplies. Projected future increases in Colorado River water demands are expected to increase the frequency and magnitude that Colorado River reservoirs are drawn down to low reservoir conditions.
- As a result of actual operating experience and through reviews of the LROC and preparation of Annual Operating Plans, particularly during recent drought years, the Secretary has determined a need for more specific guidelines, consistent with the Decree and other applicable provisions of Federal law, to assist in the Secretary's determination of annual water supply conditions in the Lower Basin. The increased level of predictability is needed by the entities that receive Colorado River water to better plan for and manage available water supplies, and to allow such entities to better integrate the use of Colorado River water with other water supplies that they rely on. To date, storage of water and flows in the Colorado River Basin have been sufficient so that it has not been necessary to reduce Lake Mead annual releases below 7.5 maf; nor has the Department yet identified when water supplies would be reduced, by how much, or who would experience specified reductions.
- After public consultation meetings held in the summer of 2005, the Secretary has also determined the desirability of developing additional operational guidelines that will provide for releases greater than or less than 8.23 maf from Lake Powell.
- To further enhance this coordinated reservoir approach, the Secretary has also determined a need for guidelines that provide water users with the opportunity to conserve, store, and take delivery of water in and from Lake Mead for the purposes of enhancing existing water supplies, particularly under low reservoir conditions.
- Lastly, the Secretary has determined the need to modify and extend the Interim Surplus Guidelines to coincide with the duration of the proposed new guidelines. This will provide an integrated approach for reservoir management and more predictability for future Colorado River Basin water supplies.

Results of Scoping Input

The description of the Proposed Federal Action and the Purpose and Need for the Proposed Federal Action described in this Notice and in the Scoping Summary Report available at Reclamation's Web site noted above, was refined to reflect information and comments received during the scoping meetings and in written and oral scoping comments submitted to the Department.[3] The Proposed Federal Action has been crafted to reflect, among others, three important considerations that were identified by commentors:

(1) *Importance of Encouraging Conservation of Water:* Many comments submitted to the Department focused on the importance of encouraging and utilizing water conservation as an important tool to better manage limited water supplies and therefore minimize the likelihood and severity of potential future shortages. *See e.g.*, comment G–0003, ''Conservation Before Shortage'' proposal submitted to the Department on July 18, 2005, which is available in its entirety in Appendix W of the Scoping Summary Report. Water conservation can occur through a number of approaches that will be identified in the Draft EIS, including: Extraordinary conservation, forbearance, financial incentives to maximize conservation, dry-year options, and associated storage and recovery methodologies and procedures to address conservation actions by particular parties.

(2) *Importance of Consideration of Reservoir Operations at all Operational Levels:* Comments submitted to the Department urged the Department to consider and analyze management and operational guidelines for the full range of operational levels at Lake Powell and Lake Mead. *See e.g.*, comment S–2006, ''Basin States' Preliminary Proposal Regarding Colorado River Interim Operations'' submitted to the Department on February 3, 2006, which is available in its entirety in Appendix Q of the Scoping Summary Report. It was suggested that this approach is integral to the prudent development of new low-reservoir operational guidelines, as the approach and management of these reservoirs at higher elevations has a direct impact on available storage, thereby affecting the likelihood and severity of potential future shortages.

(3) *Term of Operational Guidelines:* Comments submitted to the Department urged the Department to consider interim, rather than permanent, additional operational guidelines. *See e.g.*, comment letters L–2002 through 2006 submitted to the Department by several Arizona municipalities which are available in their entirety in Appendix W of the Scoping Summary Report. In this manner, the Department would have the ability to use actual operating experience for a period of years, thereby facilitating a better understanding of the operational effects of the new guidelines; modifications would then be made, if necessary, during or preferably at the end of the interim period. In particular, the

[3] The Scoping Summary Report also addresses in Section 5.0 those issues raised during scoping that have been determined to be beyond the proposed scope of the EIS.

Department was also urged to consider adopting additional operational guidelines for both low and higher reservoir elevations for a consistent period of years. At this time, it is important to note, the Department has detailed operational guidelines for declaration of surplus conditions at higher elevations of Lake Mead through 2016, but does not have similar detailed operational guidelines for either Lake Powell or the lower operational levels of Lake Mead.

Public Disclosure

Written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which respondents' identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations, business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: March 18, 2006.

Robert W. Johnson,

Regional Director, Lower Colorado Region, Bureau of Reclamation.

Dated: March 16, 2006.

Rick L. Gold,

Regional Director, Upper Colorado Region, Bureau of Reclamation.

[FR Doc. E6–4713 Filed 3–30–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0025, 1029–0040 and 1029–0104

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR 733, Maintenance of state programs and procedures for substituting federal enforcement of state programs and withdrawing approval of state programs; 785, Requirements for permits for special categories of mining; and 876, Acid mine drainage treatment and abatement program.

DATES: Comments on the proposed information collection activities must be received by May 30, 2006, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR 733, Maintenance of state programs and procedures for substituting federal enforcement of state programs and withdrawing approval of state programs; (2) 30 CFR 785, Requirements for permits for special categories of mining; and (3) 30 CFR 876, Acid mine drainage treatment and abatement program. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Maintenance of state programs and procedures for substituting federal enforcement of state programs and withdrawing approval of state programs, 30 CFR 733.

OMB Control Number: 1029–0025.

Summary: This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts that the person believes establishes the need for the evaluation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Total Annual Responses: 1.

Total Annual Burden Hours: 100.

Title: Requirements for permits for special categories of mining, 30 CFR 785.

OMB Control Number: 1029–0040.

Summary: The information is being collected to meet the requirements of section 507, 508, 510, 515, 701 and 711 of Public Law 95–87, which requires applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coalmine permits and State Regulatory Authorities.

Total Annual Responses: 228.

Total Annual Burden Hours: 16,146.

Title: Acid mine drainage treatment and abatement program, 30 CFR 876.

OMB Control Number: 1029–0104.

Summary: This part establishes the requirements and procedures allowing states and Indian tribes to establish acid mine drainage abatement and treatment programs under the Abandoned Mine Land fund as directed through Public Law 101–508.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 350.

Dated: March 27, 2006.

Kathryn S. O'Toole,

Acting Chief, Division of Regulatory Support.

[FR Doc. 06–3130 Filed 3–30–06; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–503 (Consolidated Enforcement and Advisory Opinion Proceedings)]

In the Matter of Certain Automated Mechanical Transmission Systems for Medium-Duty and Heavy-Duty Trucks and Components Thereof; Notice of Commission Decision Not to Review an Enforcement Initial Determination and an Initial Advisory Opinion; Denial of Motion for Clarification of Remedial Order and Posting of Bond

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 the Enforcement Initial Determination (''EID'') and Initial Advisory Opinion (''IAO'') issued by the presiding administrative law judge (''ALJ'') in the above-captioned proceedings. The Commission has also determined to deny the complainant's motion to clarify the Commission's existing cease and desist order and to require retroactive posting of bond.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential 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) 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: This section 337 investigation was instituted by the Commission on January 7, 2004, based on a complaint filed by Eaton Corporation (''Eaton'') of Cleveland, Ohio. 69 FR 937 (January 7, 2004). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated mechanical transmission systems (''AMTS'') for medium-duty and heavy-duty trucks, and components thereof, by reason of infringement of claim 15 of U.S. Patent No. 4,899,279 (''the '279 patent''); claims 1–20 of U.S. Patent No. 5,335,566 (''the '566 patent''); claims 2–4 and 6–16 of U.S. Patent No. 5,272,939; claims 1–13 of U.S. Patent No. 5,624,350; claims 1, 3, 4, 6–9, 11, 13, 14, 16 and 17 of U.S. Patent No. 6,149,545 (''the '545 patent''); and claims 1–16 of U.S. Patent No. 6,066,071.

The complaint and notice of investigation named three respondents ZF Meritor, LLC of Maxton, North Carolina, ZF Freidrichshafen AG (''ZFAG'') of Freidrichshafen, Germany, and ArvinMeritor, Inc. (''ArvinMeritor'') of Troy, Michigan. Claim 15 of the '279 patent, claim 4 of the '566 patent, and claims 1, 3, 6, 7, 11, 13, 16, and 17 of the '545 patent remained at issue when the ALJ issued his final ID.

On January 7, 2005, the ALJ issued his final ID on violation and his recommended determination on remedy. The ALJ found a violation of section 337 by reason of infringement of claim 15 of the '279 patent by respondents. He did not find a violation based on infringement of the asserted claims of the remaining '545 and '566 patents. Petitions for review were filed by Eaton, the respondents, and the Commission investigative attorney (''IA'') on January 21, 2005. All the parties filed responses to the petitions on January 28, 2005.

On February 24, 2005, the Commission determined not to review the ALJ's final ID on violation, thereby finding a violation of section 337. 70 FR 10112 (March 2, 2005). On April 7, 2005, the Commission issued a limited exclusion order and a cease and desist order covering AMTS for medium-duty and heavy-duty trucks, and components thereof that infringe claim 15 of the '279 patent. 70 FR 19094 (April 13, 2005).

On April 21, 2005, the respondents filed a request for advisory opinion proceedings concerning a redesigned AMTS which respondents assert does not fall within the scope of the Commission's remedial orders. Eaton filed a complaint for enforcement proceedings on May 11, 2005, naming ZFAG and ArvinMeritor as respondents. On June 6, 2005, the Commission issued a notice that it had determined to institute consolidated formal enforcement and advisory opinion proceedings.

On August 19, 2005, Eaton filed a motion requesting that the Commission issue an order clarifying that the existing cease and desist order bars the respondents from importing their redesigned AMTS during the pendency of the above-captioned proceedings. The same motion requested that the Commission require the respondents to post a bond for the redesigned AMTS that it imported during the period of Presidential review, see 19 U.S.C. § 1337(j).

On August 31, 2005, the respondents and the IA filed oppositions to Eaton's motion.

On January 10, 2006, the presiding ALJ issued an EID and IAO finding that the respondents' redesigned AMTS do not infringe claim 15 of the '279 patent and therefore do not fall within the Commission's remedial orders. No petitions for review of the EID or IAO were filed. The Commission has determined not to review the EID or IAO. The Commission has also determined to deny Eaton's motion regarding the existing cease and desist order and posting of bond because it has found that the redesigned AMTS are not covered by the remedial orders issued in this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.75 and 210.79 of the Commission's Rules of Practice and Procedure (19 CFR 210.75 and 210.79).

By order of the Commission.

Issued: March 27, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4733 Filed 3–30–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. NAFTA–103–014]

Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and opportunity to file written submissions.

DATES: Effective Date: March 24 , 2006.

SUMMARY: Following receipt of a request on March 20, 2006, from United States Trade Representative (USTR) under authority delegated by the President and pursuant to section 103 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3313), the Commission instituted investigation No. NAFTA–103–014,

Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin.

Background: According to the USTR's letter, U.S. negotiators have recently reached agreement in principle with representatives of the governments of Canada and Mexico on proposed modifications to Annexes 401 and 403 of the NAFTA. Chapter 4 and Annexes 401 and 403 of the NAFTA set forth in the rules of origin for applying the tariff provisions of the NAFTA to trade in goods. Section 202(q) of the NAFTA Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission.

The USTR has requested that the Commission provide advice on the probable effect on U.S. trade under the NAFTA and on domestic industries as a result of proposed modifications to the rules of origin in NAFTA Annexes 401 and 403 for a number of products. A complete listing of the products and the proposed modifications is available from the Office of the Secretary to the Commission or by accessing the electronic version of this notice at the Commission's Internet site (*http://www.usitc.gov*). The current U.S. rules of origin can be found in General Note 12 of the 2005 Harmonized Tariff Schedule of the United States (see ''General Notes'' link at *http://hotdocs.usitc.gov/tariff_chapters_current/toc.html*). As requested, the Commission will forward its advice to the USTR by August 14, 2006.

FOR FURTHER INFORMATION CONTACT: Project Leader, Edmund Cappuccilli (202–205–3368 or *edmund.cappuccilli@usitc.gov*) or Deputy Project Leader, Vincent Honnold (202–205–3314 or *vincent.honnold@usitc.gov*). The above persons are in the Commission's Office of Industries. For more information on the legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations at 202–205–1819 or *margaret.olaughlin@usitc.gov*).

Written Submissions: In lieu of a public hearing, interested parties are invited to submit written statements concerning any economic effect of the modifications. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on June 2, 2006. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, from which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission

Issued: March 27, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4737 Filed 3–30–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Update to the Electronic Document Information System (EDIS)

AGENCY: United States International Trade Commission.

ACTION: Notice of Update to the Electronic Document Information System (EDIS).

SUMMARY: The United States International Trade Commission hereby provides notice of an update to the Commission's Electronic Document Information System (EDIS). The update to EDIS includes an enhanced interface for the filing of electronic documents and a revised Handbook on Electronic Filing Procedures.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott (202–205–2000), Secretary to the Commission, or Brian V. Moran (202–205–2784), Director, Office of Information Technology Services, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. Persons with mobility impairments who require special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. For additional information concerning electronic filing and the Commission in general, please visit the Commission's Web site at *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: A copy of the revised Handbook on Electronic Filing Procedures is accessible at *http://www.usitc.gov.* Persons with questions regarding the use, procedures, and requirements regarding electronic filing may also contact the EDIS Help

Desk at 202–205–3347 or *EDISHELP@usitc.gov.*

By Order of the Commission.

Issued: March 27, 2006

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4732 Filed 3–30–06; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering (1170).

Date/Time: May 3, 2006, 8 a.m.–5 p.m.; May 4, 2006, 8 a.m.–1 p.m.

Place: National Science Foundation, Room 1235.

Type of Meeting: Open.

Contact Person: Deborah Young, Administrative Officer, 703–292–8301.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession and engineering education.

Dated: March 27, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–3128 Filed 3–30–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research #1203.

Dates and Times: May 16, 2006; 7:30 a.m.–9 p.m.; May 17, 2006; 8 a.m.–3 p.m.

Place: University of Nebraska, Lincoln, NE.

Type of Meeting: Part-Open.

Contact Person: Dr. Thomas Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Materials Research Science and Engineering Center (MRSEC).

Agenda:

Tuesday, May 16, 2006

7:45 a.m.–8:45 a.m. Closed—Executive Session.
8:45 a.m.–4:30 p.m. Open—Review of the Materials Research Science and Engineering Center at the University of Nebraska.
4:30 p.m.–5:45 p.m. Closed—Executive Session.
7 p.m.–9 p.m. Open—Dinner.

Wednesday, May 17, 2006

8 a.m.–9 a.m. Closed—Executive Session.
9 a.m.–9:45 a.m. Open—Review of the Materials Research Science and Engineering Center at the University of Nebraska.
9:45 a.m.–3 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 28, 2006

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–3129 Filed 3–30–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR part 60—''Disposal of High-Level Radioactive Wastes in Geologic Repositories''.

2. *Current OMB approval number:* 3150–0127.

3. *How often the collection is required:* The information need only be submitted one time.

4. *Who is required or asked to report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, currently under investigation by the U.S. Department of Energy, which is now regulated under 10 CFR part 63).

5. *The number of annual respondents:* 1; however none are expected in the next three years.

6. *The number of hours needed annually to complete the requirement or request:* 1; however, none are expected in the next three years.

7. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site proposed by the U.S. Department of Energy). Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. As provided in § 60.1, the regulations in 10 CFR. Part 60 no longer apply to the licensing of a geologic repository at Yucca Mountain. All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR part 63, and were approved by the Office of Management and Budget under control number 3150–0199. The Yucca Mountain site is regulated under 10 CFR part 63 (66 FR 55792, November 2, 2001).

Submit, by May 30, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 27th day of March 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–4697 Filed 3–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension/Revision.

2. *The title of the information collection:* 10 CFR part 51, ''Environmental Protection Regulation for Domestic Licensing and Related Regulatory Functions''.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion. Upon submittal of an application for a construction permit, operating license, operating license renewals, early site review, design certification review, decommissioning or termination review, manufacturing licensing, materials license, or upon submittal of a petition for rulemaking.

5. *Who will be required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR Parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70, and 72.

6. *An estimate of the number of annual responses:* 28.

7. *The estimated number of annual respondents:* 28.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 113,596.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 51 specifies information to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 1, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John A. Asalone, Office of Information and Regulatory Affairs (3150–0021), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 27th day of March, 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–4698 Filed 3–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Renewal for BWX Technologies, Inc., Lynchburg, VA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8F42, Washington, DC, 20852. Telephone: (301) 415–5848; fax number: (310) 415–5955; e-mail: *bcg@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering renewal of a license to BWX Technologies, Inc. (BWXT), Materials License SNM–42, that would authorize the licensee to possess nuclear materials, manufacture nuclear fuel components, fabricate research and university reactor components, fabricate compact reactor fuel elements, perform research on spent fuel performance, and handle the resultant waste streams, including recovery of scrap uranium. If granted, the renewed license would allow BWXT to continue operations as authorized in the current license. If approved, the renewed license term would be for 20 years at BWXT's Mt. Athos Road facility in Lynchburg, Virginia. The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact is appropriate. If approved, the renewed license would be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the renewal of BWXT's 10 CFR part 70 Special Nuclear Material

license, for a 20-year period, at the licensee's Lynchburg, Virginia facility. On June 30, 2004, BWXT requested that the NRC approve the renewal application. BWXT's request for the proposed change was previously noticed in the **Federal Register** on March 6, 2006 (71 FR 11231), with a notice of license amendment request and opportunity to request a hearing.

The staff has prepared the EA in support of the proposed action. The NRC staff concluded that the proposed renewal, for a 20-year period, of Materials License SNM–42 involving the continued operations at the BWXT site in Lynchburg will not result in a significant impact to the environment. The NRC staff concluded that the proposed action will not adversely affect federally listed species or federally designated critical habitat because no federally listed species are known to occur in the project area. The NRC staff found that no historic properties will be affected by the proposed action. The facility is already built, and no changes to the operations are associated with the action. The proposed action can be viewed as a continuation of impacts and can be evaluated based on the previous impacts from past operations.

Airborne effluents released through stacks and liquid effluents released in the James River are below regulatory limits for nonradiological and radiological contaminants. The radiological dose associated with the exposure to these effluents, for the maximally exposed individual is less than 1 percent of the NRC's 1.0 mSv [100 mrem] annual limit pursuant to 10 CFR 20.1301. Occupational doses are also well below regulatory limits.

The environmental impacts of the proposed action have been evaluated in accordance with the requirements presented in 10 CFR part 51. The NRC staff has determined that the renewal of license SNM–42, allowing continued operations at the BWXT facility for a 20-year period will not have a significant impact on the human environment. No environmental impact statement is required, and a finding of no significant impact is appropriate in accordance with 10 CFR 51.31.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action can be accessed on the NRC's Agencywide Document Access and Management System (ADAMS) that provides electronic copies of NRC's public documents. The ADAMS accession number for the **Federal Register** notice related to this action is: Notice of License Amendment Request of BWX Technologies, Inc., Lynchburg, VA, and Opportunity to Request a Hearing (ML053430248). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of March 2006.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–4710 Filed 3–30–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of a Proposed Free Trade Agreement Between the United States and Malaysia

AGENCY: Office of the United States Trade Representative; Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of a proposed free trade agreement (FTA) between the United States and Malaysia on U.S. employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiation of the FTA. However, comments should be received by noon, May 12, 2006 to be assured of timely consideration in the preparation of the report.

ADDRESSES: Submissions by electronic mail: *FR0613@ustr.eop.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Greg Schoepfle, Acting Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4887; or Lewis Karesh, Assistant U.S. Trade Representative for Labor, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

In accordance with section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), on March 8, 2006, the United States Trade Representative notified the Congress of the President's intent to initiate FTA negotiations with Malaysia. Also, the United States Trade Representative requested the U.S. International Trade Commission (ITC) to provide advice on probable economic effects of an FTA as soon as possible. USTR and ITC mutually agreed to delivery of the report by June 30. In addition, USTR published a notice in the **Federal Register** soliciting views from the public on the negotiations in general, and the TPSC will hold a public hearing on May 3, 2006. The United States intends to begin negotiations with Malaysia in June 2006.

2. Employment Impact Review

Section 2102(c)(5) of the Trade Act (19 U.S.C. 3802(c)(5)) directs the President to ''review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public.'' USTR and Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent

appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a notice in the **Federal Register** soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

In order to ensure prompt and full consideration of responses, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''Employment Impact Review for a Free Trade Agreement between the United States and Malaysia.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel files. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters ''BC-,'' and the file name of the public version should begin with the character ''P-.'' The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E6–4739 Filed 3–30–06; 8:45 am]

BILLING CODE 3190–D2–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Notice of Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 3, 2006:

A Closed Meeting will be held on Thursday, April 6, 2006 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 6, 2006 will be: Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings of an enforcement nature; Opinion; and Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: March 29, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–3183 Filed 3–29–06; 3:46 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53546; File No. SR–NASD–2005–067]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to Amendments to NASD Rule 6530 To Clarify the Review Process for OTCBB Eligibility Determinations and To Implement Fees for Such Review

March 24, 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 May 24, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend NASD Rules 6530 and 7010 to clarify the availability of a process to review eligibility determinations under NASD Rule 6530 and to adopt service-based fees for Over-the-Counter Bulletin Board (''OTCBB'') issuers. On September 27, 2005, Nasdaq filed with the Commission Amendment No. 1 to the proposed rule change to remove the record-keeping fee proposed in NASD Rule 7010. On October 1, 2005, the Commission approved a separate proposed rule change in which NASD amended its Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as well as certain corresponding NASD rules, to permit NASD to assume direct authority for over-the-counter (''OTC'') equity operations, including the OTCBB, rather than continuing to delegate this authority to Nasdaq.[3] As such, NASD assumed direct authority for OTC equities operations, including operation of the OTCBB (quotation and trade reporting platform and other services), trade reporting for other non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52508 (September 26, 2005), 70 FR 57346 (September 30, 2005) (SR–NASD–2005–089). Nasdaq, however, will continue to furnish the OTCBB quotation and trade reporting platform and certain other services that it provided with respect to over-the-counter equity operations.

OTCBB OTC equity securities and other services, and related rulemaking functions. On December 8, 2005, NASD filed with the Commission Amendment No. 2 to the proposed rule change to reflect NASD's authority for the OTCBB and to make certain clarifying changes. On February 23, 2006, NASD filed with the Commission Amendment No. 3 to the proposed rule change to clarify eligibility for the hearing process set forth in proposed NASD Rule 6530(f) for those securities of an OTCBB issuer subject to removal from the OTCBB under NASD Rule 6530(e)(1),[4] and to make clarifying changes relating to the application of the NASD Rule 9700 Series, as described in Items I, II, and III below, which Items have been prepared by NASD.[5] 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

NASD is proposing to amend NASD Rule 6530 to clarify the availability of a process to review eligibility determinations with respect to OTCBB securities and to implement fees for such review. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

6530. OTCBB-Eligible Securities

A Member shall be permitted to quote the following categories of securities in the Service:

(a) through (d) No change.

(e) Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:

(1) and (2) No change.

If an issuer's security becomes ineligible for quotation on the OTCBB pursuant to paragraph (e)(1) above, the security will be removed from quotation on the OTCBB without the benefit of any grace period for the third delinquency, except that NASD will provide seven calendar days from the date notification is mailed to the issuer pursuant to paragraph (f)(1) to permit an aggrieved party to request a review of the determination by a hearing panel pursuant to paragraph (f) below. Following the removal of an issuer's *security*[securities] pursuant to this paragraph (e), such *security*[securities] shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by [SEC] Rule 12b–25 *under the Exchange Act* will be considered timely filed. Furthermore, filings for reporting periods ending before October 1, 2005 will not be considered for purposes of this paragraph (e).

(f) (1) Upon determining that an issuer's security would be ineligible for quotation under this rule, NASD will send a notification to the address on the cover of the issuer's last periodic report. This notification will state the date upon which the security will be removed, following any applicable grace period, unless the condition causing the ineligibility has been cured by that date. When a security becomes ineligible for quotation pursuant to paragraph (e) above, however, the issuer may not cure the condition that caused the ineligibility. In all cases, NASD will provide at least seven calendar days from the date the notification is mailed to the issuer to permit an aggrieved party to request review pursuant to paragraph (f)(2) below, before removal of the security.

(2) Pursuant to the Rule 9700 Series, as modified herein, an aggrieved party may request a review by a hearing panel of the determination that an issuer's security is ineligible for quotation under this rule. NASD must receive the request for review at least two business days prior to the scheduled removal of the security, together with a $4,000 hearing fee payable to NASD to cover the cost of review. A request for review under this paragraph (f)(2) will stay the removal of the issuer's security from the Service until the hearing panel issues a decision under Rule 9750. The hearing panel will consider only the issues of whether the issuer's security is then eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b–25 under the Exchange Act. The hearing panel shall not have discretion to grant any extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, hearings will be conducted via telephone and NASD will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.

(3) The aggrieved party may request a review of a hearing panel's decision under Rule 9760. Such a request for review must be accompanied by a $4,000 fee payable to NASD to cover the cost of review. This review will only consider whether the issuer's security, at the time of the initial review under paragraph (f)(2), was eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b–25 under the Exchange Act. A request for review under this paragraph (f)(3) shall not stay the removal of the issuer's security from the Service and there will be no discretion to grant extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, a review under this paragraph (f)(3) will be based on the written record, unless additional hearings are ordered. If any further hearings are ordered, the hearings will be conducted via telephone and NASD will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In January 1999, Nasdaq and NASD adopted amendments to NASD Rules 6530 and 6540 that require all issuers of securities quoted on the OTCBB to be current in their filings with the Commission or other appropriate

[4] Pursuant to NASD Rule 6530(e), the securities of those OTCBB issuers (1) that are delinquent in a required filing three times in a two-year period and (2) those that are removed from the OTCBB for failure to file two times in a two-year period, are ineligible for quotation on the OTCBB. Following removal under NASD Rule 6530(e), an issuer's security would not be eligible for re-inclusion unless the issuer has timely filed in complete form all required annual and quarterly reports for a one-year period. *See* Securities Exchange Act Release No. 52786 (November 16, 2005), 70 FR 70907 (November 23, 2005) (SR–NASD–2005–011). *See also infra* note 14.

[5] Amendment No. 3 replaced and superseded the prior filings for this proposed rule change in their entirety.

regulator (the ''Eligibility Rule'').[6] When an OTCBB issuer does not comply with the Eligibility Rule, either because a filing is not made or because a filing is incomplete,[7] a fifth character ''E'' is appended to the trading symbol of that issuer's security.[8] This identifier notifies investors and other market participants that NASD does not have information that the issuer is current in its reporting obligations. If the issuer does not comply within the applicable grace period provided by the Eligibility Rule (typically 30 days), the issuer's security is removed from the OTCBB.[9]

In November 2005, the Commission approved amendments to NASD Rule 6530 that limit the eligibility for quotation on the OTCBB of the securities of an issuer that is repeatedly late or otherwise delinquent in filing periodic reports.[10] Specifically, NASD Rule 6530(e) provides that OTCBB issuers that file late with the Commission or other respective regulator, even if within the grace period allowed by NASD Rule 6530, three times in a two-year period and those that have been removed from the OTCBB for failure to file two times in a two-year period, are ineligible for quotation on the OTCBB by an NASD member until such time as the issuer has timely filed complete required periodic reports for a one-year period.[11]

Since late 2000, a party aggrieved by a determination relating to the OTCBB (''aggrieved party'') has been able to request a review of a determination under the Eligibility Rule by a hearing panel pursuant to the NASD Rule 9700 Series.[12] The proposed rule change would provide transparency to the availability and scope of such review and impose a fee for such review.[13] Specifically, under the proposed rule change, upon determining that an issuer's security would be ineligible for quotation under NASD Rule 6530, NASD would send a notice to the address appearing on the issuer's most recent periodic report at least seven calendar days prior to the removal, even if there is no applicable grace period.[14] The notice would indicate the removal date for the issuer's security after any applicable grace period, unless the condition causing the ineligibility has been cured by the expiration of any applicable grace period.[15]

In addition, the proposed rule change advises aggrieved parties of their right to request a review of the determination by a hearing panel, pursuant to the procedures in the NASD Rule 9700 Series as modified by the proposed rule change, and implements a $4000 fee for such review. The proposed rule specifies that the hearing panels can determine whether the issuer's security is eligible for continued quotation and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b–25 under the Exchange Act. The hearing panels do not have the discretion to grant any extensions of time for ineligible securities to become eligible for quotation on the OTCBB.[16] NASD believes that this lack of discretion is appropriate given the 30 or 60-day grace period that is already built into the rule. The proposed rule change notes that the request for review will stay the securities' removal until the panel makes its determination.

The proposed rule change also advises aggrieved parties of their right to request a review of the hearing panel decision, pursuant to NASD Rule 9760, and implements a $4000 fee for such review. The proposed rule change indicates that the review of the hearing panel decision is limited to whether the issuer's security, at the time of the initial review by the hearing panel, was eligible for quotation on the OTCBB and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b–25 under the Exchange Act. There is no discretion to grant any extensions of time for ineligible securities to become eligible for quotation on the OTCBB. The proposed rule change notes that the request for review of the hearing panel decision will not stay the security's removal.[17]

Unlike the NASD Rule 4800 Series that governs hearings for Nasdaq-listed securities, the NASD Rule 9700 Series currently does not provide for a fee to offset the costs to conduct these hearings.[18] Given the increasing number of these hearings,[19] NASD believes it is appropriate to adopt a fee to offset the associated costs. Specifically, NASD

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[6] *See* Securities Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (SR–NASD–98–51).

[7] In order for a filing to be complete, it must, for example, contain all required certifications, attestations, and financial statements, including an auditor's review pursuant to SAS–100 (for quarterly reports) or an unqualified auditor's opinion (for annual reports). *See, e.g.*, Rule 13a–14 under the Act, 17 CFR 240.13a–14, and Rules 10–01(d) and 2–02(c) of Regulation S–X, 17 CFR 210.10–01(d) and 2–02(c). In addition, the auditor must be registered with the Public Company Accounting Oversight Board. *See* Section 102(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7212(a).

[8] To the extent an issuer has multiple classes of securities quoted on the OTCBB, when an issuer becomes delinquent with respect to its reporting requirements under NASD Rule 6530, all of that issuer's securities become ineligible for quotation on the OTCBB.

[9] The Eligibility Rule provides a 60-day grace period to banks, savings associations and insurance companies that do not file with the Commission, but are required to file with other regulators. NASD has filed a separate proposed rule change with the Commission, which became effective upon filing, to amend NASD Rule 6530 to clarify the removal process and grace periods contained in that rule. *See* File No. SR–NASD–2006–029.

[10] *See* Securities Exchange Act Release No. 52786 (November 16, 2005), 70 FR 70907 (November 23, 2005) (SR–NASD–2005–011).

[11] This provision of NASD Rule 6530 applies to filings for reporting periods ending on and after October 1, 2005.

[12] *See, e.g., High Speed Net Solutions, Inc.*, Securities Exchange Act Release No. 43434 (October 12, 2000); *Palmworks, Inc.*, Securities Exchange Act Release No. 43423 (October 6, 2000); *JD American Workwear, Inc.*, Securities Exchange Act Release No. 43295 (September 15, 2000).

[13] Under proposed NASD Rule 6530(f)(2), the hearings would be conducted via telephone.

[14] Under NASD Rule 6530(e), the securities of an issuer are removed from the OTCBB the third time that the issuer fails to file by the due date (including, if applicable, any extension permitted by Rule 12b–25 of the Exchange Act) in a two-year period, without the benefit of the grace period for the third delinquency. Prior to removal from the OTCBB, however, NASD provides seven calendar days to allow an aggrieved party to request a review of such determination by a hearing panel. As such, where an issuer's security will be removed for failure to file by the due date for the third time in a two-year period, NASD provides seven calendar days (not the 30 or 60 day grace period provided in NASD Rule 6530(a)) to allow an aggrieved party time to request a hearing. *See* Securities Exchange Act Release No. 52786 (November 16, 2005), 70 FR 70907 (November 23, 2005) (SR–NASD–2005–011). NASD is proposing to amend NASD Rule 6530(e) and (f) to codify this procedural framework.

[15] *See* Telephone conversation between Richard Holley III, Special Counsel, Division of Market Regulation, Commission, and Andrea Orr, Assistant General Counsel, NASD, on March 23, 2006. If an issuer's security becomes ineligible for failure to file by the due date for the third time in a two-year period, such issuer will not be able to cure the condition causing the ineligibility. *See* Securities Exchange Act Release No. 52786 (November 16, 2005), 70 FR 70907 (November 23, 2005) (SR–NASD–2005–011).

[16] If a valid filing is made before the hearing panel's decision is issued, the issuer would not be rendered ineligible for further quotation on the OTCBB. However, if a security becomes ineligible for quotation pursuant to NASD 6530(e)(1), the issuer may not cure the condition that caused the ineligibility. *See supra* note 15.

[17] The proposed rule change further notes that review of the hearing panel decision will be based on the written record, unless further hearings are ordered. If further hearings are ordered, they will be conducted via telephone.

[18] *See, e.g.*, NASD Rule 4805(c), which requires Nasdaq-listed issuers to submit a $4,000 fee for a written hearing and a $5,000 fee for an oral hearing, to cover the cost of holding the hearing, and NASD Rule 4807(a), which requires Nasdaq-listed issuers to submit a fee of $4,000 to cover the cost of review by the Nasdaq Listing and Hearing Review Council. *See also* Sections 1203 and 1205 of the American Stock Exchange's Company Guide, which impose similar fees, and Section 804.00 of the New York Stock Exchange's Listed Company Manual, which requires an issuer to submit a $20,000 fee to request review of a delisting decision by the NYSE staff.

[19] In 2003, 14 hearing requests were received from OTCBB issuers. By contrast, in 2004, 53 hearing requests were received from OTCBB issuers and, in 2005, 124 such requests were received.

proposes to adopt a $4,000 fee for aggrieved parties requesting review by a hearing panel. In addition, aggrieved parties that seek review of the hearing panel's decision would also be subject to an additional $4,000 fee.

The proposed rule change will be effective immediately upon Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will clarify the OTCBB eligibility review process and will impose certain fees associated therewith to compensate NASD for the costs of conducting eligibility review hearings.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by NASD.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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–NASD–2005–067 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–2005–067. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–067 and should be submitted on or before April 21, 2006.

[20] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53539; File No. SR–NYSE–2004–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, and 5 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 6, 7, and 8 to the Proposed Rule Change to Establish the Hybrid Market

March 22, 2006.

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I. Introduction

On February 9, 2004, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a ''Hybrid Market'' by, among other things, increasing the availability of automatic executions in its existing automatic execution facility, NYSE Direct+® (''Direct+''), and providing a means for participation in the expanded automated market by its floor members.

On August 2, 2004, NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission published the proposed rule change, as amended by Amendment No. 1, for comment in the **Federal Register** on August 16, 2004.[4] On August 26, 2004, the Commission extended the public comment period with respect to the First Notice to September 22, 2004.[5] In response to the First Notice, the Commission received 17 comment letters from 15 commenters.[6]

On November 8, 2004 and November 9, 2004, the Exchange filed Amendment Nos. 2 and 3, respectively.[7] The Commission published the proposed rule change, as further amended by Amendment Nos. 2 and 3, for comment in the **Federal Register** on November 22, 2004.[8] In response to the Second Notice, the Commission received nine comment letters from eight commenters.[9]

On June 17, 2005, the Exchange filed Amendment No. 5 to the proposed rule change.[10] The Commission published the proposed rule change, as further amended by Amendment No. 5, for comment in the **Federal Register** on June 29, 2005.[11] In response to the Third Notice, the Commission received six comment letters.[12]

In total, the Commission received 43 comment letters on the amended proposal (including 32 comment letters with respect to the First, Second, and Third Notices).[13] On September 21,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 30, 2004, and accompanying Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407 (''First Notice'').

[5] *See* Securities Exchange Act Release No. 50277, 69 FR 53759 (September 2, 2004).

[6] *See* Letters from Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company, dated August 10, 2004 (''Fidelity Letter I''); James L. Rothenberg, Esq., dated August 20, 2004 (''Rothenberg Letter''); Donald E. Weeden, dated August 31, 2004 (''Weeden Letter''); Thomas Peterffy, Chairman, and David M. Battan, Vice President, Interactive Brokers Group, dated September 7, 2004 (''IBG Letter I''); Jose L. Marques, PhD, Managing Member, Telic Management LLC, dated September 21, 2004 (''Telic Letter''); Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of Northern Colorado, dated September 22, 2004 (''Peake Letter I''); Ari Burstein, Associate Counsel, Investment Company Institute, dated September 22, 2004 (''ICI Letter I''); Kim Bang, President and Chief Executive Officer, Bloomberg Tradebook LLC, dated September 22, 2004 (''Bloomberg Letter I''); Ellen L.S. Koplow, Executive Vice President and General Counsel, Ameritrade, Inc., dated September 22, 2004 (''Ameritrade Letter''); Lisa M. Utasi, President, and Kimberly Unger, Executive Director, The Security Traders Association of New York, Inc., dated September 22, 2004 (''STANY Letter''); George W. Mann Jr., EVP & General Counsel, Boston Stock Exchange, dated September 22, 2004 (''BSE Letter''); Bruce Lisman, Bear, Stearns & Co. Inc., dated September 28, 2004 (''Bear Stearns Letter''); Donald D. Kittell, Executive Vice President, Securities Industry Association, dated October 1, 2004 (''SIA Letter I''); Edward J. Nicoll, Chief Executive Officer, Instinet Group, dated October 25, 2004 (''Instinet Letter''); Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company, dated October 26, 2004 (''Fidelity Letter II''); Philip Angelides, Treasurer, State of California, dated November 23, 2004 (''Angelides Letter''); and Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company, dated December 8, 2004 (''Fidelity Letter III'').

[7] *See* Form 19b–4 dated November 8, 2004 (''Amendment No. 2'') and Partial Amendment dated November 9, 2004 (''Amendment No. 3'').

[8] *See* Securities Exchange Act Release No. 50667 (November 15, 2004), 69 FR 67980 (''Second Notice'').

[9] *See* Letters from Gregory van Kipnis, Managing Partner, Invictus Partners, LLC, dated December 10, 2004 (''Invictus Letter''); Ari Burstein, Associate Counsel, Investment Company Institute, dated December 13, 2004 (''ICI Letter II''); Ann L. Vlcek, Vice President and Associate General Counsel, Securities Industry Association, dated December 13, 2004 (''SIA Letter II''); Thomas Peterffy, Chairman, and David M. Battan, Vice President, Interactive Brokers Group, dated December 14, 2004 (''IBG Letter II''); William R. Power, Member and Director, Chicago Board Options Exchange, Incorporated, dated December 21, 2004 (''Power Letter''); Marc L. Lipson, Associate Professor, Terry College of Business, The University of Georgia, dated January 4, 2005 (''Lipson Letter''); Edward S. Knight, The Nasdaq Stock Market, dated January 26, 2005 (''Nasdaq Letter''); and George Rutherfurd, Consultant, dated March 10, 2005 (''Rutherfurd Letter I'') and April 8, 2005 (''Rutherfurd Letter II'').

[10] *See* Form 19b–4 dated June 17, 2005 (''Amendment No. 5''). The Exchange submitted Amendment No. 4 to the proposed rule change on May 25, 2005, and subsequently withdrew Amendment No. 4 on June 17, 2005.

[11] *See* Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (''Third Notice'').

[12] *See* Letters from George U. Sauter, Managing Director, The Vanguard Group, Inc., dated July 20, 2005 (''Vanguard Letter''); Ari Burstein, Associate Counsel, Investment Company Institute, dated July 20, 2005 (''ICI Letter III''); Donald D. Kittell, Executive Vice President, Securities Industry Association, dated July 20, 2005 (''SIA Letter III''); George Rutherfurd, Consultant, dated July 20, 2005 (''Rutherfurd Letter III''); Kim Bang, President and Chief Executive Officer, Bloomberg Tradebook LLC, dated July 28, 2005 (''Bloomberg Letter II''); and Frank A. Torino, dated September 27, 2005 (''Torino Letter'').

[13] *See supra* notes 6, 9, and 10. The Commission received a comment letter on Amendment No. 4, which was withdrawn by the Exchange. *See* Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of Northern Colorado, dated June 17, 2005 (''Peake Letter II''). In addition, the Commission received three comment letters from the same commenter in response to Amendment Nos. 6 and 7. *See* Letters from George Rutherfurd, Consultant, dated November 1, 2005 (''Rutherfurd Letter IV''), November 8, 2005 (''Rutherfurd Letter V''), and November 17, 2005 (''Rutherfurd Letter VI''). Finally, the Commission received seven other comment letters from two commenters. *See* Letters from Warran P. Meyers, President, Independent Broker Action Committee, Inc., dated December 7, 2005 (''IBAC Letter I''), February 2, 2006 (''IBAC Letter II''), and March 17, 2006 (''IBAC Letter III''),

2005, the Exchange filed a response to the comment letters.[14]

On September 16, 2005, the Exchange filed Amendment No. 6 to the proposed rule change.[15] In Amendment No. 6, the Exchange proposes to amend NYSE Rule 104 to state that specialists may only provide price improvement to incoming orders that are marketable. In addition, NYSE proposes to amend NYSE Rule 70.20 to limit the ability of interest in the floor broker agency interest file to trade on parity with orders in the customer limit order display book (''Book'') during a sweep.

On October 11, 2005, the Exchange filed Amendment No. 7 to the proposed rule change.[16] In Amendment No. 7, the Exchange made non-substantive stylistic, conforming, and technical changes to certain Exchange rules governing the Hybrid Market. In Amendment No. 7, the Exchange also proposes to amend NYSE Rule 92 to reflect the operation of the specialist systems that employ algorithms to generate quoting and trading messages (''Specialist Algorithms''). Specifically, the Exchange proposes that the specialist would not be deemed to have ''knowledge'' of a particular incoming order that is viewed by the Specialist Algorithm if the Specialist Algorithm is designed in a manner that prevents a quoting or trading message from being affected by a later incoming order. In addition, NYSE proposes in Amendment No. 7 to amend NYSE Rule 13.30 and the definitions of stop and stop limit orders to reflect the automatic execution of elected stop and stop limit orders in the Display Book system.[17]

On March 14, 2006, the Exchange filed Amendment No. 8[18] to the proposed rule change. In Amendment No. 8, NYSE proposes to: (1) Amend proposed NYSE Rules 13 and 124 to specify that a round lot portion of a part of round lot (''PRL'') order is an ''Auto Ex Order''[19] and that the odd lot portion of a PRL order would be executed at the same price as the round lot portion of the PRL order and processed in the Odd-Lot Execution System;[20] (2) amend proposed NYSE Rule 13 to reflect that stop orders and stop limit orders may still be represented manually by a floor broker in the trading ''Crowd;''[21] (3) amend the definition of immediate or cancel (''IOC'') order in proposed NYSE Rule 13 to: (a) Propose an IOC order that is designed to be in compliance with Regulation NMS; (b) specify that NYSE IOC orders would be eligible to be routed away during a sweep; and (c) eliminate the previously proposed changes to the treatment of commitments to trade received through the Intermarket Trading System (''ITS Commitments'');[22] (4) amend its proposed definition of Intermarket Sweep order in proposed NYSE Rule 13 to specify that this type of order would be permitted to sweep the Display Book system, and the portion that was not executed would be immediately cancelled; (5) amend proposed NYSE Rule 36 to state that a specialist may only use a wired or wireless device that has been registered with the Exchange to communicate with the Specialist Algorithms and provide that specialist firms must create and maintain records of all messages generated by the Specialist Algorithm; (6) amend proposed NYSE Rule 60 to: (a) Set forth the instances during which Autoquote[23] will update the quote even if automatic executions are not available; (b) set forth the instances during which Autoquote will update the quote when Autoquote and automatic execution are suspended and disseminate a 100 share quote in certain situations; and (c) propose to use an indicator when the NYSE quote is not available for automatic execution due to a gapped quotation or liquidity replenishment point (''LRP'') to signify that the NYSE quote is not firm; (7) amend proposed NYSE Rule 70.20 to: (a) Permit a floor broker to leave the Crowd without canceling its floor broker agency interest file[24] to recharge its handheld device and (b) specify the procedures for entering interest in the floor broker agency interest file before the open; (8) amend proposed NYSE Rule 72 to specify the priority and parity rules for instances when there are shares remaining after a sweep that triggers an LRP; (9) amend NYSE Rule 76 to reflect that it would not apply to elected stop or stop limit orders other than those manually represented in the Crowd by a floor broker; (10) amend proposed NYSE Rule 104 to: (a) Permit specialists to manually layer dealer interest in the specialist interest file; (b) permit specialists to enter certain quoting messages when automatic executions and Autoquote are suspended; (c) amend the definition of ''meaningful amount'' for purposes of determining when a specialist could provide price improvement; and (d) require specialists to hire independent auditors to review their algorithms on an annual basis; (11) amend proposed NYSE Rule 123A.30 to: (a) Provide systematic conversion of elected or converted percentage orders that are converted on a destabilizing tick and that permit the specialist to trade on parity (''CAP–DI orders'') on the same side as a specialist when the specialist is bidding (offering) or trading and an automatic execution occurs against a specialist's proprietary interest and (b) clarify the execution of contra-side elected and converted CAP–DI orders; (12) amend proposed NYSE Rule 123F to codify that NYSE may execute an Auction Limit (''AL'') order or market order at a price that matches a better away market; (13) amend proposed NYSE Rule 1000 to: (a) Clarify that automatic executions will resume in the same manner as Autoquote; (b) prohibit short sale orders, except those for Regulation SHO[25] pilot securities, from sweeping the Display Book system; (c) eliminate the provision that would have suspended the operation of Direct+ when an away market disseminates a better quote; (d) eliminate the proposal that would have permitted automatic executions to continue while the specialist reports a block trade until the quote decremented to 100 shares; (e) specify the process for determining when a security that is priced at $300.00 or more would be eligible for automatic executions; (f) specify that automatic executions would be suspended on one side of the market when a bid (offer) is

and George Rutherfurd, Consultant, dated December 11, 2005 (''Rutherfurd Letter VII''), December 17, 2005 (''Rutherfurd Letter VIII''), February 1, 2006 (''Rutherfurd Letter IX''), and February 13, 2006 (''Rutherfurd Letter X'').

[14] *See* Letter from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated September 21, 2005 (''Response to Comments'').

[15] *See* Form 19b–4 dated September 16, 2005 (''Amendment No. 6'').

[16] *See* Form 19b–4 dated October 11, 2005 (''Amendment No. 7'').

[17] The Display Book system (''Display Book system'') is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. In addition, the Display Book system is connected to a variety of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems, that is, the Intermarket Trading System, Consolidated Tape Association, Consolidated Quotation System, etc.

[18] *See* Form 19b–4 dated March 14, 2006 (''Amendment No. 8'').

[19] *See* note 29 *infra* and accompanying text for a description of ''Auto Ex Order.''

[20] *See* note 34 *infra*.

[21] *See* note 46 *infra* and accompanying text for a description of ''Crowd.''

[22] Similarly, NYSE also proposes to eliminate previously proposed changes to the treatment of ITS Commitments in NYSE Rule 15A.60.

[23] *See* note 58 *infra* and accompanying text for a description of Autoquote.

[24] *See* note 43 *infra* and accompanying text for a description of the floor broker agency interest file.

[25] *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

outside the momentum LRP; [26] (g) specify that any shares remaining after an execution in IOC orders, NYSE IOC orders, or Intermarket Sweep orders would be cancelled after sweeping the Display Book system; and (h) clarify that auto ex limit orders, except IOC orders, that are not able to be immediately executed due to a suspension of Direct+ would be placed in the Book; and (14) amend Rule 1001.

On December 14, 2005, the Commission approved on an accelerated basis a proposed rule change by the Exchange to implement and test certain proposed functions of the Hybrid Market, known as Phase 1 of the Hybrid Market, on a pilot basis (''Pilot'').[27]

This order approves the proposed rule change, as amended by Amendment Nos. 1, 2, 3, 5, 6, 7, and 8. The Commission is also providing notice and soliciting comments on Amendment Nos. 6, 7, and 8 to the proposed rule change.

II. Description of the Proposal

Currently, NYSE is primarily a floor-based auction market. NYSE members operate on the NYSE floor, representing their customers' orders for execution in a largely manual environment. NYSE provides limited automated access to its market through its automatic execution facility, Direct+. According to NYSE, automatic executions represent approximately 11% of its market share volume, with the bulk of executions occurring manually in its floor-based auction.[28] With this proposed rule change, NYSE has proposed to alter the way its market operates by allowing more orders to be executed automatically in Direct+. In essence, NYSE has proposed to move from a floor-based auction market with limited automated order interaction to a more automated market with limited floor-based auction market availability.

To create its Hybrid Market, NYSE has proposed changes to its current Direct+ rules to make the system available to more order types and to limit the instances when automatic executions are not available. In addition, NYSE has proposed to permit its floor members to participate in its expanded automated market in an electronic fashion. Specifically, NYSE has proposed to permit specialists and floor brokers to electronically provide liquidity that would be available for automatic executions.

In addition, NYSE has proposed changes to its auction market to accommodate those investors that wish to continue to have their orders exposed for price improvement. To this end, NYSE has proposed to create a new order type—the Auction Limit order, and to amend the way market orders are handled in the auction.

A. Proposed Automated Market

1. Automated Access To Display Book System

Currently, Direct+ is only available, with respect to stocks, to designated marketable limit orders, without tick restrictions, of 1,099 shares or less (''Auto Ex Orders'').[29] In addition, multiple Auto Ex Orders are not allowed to be entered for the account of the same person within a 30-second time period from the entry of an initial Auto Ex Order.[30] Auto Ex Orders trade only against interest reflected in the Exchange's published quotation—that is, the NYSE best bid or offer (''BBO''). Eligible limit orders are not required to be entered as Auto Ex Orders. Rather, the member organization entering the order (or its customer if enabled by the member organization) must make a specific designation to choose to enter an order into Direct+.

NYSE proposes to broaden access to Direct+ for stocks and ETFs.[31] Specifically, NYSE has proposed to amend its Rule 13 to define an Auto Ex Order to include: (1) All marketable limit orders; [32] (2) designated market orders; (3) designated IOC orders; [33] (4) elected stop and stop limit orders that have been systematically delivered to the Display Book system; (5) buy minus, sell plus, and short sale orders systematically delivered to the Display Book system; (6) CAP–DI Orders; (7) the round lot portion of a PRL order; [34] (8) orders that were initially eligible for automatic execution that have been cancelled and replaced with a subsequent Auto Ex Order; [35] and (9) Intermarket Sweep orders.[36] In addition,

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[26] *See* note *infra* and accompanying text for a description of momentum LRPs.

[27] *See* Securities Exchange Act Release No. 52954, 70 FR 75519 (December 20, 2005). *See also* Third Notice, *supra* note 11, for a description of Phase 1 of the Hybrid Market implementation plan. The Commission notes that it received one comment letter opposing the implementation of the Pilot. *See* Letter from George Rutherfurd, Consultant, dated December 13, 2005. On February 21, 2006, the Exchange filed a proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(5) thereunder to amend the manner in which CAP–DI orders convert in certain situations (''Pilot Amendment''). *See* Securities Exchange Act Release No. 53359 (February 24, 2006), 71 FR 10736 (March 2, 2006). On March 13, 2006, the Exchange filed a proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder to extend the Pilot until March 24, 2006 (''Pilot Extension''). *See* Securities Exchange Act Release No. 53487 (March 15, 2006), 71 FR 14278 (March 21, 2006).

[28] *See* NYSE Market Statistics (visited on March 9, 2006), *http://www.nyse.com/Frameset.html?displayPage=/marketinfo/1022221393893.html* (noting that Direct+ volume, for the year ended December 31, 2005, is 11.4% of NYSE volume).

[29] *See* NYSE Rules 13 and 1000. Orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), Trust Issued Receipts (as defined in NYSE Rule 1200), streetTRACKS Gold Shares (as defined in NYSE Rule 1300), or any product subject to the same rules as Investment Company Units (collectively ''ETFs''), however, may be entered in a size greater than 1,099 shares. *See* Securities Exchange Act Release No. 52160 (July 28, 2005), 70 FR 44963 (August 4, 2005) (amending NYSE Rules 13 and 1005 to eliminate the 10,000 share restriction and the 30-second order entry restriction for Auto Ex Orders in ETFs).

[30] *See* NYSE Rule 1005.

[31] *See* proposed NYSE Rule 1002.

[32] Marketable limit orders, *i.e.*, limit orders to buy (sell) priced at or above (below) the best offer (bid) at the time the order is routed to the Display Book system, would no longer need to be designated as requesting an automatic execution in Direct+. All marketable limit orders would be automatically executed with or without designation. *See* proposed NYSE Rule 13. Non-marketable limit orders would be routed to the Display Book system, even if designated auto ex, and would be displayed as limit orders on the Book. *See* proposed NYSE Rule 1000(d)(v); *see also* Amendment No. 8. These booked orders would be available to participate in sweep transactions. When such orders become marketable, they would be included in the quote and could participate in automatic executions.

[33] NYSE proposes two types of IOC orders. *See* proposed NYSE Rule 13; *see also* Amendment No. 8. One would be for the purposes of Regulation NMS which would not be routed to away markets during a sweep. Instead, if an away market is disseminating a better protected bid or offer, the IOC order would be cancelled. The other type of IOC order, the NYSE IOC order, would allow NYSE to route portions to away markets to satisfy better protected bids or offers and would cancel once it was no longer able to receive an execution on NYSE. The Exchange also proposes to amend the definition of an IOC order to permit the entry of IOC orders before the opening of the Exchange for participation in the opening trade. If not executed as part of the opening trade, the order would be treated as cancelled.

[34] *See* proposed NYSE Rule 13; *see also* Amendment No. 8. Odd-lot orders and odd-lot portions of PRLs would not be eligible for automatic execution in Direct+. The Exchange noted that, under NYSE Rule 124, odd-lot orders are received, processed, and executed by an Exchange system designated for such purpose with the specialist as the contra-party at the price of certain round-lot transactions (''Odd-Lot Execution System''). Accordingly, the Odd-Lot Execution System provides a type of automatic execution that is governed by NYSE Rule 124, not the rules governing Direct+. The Exchange also clarified in the Third Notice that when automatic executions are suspended, odd-lot executions also would be suspended to prevent odd-lots from trading at prices unrelated to round-lot orders in the same security and to provide consistency in the availability of automatic executions.

[35] Currently, the Display Book system changes an order that cancels and replaces an Auto Ex Order to a non-Auto Ex Order. Under the Hybrid Market, the Display Book system would no longer make this change, so that a cancel/replace order of an Auto Ex Order would now be eligible for automatic execution.

[36] A few order types would be ineligible for automatic execution, including CAP, ''opening only'' (OPG), ''limit on close'' (LOC), ''market on close'' (MOC), and ''basis'' (BAS) orders.

NYSE proposes to eliminate the size restrictions for Auto Ex Orders and eliminate the 30-second order entry restriction.

2. Liquidity Available for Automatic Execution

Currently, the Display Book system contains the Book, which is operated and represented by the specialist. The Book contains limit orders routed to NYSE though SuperDOT [37] or left with the specialist by floor brokers for representation. The Display Book system also may reflect specialist quotes at the NYSE BBO. Auto Ex Orders interact with the interest displayed on the Display Book system at the NYSE BBO.

To further automate its market, NYSE has proposed to permit its floor members—that is, specialists and floor brokers—to place liquidity in the Display Book system at various prices, in newly-created separate files that would be available for execution against incoming Auto Ex Orders. This would allow floor members and the investors they represent on the floor to more fully participate in automatic executions.

(a) Specialist Interest File and Reserve

Specialists would have the ability to manually and systematically place in a separate file (''specialist interest file'') within the Display Book system their dealer interest at prices at or outside the Exchange BBO.[38] NYSE intends the specialist interest file to assist the specialist, in an automated environment, to fulfill its obligations to provide capital, bridge temporary gaps in supply and demand, and dampen volatility. In addition, the specialist interest file would allow specialists to provide increased liquidity at prices at or outside the Exchange BBO, which could potentially improve the prices at which Auto Ex Orders are executed.[39]

The Exchange also proposes to provide specialists with the ability to maintain undisplayed reserve interest on behalf of their dealer accounts at the Exchange BBO, provided that they display at least 2,000 shares of dealer interest at that price on the same side of the market as the reserve.[40] After an execution against a specialist's displayed bid (offer), if the specialist has reserve interest remaining at that best bid (offer), the amount of displayed interest would be automatically replenished by the specialist's reserve interest, if any, so that at least 2,000 shares of specialist interest is displayed (or whatever specialist interest remains at the best bid (offer), if less than 2,000 shares).[41]

Specialist interest at the Exchange BBO would be disseminated; specialist reserve and specialist interest away from the Exchange BBO ordinarily would not be disseminated. Each specialist, however, has the option to disseminate its interest away from the Exchange BBO via OpenBook [42] or another Exchange data distribution channel.

(b) Floor Broker Agency Interest File and Reserve

Floor brokers, similarly, would be permitted to represent electronically the orders they hold by including these orders in a separate file (''floor broker agency interest file'') within the Display Book system.[43] Floor brokers would be permitted to place liquidity electronically at or outside the Exchange BBO. In addition, floor broker agency interest files would be allowed to participate in the opening trade.[44] Floor brokers would not be permitted to enter in the floor broker agency interest files any interest that restricts the specialist's ability to trade on parity with the floor broker agency interest file.[45]

A floor broker would be required to be in close physical proximity to the post for the security—that is, in the Crowd [46]—while it has orders in its floor broker agency interest file.[47] NYSE would require that a floor broker's agency interest file be cancelled when the floor broker leaves the Crowd.[48] If the floor broker nevertheless leaves the Crowd without canceling its agency interest files, and one or more executions occur with its agency interest, the floor broker would be held to such executions.[49]

Because the floor broker agency interest file is part of the Display Book system and because of the specialist's obligation to maintain a fair and orderly market, the Exchange proposes to allow the specialist ordinarily to see the aggregate number of shares of all floor broker agency interest files at each price.[50] A floor broker, however, would have the option to exclude all of its floor broker agency interest file from the information available to the specialist.[51] A floor broker's ability to exclude volume from the aggregate agency interest information available to the specialist would not be available during the open.[52] Floor broker agency interest excluded from the aggregated agency interest information available to the specialist would be able to participate in automatic executions, but would not participate in a manual execution unless the floor broker represents the interest manually.[53] Furthermore, floor broker agency interest that has been excluded from the aggregate information available to the specialist would not participate in the closing trade.[54]

The Exchange proposes to permit floor brokers to maintain undisplayed reserve interest at the Exchange BBO provided that a minimum of 1,000 shares of the floor broker's agency interest is displayed at that price.[55] If an execution at the Exchange BBO occurs that does not exhaust the broker's interest at that price, the displayed interest would be automatically replenished from the floor broker's reserve interest, if any, so that at least 1,000 shares (or whatever amount remains, if less than 1,000 shares) is displayed.[56] There would be no reserve capability for floor broker agency

[37] SuperDOT is an electronic order-routing system used by NYSE member firms to send market and limit orders to NYSE. SuperDOT is also referred to as DOT.

[38] *See* proposed NYSE Rules 104(b)(i) and 104(c)(viii); *see also* Amendment No. 8 and Pilot.

[39] *See* Response to Comments, supra note 14.

[40] *See* proposed NYSE Rule 104(d)(i).

[41] *See* proposed NYSE Rule 104(d)(ii).

[42] OpenBook is a compilation of limit order data for all NYSE traded securities that the Exchange provides to market data vendors, broker-dealers, private network providers, and other entities through a data feed. *See* Securities Exchange Act Release No. 44138 (December 7, 2001), 66 FR 64895 (December 14, 2001).

[43] *See* proposed NYSE Rule 70.20(a)(i).

[44] *See* proposed NYSE Rule 70.20(j)(i). Floor broker agency interest entered before the open could participate in the opening trade on parity with the Book in accordance with Exchange policies that govern the open.

[45] *See* proposed NYSE Rule 70.20(a)(i).

[46] *See* proposed NYSE Rule 70.30. The Exchange proposes to define a Crowd as being any five contiguous panels at any one post where securities are traded. A floor broker would be considered to be in the Crowd if it is physically present at one of the five contiguous panels. However, the requirement that a floor broker be in the Crowd to have agency interest files would not apply to orders governed by section 11(a)(1)(G) of the Act (''G'' orders), 15 U.S.C. 78k(a)(1)(G). *See* proposed NYSE Rule 70.20(a)(ii).

[47] A floor broker could enter interest in its agency interest file prior to the open regardless of its location on the floor, but would have to be in the Crowd at the open to participate in the opening trade. Any agency interest entered prior to the open would have to be cancelled before the open, if the floor broker is not in the Crowd. *See* proposed NYSE Rule 70.20(j)(ii); *see also* Amendment No. 8.

[48] *See* proposed NYSE Rule 70.20(f). However, a floor broker could leave the Crowd to recharge its handheld device without canceling its interest. *See id. See also* Amendment No. 8.

[49] *See* proposed NYSE Rule 70.20(f).

[50] *See* proposed NYSE Rule 70.20(g). Specialists would not be able to see individual orders represented in the floor broker agency interest file.

[51] *See id.*

[52] *See* proposed NYSE Rule 70.20(k).

[53] *See* proposed NYSE Rule 70.20(h).

[54] *See* proposed NYSE Rule 70.20(k).

[55] *See* proposed NYSE Rule 70.20(c)(ii).

[56] *See* proposed NYSE Rule 70.20(c)(iii).

interest entered into the files during the open and close.[57]

The floor broker agency interest file at the Exchange BBO, except reserve, would be disseminated. Floor broker agency interest away from the BBO would not be displayed in OpenBook or other Exchange data distribution channel.

3. Autoquote

Autoquote is part of the Display Book system that immediately displays customer limit orders received on the Exchange.[58] Autoquote immediately updates the NYSE BBO when a customer limit order is received by NYSE that improves the NYSE quote.[59] In addition, Autoquote updates the NYSE BBO when an execution occurs to reflect a new NYSE BBO from interest held in the Display Book system. The Exchange proposes to amend its Rule 60 to modify the circumstances under which Autoquote would be suspended.

Specifically, Autoquote would be suspended in three circumstances: (1) When the specialist manually reports a block size transaction that involves orders in the Display Book system; (2) when the specialist gaps the quote; [60] or (3) when a LRP is reached.[61] When Autoquote is suspended due to a manual report of a block trade that involves orders in the Display Book system,[62] Autoquote would resume when the manual reporting is concluded.[63] When Autoquote is suspended following a gap quote, Autoquote would resume upon the report of a manual transaction or the publication of a non-gapped quotation.[64]

When Autoquote is suspended by an LRP that is reached by an Auto Ex Order that sweeps to the LRP price,[65] and if the Auto Ex Order is filled or if its unfilled balance is not capable of trading at a price beyond the sweep LRP price, then Autoquote would resume in no more than five seconds after the LRP is reached.[66] If the Auto Ex Order is capable of trading at a price beyond the LRP price, and would not create a locked or crossed market if quoted, then Autoquote would resume upon the report of a manual transaction or the publication of a new quote by the specialist, but in any event in no more than ten seconds.[67] Finally, if the Auto Ex Order is capable of trading at a price beyond the LRP price but would create a locked or crossed market if quoted, then Autoquote would resume upon a manual transaction or the publication of a new quote by the specialist.[68]

When Autoquote is suspended by a momentum LRP (''MLRP''),[69] Autoquote would resume in no more than ten seconds unless the Auto Ex Order would create a locked or crossed market.[70] If a locked or crossed market exists, Autoquote would resume once a manual transaction is reported.[71]

Autoquote would update the quote in the following situations even though automatic executions are not available. First, when the Exchange best bid (offer) is outside a MLRP, and such MLRP has not yet been reached, the Exchange would permit Autoquote to continue to operate, while automatic executions are not available.[72] Second, NYSE would keep Autoquote active when an order or a cancellation of an order arrives that would not result in a locked or crossed market in a security priced at $300 or more that has been determined to be ineligible for automatic execution (''high-priced security'') [73] or a manual execution takes place in such security.[74] Third, if there is a cancellation of the Exchange best bid (offer) in a high-priced security when the market in such security is internally locked or crossed, and autoquoting of the next best bid (offer) would create a locked or crossed market on the Exchange, NYSE would automatically generate a quote of 100 shares at the bid (offer) price that existed at the time of the cancellation.[75]

Finally, in the following situations, the Exchange would update its quote even though Autoquote is suspended due to an LRP or a gapped quotation, and automatic executions are not available: (1) If part of the existing Exchange best bid (offer) cancels, the Exchange would use Autoquote to update its quote to reflect the remaining volume;[76] (2) if the entire existing Exchange best bid (offer) cancels, the Exchange would automatically generate a quote of 100 shares at the bid (offer) price that existed at the time of the cancellation;[77] or (3) if there is a cancellation of the Exchange best bid (offer) when the market is internally locked or crossed, and autoquoting of the next best bid (offer) would create a locked or crossed market on the Exchange, NYSE would automatically generate a quote of 100 shares at the bid (offer) price that existed at the time of the cancellation.[78]

4. Automatic Executions

Currently, an Auto Ex Order equal to or greater than the size of the Exchange's BBO trades with the entire published bid or offer,[79] and a new bid or offer is then published. If any shares of an Auto Ex Order remain available for execution after it trades with the published quote, the remaining shares are routed to the floor and represented in the auction market.[80] Auto Ex Orders that cannot be immediately executed are placed in the Book and represented as limit orders in the auction market.[81] When the national best bid or offer (''NBBO'') is disseminated by another market and an Auto Ex Order is delivered to the specialist, it must either match the better price displayed by the other market or send an ITS Commitment to the other market.[82]

As proposed, Auto Ex Orders would execute against interest at the Exchange BBO including displayed interest and reserve.[83] Once an Auto Ex Order trades with interest at the BBO, NYSE proposes to permit Auto Ex Orders, except ITS Commitments, to automatically ''sweep'' the Display Book system by trading with liquidity that is outside the BBO. Specifically, after exhausting the volume at the BBO, the shares of the Auto Ex Order that remain (the ''residual'') would trade with existing orders in the Book, floor broker agency interest files, and the specialist interest file, until the Auto Ex Order is executed, its limit price, if any, is

[57] *See* proposed NYSE Rule 70.20(k).

[58] This system was developed to facilitate specialists' compliance with the Commission's Limit Order Display Rule. *See* 17 CFR 242.604.

[59] NYSE Rule 60(e).

[60] *See* note 139 *infra*, for a description of gapped quotations.

[61] *See* proposed NYSE Rule 60(e)(i). *See* Section II(A)(5)(a) *infra*, and proposed NYSE Rule 1000(a)(iv) for a description of LRPs.

[62] *See* proposed NYSE Rule 1000(a)(v). *See* Section II(A)(5) *infra*.

[63] *See* proposed NYSE Rule 60(e)(ii)(B).

[64] *See* proposed NYSE Rule 60(e)(ii)(A).

[65] *See* Section II(A)(5)(a)(1) *infra*.

[66] *See* proposed NYSE Rule 60(e)(ii)(C).

[67] *See id*.

[68] *See id*. In Amendment No. 8, the Exchange represented that it would implement an alert for specialists to facilitate their compliance with the Commission's Limit Order Display Rule, 17 CFR 242.604.

[69] *See* Section II(A)(5)(a)(2) *infra*.

[70] *See* proposed NYSE Rule 60(e)(iii).

[71] *See id*. *See also* note 68 *supra*.

[72] *See* proposed NYSE rule 60(e)(iv)(a); *see also* Amendment No. 8.

[73] *See* note 142 *infra* and accompanying text on the definition of high-priced security.

[74] *See* proposed NYSE rule 60(e)(iv)(b)(i); *see also* Amendment No. 8.

[75] *See* proposed NYSE rule 60(e)(iv)(b)(ii); *see also* Amendment No. 8.

[76] *See* proposed NYSE rule 60(e)(iv)(c)(i); *see also* Amendment No. 8.

[77] *See* proposed NYSE rule 60(e)(iv)(c)(ii); *see also* Amendment No. 8.

[78] *See* proposed NYSE rule 60(e)(iv)(c)(iii); *see also* Amendment No. 8.

[79] *See* NYSE Rule 1000(a).

[80] *See* NYSE Rule 1001(b).

[81] *See* NYSE Rule 1000.

[82] *See* NYSE Rule 15A.

[83] *See* proposed NYSE Rule 1000(d).

reached, or a LRP is reached, whichever occurs first.[84]

During a sweep, the residual would trade with the orders in the Display Book system, floor broker agency interest, and any specialist interest capable of execution, at a single price (the ''clean-up price''), such that any price improvement is given to the orders and interest in the Display Book system rather than the Auto Ex Order.[85] Accordingly, orders in the Book, floor broker agency interest, and any specialist interest capable of trading with the residual would receive the clean-up price.[86] Any specialist interest that remains at the clean-up price after the residual has traded would be automatically cancelled by the Exchange.[87]

Any residual remaining after the sweep would become a bid (offer) at the order's limit price, if any, or the LRP price, whichever is lower (higher).[88] If the residual can execute at the price at which it is bidding (offering), it would have priority for one trade over other interest at that price.[89] If the residual executes at a different price—within the parameters of its limit, if any—it would trade on parity.[90] If an Auto Ex Order is designated IOC, any unfilled balance remaining after the sweep would be automatically cancelled.[91]

Current NYSE Rule 1001(a)(iv) provides that the specialist shall be the contra party for any automatic execution of an Auto Ex Order where the interest reflected in the published bid or offer is no longer available. This obligation exists regardless of the tick associated with the automatic execution. NYSE Rule 104, however, restricts the specialist's ability to purchase stock on direct plus ticks or sell stock on direct minus ticks. As part of its initial proposal establishing Direct+, the Exchange sought and received Commission approval of an interpretation of NYSE Rule 104 that provides that any instance in which the specialist is effecting such a direct tick transaction only because it has been required to assume the contra-side of an automatic execution shall be deemed to be a ''neutral'' transaction for purposes of NYSE Rule 104, and shall not be deemed a violation of the Exchange rule.[92] The Exchange requests that the Commission extend this interpretation to its Hybrid Market proposal.

Automatic executions of Auto Ex Orders may elect stop orders, stop limit orders, and percentage orders electable at the price of such executions.[93] Currently, any stop orders so elected are executed pursuant to Exchange auction market procedures and are not guaranteed an execution at the same price as subsequent automatic executions of Auto Ex Orders.[94] The Exchange previously sought and the Commission approved an interpretation[95] that, for the purposes of NYSE Rule 123A, the specialist is not required to fill any stop orders elected by an execution of an Auto Ex Order at the price of the electing sale in any instance where the specialist was required by NYSE Rule 1001(a)(iv) to take the contra-side of a Direct+ execution. NYSE proposes to retain this interpretation.

(a) Priority, Parity, and Precedence

NYSE executions are governed by its rules of priority, parity, and precedence.[96] These rules dictate which order or quote is able to execute against an incoming order and the allotment of shares, if more than one order or quote is at the BBO. Generally, the first bid (offer) at the BBO has priority to execute against the next incoming order.[97] Once a trade occurs with the bid (offer) that has priority, other bids (offers) at that price (including any remaining interest from the bid (offer) that had priority) generally trade on parity, meaning they split evenly the remainder of the incoming order, up to the size of their own order.[98]

A specialist must always yield priority to the orders it represents on the Book,[99] and today is limited somewhat in its ability to trade with orders represented by floor brokers. Specifically, when the specialist is decreasing or liquidating its dealer position, the specialist is entitled to trade on parity with orders represented by floor brokers, unless the floor broker (or its customer) requests that the specialist refrain from trading along with the order the floor broker represents.[100] When a specialist is establishing or increasing its dealer position, NYSE Rule 108 states that the specialist is not ''entitled'' to parity with orders represented on the floor. According to NYSE, it has interpreted this rule to permit specialist trading on parity when establishing or increasing a position if the specialist is granted permission from the floor broker (or its customer) to do so.[101]

In its Hybrid Market, the Exchange proposes to amend its rules that govern priority, parity, and precedence with respect to interest placed in the Display Book system. Generally, an incoming Auto Ex Order would trade first with the displayed bid (offer) that established the BBO.[102] If the Auto Ex Order is of greater size than the bid (offer) that has priority, the remaining balance of the Auto Ex Order would trade with other displayed interest at the BBO.[103] The additional displayed interest would trade on parity.[104] Thereafter, if the Auto Ex Order has size remaining to be executed, it would then execute against undisplayed specialist or floor broker reserve at the BBO, which would trade on parity.[105]

The Exchange proposes that all floor broker agency interest files at the same price be on parity with each other, except a floor broker agency interest file that establishes the BBO would be entitled to priority in accordance with NYSE Rule 72.[106] Finally, with respect to transactions against the published bid or offer, no published bid or offer may claim precedence based on size with respect to executions against Auto Ex Orders.[107]

[84] *See* proposed NYSE Rule 1000(d)(ii)(A)–(D).

[85] *See* proposed NYSE Rule 1000(d)(iii)(A).

[86] *See* proposed NYSE Rule 1000(d)(iii)(B).

[87] *See* proposed NYSE Rule 1000(d)(iii)(C)(ii).

[88] *See* proposed NYSE Rule 1000(d)(iv).

[89] *See* proposed NYSE Rule 72(j); *see also* Amendment No. 8.

[90] *See id.*

[91] *See* proposed NYSE Rule 1000(d)(iv).

[92] *See* note 203 *infra.*

[93] *See* NYSE Rule 1004.

[94] *See id.*

[95] *See* note 203 *infra.*

[96] *See* NYSE Rules 72, 104, and 108.

[97] *See* NYSE Rule 72 I(a). A bid (offer) that establishes the Exchange BBO is entitled to priority at that price for one trade, except a specialist bid or offer entitled to priority must yield to limit orders on the Book at the same price.

[98] *See* NYSE Rule 72 III. When bids (offers) are on parity, Exchange rules dictate that in certain circumstances, a particular participant is guaranteed a portion of an order based on the size of its bid (offer), *i.e.*, precedence based on size. *See* NYSE Rule 72 I(c).

[99] *See* NYSE Rule 92.

[100] *See* NYSE Rule 104.10(6)(i)(C).

[101] *See* NYSE Information Memo 05–81 (October 26, 2005) (interpreting NYSE Rule 108(a) as permitting a specialist to be on parity with orders in the Crowd when the specialist is establishing or increasing its position, provided that the brokers representing orders in the Crowd permit the specialist to trade along with them by not objecting to such participation). *See* Securities Exchange Act Release No. 53208 (February 2, 2006), 71 FR 6804 (February 9, 2006).

[102] *See* proposed NYSE Rule 1000(d)(i). If the specialist establishes the BBO, however, it would have to yield to all interest in the Book.

[103] *See* proposed NYSE Rule 1000(d)(ii). As noted above, floor brokers would not be permitted to enter interest into its floor broker agency interest files that restricts the specialist's ability to trade on parity. In addition, specialists would not be permitted to trade on parity until orders in the Book at the same price are executed in full.

[104] *See* proposed NYSE Rule 1001(a)(i).

[105] *See* proposed NYSE Rules 1000(d)(ii)(A), 70.20(c)(iv), and 104(d)(iii).

[106] *See* proposed NYSE Rule 70.20(b).

[107] *See* proposed NYSE Rule 1001(b). This reflects the current NYSE Rule 1001(c), which is proposed

Continued

In Amendment No. 6, the Exchange proposes to amend NYSE Rule 70.20(d)(i) to provide that, during a sweep, the amount of floor broker agency interest that would have been displayed had the clean-up price become the Exchange BBO would trade on parity with displayed interest (*i.e.*, orders on the Book) at that price.[108] The amount of any floor broker agency interest that would have been placed in the broker's reserve, however, would yield to displayed interest.[109]

The Exchange proposes that interest reflected in the specialist interest file would be entitled to trade on parity with interest in the floor broker agency interest file, regardless of whether the specialist is increasing or decreasing its position, but, in all cases, specialist interest would have to yield to orders in the Book. Specifically, during a sweep, if no orders remain on the Book capable of trading at the clean-up price, specialist interest could trade and would be on parity with floor broker interest at that price.[110] During a sweep, neither the specialist interest file nor the floor broker agency interest file could claim precedence based on size.[111]

The Exchange also proposes to modify NYSE Rule 72 III to add that a cancellation of an entire bid or offer entitled to priority under the rule would clear the floor, after which all bids and offers would be deemed to be re-entered and on parity.[112] The Exchange believes this amendment is warranted because a cancellation of a bid or offer that was entitled to priority has the same effect as a trade.

To summarize, the following describes the sequence of execution against an incoming Auto Ex Order in the Hybrid Market:

Interest at Exchange BBO

An incoming Auto Ex Order would first trade with displayed interest at the Exchange BBO. Within this category, the order of execution would be:

- First, interest that clearly establishes the BBO would be entitled to priority at that price for one trade, except that specialist interest that clearly established the BBO would yield to all later-arriving limit orders at the BBO on the Book. If there are no limit orders on the Book at the BBO, specialist interest that clearly established the BBO would be entitled to priority over the floor broker agency interest file for one trade.
- Second, all other displayed interest at the BBO would trade on parity, except that specialist interest displayed at the BBO could not trade until all limit orders on the Book at the BBO are filled. If there are no limit orders on the Book at the BBO, specialist interest displayed at that price would trade on parity with the floor broker agency interest files displayed at the BBO. A specialist's ability to trade on parity with the floor broker agency interest files would not be restricted by the specialist's proprietary position (*i.e.*, the specialist would trade on parity whether establishing/increasing or liquidating/decreasing its position).[113]
- Third, reserve interest (*i.e.*, non-displayed interest) of the specialist or floor broker at the BBO would trade on parity. Additional specialist interest (*i.e.*, other non-displayed interest generated by the Specialist Algorithm) at the BBO would trade only if no other interest exists at the BBO.[114]

Interest Outside Exchange BBO That Participates in a Sweep

- Orders on the Book outside the Exchange BBO would trade at the clean-up price on parity with the amount of floor broker agency interest that would have been displayed had the clean-up price become the Exchange BBO. The amount of any floor broker agency interest that would have been placed in the broker's reserve would yield to displayed interest.
- Specialist interest would participate in the sweep provided there are no limit orders on the Book remaining at the clean-up price. Specialist interest participating in the sweep would trade on parity with any remaining floor broker agency interest at the clean-up price.

(b) Automated Routing Away

In the case of all orders submitted to the Exchange electronically, except for certain IOC orders, ITS Commitments, and Intermarket Sweep orders, where a better bid or offer is published by another ITS participating market center in which an automatic execution is available, or a published bid or offer is otherwise protected from a trade-through by Commission rule or the Intermarket Trading System plan, and the specialist has not systematically matched the price associated with that better bid or offer, the Exchange would automatically route to such other market center a commitment to trade that satisfies that published bid or offer, unless the member entering the order indicates that it has contemporaneously satisfied the better published bid or offer.[115] If the commitment to trade is not filled or not filled in its entirety, the balance would be returned to the Exchange and handled consistent with the order's instructions, which includes automatic execution, if available.[116] The order entry time associated with this returned portion of the order would be the time of its return, not the time the order was first entered on the Exchange.[117] With respect to the operation of sweeps, automated bids (offers) published by away markets that are better than the clean-up price would be satisfied in their entirety unless the order is an IOC order[118] or an Intermarket Sweep order.[119]

(c) Tick-Restricted Orders, Stop Orders, and Other Orders Eligible for Automatic Execution

Tick-restricted orders in the Display Book system would be filled electronically and participate in automatic executions and sweeps as their ticks and limits, if any, allow.[120] Specifically, buy sweeps would cause short sales and sell plus orders to be executed above the offer, while sell sweeps would cause buy minus orders to be executed below the bid. Sell short orders, other than those involving Regulation SHO pilot securities, would not sweep the Display Book system after automatically executing against the bid,

in this filing to be renumbered as NYSE Rule 1001(b).

[108] As noted earlier, floor broker agency interest would not be disseminated unless at the Exchange's BBO.

[109] *See* proposed NYSE Rule 70.20(d)(ii). Floor brokers would have to indicate when entering interest in the floor broker agency interest file the amount that would be displayed and the amount that would be placed in reserve if the price becomes the BBO.

[110] *See* proposed NYSE Rule 1000(d)(iii)(C)(i).

[111] *See* proposed NYSE Rule 72 I(c)–(e).

[112] Currently, a transaction ''clears the floor,'' after which all bids and offers are deemed resubmitted simultaneously and are on parity, except that specialists must yield to limit orders on the Book. Cancellation of part of an order retains priority for the uncancelled portion of such order. However, canceling an order and replacing it with a larger order would result in a loss of priority for the original order.

[113] However, NYSE Rule 104 would continue to restrict a specialist's ability to trade on parity.

[114] *See infra* Section II(B)(1) for a description of this ''additional specialist interest.''

[115] *See* proposed NYSE Rule 15A.50

[116] *See id.*

[117] *See id.*

[118] In such case, the IOC order would be cancelled by NYSE to prevent trading through the away market.

[119] *See* proposed NYSE Rule 1000(d)(III)(D) and Rule 600(b)(30) of Regulation NMS, 17 CFR 242.600(b)(30).

[120] Specifically, the Exchange proposes in NYSE Rule 13 that sell ''plus'' limit orders, buy ''minus'' limit orders, sell ''plus'' market orders, and by ''minus'' market orders designated for automatic execution that are systematically delivered to the Display Book system be eligible to be automatically executed in accordance with NYSE Rules 1000–1004.

as the sweep transaction would occur on a minus tick.[121]

Under the proposal, stop orders (including stop limit orders) on the Display Book system would be electronically elected and may participate in automatic executions.[122] Elected stop orders on the same side of the market as the Auto Ex Order could trade at the electing bid (offer) price after the Auto Ex Order is filled to the extent that there is volume available.[123] In addition, an execution at the clean-up price could also elect stop orders. Elected stop orders on the same side of the market as a sweeping Auto Ex Order could trade at the clean-up price after the Auto Ex Order is filled to the extent that there is volume available.[124]

Furthermore, under proposed amendments to NYSE Rule 123A, the elected or converted portion of a CAP–DI order could be automatically executed and participate in a sweep. An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order could participate in a transaction at the bid (offer) price if there is volume associated with the bid (offer) remaining after the electing order is filled in its entirety.[125] An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order that sweeps the Display Book system could also participate in a transaction at the clean-up price if there is volume remaining on the Display Book system or from contra-side elected CAP–DI orders at that price.[126] Furthermore, an elected or converted CAP–DI order on the contra-side of the market of an automatically executed electing order could execute against the Auto Ex Order at the electing price if there is volume remaining after the Auto Ex Order executes against interest in the Display Book system at the bid (offer) price.[127] An elected or converted CAP–DI order on the contra-side of the market of an automatically executed electing order that sweeps the Display Book system could execute against the Auto Ex Order at the clean-up price if there is volume remaining from the Auto Ex Order, from contra-side elected CAP–DI orders, or other interest at that price.[128] Finally, when a specialist is bidding (offering) or trading and an automatic execution occurs against such specialist proprietary interest, marketable CAP–DI orders on the same side as the specialist's interest would be automatically converted to participate in such execution.[129] If the execution elects a contra-side stop or stop limit order and the specialist is required to execute the elected stop or stop limit order, then CAP–DI orders on the same side of the market as the specialist would be automatically converted to participate in the execution of the stop or stop limit orders.[130]

Stop orders and CAP–DI orders could be elected at the same time by automatic executions and sweeps. If there is insufficient volume to fill the elected orders, stop orders could be executed first as they become market or marketable limit orders upon their election, whereas the elected portion of CAP–DI orders would revert to CAP–DI status if it is unable to trade. Elected CAP–DI orders are on parity with each other, which could affect the sequence in which elected stop and CAP–DI orders would trade.[131]

5. Availability of Direct+

Current Exchange rules provide that automatic executions are available from the time the Exchange disseminates a published bid or offer until 3:59 p.m. for stocks and Trust Issued Receipts, or 4:14 p.m. for Investment Company Units, or within one minute of any other closing time of the Exchange's floor market.[132] Auto Ex Orders entered prior to the dissemination of a bid or offer or after 3:59 p.m./4:14 p.m. or within one minute of any other closing time, are handled in the auction market. The Exchange proposes to extend the availability of automatic executions through the close of regular trading for a particular product (*e.g.*, 4 p.m./4:15 p.m.).[133]

Currently, Direct+ is not available during the trading day at the following times: (1) When the NYSE published quotation is in the non-firm quote mode; (2) when the execution price would be more than five cents away from the last reported transaction price in the subject security on the Exchange; (3) when a better price exists in another ITS participating market center; (4) when NYSE's published bid or offer is 100 shares (on the side the order would be executed against); (5) when a block size transaction outside NYSE's published bid or offer pursuant to NYSE Rule 127 is in the process of being completed, in which case the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange; [134] or (6) when trading in the subject security has been halted.[135]

NYSE proposes to limit the instances when Direct+ is unavailable.[136] Specifically, pursuant to proposed NYSE Rule 1000(a),[137] automatic executions in Direct+ would not occur when: (1) The NYSE published quotation is in non-firm quote mode; (2) trading in a security has been halted; [138] (3) the quote is gapped in accordance with Exchange procedures; [139] (4) trading on the Exchange reaches a LRP; (5) a block size transaction, as defined in NYSE Rule 127.10,[140] that involves

[121] *See* proposed NYSE Rule 1000(d)(iii)(E); *see also* Amendment No. 8.

[122] *See* proposed NYSE Rule 13.

[123] Elected stop orders on the contra side of the market of the Auto Ex Order could trade with the Auto Ex Order at the electing bid (offer) price after interest in the Display Book system at such price has been filled to the extent that there is volume available from the Auto Ex Order.

[124] Elected stop orders on the contra side of the market of the Auto Ex Order could trade with the Auto Ex Order at the clean-up price after interest in the Display Book system at such price has been filled to the extent that there is volume available from the Auto Ex Order.

[125] *See* proposed NYSE Rule 123A.30(a)(i).

[126] *See id.*

[127] *See* proposed NYSE Rule 123A.30(a)(ii); *see also* Amendment No. 8.

[128] *See* proposed NYSE Rule 123A.30(a)(ii); *see also* Amendment No. 8.

[129] *See* proposed NYSE Rule 123A.30(a)(iii); *see also* Pilot Amendment.

[130] *See id.*

[131] *See* NYSE Rule 123A.30.

[132] *See* NYSE Rule 1002.

[133] *See* proposed NYSE Rule 1002.

[134] On January 17, 2006, the Exchange filed a proposed rule change seeking to amend the procedure for suspending automatic execution in connection with a block size transaction. *See* Form 19b–4 dated January 17, 2006 (SR–NYSE–2006–01). The Exchange proposes to require specialists to publish a 100 × 100 share market quote that reflects the last reported transaction in connection with a block size transaction.

[135] *See* NYSE Rule 100(a)(i)–(vi).

[136] In Amendment No. 8, NYSE proposes to remove its previously proposed rule that would have made Direct+ unavailable when a better price was published by an away market. As noted above, NYSE proposes to automatically route orders, except Intermarket Sweep orders and certain IOC orders, to ITS participant markets that make automatic execution immediately available and are protected from trade throughs, unless the specialist matches the better price.

[137] *See* proposed NYSE Rule 1000(a)(i)–(vi).

[138] No executions, either automatic or manual, would be possible on the Exchange when trading has been halted.

[139] A specialist could cause a non-auto-executable quote by gapping the quotation due to an order imbalance in accordance with the policies and procedures of the Exchange. Gap quotes are used to signal an imbalance so as to attract contra-side liquidity in an attempt to mitigate volatility. The size of an imbalance suitable for gapped quoting is at least 10,000 shares or a quantity of stock having a value of $200,000 or more, although depending on the trading characteristics of the security, the appropriate conditions for gapped quoting could be higher. *See* NYSE Information Memo 04–27 (June 9, 2004).

When the quotation is gapped, automatic executions and Autoquote would be suspended, and the NYSE quote would be identified as non-firm. Incoming orders and cancellations would update the Book electronically. Once a trade occurs or a non-gapped quote is published, Autoquote and automatic execution would resume.

[140] NYSE Rule 127.10 defines a ''block'' size as at least 10,000 shares or a quantity of stock having a

Continued

orders in the Display Book system is being manually reported; [141] or (6) an Auto Ex Order is entered for a security whose closing price (or the closing bid price if there were no transactions on the previous trading day) on the Exchange is $300 or more.[142] Direct+ would be unavailable on both sides of the market in these situations.[143] NYSE proposes to disseminate an indicator to alert investors when automatic executions are not available against its quote. In addition, when automatic executions are not available due to a LRP or gapped quotation, NYSE would disseminate an indicator to signify that the NYSE quotation is not firm.[144] In any instance where the automatic execution feature is not available, Auto Ex Orders would be directed to the Exchange's auction market for representation.[145]

(a) Liquidity Replenishment Points

The Exchange proposes LRPs as pre-determined price points that would halt automatic executions for varying periods of time depending on the price and remaining size, if any, of an Auto Ex Order. LRPs may be triggered by a sweep or electronic trading that results in rapid price movement over a short period. A LRP converts the electronic market to an auction market on a temporary basis, with the intent of moderating volatility in the security by affording an opportunity for new orders, the Crowd, and the specialist to add liquidity. The Exchange proposes two LRPs—a price-based or sweep LRP and a momentum LRP.

(1) Sweep LRPs

The sweep LRP price would be set at the nearest five-cent increment outside the Exchange BBO, rounded away to the next nearest nickel.[146] When a sweep LRP is reached, the sweeping order would trade at that price to the extent of the volume available at that price. If there is a residual remaining after a sweep that has triggered an LRP, it would be bid (offered) at the LRP price, unless the order is NYSE IOC, IOC or Intermarket Sweep, in which case it would be cancelled.[147]

Automatic executions and Autoquote would then be suspended, but incoming orders and cancellations would continue to be reflected automatically in the Display Book system, although new incoming orders would not be displayed.[148] However, if a displayed bid (offer) cancels, a new bid (offer) would be autoquoted.[149]

Under the proposal, automatic executions and Autoquote would resume in no more than five seconds when the sweeping order is filled in its entirety (*i.e.*, no residual exists), when the residual is cancelled (*i.e.*, the sweeping order is IOC), or when the residual is not capable of trading at a price above (in the case of a buy order) or below (in the case of a sell order) the sweep LRP (that is, when the residual has a limit price equal to the LRP).[150] Automatic executions and Autoquote would resume in no more than 10 seconds when the residual is able to trade at a price above (below) the sweep LRP, but that price would not create a locked or crossed market.[151] Automatic executions and Autoquote would resume earlier if the specialist has manually traded or quoted the market before 10 seconds have elapsed. NYSE expects the specialist to quote or trade before 10 seconds have elapsed, unless an imbalance exists, a trade is being put together in the Crowd, or market conditions otherwise prevent such actions from occurring.

Finally, where a residual is able to trade at a price above (below) the sweep LRP, and that price would create a locked or crossed market, or when a locked or crossed market results from the entry of orders or cancellations during the 5- and 10-second periods described above, automatic executions and Autoquote would resume with a manual trade or the publication of a new quote by the specialist.[152] In this circumstance, there is no maximum time period after which automatic executions and Autoquote would automatically resume.[153] If the locking or crossing residual order cancels, automatic executions and Autoquote would resume within the relevant 5- or 10-second timeframe described above, unless a manual trade or quote occurs before then.[154] If the displayed bid (offer) on the contra-side of the locking or crossing residual order cancels, a new bid (offer) would be autoquoted.

(2) MLRPs

The momentum LRP would be triggered by a specified price movement over a specified period during a trading session. The Exchange is proposing a LRP based on price movement over a period of time because it is concerned that excessive volatility could arise in situations other than electronic sweeps. MLRPs are designed to limit the amount of price change that can occur within a 30-second time period to the greater of 25 cents or 1% of the security price (rounded to the nearest cent).

The MLRP range at any time may be calculated as follows. First, the low MLRP range is calculated by taking the high transaction price of the security within the prior 30 seconds and subtracting the greater of (a) 25 cents or (b) 1% of the security's price (rounded to the nearest cent).[155] Next, the high MLRP range is calculated by taking the low transaction price of the security within the prior 30 seconds and adding the greater of (a) 25 cents or (b) 1% of the security's price (rounded to the nearest cent).[156] For example, assume that during the prior 30 seconds, the high transaction price is $20.15, the low transaction price is $19.92, and the last sale price was $20.15. The low MLRP range would be $19.90, calculated by subtracting $0.25 ($0.25 is greater than 1% of the security's price) from the high transaction price of $20.15. The high MLRP range would be $20.17, calculated by adding $0.25 to the low transaction price of $19.92. The MLRP

market value of $200,000 or more, whichever is less. *See* Amendment No. 8.

[141] The Exchange originally proposed to permit automatic executions to continue while a block size transaction was manually reported until the bid (offer) decremented to 100 shares. In Amendment No. 8, NYSE proposes to suspend both Autoquote and automatic executions as soon as the report template is opened by the specialist to report a block size transaction that involves orders on the Display Book system. *See* proposed NYSE Rule 60(e)(ii)(B) and NYSE Rule 1000(a)(v).

[142] *See* proposed NYSE Rule 1000(a)(vi); *see also* Amendment No. 8. In addition, in Amendment No. 8, NYSE proposes to suspend automatic executions for such securities on both sides of the market.

[143] Automatic executions would be suspended on only one side of the market when an execution at the NYSE quote would trigger the MLRP. *See* proposed NYSE Rule 1000(c). *See also* proposed NYSE Rule 60(e)(iv)(a).

[144] *See* proposed NYSE Rule 60(c)(2)(b); *see also* Amendment No. 8.

[145] *See* NYSE Rule 1000(d)(v).

[146] *See* proposed NYSE Rule 1000(a)(iv)(A).

[147] *See* proposed NYSE Rule 1000(d)(iv). If an Auto Ex Order sweeps to its limit price and has residual remaining at the price, the residual would be bid (offered) at its limit price.

[148] *See* Second Notice, *supra* note . According to the Exchange, the Display Book system has the ability to accept incoming orders and cancellations when automatic executions and Autoquote are suspended; however, only the specialist would be able to view this information. These incoming orders and cancellations are held in the Display Book system in the sequence that they are received, until Autoquote and automatic executions are available.

[149] *See* proposed NYSE Rule 60(e)(iv)(c); *see also* Amendment No. 8.

[150] *See* proposed NYSE Rules 60(e)(ii)(C) and 1000(b); *see also* Amendment No. 8.

[151] *See id.*

[152] *See* proposed NYSE Rules 60(e)(ii)(C) and 1000(b).

[153] Specialists would still be required to immediately display customer limit orders. *See* Rule 604 of Regulation NMS, 17 CFR 242.604. *See also* proposed NYSE Rule 60(e)(ii)(C) and 60(e)(iii).

[154] *See* Second Notice, *supra note 8.*

[155] *See* proposed NYSE rule 1000(a)(iv)(B)(ii).

[156] *See id.*

range could change based on an event (*e.g.*, a new trade) or the passage of time.

If there was no transaction on the Exchange within 30 seconds, the MLRP range would be based off the last transaction on the Exchange.[157] For example, if the last sale price was $20.15 and no transactions have occurred within the prior 30 seconds, the low MLRP range would be $19.90 and the high MLRP range would be $20.40. Automatic executions could occur at prices at or within the MLRP range. Automatic executions that would occur at prices outside the MLRP range would cause the suspension of automatic executions and Autoquote. An Auto Ex Order that reaches the MLRP price would trade at that price to the extent possible, and thereafter automatic executions and Autoquote would be suspended.[158] The Display Book system would be automatically updated by incoming orders and cancellations, although new incoming orders would not be displayed.[159]

Once automatic executions and Autoquote have been suspended due to a MLRP, they generally would resume in no more than 10 seconds.[160] The Exchange expects, similar to a sweep LRP, that the specialist will trade or requote the stock in less than 10 seconds unless conditions in the stock prevent this. Where incoming orders and cancellations cause a locked or crossed market, Autoquote and automatic executions would resume upon a manual transaction.[161]

In addition, if the NYSE published bid or offer is at a price beyond the MLRP range, automatic executions on that side of the market would be suspended because an automatic execution could not occur at that price.[162] This is the only instance when automatic executions would be suspended on one side of the market. Autoquote would continue, and orders and cancellations would update the Display Book system.[163] Automatic executions would resume when a bid or offer within the MLRP range is autoquoted or the MLRP range changes as a result of the moving 30-second timeframe.[164]

[157] *See* proposed NYSE rule 1000(a)(iv)(B)(iii).

[158] *See* proposed NYSE Rule 1000(a)(iv)(B).

[159] *See* Second Notice, *supra* note 8. *See also supra* note 148.

[160] *See* proposed NYSE Rules 60(e)(iii) and 1000(b); *see also* Amendment No. 8.

[161] *See id.*

[162] *see* proposed NYSE Rule 1000(c); *see also* Amendment No. 8.

[163] *See supra* note 148.

[164] *See id.*

B. Role of the Specialist in the Hybrid Market

1. Specialist Algorithms

The Exchange proposes to allow specialists to participate automatically in the Hybrid Market and replicate the performance of certain specialist privileges and obligations in an electronic way. For instance, specialists would be permitted to establish electronic connections to the Display Book system that would provide them with access to certain information before other market participants, and be permitted to make a range of specified quoting and trading decisions based on that information.

Specifically, the Exchange proposes to provide specialists with the ability to implement systems that use proprietary algorithms, based on predetermined parameters, to electronically participate in the Hybrid Market (''Specialist Algorithm'').[165] The Specialist Algorithm would communicate with the Display Book system via an Exchange-owned external application program interface (''API'').[166] The Specialist Algorithm is intended to replicate electronically some of the activities specialists are permitted to engage in on the floor in the auction market, and to facilitate specialists' ability to fulfill their obligations to maintain a fair and orderly market.

The Specialist Algorithm would receive information via the API, including information about orders entering NYSE systems, before that information is available to other market participants.[167] NYSE systems would enforce the proper sequencing of incoming orders and algorithmically-generated messages.[168] The Specialist Algorithm and the specialists on the floor would not have the ability to affect the arrival of orders at the Display Book system, or the sequence in which orders and algorithmically-generated messages are processed by the Display Book system.[169] The Specialist Algorithm, however, would be able to generate certain specified quoting and trading messages based on the information it receives through the API. Once an algorithmic message has been generated, it cannot be stopped, changed, or cancelled on its way to the Display Book system.

The Display Book system would not accept algorithmically-generated messages from the Specialist Algorithm when automatic executions are unavailable except in certain specified situations.[170] Specifically, when automatic executions are suspended, but Autoquote is active, the Display Book system would accept algorithmically-generated messages from the Specialist Algorithm to generate a bid or offer that improves the Exchange BBO or supplements the size of the existing BBO.[171]

In addition, when Autoquote and automatic executions are suspended, the Display Book system would: (1) Process algorithmically-generated messages to layer specialist interest outside the published Exchange quotation and (2) permit specialists to manually layer specialist interest at prices within a previously established locking or crossing quotation.[172]

Furthermore, the Display Book system would not process algorithmically-generated messages from the Specialist Algorithm during the time a block size transaction involving orders in the Display Book system is being manually reported[173] or when the messages would trigger the automatic execution of an AL order or an AM order, or would result in such order's execution with an existing contra-side specialist bid or offer.[174] However, the Display Book system would process algorithmically-generated messages from the Specialist Algorithm to provide price improvement to AL and AM orders in accordance with the price improvement parameters described below.[175] Algorithmically generated messages would not be permitted to create a

[165] *See* proposed NYSE Rule 104(b).

[166] In Amendment No. 8, the Exchange clarified that specialists would develop Specialist Algorithms to communicate with the Display Book system via the API.

[167] The Specialist Algorithm would have access to the following information: (1) Specialist dealer position; (2) quotes; (3) information about orders in the Display Book system such as limit orders, percentage orders, stop orders, and AL orders and market orders not designated for automatic execution (''AM orders'') (''state of the book''); (4) any publicly available information the specialist firm chooses to supply to the algorithm, such as the Consolidated Quote stream; and (5) incoming orders as they are entering NYSE systems. The Specialist Algorithm would not have access to the following types of information: (1) Information identifying the firms entering orders, customer information, or an order's clearing broker; (2) floor broker agency interest files or aggregate floor broker agency interest available at each price; or (3) order cancellations, except for cancel and replace orders. *See* proposed NYSE rule 104(c)(ii).

[168] *See* proposed NYSE Rule 104(b)(ii)(A).

[169] *See* proposed NYSE Rule 104(b)(ii)(B).

[170] *See* proposed NYSE Rule 104(c)(vi).

[171] *See* proposed NYSE Rule 104(c)(vi)(i); *See also* Amendment No. 8.

[172] *See* proposed NYSE Rule 104(c)(vi)(ii) and 104(c)(viii); *See also* Amendment No. 8.

[173] *See* proposed NYSE Rule 104(c)(v).

[174] *See* proposed NYSE Rule 104(c)(vii) and *infra* Section II(D).

[175] *See* proposed NYSE Rule 104(c)(vii).

locked or crossed market [176] and would have to comply with all SEC and NYSE rules, policies, and procedures governing specialist proprietary trading.[177]

(a) Quoting Messages

The Exchange proposes to allow the Specialist Algorithm to generate quoting messages to: (1) Supplement the size of the existing Exchange BBO; (2) place within the Display Book system specialist reserve interest at the Exchange BBO; (3) layer within the Display Book system specialist interest at varying prices outside the Exchange BBO; [178] (4) establish the Exchange BBO; and (5) withdraw previously established specialist interest at the Exchange BBO.[179]

A quoting message would not be able to interact with the order that preceded it. In addition, the Specialist Algorithm could move its quote away from the inside market only after the order it is reacting to has been processed.

(b) Trading Messages

The Exchange proposes to allow the Specialist Algorithm to generate trading messages to: (1) Provide ''additional specialist volume'' to partially or completely fill an order at the Exchange BBO; [180] (2) match better bids and offers published by other market centers where automatic executions are immediately available; (3) provide price improvement to an order, subject to the conditions outlined below; and (4) trade with the Exchange published quotation '' that is, ''hit bids'' or ''take offers.'' [181]

The generation of algorithmic messages to trade in response to a particular order does not guarantee that the specialist would be able to interact with that order or that the specialist has priority in trading with that order.[182] For example, specialist interest may not trade with the order identified by the algorithmic message because the specialist's message did not arrive in the Display Book system in time or the specialist has to yield to the Book. Such interest would be automatically cancelled.[183]

(1) Specialists' Ability To Systematically Price Improve Incoming Orders

The Specialist Algorithm would enable specialists, on behalf of their dealer accounts, to electronically provide price improvement to all or part of a marketable incoming order, including an AL order or AM order,[184] provided the following conditions are met: (i) The specialist is represented in a ''meaningful amount'' in the bid with respect to price improvement provided to an incoming sell order, or in the offer with respect to price improvement provided to an incoming buy order; and (ii) the price improvement provided by the specialist is (a) at least three cents where the quotation spread is more than five cents, (b) at least two cents where the quotation spread is three, four, or five cents, or (c) one cent where the quotation spread is two cents.[185] NYSE proposes to define the term ''meaningful amount'' as at least 1,000 shares for the 100 most active securities on the Exchange based on average daily volume and at least 500 shares for all other securities on the Exchange.[186] Specialist systematic price improvement would only be available for incoming orders that are marketable (*i.e.*, that can trade with the published bid or offer).[187] In addition, the Exchange proposes to amend NYSE Rule 123A.30 to provide for systematic conversion of marketable CAP–DI orders previously entered with the specialist to allow these orders to participate on parity with the specialist when the specialist is price improving an incoming order.[188]

(2) Specialists' Ability To Hit Bids or Take Offers

Specialists' messages to trade with the Exchange published quote must include information that indicates the quote has been publicly disseminated.[189] In addition, to ensure that a specialist's algorithmic message to trade with the Exchange published quotation does not possess any speed advantage in reaching the Display Book system, Exchange systems would process such messages in a manner that gives specialists and other market participants a similar opportunity to trade with the Exchange's published quotation, by delaying the processing of this type of trading message from the Specialist Algorithm.[190]

2. Limitations on Members' Trading Because of Customers' Orders—NYSE Rule 92

NYSE Rule 92(a) generally prohibits members from causing the entry of an order to buy (sell) any Exchange-listed security for any account in which such member is directly or indirectly interested, if the person responsible for entering such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price. The Exchange has proposed to amend NYSE Rule 92 to reflect the operation of the Specialist Algorithm.

Specifically, NYSE proposes that the specialist would not be deemed to have knowledge about a particular incoming order that is viewed by the Specialist Algorithm until such incoming order is ''processed'' by the Specialist Algorithm.[191] According to the Exchange, there may be times when the Specialist Algorithm could ''possess'' more than one order at the same time.

[176] *See* proposed NYSE Rule 104(c)(iv).

[177] *See* proposed NYSE Rule 104(c)(iii). NYSE has represented that prior to the rollout of the third phase of the Hybrid Market, it will develop guidance to clarify how it expects specialists to comply with the NYSE Rule 104 in the Hybrid Market. Telephone call between Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE Group, Inc. and Richard G. Ketchum, Chief Regulatory Officer, NYSE Regulation, Inc., and Kelly M. Riley, Assistant Director, Division, SEC, on March 22, 2006. *See also* Amendment No. 8.

[178] In Amendment No. 8, NYSE proposes to permit specialists to manually place interest in the specialist interest files at and outside the BBO. Such interest would remain in the Display Book system until it is traded with or cancelled. *See* proposed NYSE Rule 104(c)(viii); *see also* Pilot.

[179] *See* proposed NYSE Rule 104(b)(i)(A)–(E).

[180] Specialists could supply additional trading volume at the BBO beyond the amount in the specialist's reserve, if any. The Exchange proposes to amend NYSE Rule 104 to provide that this additional volume, which is not part of the reserve and which is not displayed, could complete an order, thereby providing a single-priced execution, or partially fill the remainder of the order. *See* proposed NYSE Rule 104(b)(i)(F). Additional specialist volume would yield to displayed and reserve interest.

[181] *See* proposed NYSE Rule 104(b)(i)(F)–(I).

[182] *See* proposed NYSE Rule 104(c)(i)(C).

[183] *See* proposed NYSE Rule 104(c)(i)(D).

[184] Specialist Algorithms could price improve AL orders and AM orders, consistent with the requirements noted above, by generating a message to trade with the AL or AM order before it is processed by the Display Book system, or executing the AL or AM order at its quoted price once the order has been processed by the Display Book system. Algorithmic messages that would trigger the automatic execution of AL or AM orders or that would result in such orders trading with the specialist's existing contra-side bid or offer would be prohibited. *See* proposed NYSE Rule 104(c)(vii).

[185] *See* proposed NYSE Rule 104(e)(i)(A)–(D).

[186] See proposed NYSE Rule 104(e)(ii); *see also* Amendment No. 8. NYSE would disseminate a list of the 100 most active securities on a quarterly basis, or more frequently as the Exchange may determine from time to time. *See* proposed NYSE Rule 104(e)(ii).

[187] *See* proposed NYSE Rule 104(e)(i). With respect to incoming orders that are not marketable (*i.e.*, those orders that would establish a new best bid or best offer), the specialist could not trade with such order until the new bid or offer is publicly disseminated.

[188] *See* proposed NYSE Rule 123A.30(a)(iii).

[189] *See* proposed NYSE Rule 104(c)(i)(A).

[190] *See* proposed NYSE Rule 104(b)(ii). Based upon the average transit time from the Common Message Switch (CMS) system to the Display Book system, the Exchange would determine the appropriate amount of time to delay the processing of algorithmic messages to trade with the Exchange published quotation. The delay parameter would be adjusted periodically to account for changes to the average transit time resulting from capacity and other upgrades to Exchange systems. *See* Third Notice, *supra* note 11.

[191] *See* proposed NYSE Rule 92.15. *See also* Amendment No. 7.

In addition, there could be times when a permissible algorithmic message has been generated, but before such message has been processed by the Display Book system, the Specialist Algorithm has ''read'' or ''is reading'' a new incoming order. This new order could be priced at the same price as the algorithmically-generated order or otherwise be able to trade with the order to which the algorithmic message reacted, but, as a result of proper time sequencing within the Display Book system, the algorithmic message would be processed before the new incoming order. NYSE has proposed to amend Rule 92 to provide that, if the Specialist Algorithm is designed and operated in a manner that prevents a quoting or trading message generated in response to an order from being affected by the receipt of a subsequent order, then for purposes of Rule 92, the specialist would not be deemed to have knowledge of the subsequent order.[192]

3. Policy for Communicating With the Specialist Algorithm

NYSE proposes to permit specialists on the floor to control the Specialist Algorithms.[193] For example, specialists could activate or deactivate the firm's algorithms or adjust the firm's pre-set parameters that guide an algorithm's decision-making.[194] Specialists would not, however, have the ability to prevent the processing by the Display Book system of an algorithmically-generated message. NYSE proposes to allow specialists to interact with the Specialist Algorithm via a wired or wireless device that has been registered with the Exchange, such as a computer terminal or laptop. Each specialist firm would be required to certify, in the time, frequency, and manner prescribed by the Exchange, that such wired or wireless devices operate in accordance with all SEC and Exchange rules, policies, and procedures.[195] In addition, specialists would be required to create and maintain records of all messages generated by the firm's wired or wireless devices.[196]

4. Specialist Algorithm Record Requirements

Every algorithmically-generated message generated by the Specialist Algorithm would have to include a code identifying the reason for the algorithmic action (*e.g.*, ''match ITS,'' ''price improvement,'' ''hit bid,'' etc.), the unique identifiers of the order to which the algorithmically-generated message is reacting (if any), the order immediately preceding the generation of the algorithmically-generated message, and any other information the Exchange may require.[197] The Exchange would automatically cancel algorithmically-generated messages that are unable to interact with the order or quotation identified by the message, where the reason code and the proposed algorithmic action are inconsistent, where message activity would create a locked or crossed market, where the identifiers described above are not included, and in other similar situations.[198]

Furthermore, the Exchange would require that each specialist firm maintain an electronic log of all algorithmically-generated messages, including the date and time of each algorithmically-generated message and such other information as the Exchange shall designate.[199] Such log would have to be maintained in accordance with SEC and Exchange rules regarding books and records, and be capable of being provided to the Exchange upon request, in such time and in such format as the Exchange shall designate.[200] In addition, each specialist firm would be required to notify the Exchange in writing, within such time as the Exchange shall designate, whenever its Specialist Algorithm or an individual algorithm is not operating and the time, cause, and duration of such non-operation.[201] Finally, each specialist would be required to have an independent third party auditor review, on an annual basis, all Specialist Algorithms to ensure that they operate in accordance with all SEC and Exchange rules, policies, and procedures.[202]

C. Proposal To Make Direct+ Permanent

Direct+ was originally approved as a one-year pilot program ending on December 21, 2001.[203] The pilot was subsequently extended for five additional one-year periods, and is currently scheduled to end on December 23, 2006.[204] The Exchange proposes to make Direct+ permanent.[205]

D. Auction Limit Orders and Auction Market Orders

While NYSE has proposed to significantly increase the availability of Direct+, it would still retain its auction market on the floor. Investors would be able to submit orders to floor brokers for representation on the floor (or in the electronic market if the floor broker sends this interest to the floor broker agency interest file). Investors also would be able to submit certain order types electronically through DOT that would be represented by the specialist to seek price improvement opportunities.

Specifically, NYSE has proposed one new order type—AL orders, and has proposed to amend its rules governing the execution of market orders that are not designated as auto ex eligible, *i.e.*, AM orders.[206] Specialists would represent these orders in the auction market, where the Crowd or Auto Ex Orders could offer an opportunity for execution at a price better than the Exchange BBO, while retaining as a backup the possibility of automatic execution in case the floor is unable to offer price improvement promptly.

Under the proposal, AL and AM orders would be automatically executed when they arrive at the Display Book system if the Exchange quotation is at the minimum variation of one cent.[207] Where a better bid (offer) is published by another ITS participating market center in which an automatic execution is immediately available and such better bid (offer) creates a minimum variation market compared with the Exchange best offer (bid), an AL or AM order (or the requisite portion thereof) would be automatically routed to such other market center for execution, unless the

[192] *See id.*

[193] *See* proposed NYSE Rule 36.30.

[194] *See id. See also* proposed NYSE Rule 104(g).

[195] *See* proposed NYSE Rule 36.30; *see also* Amendment No. 8.

[196] *See id.*

[197] *See* proposed NYSE Rule 104(c)(i).

[198] *See* proposed NYSE Rule 104(c)(i)(D).

[199] *See* proposed NYSE Rule 104(f)(i). NYSE Rule 132A requires members and member firms to synchronize the business clocks they use to record dates and times of any event the Exchange requires to an Exchange-designated time source.

[200] *See id.*

[201] *See* proposed NYSE Rule 104(f)(ii)

[202] The Exchange would have the right to request originals and copies of any report, notes, analysis, documents, and similar types of materials prepared by the independent auditor. *See* proposed NYSE Rule 104(h); *see also* Amendment No. 8.

[203] *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001).

[204] *See* Securities Exchange Act Release Nos. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002); 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002); 48772 (November 12, 2003), 68 FR 65756 (November 21, 2003); 50828 (December 9, 2004), 69 FR 75579 (December 17, 2004); and 53014 (December 22, 2005), 70 FR 77228 (December 29, 2005).

[205] This would also have the effect of superseding four filings that have been approved by the Commission during the Direct+ pilot, which were made part of the pilot. *See* Securities Exchange Act Release Nos. 47024 (December 18, 2002), 67 FR 79217 (December 27, 2002); 47353 (February 12, 2003), 68 FR 8318 (February 20, 2003); 47463 (March 7, 2003), 68 FR 12122 (March 13, 2003); and 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003).

[206] *See* proposed NYSE Rule 13.

[207] *See* proposed NYSE Rule 123F(a)(i)(A) and (b)(ii)(A).

specialist matches the price of the better away offer (bid).[208]

If not automatically executed or routed away upon entry, AM orders to buy and AL orders to buy with a limit price that is at or above the Exchange best offer when they reach the Display Book system would be autoquoted the minimum variation better than the Exchange best bid, thereby becoming the Exchange best bid.[209] Similarly, AM orders to sell and AL orders to sell with a limit price that is at or below the Exchange best bid when they reach the Display Book system would be autoquoted the minimum variation better than the Exchange best offer, thereby becoming the Exchange best offer.[210] The size associated with the bid or offer would be the size of the AL or AM order.[211] The size of subsequent AL and AM orders on the same side of the market would be aggregated in the bid (offer) and executed based on time priority, consistent with AL orders' limit prices.[212]

An AL or AM order could miss the market while attempting to obtain price improvement,[213] but according to the Exchange, electronic representation should limit that possibility. Once on the Book, an AL or AM order could participate in any execution, including automatic executions and sweeps. Furthermore, if an AL or AM order has not been executed within 15 seconds after reaching the Display Book system, it would automatically execute (*i.e.*, buy orders would execute against the displayed offer, and sell orders would execute against the displayed bid),[214] provided Autoquote and automatic executions are available.[215] In addition, three events would cause automatic execution of an AL or AM order before 15 seconds has elapsed. The three events are: (i) The arrival of a subsequent order at a better price on the same side of the market as an AL or AM order; (ii) the execution of an order on the same side of the market as an AL or AM order that exhausts some or all of the displayed contra-side volume available in the Exchange quotation; and (iii) the cancellation of some or all of the displayed contra-side volume, or the improvement of the displayed contra-side price that creates a minimum variation market or allows execution of the AL or AM order with price improvement.[216] In these situations, the order causing the AL or AM order to automatically execute would trade first.[217] If a trade that causes an automatic execution of an AL or AM order also elects stop orders and CAP–DI orders, the AL and AM orders would execute first because they are executable at the time of entry (but seek an opportunity for price improvement), and CAP–DI and stop orders would execute after the AL and AM orders because they are contingent orders that are not executable until elected.

An AL order to buy with a limit price that is not at or above the Exchange best offer when it reaches the Book or an AL order to sell with a limit price that is not at or below the Exchange best bid when it reaches the Book, would be displayed on the Book at its limit price.[218] An AL order that is unable to automatically execute because of its limit price would be handled as a regular limit order.[219]

E. Other Changes

1. Intermarket Sweep Order

To implement the requirements of Regulation NMS,[220] the Exchange proposes to amend NYSE Rule 13 to adopt another new order type—the Intermarket Sweep order. An Intermarket Sweep order would be a limit order designated for automatic execution in a particular security that meets the following requirements: (1) It is identified as an Intermarket Sweep order in the manner prescribed by the Exchange; and (2) simultaneously with the routing of the Intermarket Sweep order to the Exchange, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bids (offers).[221] These additional routed orders would have to be marked as intermarket sweep orders. Intermarket Sweep orders would be automatically executed upon receipt against the displayed bid (offer) and would then sweep the Display Book system. Any portion not executed would be immediately and automatically cancelled. Intermarket Sweep orders would be identified as such on the Consolidated Tape.

2. Record of Orders/Order Tracking

The Exchange proposes in NYSE Rule 123(e) that no order may be represented for execution on the floor or placed in a floor broker agency interest file within the Display Book system unless certain details of the order and the floor broker agency interest file have been first recorded in an electronic system on the floor. Furthermore, the floor member would have to identify which orders or portions thereof are being made part of the floor broker agency interest file. Since NYSE Rule 123(e)(7) provides that the type of order be designated and recorded, the Exchange proposes that AL orders and auto ex market orders be added to this rule.

NYSE Rule 132B prescribes requirements and procedures with respect to orders in any security listed on the Exchange received or originated by a member. It requires a member to immediately record data elements as detailed in the rule. If an order is transmitted to another member or is transmitted to another department of the same member, or is modified or cancelled, information detailed in the rule must be recorded. Additionally, the recipient of the order must record the order details as provided in the rule.

The Exchange proposes similar changes to NYSE Rule 132B(b)(9) with regard to the designation of an order as in proposed NYSE Rule 123(e)(7). Furthermore, NYSE Rule 132B(a)(1)(D) is proposed to be amended to require that members and member organizations identify which orders or portions thereof are being made part of the floor broker agency interest file pursuant to such procedures as required by the Exchange. This would conform NYSE Rule 132B with changes made to NYSE Rule 123(e).

3. NYSE Rule 91

NYSE Rule 91 includes transaction confirmation requirements in instances in which the specialist participates in a transaction as both principal and agent. The Exchange sought and received Commission approval [222] of its interpretation that NYSE Rule 91 does not apply where the specialist is the contra-party to an automatic execution, as the specialist does not accept an Auto Ex Order for execution or act as agent in the execution of such order. NYSE

[208] *See* proposed NYSE Rule 123F(a)(i)(B) and (b)(ii)(B).

[209] *See* proposed NYSE Rule 123F(a)(ii) and (b)(iii).

[210] *See id.*

[211] *See id.*

[212] *See id.*

[213] *See* proposed NYSE Rule 123F(a)(iv) and (b)(v).

[214] *See* proposed NYSE Rule 123F(a)(iii)(D) and (b)(iv)(D).

[215] If another market displays a price better than the AL or AM orders, the Exchange would execute the AL or AM order at a price (consistent with the AL order's limit) that matches the immediately accessible better away quote. *See* proposed NYSE Rule 123F(a)(i)(C) and (b)(ii)(C); *see also* Amendment No. 8.

[216] *See* proposed NYSE Rule 123F(a)(iii)(A)–(C) and (b)(iv)(A)–(C).

[217] As noted above, a Specialist Algorithm trading message cannot cause the automatic execution of an AL or AM order. *See* proposed NYSE Rule 104(c)(vii).

[218] *See* proposed NYSE Rule 123F(a)(v).

[219] *See id.*

[220] 17 CFR 242.600(b)(30).

[221] *See* proposed NYSE Rule 13.

[222] *See supra* note 203.

proposes to extend this interpretation to its Hybrid Market.

F. Hybrid Market Implementation Plan

The Exchange proposes to implement the Hybrid Market in five phases over a period of months.[223] The Exchange believes that this would help ensure proper functioning of the Exchange, specialists, floor brokers, vendor-based systems, and Hybrid Market-related functionalities, and would promote the seamless integration of Hybrid Market facilities into the marketplace. In addition, the phased implementation plan would provide time for market participants to become familiar with the different functions and features, so that they would be adequately prepared to employ them properly once the Hybrid Market is fully functional. Within each phase, the various functions that would become operational during that phase would be made available over a period of several weeks.

In Amendment No. 8, the Exchange committed to provide notice to its members and others using its facilities, through information memoranda and its Web site, of the specific rules that would be effective during each phase.

1. Phase 1—Floor Broker Agency Interest Files, Specialist Interest Files, and Systematic Integration of Priority, Parity, and Yielding Requirements

During the first phase of implementation, the Exchange contemplates activating the floor broker agency interest file to permit floor brokers to enter their interest at or outside the BBO. This would enable floor brokers to gain experience using this tool. Floor brokers would be able to populate the reserve file; however, the reserve file would be visible to the specialist in this phase. The feature permitting floor brokers to exclude their interest from the aggregate information available to the specialist would not be available in this phase; the Exchange contemplates making the exclusion feature operational in Phase 4. In addition, commencing in Phase 4, floor broker reserve interest would not be visible to the specialist if chosen as an option by the floor broker.

Specialists would be able to manually layer their interest at and outside the BBO during the first phase. However, they would not be able to disseminate this information via OpenBook or another Exchange data distribution channel until Phase 4. The API would not be activated during Phase 1; accordingly, specialists would not be able to use Specialist Algorithms to layer their interest or to otherwise trade or quote, nor would the specialists' reserve capability be operational.

During Phase 1, the systematic programming of priority, parity, and yielding requirements, other than the yielding requirements for additional specialist interest, would be completed, enabling ''G'' order interest to be included in the floor broker agency files and to be handled by the Display Book system. Other system changes would be made to enhance systematic reporting of transactions and associated audit trail, such as eliminating specialist responsibility for allocation of volume in automatic executions.[224] Finally, the Exchange would implement the automation of CAP–DI orders and stop or stop limit orders.

During Phase 1, Direct+ would continue to operate as it does under the current rules and would be subject to the same restrictions and availability as set forth in NYSE Rules 1000—1005. Accordingly, the Exchange anticipates that most trading would continue to be effected in the auction market, subject to the same rules and conditions as trading on the Exchange today. The Exchange began testing the Phase 1 functions for 168 securities in the Pilot.[225] Upon approval of the Hybrid Market, the Exchange would implement Phase 1 for all its securities.[226]

2. Phase 2—API and Specialist Algorithms

Phase 2 would see the introduction of the API and Specialist Algorithm. During this phase, the specialist's systematic trading and quoting abilities would become operational. For example, the specialist would be able to provide algorithmic price improvement pursuant to the formula described in the proposal, regardless of the size of the incoming order. Algorithmic trading with the bid and offer, algorithmic ability to make new bids and offers and to withdraw previously made bids and offers, to add size to an existing bid and offer, to match better bids and offers away, and to layer specialist interest at prices outside the BBO, would also be available. Specialist reserve file capability and the yielding requirements for additional specialist interest would become operational during this phase.

As in Phase 1, Direct+ would continue to operate according to the same restrictions and availability as set forth in NYSE Rules 1000–1005 today, and the Exchange anticipates that most trading would continue to be effected in the auction market.

3. Phase 3—Automatic Routing of Orders, Elimination of Direct+ Restrictions, ''Slow'' Market Indicators, and Gap Quoting

During Phase 3, the following changes would be implemented:

- Automatic routing of orders to automated markets posting better bids and offers in accordance with Regulation NMS;
- Availability of NYSE IOC orders for automatic executions;
- Use of indicators to identify quotations that are not immediately available for automatic executions;
- Implementation of gap quoting procedures;
- Elimination of size restrictions for automatic executions;
- Elimination of 30-second restriction on the entry of Auto Ex Orders from the same person;
- Availability of automatic executions through the close;
- Elimination of Direct+ availability only to straight limit orders;
- Elimination of Direct+ suspensions due to price (*i.e.,* a trade at a price that would be more than five cents from the last trade in the stock on the Exchange);
- Elimination of Direct+ suspensions due to size (*i.e.*, a 100-share published bid or offer);
- Conversion of marketable limit orders automatically to Auto Ex Orders; and
- Automatic executions of designated market orders.

Not all of these features would be made available at the same time during this phase, but instead would be made available in all securities over a period of time.

4. Phase 4—Floor Broker Reserve Features, Sweeps, LRPs, and New Order Types

Phase 4 would implement the following:

[223] *See* Amendment No. 8. In Amendment No. 8, the Exchange modified the implementation plan by moving: (1) Floor brokers' ability to exclude their interest in the floor broker agency interest file from the aggregate information available to the specialist from Phase 2 to Phase 4; (2) the ability of floor brokers to hide their reserve interest from the specialist from Phase 2 to Phase 4; (3) the specialist's ability to disseminate information regarding its layered interest via OpenBook or another Exchange data distribution channel from Phase 2 to Phase 4; (4) the availability of sweeps, LRPs, and AL/AM orders from Phase 3 to Phase 4; (5) the availability of Intermarket Sweep orders and use of indicators to identify executions involving an Intermarket Sweep order from Phase 3 to Phase 4; and (6) the implementation of new Display Book system templates and programming that will eliminate the suspension of Autoquote and automatic executions from Phase 4 to Phase 5, and by adding: (1) The specialist's ability to manually enter reserve interest to Phase 4 and (2) the availability of IOC (consistent with Regulation NMS) orders for automatic executions to Phase 4.

[224] *See* NYSE Rule 1001(a)(3).

[225] *See* Pilot. *See* Section II(G), *supra,* for a discussion of the Pilot.

[226] *See* Amendment No. 8.

- Use of indicators to identify an execution involving an Intermarket Sweep order;
- Floor brokers' ability to exclude interest, including reserve, from the aggregate information available to the specialist;
- Sweep functionality for automatic executions;
- Activation of LRPs (both sweep and momentum), and the publication via OpenBook or another Exchange data distribution channel of the most restrictive LRP;
- Availability of new order types—AL and AM orders and Intermarket Sweep orders;
- Specialists' ability to disseminate their layered interest via OpenBook or another Exchange data distribution channel;
- Specialists' ability to manually enter reserve interest; and
- Availability of IOC orders for automatic executions.

5. Phase 5—New Reporting Templates and Elimination of Suspensions of Autoquote and Automatic Executions

In Phase 5, NYSE proposes to implement the new Display Book system templates and programming that would eliminate the suspension of Autoquote and automatic executions.

G. Limited Hybrid Market Pilot

As noted earlier, the Commission approved the testing of certain functions the Hybrid Market on December 14, 2005, on a limited basis and for a pilot period expiring on March 24, 2006.[227] The Pilot implemented testing, with respect to a limited group of securities, the specialist interest files, the floor broker agency interest files, and the priority, parity, and yielding rules as proposed in the Hybrid Market.[228]

Specifically, the Pilot allows specialists to manually layer their proprietary trading interest outside the NYSE BBO into the Display Book system.[229] Specialists' proprietary interest remains in the Display Book system until cancelled or executed. The Pilot also allows floor brokers to electronically represent their customers' orders in the floor broker agency interest files.[230] Floor brokers could enter interest in the floor broker agency interest files directly either at the BBO or outside the BBO and could enter reserve size at the BBO so long as 1,000 shares are displayed. In addition, the Pilot automates the priority, parity, and yielding rules. The Pilot permits specialists to trade on parity with orders represented by floor brokers when specialists are increasing or decreasing their position and eliminates floor brokers' ability to object to specialist parity. Finally, the Pilot implemented the automation of CAP–DI orders and stop orders.[231]

III. Summary of Comments and NYSE's Response

The Commission received a total of 43 comment letters on the Hybrid Market proposal.[232] In addition to the amendments filed by the Exchange that addressed many questions raised in the comment letters, NYSE also filed the Response to Comments to address other specific concerns raised in the comment letters.[233]

A few commenters supported the NYSE's proposal to create a Hybrid Market.[234] Several commenters generally supported further automation of the NYSE market,[235] and some of these commenters claimed that the Exchange had not gone far enough to create the automated mar ket that Exchange users desire.[236] A few commenters expressed dissatisfaction with the proposal.[237] Some of these commenters believed that the Exchange failed to create a genuine hybrid market that would blend floor-based and screen-based trading, that the proposed market did not provide for any true inter-market competition, and that it gave preferential treatment to specialists and/or floor brokers.[238]

Initially, most commenters had questions about the rules that the Exchange had proposed. Specifically, in response to the First Notice, a majority of commenters requested that NYSE provide more details and specific trading examples showing how the Hybrid Market proposal would work.[239] Several commenters raised specific issues. For example, several commenters on the First Notice questioned how the LRPs would work,[240] how specialists would participate in the Hybrid Market,[241] how the floor broker agency interest file would interact with orders on the Book,[242] and how AL and AM orders would be handled.[243] In addition, several commenters requested more detail on automatic execution.[244] Specifically, commenters requested detail on how the priority and parity rules would operate with the specialist interest file and floor broker agency interest file,[245] and the instances when automatic executions would not be available.[246]

Several commenters also questioned how the Hybrid Market would interact with other markets. For example, one commenter questioned whether ITS would be capable of handling NYSE's increased interaction with ''away markets'' and whether the Exchange had a contingency plan to ensure that adequate linkages will be in place to accommodate the enhancement to

[227] *See* Pilot Extension, *supra* note 27.

[228] *See also* Pilot Amendment, *supra* note 27.

[229] Prior to the Pilot, specialists could only manually place their proprietary trading interest at the NYSE BBO.

[230] Prior to the Pilot, floor brokers could only enter their customers' orders in the Display Book system through the specialist.

[231] In Amendment No. 8, the Exchange represented that it has not encountered any systematic difficulties in connection with the Pilot.

[232] *See supra* notes 6, 9, 12, and 13.

[233] *See* Response to Comments, *supra* note 14.

[234] *See* IBG Letter II, Invictus Letter, and Power Letter.

[235] *See, e.g.,* Ameritrade Letter, IBG Letters I and II, ICI Letters I, II, and III, SIA Letters I, II and III, STANY Letter, Telic Letter, and Vanguard Letter. However, one commenter suggested that while the proposal could turn out well for liquid stocks, the Exchange should consider separate and distinct rules for illiquid securities. *See* Bear Stearns Letter.

[236] *See, e.g.,* ICI Letters I and III and Telic Letter.

[237] *See, e.g.,* Bloomberg Letters I and II, IBAC Letters I, II, and III, Peake Letter I, Rutherfurd Letters I, II, III, IV, V, VI, VII, VIII, IX, and X, Telic Letter, Torino Letter, and Weeden Letter. *See also* Fidelity Letter III (urging the Commission to consider a study indicating that NYSE's Hybrid Market would be a substantially more costly trading environment than that of fully electronic markets). However, *see also* Lipson Letter (stating that the data does not justify Fidelity Letter III's conclusion).

[238] *See, e.g.,* Bloomberg Letter I, IBAC Letters I and II, Rutherfurd Letters I, III, and V, Telic Letter, Weeden Letter. In particular, one of these commenters argued that specialists and floor brokers in the proposed Hybrid Market should not be able to charge floor brokerage commission on any orders that are executed automatically in the Display Book system and not by the specialist or floor broker personally. *See* Rutherfurd Letter I. Another commenter was concerned that NYSE's ultimate plans would be to move past any true ''hybrid'' and phase out the auction market entirely, which the commenter believed would disadvantage the investing public that relies on the face-to-face interaction on the floor to achieve the best prices. *See* IBAC Letters I and II.

[239] *See, e.g.,* Ameritrade Letter, Angelides Letter, Bear Stearns Letter, Bloomberg Letter I, BSE Letter, Fidelity Letters I and II, IBG Letter I, ICI Letter I, Instinet Letter, Peake Letter, SIA Letter I, STANY Letter, and Telic Letter. After the Second and Third Notices, a few commenters continued to believe that the proposal did not fairly and accurately describe exactly what the NYSE intended, and still had explicit questions relating to the Hybrid Market. *See also* Bloomberg Letter II, IBAC Letters I and II, and Rutherfurd Letters I, II, III, and V.

[240] *See* IBG Letter I and ICI Letter I. The Commission notes that NYSE did not specifically define the parameters of its MLRP in the First Notice.

[241] *See* IBG Letter I and ICI Letter I.

[242] *See* IBG Letter I and ICI Letter I.

[243] *See* IBG Letter I.

[244] *See* BSE Letter, Fidelity Letter I, and STANY Letter.

[245] *See* Fidelity Letter I, SIA Letter I, and STANY Letter.

[246] *See* BSE Letter, Instinet Letter, and STANY Letter.

Direct+.[247] Other commenters questioned how the Hybrid Market would operate in compliance with the ITS trade-through rule or the then-proposed Regulation NMS.[248]

The Exchange responded to the initial comments in its Amendment Nos. 2 and 3, which the Commission published as the Second Notice.[249] In addition to providing more detail on its proposal, NYSE submitted detailed trading examples to demonstrate how its proposed Hybrid Market would operate.[250] Soon after the Second Notice was published, the Commission reproposed its Regulation NMS.[251] Commenters generally asked the Commission to refrain from acting on NYSE's proposal until it had made a decision on Regulation NMS to allow commenters to consider the operation of the Hybrid Market in conjunction with Regulation NMS.[252] Several commenters, however, raised specific concerns about NYSE's proposal as described in the Second Notice. For example, commenters questioned whether it would be appropriate to allow undisplayed floor broker interest to trade on parity with displayed orders on the Book,[253] whether it would be appropriate to allow specialists to have access to non-public information about incoming orders,[254] and whether the sweep functionality would result in less favorable executions of customer orders.[255]

After the Third Notice, certain commenters continued to question several aspects of the proposal that they believed raised investor fairness and logistical issues.[256] Some of these commenters encouraged the Exchange to modify its proposal to give priority to investor orders and to encourage the display of limit orders.[257]

A number of commenters emphasized the significance of NYSE's proposal.[258] In fact, one commenter stated that NYSE's proposal was ''among the most significant SRO rule changes that the Commission has had to evaluate for quite some time.'' [259] Although the same commenter favored a quick approval and implementation of the proposal,[260] other commenters cautioned the Commission to proceed slowly in considering the NYSE's rule change, to give the industry and investors an opportunity to gain a full understanding of the proposal's effect.[261] Some commenters believed that Direct+ should be subject to a pilot program or have a phase-in period so that there would be an opportunity to review the impact of the proposed changes before they become a permanent fixture of the equities markets.[262]

In its response, the Exchange stated that the proposed enhancements to Direct+ were responsive to customer requests for greater electronic access to the liquidity on the Exchange. The Exchange believed that this, along with the new opportunities for price improvement via AL and AM orders, would make for a better market, would encourage the display of liquidity, and would allow customers to access this liquidity in the manner that best suits their needs. In response to commenters' concerns over the implementation of the Hybrid Market, the Exchange proposed, in the Third Notice, to launch the Hybrid Market proposal in phases. The Exchange believes this phased implementation should help ensure the proper functioning of market participants' Hybrid Market-related systems, promote the integration of Hybrid Market facilities into the marketplace, and allow market participants adequate time to become familiar with the features of the Hybrid Market.[263]

A. Liquidity Available for Automatic Executions

Several commenters argued that off-floor participants should be able to place liquidity on the Display Book system without the use of a floor member.[264] Two commenters argued that the NYSE's proposal failed to provide any material inducement to non-NYSE liquidity providers to participate in the Hybrid Market.[265] One of these commenters stated that the proposal would ''perpetuate asymmetric information between specialists, floor brokers and customers that only serves to discourage competing liquidity providers * * *'' from providing better prices and more liquidity.[266]

1. Specialist Interest File and Specialist Reserve

As discussed earlier, specialists would have the ability to manually and systematically place in the Display Book their dealer interest at prices at or outside the Exchange BBO.[267] In addition, a specialist would be able to maintain undisplayed reserve interest on behalf of its dealer account at the Exchange BBO, provided that the specialist displayed at least 2,000 shares at that price on the same side of the market.[268] Specialist interest at the Exchange BBO would be disseminated; specialist reserve would not be disseminated. In addition, specialist interest away from the Exchange BBO could be disseminated, at the option of the specialist, via the NYSE's OpenBook data feed.

Many comments questioned the appropriateness of creating an undisplayed interest file for those market participants that have a time and place advantage relative to the rest of the marketplace.[269] One commenter advised that the Exchange either continually monitor the specialist's dealer position in real time to preclude unlawful trading activity or require the specialist interest file to yield to all orders in all instances.[270]

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[247] *See, e.g.,* STANY Letter. *See also* Ameritrade Letter (voicing concern that Direct+ and ITS would fall short of today's technological standards and create a slow, automated trading environment for listed securities).

[248] *See, e.g.,* Ameritrade Letter, Bloomberg Letters I and II, BSE Letter, Fidelity Letters I and II, and SIA Letter I. *See* note and accompanying text for a complete discussion of the comments on this issue.

[249] *See* note 8, *supra.*

[250] The Commission published these trading examples as Exhibit A to the Second Notice.

[251] *See* Securities Exchange Act Release No. 50870 (December 16, 2004), 69 FR 77424 (December 27, 2004).

[252] *See, e.g.,* ICI Letter III, Nasdaq Letter, and SIA Letters II and III. *See also* Ameritrade Letter. A few commenters also urged the Commission to examine the Hybrid Market proposal alongside Regulation NMS. *See, e.g.,* Angelides Letter, Fidelity Letter II, Nasdaq Letter, and SIA Letters I, II and III.

[253] *See* Rutherfurd Letter II and Invictus Letter.

[254] *See* Rutherfurd Letter II, Invictus Letter, and ICI Letter II.

[255] *See* Rutherfurd Letter II. *See also* Bloomberg Letters I and II.

[256] *See, e.g.,* IBAC Letters I and II (arguing that the Commission should reject the Hybrid Market proposal because it lacks the statutorily required information on possible impacts on competition and because the proposal would indeed impair competition and unfairly discriminate against floor brokers and investors), ICI Letter III, Rutherfurd Letters IV, V, VI, VII, VIII, IX, and X, and Vanguard Letter.

[257] *See, e.g.,* ICI Letter III and Vanguard Letter.

[258] *See* Fidelity Letter I, IBG Letter I, and Weeden Letter.

[259] *See* IBG Letter I.

[260] *See* IBG Letter II.

[261] *See, e.g.,* Angelides Letter, Bear Stearns Letter, SIA Letter I, and Weeden Letter. A few commenters believed that the Commission should hold a public hearing on the proposal. *See, e.g.,* Angelides Letter, Fidelity Letter I, IBAC Letter II, and STANY Letter.

[262] *See, e.g.,* Bear Stearns Letter, Invictus Letter, SIA Letter III, and STANY Letter.

[263] In addition, as noted above, the Exchange implemented a limited pilot to begin testing some of its Hybrid Market systems and to give its floor members an opportunity to utilize its functionality in live trading. *See* discussion of the Pilot in Section II(G), *supra.*

[264] *See* Rutherfurd Letters I and V, ICI Letter III, and Vanguard Letter. *But see* ICI Letter II (noting that it did not object to the Exchange providing floor brokers with the ability to represent their customers as they do today).

[265] *See* Telic Letter and Weeden Letter.

[266] *See* Telic Letter.

[267] *See* proposed NYSE Rule 104(b)(i) and 104(c)(viii).

[268] *See* proposed NYSE Rule 104(d)(i).

[269] *See, e.g.,* Bloomberg Letters I and II, Rutherfurd Letters I, III and V, and SIA Letter I.

[270] *See* Rutherfurd Letter I.

The Exchange responded that it believes that the specialist interest file would allow specialists to provide value by committing capital and layering the Display Book system outside the BBO. According to NYSE, such interest would benefit the marketplace by increasing liquidity at prices outside the BBO, bridging temporary gaps in supply and demand, dampening volatility, and potentially improving clean-up prices. Additionally, the Exchange noted that specialists would have the option to display all of their specialist interest file away from the BBO in the aggregate price/volume information disseminated via NYSE OpenBook.

(a) Specialists' Parity

The Exchange also has proposed to amend its Rule 108 to provide that the specialist interest file would be entitled to trade on parity with interest in the floor broker agency interest files regardless of whether the specialist is increasing or decreasing its position. Specialist interest would, however, continue to yield to orders on the Book. Three commenters opposed these proposed changes to NYSE Rule 108.[271] Two believed that placing specialist proprietary trading on parity with investors' orders would misalign the interests of participants on the Exchange and likely contribute to the ineffectiveness of the Hybrid Market.[272] The other commenter considered this change to be a contravention of the specialists' negative obligation to trade only when reasonably necessary to maintain a fair and orderly market.[273] According to this commenter, specialist parity acquisitions would amount to unnecessary dealer intervention because there would be no market ''necessity'' for the specialist to effect proprietary trades in these situations, where public orders could otherwise fully satisfy contra-side interest.[274]

In response, the Exchange noted that, under current practice, floor brokers in the Crowd may permit the specialist to be on parity with their orders. The Exchange stated its belief that parity provides an incentive for specialists to participate in the price discovery process at the point of sale, and has the beneficial effects of dampening volatility and lowering execution costs for investors. In response to the concern that a specialist trading on parity when establishing or increasing its position could be inconsistent with the negative obligation, the Exchange clarified that the general negative obligation incorporated into NYSE Rule 104.10 would continue to apply to all specialist trading on the NYSE.[275]

2. Floor Broker Agency Interest Files and Reserve

NYSE proposes to permit floor brokers to participate in the Hybrid Market by allowing them to systematically provide liquidity at varying prices at or outside the BBO with respect to orders the broker is representing, but only while standing in the Crowd.[276] While a floor broker's agency interest, except reserve, would be displayed as part of the quotation when it is at the BBO, floor broker agency interest outside of the BBO would not be displayed. NYSE proposes to allow floor broker agency interest to trade on parity with the specialist interest file,[277] and in many cases, with orders on the Book.

The Commission received one comment letter criticizing the requirement that floor brokers be physically present in the Crowd to place interest in its floor broker agency interest file.[278] Most of the other comments regarding floor broker agency interest file focused on the Exchange's proposal to not require the display of such interest that is outside of the BBO while providing this interest with the ability to trade on parity with displayed interest.[279] Specifically, several commenters questioned the fairness of allowing non-displayed floor broker agency interest to trade on parity with disclosed orders on the Book.[280] Some commenters argued that this practice would be inconsistent with the Exchange's goal of providing incentives to place limit orders on the Exchange, and predicted that investors would be reluctant to place limit orders on the Book knowing that they might not be fully rewarded for displaying those orders.[281]

Commenters also expressed the opinion that the proposal appeared to be designed to preserve the time and place advantages that floor members currently enjoy over public investors.[282] For example, one commenter believed that, by authorizing this parity structure, the Exchange would be affording the floor broker agency interest file with three major execution advantages over orders on the Book: (1) Floor broker agency interest entered later in time could deny an execution to public limit orders

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[271] *See* IBAC Letters I and II, ICI Letter III, and Rutherfurd Letters III, IV, V, VI, VII, VIII, IX, and X. Two of these commenters also challenged NYSE's interpretation of NYSE Rule 108 that provides that specialists can trade on parity with orders in the Crowd when establishing or increasing their position, provided that the floor broker or its customer does not object. *See, e.g.,* IBAC Letter I and Rutherfurd Letters III, IV, V, VI, VII, VIII, IX, and X.

[272] *See* IBAC Letters I (also contending that it would increase volatility in the market) and II and ICI Letter III.

[273] *See* Rutherfurd Letters III, IV, V, VI, VII, VIII, IX, and X. According to the commenter, since Section 11A of the Act promotes the objective of public order interaction without dealer intervention, specialist parity acquisitions would constitute an example of unnecessary dealer intervention and could not be reconciled with Section 11A. *See* Rutherfurd Letter III. *See also* IBAC Letter I.

[274] *See* Rutherfurd Letters III, IV, V, VI, VII, VIII, IX, and X.

[275] *See also* note *infra* and accompanying text.

[276] However, as noted earlier, a floor broker would be permitted to leave the Crowd without canceling its agency interest files to recharge its handheld device. *See* proposed NYSE Rule 70.20(f).

[277] The specialist interest file would only trade on parity with the floor broker agency interest file when there are no orders on the Book executable at a particular price.

[278] *See* Invictus Letter. This commenter believed that the proposed requirement that a floor broker agency interest file be cancelled when the floor broker leaves the Crowd and the proposed definition of a Crowd would be at odds with the direction of technology, greater speed, productivity, and liquidity. Because floor brokers are equipped with hand held computers and can act in a virtual capacity at any post where they have customer interest files, this commenter believed that limiting them to a distance of five contiguous panels at the same post would be arbitrary and unnecessarily restrictive and would put customers who use independent floor brokers at a disadvantage. In response to this criticism, the Exchange explained that, like the current floor today where a floor broker has to be in the Crowd to participate in the auction, the floor broker agency interest file was designed to allow the floor broker to continue participation in the auction, but in an automatic execution environment. In addition, the Exchange believes that the range of five contiguous panels in the proposed definition of a Crowd represents the appropriate range of proximity to enable brokers to also participate in the auction market. Furthermore, the Exchange pointed out that, if a floor broker must leave the Crowd and therefore cancel its agency interest file, the broker could ensure that its customers' orders are still represented in that Crowd by sending such orders to the specialist, sending the orders to Direct+ via its handheld devices for automatic execution, or transferring the orders to another member for representation in the Crowd. In Amendment No. 8, NYSE proposes to limit this restriction by allowing a floor broker to leave the Crowd to recharge a handheld device without canceling its agency interest file.

[279] *See, e.g.,* Bloomberg Letters I and II, ICI Letters I, II, and III, Rutherfurd Letters I, II, III, and V, SIA Letter I, STANY Letter, and Vanguard Letter.

[280] *See, e.g.,* Bloomberg Letters I and II, ICI Letters I, II, and III, Rutherfurd Letters I, II, III, and V, SIA Letter I, STANY Letter, and Vanguard Letter.

While supporting the NYSE's proposal to have the floor broker's undisplayed reserve interest at the BBO yield to displayed interest at that price, one commenter questioned why the Exchange did not extend this concept to its execution priorities at other levels of the book. *See* ICI Letter II.

[281] *See, e.g.,* ICI Letters II and III, Rutherfurd Letters II and V, STANY Letter, and Vanguard Letter.

[282] *See, e.g.,* Bloomberg Letters I and II, ICI Letters I, II, and III, Rutherfurd Letters I, II, and III, and SIA Letter I.

entered earlier in time;[283] (2) floor broker agency interest would often be entitled to superior parity splits with the Book, since the proposed parity structure would treat the Book as only one bidder (irrespective of the number of orders on the Book, the aggregate number of shares, and their times of entry);[284] and (3) floor brokers would enjoy an informational and order entry advantage that will allow them to ''see'' the orders on the Book and make trading decisions by entering floor broker agency interest.[285]

Accordingly, commenters insisted that for a floor broker agency interest file to be on parity with other orders at its price, a broker should be required to display orders placed in their agency interest file in the same manner as at the BBO.[286] If the Exchange believes that floor brokers' agency interest should be undisplayed, commenters argued that those orders should not be provided parity with fully-displayed orders on the Book.[287]

One commenter suggested that the Exchange give qualified customers the option either to give their agency interest to a floor broker or enter it directly in the Display Book system themselves.[288] Similarly, with respect to a floor broker's ability to place undisplayed reserve interest at the BBO, two commenters suggested that the Exchange provide investors with a similar reserve feature where investors would have the direct ability to conceal a portion of their orders at the BBO, and not be required to do so solely through the use of a floor broker.[289] One of these commenters argued that this aspect of the proposal would not support economically efficient executions or the ability of investors to interact directly, and thus would be inconsistent with the principles of section 11A under the Act.[290]

In general support of the floor broker agency interest file, the Exchange stated that this feature would allow customers both to take advantage of floor broker knowledge and trading expertise, as well as the efficiencies of automatic executions. The Exchange believes that floor brokers would be able to use the interest file to effectively represent interest that their customers do not wish to display, and, simultaneously, permit this interest to be accessed by incoming orders and participate in automatic executions and sweeps.

Furthermore, in addressing comments that undisplayed floor broker agency interest should not trade on parity with displayed orders on the Book, the Exchange proposed in Amendment No. 6 to revise the standing of orders on the Book and floor broker agency interest during a sweep. Specifically, the Exchange proposes to revise NYSE Rule 70 to provide that during a sweep, the amount of floor broker agency interest that would have been displayed had there been a new quote at the clean-up price would trade on parity with displayed interest, *e.g.* orders on the Book, at that price. The amount of any floor broker agency interest that would have been placed in the broker's reserve would yield to displayed interest. The Exchange believes that this amendment is consistent with the concept that displayed interest at each price point would execute before non-displayed interest at the same price point and the corollary principle that non-displayed interest at a better price would trade ahead of displayed interest at a worse price, while taking into account the fact that during a sweep there is no opportunity for floor broker agency interest at the clean-up price to be displayed before an execution that occurs at that price.[291]

With respect to suggestions that the floor broker agency interest file would provide floor brokers with some form of advantage over public customers, the Exchange emphasized that floor brokers would only have access to information pertaining to their own agency interest, and no access to other broker's files. Similarly, the Exchange proposed that neither specialists on the floor nor the Specialist Algorithms would have access to any information about specific orders in floor broker agency interest files.[292] Under the proposal, specialists would only be able to view the total aggregated broker agency interest at each price, except for any interest a broker has elected to not disclose to the specialist.

Furthermore, in response to comments questioning the reserve feature of the floor broker agency interest file and whether it would grant too much advantage to floor brokers,[293] the Exchange argued that the existence of reserve interest would not be unique to the Exchange, and that electronic order books in other markets have a reserve functionality at all price levels, not just the BBO.[294] In the Hybrid Market, the Exchange believes that the reserve functionality would allow floor brokers to use their skills to determine the best way to represent their customers' interests, whether that be through the display of some or all of the customer order. Furthermore, the Exchange believes that the reserve feature would benefit the marketplace as a whole by providing liquidity and dampening price volatility. Since reserve interest would yield to

[283] *See* Rutherfurd Letters III and V. This commenter believed that the proposal would allow floor brokers to enter interest in reaction to their knowledge of public orders on the Book, and thereby supersede the clearly established price/time priority of such public limit orders. The commenter believed this to be fundamentally unfair to public investors and unknown in other major securities markets. *See* Rutherfurd Letter V.

[284] This commenter believed that the Exchange's examples do not reveal the fact that the Book would be deemed to be only one ''bidder'' regardless of how many individual orders are on the Book at the same price, while every broker who enters an agency interest file would be considered a separate ''bidder.'' *See* Rutherfurd Letter V. This commenter believed that, if the floor broker agency interest file is permitted to compete directly with the price/time priority of the Book, it should be treated as only one bidder. *See* Rutherfurd Letter I.

[285] *See* Rutherfurd Letters I, III, and V (also claiming that Amendment No. 6 failed to address the floor brokers' informational advantage in placing orders and their advantage in being able to supersede the price/time priority of orders on the Book and in being treated as a separate ''bidders,'' whereas limit orders on the Book would be treated as one ''bidder''). The commenter also argued that the principal beneficiary of the clean up methodology would be undisplayed floor broker agency interest files, which could be entered on the Display Book with knowledge of, and in relation to, the limit orders on the Book to take advantage of possible sweep executions.

[286] *See, e.g.,* ICI Letters I, II and III, Rutherfurd Letters I and II, SIA Letter I, and Vanguard Letter.

[287] *See, e.g.,* ICI Letters I, II and III (recommending that the Exchange provide execution priority on the same level as fully displayed investors' orders only to the portion of those orders represented by the floor brokers that are displayed). *See also* SIA Letter I.

[288] *See* Rutherfurd Letters I and III.

[289] *See, e.g.,* ICI Letters I and III and Vanguard Letter.

[290] *See* Vanguard Letter.

[291] However, *see* Rutherfurd Letter V. This commenter argued that the NYSE's revision in Amendment No. 6 to the standing of floor broker agency interest during a sweep would be ineffective (*i.e.*, no one would be aware of the floor broker agency interest file except for the floor broker since the interest would not actually be displayed prior to a sweep transaction). Accordingly, the commenter believed that the amendment would not attract liquidity or solve the problems of unfairness to the Book, since investors with orders on the Book would still have no information about interest in the floor broker agency interest files.

[292] Only the specialist on the floor would have access to limited information pertaining to interest in the files. The specialist would not know the number of customer orders behind such volume, who the orders are for, which brokers represent the orders, or the limit prices for such orders. *See* Response to Comments, *supra* note 14.

[293] *See, e.g.,* Bloomberg Letters I and II, ICI Letter III, Rutherfurd Letter I, SIA Letter I, and Vanguard Letter.

[294] However, *see* Rutherfurd Letter V. This commenter argues that markets with reserve features are, for the most part, non-primary, non-price discovery markets whose lack of transparency does not materially impact the overall price discovery process. However, the commenter believes that the critical distinction between other markets that have reserve features and the NYSE's proposed Hybrid Market is that there is not a similar concept of ''parity'' in those markets (*e.g.*, a trader cannot enter a reserve order in those markets that will supersede the price/time priority of a previously entered order).

displayed interest at the Exchange BBO, but would participate in automatic executions at that price provided there is sufficient contra-side liquidity, the Exchange believes that reserve interest would benefit incoming orders by providing more liquidity at the BBO, yet without disadvantaging displayed interest at the BBO. The Exchange believes that it would be unable to attract and aggregate liquidity as effectively if a reserve feature was not offered, as it is in other competing market centers. In response to comments that investors should have a similar feature to directly enter interest in reserve, the Exchange represents that the reserve feature would be available to all investors through floor brokers. Customers seeking to participate in the reserve interest file would be able to do so by sending their orders to floor brokers with appropriate instructions as to how they want their orders handled. The Exchange believes that creating a reserve feature exclusively for on-floor participants would provide an incentive for participating in price discovery at the point of sale, and would allow differentiation from typical electronic communication network (ECN) functionality.

B. Automatic Executions

1. Sweeping the Display Book System

With respect to sweeps, two commenters noted that incoming investors' orders that sweep the Display Book system would be executed at a clean-up price, which could be inferior to other prices placed in the Display Book system.[295] Specifically, one commenter believed that the proposed sweep methodology would result in executions less favorable to investors than that of the current floor auction, which allows floor brokers with a large order to trade at intervening price levels instead of only a clean-up price.[296] The other commenter questioned whether the Exchange's proposal would be consistent with best execution requirements of brokers.[297]

Two commenters also suggested that the proposed sweep function should be considered in relation to the pilot program in Regulation SHO, *e.g.* the effect a sell short sweep order would have under the pilot where consecutive bids were hit.[298] In Amendment No. 8, the Exchange proposes in NYSE Rule 1000(d)(iii)(E) to clarify that during a sweep, sell short orders, other than those involving Regulation SHO pilot securities, would have to comply with the conditions outlined in the SEC's Short Sale Rule, Rule 10a–1, and NYSE Rule 440B.

2. Automated Routing to Other Markets

Initially, a number of commenters generally believed that the proposal would allow limit orders to be swept on NYSE at prices that are inferior to prices immediately available at other markets.[299] In addition, some commenters initially believed that the proposal did not clearly indicate how a specialist would be able to match the NBBO on an away market, and noted that there did not appear to be a minimum size requirement for specialists to match away markets. Specifically, some commenters thought that the NYSE specialist could program its systems to automatically put up a pre-emptive 100 share bid or offer to match the NBBO at any given time on any other market, and thus would not be obligated to send trades to another market.[300]

In addressing these comments, the Exchange emphasized in its Second Notice and Response to Comments that the proposed Hybrid Market would operate in full conformity with all SEC rules, including Regulation NMS. In response to specific comments that the specialist in the Hybrid Market proposal could trade through better prices on another market center below the NBBO, the Exchange stressed in the Second Notice that the operation of sweeps, including the automatic electronic routing of orders to the market centers displaying better priced bids and offers, would be consistent with the fundamental tenet of the ITS trade-through rule and Regulation NMS—that the best bids and offers published by other market centers are entitled to protection. The Exchange represented that best bids (offers) published by away markets that are better than a clean-up price would be satisfied in their entirety. The Exchange further represented that, as today, best bids and offers in these markets (*i.e.*, ''top of the book'') would be entitled to price protection in the Hybrid Market.[301] The Exchange disagreed with comments suggesting that it should also provide price protection at intervening price levels, and argues that while intermarket price-time priority has been extensively debated, it has not been viewed to be in the best interest of the national market system.

Furthermore, the Exchange pointed out that a specialist already has the option of matching a better published bid or offer rather than shipping an order to that bid or offer. The Exchange believes that the proposed rules would simply make this process more efficient by permitting the specialist to electronically match or ship. During the sweep, a commitment to trade that satisfies the full amount of any better bid or offer that is published as the best bid or offer by another market center would be auto-routed to such market (if a prohibited trade-through would otherwise occur), which the Exchange argues is consistent with the ITS trade-through rule and Regulation NMS.

C. Availability of Direct+ and Liquidity Replenishment Points

Two commenters supported NYSE's proposal to remove order size and time entry restrictions in Direct+.[302] Commenters, however, requested more detail on when automatic executions would not be available.[303] Specifically, many commenters requested after the First Notice that the Exchange supply additional details and examples regarding the operation of LRPs, including the determination and dissemination of the LRP to the public, the frequency of triggering a LRP, and the specific parameters of a MLRP.[304] Some commenters questioned whether LRPs would be too restrictive or even necessary to dampen volatility, and expressed concern over the length of time LRPs could stop automatic execution in the Hybrid Market.[305] Commenters suggested that the Exchange reexamine the rules governing halts and resumption of trading to ensure that the LRP parameters are realistic.[306] After the Third Notice, one

[295] *See, e.g.*, Bloomberg Letters I and II and Rutherfurd Letters I, III, and V (declaring that the sweep clean up price methodology would be a benefit only to those trade initiators who seek such a price; otherwise, there is significant economic dislocation for them with respect to the traditional pricing of large orders that cannot be filled at published bid or offer prices).

[296] *See* Rutherfurd Letter I.

[297] *See* Bloomberg Letters I and II.

[298] *See* Rothenberg Letter and SIA Letter I.

[299] *See, e.g.*, Ameritrade Letter, Bloomberg Letters I and II, Fidelity Letters I and II, and SIA Letter I.

[300] *See, e.g.*, Bloomberg Letters I and II, Fidelity Letter I, SIA Letter I.

[301] As discussed earlier, except for IOC and Intermarket Sweep orders, NYSE proposes to automatically route portions of an Auto Ex Order that would satisfy a protected quote of an away market, unless the specialist matches the better published price.

[302] *See* Rutherfurd Letter III and STANY Letter.

[303] *See, e.g.*, BSE Letter, Instinet Letter, SIA Letter I, and STANY Letter.

[304] *See, e.g.*, Ameritrade Letter, Bear Stearns Letter, BSE Letter, IBG Letter I, ICI Letters I and II, SIA Letter I, and STANY Letter.

[305] *See, e.g.*, Ameritrade Letter, Bear Stearns Letter, ICI Letters I and II, and SIA Letter I. *See also* SIA Letter III and Vanguard Letter. One of these commenters thought that the parameters of the MLRP could be too restrictive for very liquid stocks. *See* ICI Letter II.

[306] *See, e.g.*, Ameritrade Letter, ICI Letters I, and Vanguard Letter.

commenter asserted that market volatility should not be artificially limited through the mechanism of LRPs, but that investors should be free to place, and interact with, orders at all price points without unnecessary market center intervention.[307] Another commenter expressed concern about the priority of order execution coming out of an LRP.[308] This commenter wondered if an order that caused the price of a security to reach an LRP would be denied priority coming out of the LRP.

The Exchange described LRPs as pre-determined price points at which electronic trading would briefly convert to auction market trading. With respect to MLRPs, the Exchange believed that excessive volatility could occur in situations other than electronic sweeps and thus proposed a LRP based on price movement over a period of time. The Exchange also described in the Second and Third Notices the specific parameters of MLRPs, and clarified that automatic executions could occur within the MLRP range.

In addressing commenters' concerns over the use of LRPs in the Hybrid Market, the Exchange stated that it believes that LRPs would promote reasonable price continuity and foster market quality. When a LRP converts the market exclusively to an auction market on a temporary basis, the Exchange believes this would provide an opportunity to moderate volatility by permitting new orders, as well as Crowd and specialist interest, to add liquidity. Furthermore, the Exchange represented that the LRP parameters were selected by the Exchange after careful evaluation and discussions with market participants, and have been designed to limit automatic executions infrequently. According to the Exchange, when reached, LRPs would allow buyers and sellers to react to fast-changing market conditions and provide an opportunity for orders to interact with Crowd interest not encompassed in the broker agency interest file and with specialist interest, enabling the auction market to supplement liquidity and lower volatility. In addition, to respond to commenters' requests for more details on LRPs, the Exchange provided additional discussion and examples in the Second Notice, and also set out the timeframes within which automatic executions and Autoquote would resume after a LRP is reached.

Similar to the concerns expressed over LRPs, many commenters also generally questioned the particular methods and frequency of suspensions of automatic executions in the Hybrid Market.[309] For instance, a few commenters requested that the Exchange provide more information on how often the Exchange could preclude investors from obtaining an automated sweep of the Display Book and the timeframes within which the security would remain in an auction capacity or ''slow'' mode.[310] Like the comments relating to LRPs, commenters suggested that the proposed rules regarding halts and resumption of trading be examined to ensure that they are structured in a manner to permit the least amount of disruption as possible.[311] One commenter questioned whether NYSE would be considered reopening its market for purposes of Regulation NMS each time a LRP is reached or a specialist has gapped the quote.[312]

In response to these comments, the Exchange represented that Autoquote and automatic executions would be suspended infrequently and only in certain limited circumstances, such as when trading on the Exchange reaches a LRP, when the quote is gapped in accordance with Exchange procedures, when trading in a security has been halted, when the quote is not firm, or when a block size transaction involving orders in the Display Book system is manually reported.[313] The Exchange believes that suspension of Autoquote and automatic executions to report block trades is necessary to protect customer orders on the Book and facilitate orderly executions in limited ''breakout'' situations and during the reporting of a block size transaction.

The Exchange will disseminate a systematic indication, consistent with Regulation NMS, when automatic executions against its published quotation are unavailable. In addition, in situations when automatic executions are suspended due to a gapped quote or LRP, NYSE will notify members by way of an indicator that the NYSE quotation is not firm.

The Exchange represented that once the Hybrid Market is implemented, all other instances of manual reporting[314] would not suspend Autoquote and automatic executions, and the quote would automatically update to reflect the entry of better bids and offers and cancellations. Finally, in the Second Notice, the Exchange represented, based on its original proposal which proposed to suspend automatic executions and Autoquote more frequently, that it expected Autoquote and automatic executions to be available at least 99.7% of the time.[315]

D. Role of the Specialist in the Hybrid Market

1. Specialist Algorithm

The Exchange proposes to allow specialists to participate automatically in the Hybrid Market by capturing many specialist functions and replicating certain specialist privileges in an electronic environment. As discussed earlier, specialists would be permitted to establish Specialist Algorithms to send specific quoting and trading messages via the API to the Display Book system.

After the First Notice, the Commission received a number of comments questioning the operation of the Specialist Algorithm in the Hybrid Market, including its ability to generate quoting and trading messages on behalf of the specialist's dealer account and the sequence of priority and parity rules with respect to the specialist interest file and incoming orders.[316] Although one

[307] *See* Vanguard Letter.

[308] *See* SIA Letter III.

[309] *See, e.g.*, Ameritrade Letter, Bloomberg Letters I and II, BSE Letter, Fidelity Letter I, ICI Letter I, Instinet Letter, SIA Letter I, and STANY Letter.

[310] *See, e.g.*, Fidelity Letter I, and SIA Letter I.

[311] *See, e.g.*, ICI Letter III and Vanguard Letter.

More specifically, several commenters also expressed concern over the suspension of automatic execution when the specialist has gapped the quote. *See* BSE Letter, ICI Letter I, Nasdaq Letter, and SIA Letter III. In justifying the specialist's use of gapped quotes, the Exchange explained in the Second Notice that gap quotes would be used by specialists in response to trading scenarios in which price dislocation is expected, such as a sudden influx of orders on one side of the market, one or more large-size orders with no off-setting interest, or when a member proposes to effect a one-sided block size transaction or a cross at a significant premium or discount to the prevailing market. In an attempt to mitigate volatility, specialists would use gap quotes to signal the potential price movement so as to attract contra-side liquidity. The Exchange also clarified in the Second Notice that, when the quotation is gapped, automatic executions and Autoquote would be suspended, although incoming orders and cancellations would update the Book electronically. Furthermore, the Exchange explained that better priced orders would be taken into account in the transaction resulting from the gapped quotation and that Floor Officials would oversee the gap quote process, including its duration.

[312] *See* Nasdaq Letter. The Commission notes that turning off automatic executions, for example, for a gap quoting situation, the triggering of a LRP, or the reporting of a block size transaction, would not in and of itself halt trading and thus trigger a reopening pursuant to Rule 611(b)(3) of Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[313] Autoquote and automatic executions would resume when the manual reporting is concluded.

[314] For example, trades occurring within the Crowd or between the Crowd and the specialist, as either agent or dealer, are reported manually.

[315] One commenter argued that automatic executions should be available 100% of the time because it is during times when news is disseminated or when there is an imbalance or when there is a fast market that its customers need certainty of execution. *See* Ameritrade Letter. *See also* ICI Letter I.

[316] *See, e.g.,* Bloomberg Letter I, BSE Letter, IBG Letter I, ICI Letter I, Peake Letter I, SIA Letter I,

Continued

commenter appeared to support the amendments to NYSE Rule 104 that describe the Specialist Algorithm,[317] several of the comments raised issues of fairness and transparency in the operation of the Specialist Algorithm.[318] Specifically, commenters opposed allowing the Specialist Algorithm to ''read'' certain information before other market participants and to interact with incoming orders and quotes on the Display Book system based on that information.[319] Two commenters questioned whether the operation of the Specialist Algorithm was consistent with the specialist's negative and affirmative obligations.[320] One of these commenters opposed providing only the specialists with the ability to trade algorithmically with incoming orders and believed it would greatly increase the specialists' speed advantage and tilt the playing field toward the specialists and away from the investing public.[321] These two commenters also viewed as ineffective the Exchange's proposal to delay the processing of algorithmic messages (based on the average transit time from the CMS) to give specialists and other market participants a similar opportunity to trade with the Exchange's published quotation.[322]

In support of the API and the Specialist Algorithm, the Exchange asserted that specialists provide significant value to the market: They commit capital to narrow quotes, add liquidity, and stabilize prices.[323] The Exchange maintained that its proposed rules provide specialists with the ability to transmit to the Display Book system algorithmic messages to quote or trade on behalf of their dealer accounts so that they are able to fulfill their market making obligations once electronic trading increases. According to the Exchange, this algorithmically-based trading and quoting would be permissible only in certain, limited ways that preclude the opportunity for abuse. By allowing specialists to do electronically that which they are able to do manually today, the Exchange believes that specialists would be able to continue to provide value and liquidity in the Hybrid Market.

In addressing comments that the specialist's ability to access certain information and then algorithmically trade and quote based on that information would give the specialist an unfair informational advantage over other market participants, the Exchange said that specialists would need to engage in algorithmic trading to effectively participate in the Hybrid Market and continue to fulfill their market making obligations in an efficient and effective manner. The Exchange contends that, without this ability, specialists in an automated environment would be unable to ensure that there is appropriate price continuity and depth, in which price movements are accompanied by appropriate volume, and that unreasonable price variations between trades are avoided. The Exchange stressed that the Specialist Algorithm would not be privy to any more or different information than specialists currently have today.[324] In the Hybrid Market, the Specialist Algorithm would be required to function according to new NYSE rules and take predetermined actions before an order arrives at the Display Book system. To do this effectively, the Specialist Algorithm would need to take into account the size and price of an incoming order to determine the appropriate algorithmic action.[325] According to the Exchange, specialists' algorithmic trading would be strictly controlled and limited to relatively few circumstances as detailed in NYSE Rule 104. The Exchange represents that the requirements detailed in NYSE Rule 104(b)–(h) for algorithmic trading would be enforced systematically, and, in some ways, would be more restrictive than current auction market rules.[326]

For example, to ensure that an algorithmically-generated message to trade with the Exchange published quotation (*i.e.,* to hit a bid or take an offer) does not have an advantage—since the specialist's system would be aware of an incoming order that would change the BBO before such new bid or offer is publicly disseminated—the processing of the specialist's algorithmically-generated message would be delayed so as to give all market participants a comparable opportunity to trade with such bid or offer. This would be accomplished by delaying processing of the algorithmically-generated message for a period based upon the average transit time from the system to the Display Book system. According to the Exchange, the delay parameter would be adjusted periodically to account for changes to the average transit time resulting from capacity and other upgrades to Exchange systems.

In addition, per proposed NYSE Rule 104(b)(ii), neither the specialist on the floor nor the messages generated by the Algorithms would have the ability to affect the order in which algorithmically-generated messages and incoming orders are processed by the Display Book system. In correcting one commenter's impression that orders would have to go through the

STANY Letter, and Telic Letter. *See also* Rutherfurd Letter III (advising after the Third Notice in response to NYSE's proposed change to its Rule 92 that the Exchange should program its system so that the specialist's dealer orders can never be executed ahead of a public limit order that is executable at the same price of the proposed specialist trade).

[317] *See* Invictus Letter (stating that proposed NYSE Rule 104 appears constructive as a potential risk management tool and may speed the process of providing liquidity by specialists). However, this commenter expressed a concern over the potential of piercing the information barrier, whereby the data, within the computers running the algorithms and the staff monitoring the books across all the specialists within a firm, could be communicated outside the Exchange and be seen by upstairs traders or other business units affiliated with the specialists. This commenter believed that there should be an affirmative statement from the Exchange concerning this prohibition. In Amendment No. 8, NYSE clarified that its current information barrier rules would prevent a specialist firm from sharing information with its affiliated business units. Specifically, the Exchange represented that pursuant to NYSE Rule 104(i), Specialist Algorithms would have to be designed to comply with all Exchange rules, policies, and procedures, including NYSE Rule 98, which requires the existence of information barriers between the specialist operations and other business operations in situations where the specialist is part of an integrated firm.

[318] *See, e.g.,* IBAC Letters I and II, ICI Letters I, II, and III, Rutherfurd Letters I, III, V, and IX, SIA Letters I and III, and Vanguard Letter.

[319] *See, e.g.,* IBAC Letter I, ICI Letters I, II (recommending that the Hybrid Market proposal be amended to make this information available to investors as well), and III, Rutherfurd Letters I, III, and V, SIA Letters I and III, and Vanguard Letter.

[320] *See* IBAC Letter I and Rutherfurd Letters I, III, and V.

[321] *See* IBAC Letters I (questioning the effectiveness of NYSE's solution that floor brokers will be able to mitigate the impact of specialist algorithmic trading by entering bids and offers into the floor broker agency interest file) and II.

[322] *See* IBAC Letter I and Rutherfurd Letter V.

[323] The Exchange represented that currently specialists provide approximately 9% of total volume, approximately 80% of which is stabilizing in nature. *See* Response to Comments, *supra* note 14.

[324] In response to commenters that argued that specialists would have an informational advantage over other market participants due to their ability to see floor broker agency interest files, the Exchange clarified that specialists would only be able to view the total aggregated floor broker agency interest at each price, except for any interest a broker has elected not to have disclosed to the specialist. The Exchange argued that specialists need to know the amount of buy and sell interest at each price to fulfill their obligation to maintain a fair and orderly market and to determine appropriate prices in manual trading situations, such as after a quote is gapped or when a LRP has been reached. The Exchange maintains that specialists would thus not be given an advantage over other market participants, as commenters may believe (*See* ICI Letter II). Moreover, the Exchange emphasized that a broker can elect to exclude its agency interest from the aggregate disclosed to the specialist without jeopardizing such interest from participating in automatic executions.

[325] For example, to fulfill their obligations, specialists today have knowledge of incoming orders, as well as CAP and stop orders. *See* Response to Comments, *supra* note 14.

[326] *See also* note *infra* and accompanying text.

specialist's trading system before they are sent to the book for processing,[327] the Exchange clarified that an incoming order would not be delayed in its arrival at, or processing by, the Display Book. A copy of the order would go to the specialist's system, and the actual order would continue on its path to the Display Book for processing.

With regard to commenters' recommendation that the Exchange aggressively monitor the Specialist Algorithm to preclude unlawful trading activity, the Exchange pointed out that algorithmically-generated messages would provide improved audit trail data for NYSE Regulation, since detailed information regarding such messages and the systems within which they operate would be captured systematically. In addition, the rules would require specialists to produce information and documentation regarding their systems that should assist NYSE's oversight of specialists' algorithmic trading.[328] To ensure that the specialists' ability to trade algorithmically is consistent with the expectations of market participants, the Exchange also plans to establish a committee composed of representatives of the various Exchange constituencies that would review the functioning of the Hybrid Market based upon experience and data, including specialist trading data.[329]

2. Specialists' Ability To Systematically Price Improve Incoming Orders

Commenters objected to the specialists' ability, on behalf of their dealer accounts, to provide price improvement electronically to all or part of a marketable incoming order.[330] These commenters believed that the specialists' ability to ''see'' information before others and price improve is fundamentally unfair to other market participants and a disincentive to displaying limit orders.[331] One of these commenters claimed that the algorithmic price improvement functionality would provide the specialist with a unique proprietary trading opportunity and would be inconsistent with the specialist's negative obligation.[332] This commenter also believed the requirement that the specialist be represented in the quote for a minimum of 1000 shares to price improve would be ineffective, and suggested that the Exchange restrict the specialist to providing algorithmic price improvement only when the incoming order would otherwise trade against the specialist's bid or offer.[333] In addition, two commenters urged the Exchange to provide floor brokers with the functionality to provide price improvement electronically in the current proposal, rather than in a later filing, to promptly level the playing field between specialists and investors.[334]

The Exchange represented that throughout the process of formulating rules governing specialist-provided price improvement, the Exchange has sought to balance the benefit this would provide to incoming customer orders with the interests of customers who have displayed orders at prices inferior (albeit by as little as one cent) to that at which the specialist would be willing to trade, or who would like a similar opportunity to trade with incoming orders. Although comments have criticized the algorithmic price improvement of one cent as ''penny-jumping,'' [335] the Exchange believes that the ability of the specialist to provide price improvement of one cent when the quotation spread is two cents provides a meaningful benefit to the incoming order, and is consistent with Federal securities laws and Exchange rules, which permit any market participant to bid, offer, or trade one cent (*i.e.,* the minimum variation) better than an existing bid or offer.

In response to comments that other market participants should also have the ability to systematically price improve or trade with incoming orders, the Exchange indicated that it is in the process of developing the means by which floor brokers would have the ability to do this through a discretionary price capability. In addition, the Exchange proposes to automatically convert CAP–DI orders that are able to trade along with the specialist at the improved price, so that these orders can participate in that execution. The Exchange believes that the opportunity for price improvement is an important factor in market quality and a hallmark of the Exchange, and thus seeks to preserve this important feature in the Hybrid Market.

E. Auction Limit and Auction Market Orders

Under NYSE's proposal, AL and AM orders would automate the opportunity for investors to seek potential price improvement of a penny or better. The Exchange describes AL and AM orders as market and marketable limit orders that would be exposed to the auction and electronic market and would have the possibility of price improvement. These orders would automatically execute if: (1) The order is not executed within 15 seconds; or (2) a quoting or trading action triggers automatic execution before the 15-second period times out.

After the First Notice, a few commenters had specific questions regarding how AL and AM orders would be processed and handled.[336] These commenters requested clarification and examples relating to the execution of these orders and how they would interact with existing order types, the time priority of these orders when an incoming order triggers their execution, and which participants could trade with these orders. After the Second and Third Notices, another commenter, who supported the current NYSE methodology of price improvement resulting from order competition in the auction market, asserted that the proposed 15-second exposure procedure for price improvement of AL and AM orders would likely result in less price improvement, a risk of price disimprovement, and a greater prospect of orders not even being executed.[337]

In addressing the need for more details, NYSE provided an extensive

[327] *See, e.g.,* SIA Letter III.

[328] For example, proposed Exchange Rule 104(f)(ii) requires that specialists notify the Exchange in writing within such time as the Exchange shall designate, whenever an algorithm is not operating and the time, cause, and duration of such non-operation.

[329] One commenter viewed this aspect of the proposal as a ''positive step.'' *See* SIA Letter III.

[330] *See, e.g.,* IBAC Letters I and II, ICI Letter III, Rutherfurd Letters I, III, and V, and Vanguard Letter.

[331] *See, e.g.,* IBAC Letter I, ICI Letters II and III (claiming that their members are much more likely not to post orders on the Exchange due to the ability of specialist to electronically interact with orders through this mechanism), Rutherfurd Letters I, III, and V (asserting that the specialist algorithmic price improvement to incoming Auto Ex Orders that would otherwise be automatically executed against the contra-side bid or offer has no net public benefit and discourages the placement of public limit orders on Book), and Vanguard Letter (arguing that if the specialist is willing to provide liquidity at a price that is better than the BBO, then the specialist should be required to display that liquidity).

[332] *See* Rutherfurd Letter V (stating that NYSE's approach transforms the specialist from the trader of last resort to the only one who can trade in the first place).

[333] *See* Rutherfurd Letter V.

[334] *See* IBAC Letters I and II (urging the Commission to not approve the Hybrid Market proposal until this functionality is provided to floor brokers) and ICI Letter III.

[335] *See, e.g.,* Rutherfurd Letter III.

[336] *See* BSE Letter, IBG Letter I, SIA Letter I, and STANY Letter.

[337] *See* Rutherfurd Letters I, III (stating that, given the prospect of inferior pricing, NYSE's proposal effectively gives the specialist an illegal ''not held'' order, and renders it virtually impossible for broker-dealers with ''best execution'' responsibilities to seek price improvement on the Exchange), and V (stating that AL and AM orders can be executed at worse prices because later arriving orders could exhaust contra-side liquidity, a result unknown in today's physical auction).

discussion in the Second Notice on AL and AM orders, including how they would be electronically executed when they arrive at the Display Book if the Exchange quotation is at the minimum variation, or routed away to another market center if that market center is publishing the national best bid (offer) and it causes a minimum variation with the Exchange's best offer (bid). The Exchange also clarified that if AL and AM orders are not automatically executed or routed away upon entry, they would be quoted at a price to attract liquidity (a penny better than the Exchange best bid or offer, as applicable) while retaining their limit price. Furthermore, the Exchange clarified in the Second Notice the three events that would cause automatic execution of an AL or AM order before 15 seconds has elapsed,[338] and also provided detailed examples of how AL and AM orders would function in the Hybrid Market.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[339] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act [340] in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with section 6(b)(8) of the Act,[341] which prohibits an exchange's rules from imposing a burden on competition that is not necessary or appropriate in furtherance of the Act. The Commission believes that the proposed rule change, as amended, is also consistent with section 11A(a)(1)(C) of the Act,[342] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers and among exchange markets, and between exchange markets, and markets other than exchange markets; (3) the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

The adoption of Hybrid Market proposal may fundamentally change the Exchange's current market structure from a floor-based auction market with an emphasis on human contact, to a predominantly electronic market with limited human intervention. Today, the vast majority of orders sent to NYSE for execution are handled manually by NYSE floor members—specialists and floor brokers. Specialists represent orders that are electronically submitted to the Exchange via DOT or left with them for representation by floor brokers. Floor brokers receive their own customers' orders at their booths on the floor that are delivered electronically or by telephone. These floor members represent each order individually in the market, ascertaining the current market by seeking contra-side liquidity.

Trading on NYSE may be considerably different once the Hybrid Market proposal is implemented. Orders that currently are represented individually are more likely to be executed automatically without human intervention.[343] While NYSE has proposed to move to a more automated model, it also seeks to retain substantive roles for its floor members. Specialists will be permitted to perform many of their obligations to maintain a fair and orderly market electronically, while floor brokers will be able to represent their customer orders electronically. To create the Hybrid Market, the Exchange has proposed significant changes to its rules and systems to alter the way specialists, floor brokers, and customers would participate and interact.

As discussed more fully below, the Commission finds that the Hybrid Market proposal, by allowing greater electronic access to liquidity on NYSE, should help perfect the mechanism of a free and open market. The Hybrid Market proposal should provide investors with a more efficient mechanism to have their orders executed on the Exchange. The Commission also finds that the Hybrid Market should facilitate securities transactions by providing investors with faster access to the trading interest reflected in NYSE's published quotation, as well as interest away from the Exchange BBO.[344] Finally, the Commission finds that the Hybrid Market could enhance the opportunity for a customer's order to be executed without dealer participation, consistent with the goals of the Act.

A. Increased Access to Display Book System

Under the proposal, a wide range of additional order types could be entered into Direct+ for automatic execution. For example, all marketable limit orders, designated market orders, designated IOC orders (including ITS Commitments), and Intermarket Sweep orders, would be able to receive automatic execution against interest placed in the Display Book system. In addition, for the first time, Auto Ex Orders would have the ability, within certain limits, to sweep interest outside the Exchange BBO. The proposal also would eliminate the size and the 30-second order entry restrictions that currently limit automated access to the Exchange's quote via Direct+. The Commission finds that the availability of automatic executions for a much wider range of order types, the ability of Auto Ex Orders to sweep the NYSE depth-of-book, and the elimination of the size and timing restrictions for Auto Ex Orders, are consistent with the requirements of the Act. Specifically, the Commission believes that providing more instantaneous access to liquidity on the Display Book system should facilitate the efficient execution of orders on the Exchange and potentially could enhance the ability of executions to occur without the participation of a dealer.

In addition to broadening the scope of automatic executions, NYSE has proposed to limit the instances when Direct+ would not be available.

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[338] The three events are: (i) The arrival of a subsequent order at a better price on the same side of the market as an AL or AM order; (ii) the execution of an order on the same side of the market as an AL or AM order that exhausts some or all of the displayed contra-side volume available in the Exchange quotation; and (iii) the cancellation of some or all of the displayed contra-side volume, or the improvement of the displayed contra-side price, creating a minimum variation market or allowing execution of the AL or AM order with price improvement. *See* proposed NYSE Rule 123F.

[339] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[340] 15 U.S.C. 78f(b)(5).

[341] 15 U.S.C. 78f(b)(8).

[342] 15 U.S.C. 78k–1(a)(1)(C).

[343] Several commenters generally supported NYSE's move to a more automated trading model. *See, e.g.*, Ameritrade Letter, IBG Letters I and II, ICI Letters I, II, and III, SIA Letters I, II, and III, STANY Letter, Telic Letter, and Vanguard Letter.

[344] The Commission notes that, while it believes the proposed rule change, as amended, is consistent with the requirements of the Act, the Commission makes no determination whether the Hybrid Market would satisfy the ''automated trading center'' definition in Rule 600(b)(4) of Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Currently, under NYSE rules, Direct+ is unavailable under many circumstances. Some of these reflect the needs of NYSE's current market structure, which is largely a manual auction on the floor. For example, specialists have broad discretion to disable Direct+ by publishing 100 share quotes and manually reporting floor transactions.[345] When Direct+ is disabled, Auto Ex Orders are directed to the specialist for manual handling in the auction. In addition, NYSE Rule 1000 permits Direct+ to be turned off if a block size transaction away from the NYSE BBO is in the process of being completed on the floor.[346] In such instances, the specialist publishes a quote that is five cents away from the last reported sale, and this has the effect of disabling Direct+.[347] Further, NYSE Rule 1000 permits Direct+ to be turned off if the NYSE quote is not firm, the execution price would be more than five cents away from the last reported transaction price, a better price exists in another ITS market, or trading has been halted.[348]

Under the proposal, Direct+ would be unavailable only when: (1) The NYSE quote is not firm; (2) trading has been halted; (3) the specialist has gapped the quotation in accordance with Exchange procedures; (4) trading has reached a LRP; (5) a block size transaction involving orders in the Display Book system is being manually reported; or (6) an Auto Ex Order is entered for a high-priced security. The Commission believes that these proposed changes should ensure that automatic executions are more readily available on NYSE than they are today.

Further, the Commission believes the proposal should provide specialists with less discretion to disengage Direct+ than they have today. This reduced specialist discretion both should help ensure that automated executions are more widely available on NYSE and help alleviate concerns that specialists might manipulate the automated/non-automated status of NYSE for their own benefit. Specifically, specialists would only be permitted in two instances to actively disengage Direct+: (1) By gapping the NYSE quotation and (2) by manually reporting block size transactions that involve orders on the Display Book system. NYSE believes that the specialist, when faced with a substantial order imbalance, may need the ability to attempt to attract additional liquidity in a controlled environment without automatic executions. NYSE has sought to ensure that specialists do not frequently enter gapped quotations for the purpose of disabling Direct+ by requiring that when a specialist gaps the quote, it must follow certain procedures and consult with floor officials.[349] Specialists will also be permitted to disengage Direct+ when manually reporting a block size transaction that involves orders on the Display Book system. The Commission believes that this limited ability to disengage Direct+ could be necessary due to the practical difficulties of integrating orders on the Book into large transactions on the floor.

The Commission also believes that the other limited instances when Direct+ will not be available are reasonable. High-priced securities would be ineligible to participate in automatic executions because they are thinly traded and, according to the Exchange, customers would obtain better representation if transactions in these securities are handled in the manual auction market. Finally, when trading is halted or when the NYSE quotation is not firm, no execution, automatic or manual, would be available.

The Commission notes that when Direct+ is disengaged, whether due to an LRP or any of the other events that cause the NYSE market to revert to a manual market, the NYSE quote would not be an ''automated quotation,'' and thus not entitled to protection under Rule 611 of Regulation NMS.[350] When this occurs, NYSE also would be required to immediately identify its quotation as a manual quotation if it is to be considered an ''automated trading center'' for purposes of Regulation NMS.[351] In addition, when the NYSE quotation is not available for automatic execution because of a LRP or gapped quotation, NYSE would identify such quotes as non-firm. The Commission believes that these requirements may provide an incentive to NYSE to keep the frequency and length of the unavailability of automatic executions to a minimum.

1. Liquidity Replenishment Points

Under the proposal, when trading on the Exchange reaches a LRP, automatic executions would be unavailable and the Hybrid Market would temporarily revert to an auction market. NYSE has proposed two types of LRPs: (1) The sweep LRP and (2) MLRP. As discussed in Section II(A)(5) above, the sweep LRP price would be set at the nearest five-cent increment outside the NYSE BBO, rounded to the next nickel. The MLRP price would be calculated by adding the greater of $.25 or 1% of the security's price to its lowest price within a rolling 30-second period and subtracting that amount from the security's highest price within the same time period. In the event that there is no transaction in a security within the 30-second period, the MLRP would be based on the last transaction on the Exchange.

Initially, commenters questioned the specifics of LRPs, including whether they were too restrictive and whether they were necessary.[352] After NYSE proposed the parameters for MLRP, one commenter questioned whether the parameters would cause frequent suspension of Autoquote and automatic execution.[353] Another commenter believed that market volatility should not be artificially limited and that LRPs are too restrictive for active securities.[354]

According to NYSE, the LRPs are intended to moderate volatility, which may increase when the Hybrid Market is implemented and a larger portion of NYSE trades are executed electronically. NYSE believes that reverting to a manual market in times of volatility will enhance the quality of executions in its market.

As noted above, the Commission believes that the increased availability of automated executions should facilitate the efficient execution of orders on the Exchange and enhance the opportunity for executions to occur without the participation of a dealer. NYSE believes, however, that precluding automatic executions under certain circumstances—such as where market volatility has triggered an LRP—will provide its customers with better executions by fully utilizing the expertise of its floor members. In the Commission's view, this type of hybrid market model is consistent with the requirements of the Act, and, as such, is within the realm of judgments generally left to the discretion of individual markets. Creating a new market model also has the potential to foster intermarket competition. Accordingly, the Commission finds that NYSE's use of LRPs in the context of its Hybrid

[345] *See* NYSE Rule 1000(iv).

[346] *See* NYSE Rule 1000(v).

[347] In a separate proposal, the Exchange is proposing to require specialists to publish a 100 x 100 share market quote that reflects the last reported transaction in connection with a block size transaction. *See supra note* 134.

[348] *See* NYSE Rule 1000.

[349] *See* NYSE Information Memo 04–27. The Commission notes that NYSE must update this information memo to reflect that automatic executions on both sides of the market will be suspended once the quote is gapped.

[350] 17 CFR 242.611.

[351] *See* 17 CFR 242.600(b)(4)(iii).

[352] *See, e.g.,* Ameritrade Letter, Bear Stearns Letter, BSE Letter, IBG Letter I, ICI Letters I and II, SIA Letter I, and STANY Letter.

[353] *See* ICI Letter II.

[354] *See* Vanguard Letter.

Market is consistent with the requirements of the Act.

B. Autoquote

NYSE has proposed to disengage its Autoquote system in three specified instances. Specifically, Autoquote would not be available when the specialist gaps the quote, when the specialist is manually reporting a block size transaction that includes orders in the Display Book system, or when an LRP has been reached. The Commission believes that it is consistent with the requirements of the Act to disengage Autoquote for limited periods to accommodate these specific activities in the auction market. For example, in the circumstances when the quote is gapped or an LRP is reached, the Commission believes that Autoquote may be disengaged to permit the specialist to more effectively fulfill its obligation to maintain a fair and orderly market by controlling the NYSE quote during limited periods of significant market activity. Accordingly, the Commission finds that the proposed provisions relating to Autoquote are consistent with requirements of the Act.[355]

C. Liquidity Available for Automatic Execution

As discussed in Section II(A) above, NYSE proposes to allow its floor members to post liquidity in the Display Book system electronically, so that it is available for automatic executions. Specifically, NYSE proposes to create two new files within the Display Book system—the specialist interest file and the floor broker agency interest file. Specialists and floor brokers would be allowed to place liquidity within these new files in the Display Book system at the Exchange BBO or outside the Exchange BBO. The liquidity within these interest files would not be disseminated, unless it is priced at the Exchange BBO.[356]

In addition, specialists and floor brokers could enter reserve size at the Exchange BBO. This interest would not be disseminated and would trade after all displayed interest at the BBO has been filled. Specialists would be required to display at least 2,000 shares at the BBO to enter reserve size, and floor brokers would be required to display 1,000 shares. The Display Book system will automatically replenish specialist interest files and floor broker agency interest files to the minimum displayed amounts, unless there is insufficient reserve size to display the minimums. In such cases, the entire amount of reserve will be added to the displayed size.

The proposed specialist interest file and proposed floor broker agency interest file generated several comments. Generally, commenters raised several broad issues related to the ability of specialists to see interest in the floor broker agency interest files, the lack of display of both reserve interest and floor broker agency interest away from the BBO, and NYSE's requirement that floor brokers remain in the ''Crowd'' when utilizing the floor broker interest file.[357] Specifically, a number of commenters questioned the lack of transparency of the floor broker agency interest file, given that floor broker interest would not be publicly disseminated unless it were at the NYSE BBO.[358] These commenters argued that the floor broker agency interest file, if not displayed, should not be entitled to trade on parity with displayed orders on the Book.[359]

The Commission finds that NYSE's proposal to allow floor brokers and specialists to electronically participate in the Hybrid Market is consistent with the requirements of the Act. This capability could increase the liquidity available for automatic executions on NYSE. Moreover, including the interest of these floor members and their customers in the Hybrid Market electronically could improve the prices at which Auto Ex Orders that sweep the Display Book system may execute. In addition, the proposal should allow customers of floor brokers to more effectively participate in an electronic trading environment.

The Commission also finds that making floor broker agency interest information available to specialists is consistent with the requirements of the Act. In the Hybrid Market, specialists would continue to have the obligation to conduct the auction on the floor. Thus, to ensure that all interest is represented in an auction, the Commission believes that a specialist would need full information about the liquidity available and the prices at which such liquidity is available. The availability of this information also may assist specialists in maintaining a fair and orderly market under NYSE Rule 104 and Rule 11b–1 under the Act. Further, floor brokers that do not want specialists to have information about their interest have the discretion to exclude their interest from the aggregate information available to specialists if they believe that doing so is in the best interest of their customers. The Commission also notes that Specialist Algorithms would not be able to view or make quoting or trading decisions based on interest in the floor broker agency file that is not publicly available.[360]

The Commission further finds that the floor broker reserve function is consistent with the requirements of the Act as it could provide floor brokers with greater flexibility in handling and working large customer orders. In particular, the reserve function could prove useful to institutions that wish to minimize the market impact of their large orders. Furthermore, allowing floor brokers to place interest in reserve could increase participation on NYSE, which might enhance the depth and liquidity of NYSE's market. The Commission also believes that it is consistent with the requirements of the Act to allow specialists to place reserve interest in the Display Book system as it too could increase the liquidity available for execution at the Exchange BBO.

Two commenters suggested that NYSE allow investors to place reserve, or undisplayed, interest in the Display Book system.[361] One of these commenters argued that depriving investors of this ability would be inconsistent with the principles set forth in section 11A of the Act.[362] The Commission believes that the decision to limit the availability of reserve orders to specialists and floor brokers, under the conditions proposed by NYSE, is within the realm of judgments generally left to the discretion of an individual market and is consistent with the requirements of the Act. In addition, this aspect of the Hybrid Market is similar to how the NYSE market operates today, as investors today must use a floor member to represent their undisplayed interest on the Exchange.

[355] The Commission notes that the display of customer limit orders is governed by the Limit Order Display Rule, 17 CFR 242.604, and that even if Autoquote is disengaged, specialists may be required to display such orders in compliance with this rule. The Exchange represented that it would notify specialists after an LRP has disengaged Autoquote to alert specialists of their obligations under the Limit Order Display Rule.

[356] Specialists could elect to disseminate their interest via NYSE OpenBook. The specialist would be able to view aggregate floor broker interest at each price level, unless the floor broker elects to exclude its interest from the specialist's view.

[357] As discussed further below, the specialist interest file and the floor broker agency interest file generated comments regarding the priority and parity rules that would be implemented for these files.

[358] *See, e.g.*, Bloomberg Letters I and II, ICI Letters I, II, and III, Rutherfurd Letters I, II, III, and V, SIA Letter I, and STANY Letter. *See also* Vanguard Letter.

[359] For a complete description of the parity issues, *see infra* Section IV(D).

[360] *See* proposed NYSE Rule 104(c)(ii).

[361] *See* ICI Letters I and II and Vanguard Letter.

[362] *See* Vanguard Letter.

The Commission notes that two features of NYSE's proposal to allow undisplayed reserve interest should help ensure that market participants continue to have an incentive to display quotes or orders on NYSE: (1) Specialists and floor brokers must display a minimum number of shares at the BBO to have undisplayed reserve interest; and (2) displayed interest will have priority over all undisplayed reserve interest. The Commission believes that, taken together, these requirements could promote additional depth at the Exchange BBO, while preserving incentives for investors to display limit orders. Accordingly, the Commission finds that NYSE's proposal to allow floor brokers and specialists to have undisplayed reserve in the Display Book system is consistent with the requirements of the Act.

NYSE also proposes to require floor brokers to be in the ''Crowd'' when the floor broker maintains interest in the floor broker agency interest file. NYSE defines a ''Crowd'' as any five contiguous panels at any one trading post. It would be a violation of Exchange Rules for a floor broker to leave the Crowd without canceling its interest in the file,[363] but if this occurs, the floor broker nevertheless would be held to any resulting executions. One commenter believed that limiting the Crowd to five contiguous panels is arbitrary and unnecessarily restrictive.[364]

The Commission believes that the requirement that a floor broker be present while representing orders in the Display Book system is within the realm of judgments generally left to the discretion of an individual market and is consistent with the requirements of the Act. NYSE has proposed to create a Hybrid Market that combines a manual auction market on the floor with an electronic market. The Commission notes that NYSE currently requires floor brokers to be present in the Crowd to represent their customer orders in the auction market.[365] NYSE stated that it believes five contiguous panels is the appropriate range of proximity to enable floor brokers to electronically participate in the Hybrid Market and, at the same time, physically participate in the auction component of the Hybrid Market. Under these circumstances, the Commission believes that it is reasonable for NYSE to require floor brokers to be available to actively represent their customers, even when their customers' interest is in the Display Book system, by requiring floor brokers to be present in the Crowd.

D. Automatic Executions

Under the proposal, Auto Ex Orders would execute against interest in the Display Book system, including the Book, floor broker agency interest files, and specialist interest files. Auto Ex Orders would first execute against interest at the Exchange BBO. Once interest at the Exchange BBO is exhausted, an Auto Ex Order would trade with interest outside the Exchange BBO, automatically sweeping the Display Book system, until it is: (1) Executed; (2) its limit price, if any, is reached; or (3) a LRP is reached, whichever occurs first. During a sweep, the residual would trade at the clean-up price.

The Commission notes that the ability to sweep the NYSE Display Book system is a significant expansion of the availability of automatic executions on the Exchange. Currently, Auto Ex Orders that are for a size greater than the Exchange BBO trade automatically with the BBO, and then the residual is routed to the specialist for manual handling. The Commission believes that the ability to automatically execute against the depth of interest on the NYSE Display Book system should enhance the speed of executions and facilitate more efficient transactions on the Exchange.

Several commenters raised concerns about the rules NYSE proposed governing how automatic executions would occur against interest in the Display Book system. In particular, commenters raised concerns about how the rules of priority, parity, and precedence would apply with regard to interest in the Display Book system.[366]

Currently, executions on the Exchange are governed by NYSE Rules 72, 104, and 108. When more than one market participant is bidding or offering the best price, these rules detail which participant(s) have the right to fill the order—either entirely, or a certain percentage of it—before anyone else. As a general rule, the first person to quote the price at which the security is ultimately traded is entitled to ''priority''—the right to fill the order before anyone else.[367] ''Parity,'' on the other hand, means that none of the market participants competing to fill the order has rights over any other based on quoting the best price first.[368] Generally, in a situation of this kind, participation in the order must be divided pro rata among the crowd participants who simultaneously bid to fill the order at the best price. To create incentives for market participants to provide liquidity, current Exchange rules may permit certain participants to trade ahead of others who are on parity if they are quoting in size. (This is known as ''precedence based on size.'')[369]

Specialists are subject to additional restrictions on their ability to trade for their own accounts, given their special position in the marketplace. Specifically, specialists, as agents for orders on the Book, are required to yield to orders on the Book.[370] Today, specialists also are limited, pursuant to NYSE Rules 104 and 108, when trading for their own accounts along with orders represented by floor brokers. NYSE Rules 72 and 104 provide that when a specialist is decreasing or liquidating its position, the specialist is entitled to parity unless requested by a floor broker, on behalf of its customer, to yield. NYSE Rule 108 provides that a specialist is not entitled to parity when increasing or establishing its position, but, according to NYSE, it has interpreted this rule as permitting the specialist to trade on parity when increasing its position, so long as the floor broker consents.[371]

NYSE proposes certain changes to its rules of priority, parity, and precedence. For example, NYSE proposes that the interest in the floor broker agency interest file and specialist interest file trade on parity once all interest in the Book has been satisfied, with neither entitled to priority. To accomplish this, NYSE would prohibit a floor broker from placing any interest in its agency interest file that would restrict the ability of the specialist to trade on parity. In other words, specialists would be entitled to trade on parity with orders represented by floor brokers in the floor broker agency interest file, and floor brokers would not be able to object to such specialist trading.[372] The Exchange also proposes to eliminate the regulatory distinction, in this context, between situations where the specialist is increasing or decreasing its position.

In addition, NYSE proposes to permit the floor broker agency interest file to trade on parity with orders in the Book

[363] The floor brokers would be permitted to leave the Crowd to recharge its handheld device. *See* proposed NYSE Rule 70.20(f).

[364] *See* Invictus Letter.

[365] *See, e.g.,* NYSE Rule 117.10.

[366] *See, e.g.,* Bloomberg Letters I and II, IBAC Letters I and II, IBG Letter I, ICI Letters I, II, and III, Rutherfurd Letters I, II, III, IV, V, VI, VII, VIII, IX, and X, SIA Letter I, STANY Letter, and Vanguard Letter.

[367] *See* NYSE Rule 72(a).

[368] *See* NYSE Rule 72(e).

[369] *See* NYSE Rule 72(c) and (d).

[370] *See* NYSE Rule 92.

[371] *See supra* note 101.

[372] If the floor broker does not want the specialist to trade on parity with its customer, it could place its customer's order on the Book.

to the extent that neither is entitled to priority. At the BBO, floor broker agency interest that is displayed would trade on parity with interest in the Book. During sweeps, floor broker agency interest that is designated as eligible for display if the price moves to the BBO would be permitted to trade on parity with the Book. Floor broker agency interest that would not be displayed even if at the BBO (*i.e.*, reserve interest) would not be entitled to trade on parity with the Book during a sweep at the clean-up price.

These proposed changes generated several comments. For example, three commenters believed that NYSE should not allow specialists to trade on parity with the floor broker agency interest file when specialists are increasing or establishing their position.[373] One commenter argued that allowing specialists to trade on parity with the floor broker agency interest file would be inconsistent with the specialists' negative obligation, as well as section 11A of the Act, which encourages order interaction without the participation of a dealer.[374] Other commenters raised concerns about the ability of undisplayed floor broker interest outside the BBO to trade on parity during sweeps with displayed orders on the Book.[375] For example, some commenters argued that permitting floor brokers to conceal their interest from other market participants, while allowing this undisplayed interest to trade on parity with displayed interest, would provide a disincentive for investors to place limit orders on the Book, since investors would not be rewarded for taking the risk to display their orders.[376]

The Commission's standard for reviewing trading rules filed by exchanges is based on whether the rules are consistent with the requirements of the Act, such as provisions that require that market participants be treated fairly and provisions that limit the role of specialists.[377] The Commission also reviews trading rules to see if the rules discriminate in favor of some members over others, or in favor of members over public customers.[378] Trading rules also must promote fair and orderly markets, as well as the specified goals of the national market system.[379]

The Commission finds that NYSE's proposal to permit specialists to trade on parity with the floor broker agency interest after interest on the Book has been exhausted is consistent with the requirements of the Act. The Commission notes that specialists will continue to be restricted in their ability to trade pursuant to section 11(b) and Rule 11b–1 of the Act,[380] and NYSE Rule 104. The Commission expects and the Exchange represented that it expects the Specialist Algorithms to be programmed and operated in a manner to ensure that specialist proprietary trading is conducted consistent with section 11(b) of the Act,[381] Rule 11b–1, and NYSE Rule 104.

In accordance with SEC Rule 11b–1, NYSE Rule 104 restricts the specialist's ability to trade for its own account. SEC Rule 11b–1 provides that exchanges may permit members to register as specialists so long as their rules include, among other things, ''provisions restricting [the specialist's] dealings so far as practicable to those reasonably necessary to permit [it] to maintain a fair and orderly market * * *'' NYSE Rule 104 specifically prohibits a specialist from dealing in its own account ''unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market * * *'' Currently, the specialist makes the determination as to whether its proprietary transactions are reasonably necessary based on the anticipated needs of the market and the conditions of the market at the time the transaction is effected. As proposed, the specialist may not have access to all of the information that it has today regarding the condition of the market at the time of sale. Specifically, the specialist may not, and the Specialist Algorithm will not, have access to information regarding floor broker reserve at the BBO or floor broker agency interest outside of the BBO. Accordingly, the Commission must consider the application of the restrictions in SEC Rule 11b–1 and NYSE Rule 104 to the specialist's proprietary trading in the Hybrid Market.

In the Hybrid Market, specialists will remain obligated to determine whether their proprietary trades are reasonably necessary to maintain a fair and orderly market. The specialist will be expected to actively monitor, both personally and through the Specialist Algorithm, whether the interest placed in the specialist interest file remains appropriate in light of current market conditions and the specialist's obligations under NYSE Rule 104, and to make appropriate adjustments. Nonetheless, the Commission recognizes that the role of the specialist in the more automated Hybrid Market will be somewhat different from its traditional role on the Exchange floor. Specifically, the specialist will participate in automatic executions that occur against proprietary interest previously placed in the specialist interest file. The Commission also recognizes that, in the Hybrid Market, the specialist will not individually handle each trade that occurs on the Exchange, and may not necessarily know of—personally or algorithmically—other trading interest available in the market prior to an execution for its proprietary account. The specialist may not, and the Specialist Algorithm will not, know whether there is floor broker reserve interest available at the BBO, or floor broker agency interest available outside the BBO. Accordingly, the specialist must make decisions whether to add orders to the specialist interest file without knowing the full extent of other trading interest available in the market, and consequently may trade on parity with other available floor broker interest.

As noted above, the Exchange believes that providing specialists parity with floor broker agency interest will incent specialists to participate in the price discovery process at the point of sale and thus dampen volatility and lower execution costs for investors. The Exchange also believes that withholding information about floor broker reserve interest at the BBO, and floor broker agency interest outside the BBO, from the Specialist Algorithm—and in some cases from the specialist himself—will allow floor brokers to more effectively represent their customer orders, and thus further incent liquidity and dampen price volatility in the Hybrid Market.

Although the Commission recognizes that these features may inhibit somewhat the ability of specialists to assess the condition of the market to comply with their ongoing negative obligations under SEC Rule 11b–1 and NYSE Rule 104, the potential benefits these features may bring to the quality of the Hybrid Market justify the risks of

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[373] *See* IBAC Letters I and II, ICI Letter III and Rutherfurd Letters III, IV, V, VI, VII, VIII, IX, and X.

[374] *See* Rutherfurd Letters III, IV, V, VI, VII, VIII, IX, and X. *See also* IBAC Letter I.

[375] *See, e.g.*, Bloomberg Letters I and II, ICI Letters I, II, and III, Rutherfurd Letters I, II, III, and V, SIA Letter I, STANY Letter, and Vanguard Letter.

[376] *See, e.g.*, ICI Letters II and III, Rutherfurd Letters II and V, STANY Letter, and Vanguard Letter.

[377] *See, e.g.*, 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k.

[378] 15 U.S.C. 78f(b)(5).

[379] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k–1.

[380] 17 CFR 240.11b–1(a)(2). In light of these changes, the Commission expects the Exchange to update its surveillance procedures and the specialist firms to update their compliance programs to ensure that specialist trading is conducted in a manner that is consistent with the requirements of the Act and NYSE rules.

[381] 15 U.S.C. 78k(b).

unnecessary specialist trading. The specialist must design its Specialist Algorithm to support a fair and orderly market, which includes varying its position in light of the anticipated needs of the market. The specialist also must adjust the operation of the Specialist Algorithm to the extent it becomes aware of changes in the market that would render its operation inconsistent with its obligation. However, the Commission recognizes that the specialist may, and the Specialist Algorithm will, have less than full information about the floor broker interest. So long as the specialist has programmed the Specialist Algorithm, taking into account and including as inputs all relevant factors available to the Specialist Algorithm, in a manner designed to support a fair and orderly market, and the specialist has made adjustments to the operation of the Specialist Algorithm based on its knowledge of market information, the Commission believes the specialist could trade on parity with floor broker interest consistent with its obligations under SEC Rule 11b–1 and NYSE Rule 104 in the Hybrid Market.[382]

In addition, the Commission finds that NYSE's proposal to permit interest in the floor broker agency interest files to trade on parity with orders in the Book, subject to certain limitations, is consistent with the requirements of the Act. NYSE appears to have sought to balance the incentives for placing interest in the Book against the ability of floor brokers to effectively represent their customers. The proposal limits the ability of interests in the floor broker agency interest files outside the BBO to trade on parity with orders in the Book by requiring floor brokers to designate the amount of interest that would be displayed if the price becomes the Exchange BBO, and permitting only that amount to trade on parity. The Commission believes that providing floor brokers with this additional incentive to place liquidity in the Display Book system could allow them to more effectively represent their customer orders, without materially reducing the incentives to display liquidity on the Book.

The Commission believes that exchanges have a degree of flexibility, in their judgment, to determine the methods of non-discretionary order interaction on their markets so long as the requirements of the Act are met. Accordingly, the Commission believes that NYSE's proposed changes to its rules of priority, parity and precedence are consistent with the requirements of the Act.

E. Role of Specialist in the Hybrid Market

To preserve a meaningful role for the specialist, NYSE has proposed to permit specialists to participate electronically in the Hybrid Market and replicate certain existing specialist privileges in an electronic manner. For example, NYSE has proposed to provide specialists with access to certain information about incoming orders before they are processed by the Display Book system.[383] This information would be transmitted to the specialist via the API. Based on this and other information, specialists would use the Specialist Algorithms to generate quoting or trading messages, which would be transmitted to the Display Book system via the API. The Specialist Algorithm would be able to make limited quoting and trading decisions in response to incoming orders, such as to provide price improvement, improve the Exchange BBO, or supply size to fill the incoming order at the Exchange BBO.

The proposal to create Specialist Algorithms generated several comments. Five commenters believed that it would be unfair for the Specialist Algorithms to view information prior to other market participants and for the specialist to act on that information.[384] These commenters believed that other market participants should be given the same opportunity.[385] For instance, one commenter viewed as one-sided NYSE's proposal to provide specialists with the ability to algorithmically trade with incoming orders while providing no similar tool for floor brokers, and believed this would thwart, rather than foster, fair competition.[386] Another commenter was concerned that the information barriers within a specialist firm could be breached, resulting in the dissemination of non-public information outside the Exchange, including upstairs traders or other business units affiliated with the specialist firm.[387] This commenter believed that the Exchange should affirmatively state a prohibition against such sharing of information.

Specialists will continue to be required to perform their obligations to maintain a fair and orderly market.[388] For example, pursuant to NYSE Rule 104, specialists will continue to be required to trade for their own account when there is a lack of price continuity, depth, or a disparity between supply and demand. In addition, specialists will continue to oversee the auction market and play an active role when large transactions are routed to the NYSE floor for execution. To enable specialists to effectively perform these functions, NYSE has proposed to replicate some of the existing specialist privileges—including an informational advantage—in an electronic manner. As discussed below, the Commission finds that NYSE has sufficiently limited the specialists' informational advantage so that, in light of the specialists' ongoing duties and obligations to the market, the proposal is consistent with the requirements of the Act.

1. Price Improvement

Under the proposal, the specialist could program its algorithm to offer price improvement to incoming orders under certain circumstances. The amount of price improvement would vary, depending on the spread. For example, price improvement must be at least three cents when the spread is more than five cents, at least two cents when the spread is three cents to five cents, and one cent when the spread is two cents. To offer electronic price improvement, the specialist must be represented in the bid or offer in a meaningful amount, which NYSE would define as a minimum of 1,000 shares for the most 100 active stocks on the Exchange and 500 shares for all other stocks on the Exchange.[389]

Commenters objected to the ability of a specialist to provide price improvement electronically to all or part

[382] NYSE has represented that prior to the rollout of the third phase of the Hybrid Market, it will develop guidance to clarify how it expects specialists to comply with the NYSE Rule 104 in the Hybrid Market. Telephone call between Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE Group, Inc., and Richard G. Ketchum, Chief Regulatory Officer, NYSE Regulation, Inc., and Kelly M. Riley, Assistant Director, Division, SEC, on March 22, 2006. *See also* Amendment No. 8. The Commission believes that specific guidance is necessary to help assure that specialists can effectively program the algorithms to trade in compliance with the negative obligation.

[383] *See supra* note 167.

[384] *See* IBAC Letter I, ICI Letters I, II, and III, Rutherfurd Letters I, III, and V, SIA Letters I and III, and Vanguard Letter. *See also* IBAC Letter II.

[385] *See id.*

[386] *See* IBAC Letters I and II. *See also* ICI Letter III.

[387] *See* Invictus Letter.

[388] *See also* Section IV(D), *supra*, for a discussion on the application of SEC Rule 11b–1 and NYSE Rule 104 in the Hybrid Market.

[389] The Exchange would determine the 100 most active stocks based on the average daily volume and would provide notice to its members on a quarterly basis, or more frequently as the Exchange from time to time shall determine. *See* proposed NYSE Rule 104(e)(ii).

of a marketable incoming order.[390] One commenter believed that the specialist's ability to provide algorithmic price improvement would not be as fair of a process as price improvement resulting from genuine order competition in the auction market which can be verified by other market participants at the point of sale.[391] Two commenters insisted that the Exchange supplement its proposal to grant floor brokers with a similar ability to provide electronic price improvement to orders.[392] Another commenter believed that if the specialist is willing to improve the NYSE BBO, the specialist should display that price in its quote.[393]

The Commission believes that the ability of specialists to offer price improvement to incoming orders is consistent with the requirements of the Act. The Commission notes that NYSE specialists today are permitted to provide price improvement to incoming orders in the auction market. With this proposal, NYSE is providing specialists with the ability to continue to offer price improvement in an electronic environment, but only if the specialists satisfy certain conditions. As noted above, specialists would be required to be meaningfully represented in the BBO and to provide a minimum amount of price improvement. The Commission also notes that Specialist Algorithms could only offer price improvement to incoming marketable orders; incoming orders that would improve the Exchange BBO would be quoted as the new BBO. The Commission believes that permitting specialists to algorithmically price improve marketable orders by certain minimum amounts could increase the quality of its electronic market, and that the condition that specialists be meaningfully represented in the bid or offer might enhance depth and liquidity at the NYSE BBO.

2. Ability To Hit Bids or Take Offers

In addition to offering price improvement to incoming marketable orders, Specialist Algorithms could also generate trading messages that would trade with the Exchange BBO. The Commission notes that NYSE has proposed to implement safeguards that prohibit the Specialist Algorithms from obtaining a time advantage over the public, by delaying the processing of algorithmic messages to trade with the Exchange BBO. The Commission believes that the capability of the Specialist Algorithms to hit bids or take offers is designed to assure specialists are on a level playing field with other market participants with respect to their ability to interact with the Exchange BBO, and is consistent with the requirements of the Act. Further, the Commission notes that capability of the Specialist Algorithms to hit bids or take offers must be consistent with their obligations under NYSE Rule 104 and Rule 11b–1 under the Act.

3. NYSE Rule 92

NYSE Rule 92 reflects the fundamental tenet of agency law that an agent must place its customer's interest ahead of its own proprietary interest. In essence, Rule 92 prohibits an NYSE member from buying or selling for its own account an Exchange-listed security when it knows that it is holding a customer order that is executable at the same or better price. NYSE has proposed to clarify when the Specialist Algorithms would be deemed to have knowledge of an incoming order. Specifically, NYSE has proposed that the Specialist Algorithm would not be deemed to have knowledge of an incoming order, for purposes of Rule 92, if the Specialist Algorithm is designed and operated in a manner that prevents its handling of an incoming order from being affected by the receipt of subsequent orders in the same security. NYSE believes that this amendment is necessary because there could be situations where the Specialist Algorithms generate a quoting or trading message, and before the Display Book system can process the message, the Specialist Algorithms receive and process information about a subsequent incoming order that is at the same or better price. The Commission believes that the proposed amendment to Rule 92 is consistent with the requirements of the Act, and should maintain the same level of protection for customer orders in an electronic environment as exists today in a manual environment.

4. Communicating With the Specialist Algorithm

NYSE proposes to allow specialists to interact with the Specialist Algorithms through a wired or wireless device that has been registered with NYSE, such as a computer terminal or laptop, to activate or deactivate a particular algorithm or adjust its parameters. NYSE also proposes that specialist firms be required to create and maintain records of all messages generated by the firms' wired or wireless devices. The Commission believes that providing specialists with this functionality would enhance their ability to function in an electronic environment, and is consistent with the requirements of the Act. In this regard, the Commission expects the Exchange to implement adequate surveillance procedures and to engage in ongoing monitoring of the wired and wireless devices to ensure that they are being used in a manner consistent with the NYSE's rules, and the securities laws and rules. NYSE is also requiring that specialists have an independent third party auditor review on an annual basis the Specialist Algorithms to ensure that they operate in accordance with all SEC and Exchange rules, policies, and procedures. The Commission notes that the Exchange has the responsibility under the Act to enforce compliance with the Federal securities law and NYSE rules.[394] The Commission expects NYSE to review any reports, notes, analysis, documents and similar types of materials from such independent auditing as part of the Exchange's surveillance procedures.

F. Changes to the Auction Market and New Order Types

As part of the Hybrid Market, the Exchange has also proposed to modify its auction market. Specifically, the Exchange is proposing a new order type—the AL order—and changes to the way market orders (AM orders) are handled on the floor to accommodate investors who wish to have their orders exposed for price improvement. Under the proposal, AL orders and AM orders would be automatically executed when the Exchange quotation is at the minimum variation of one cent. Otherwise, these orders would be placed in the Display Book system for an opportunity to receive a better price than the Exchange BBO. If an AL order or an AM order has not been executed after 15 seconds, it would be automatically executed at the prevailing bid or offer, provided that automatic executions are available. In addition, certain events could cause an AL order or an AM order to automatically execute prior to the 15-second period.

NYSE's proposal to adopt the AL order and the AM order would offer customers the option to seek price improvement for their orders in a more rapidly-moving Hybrid Market. The Commission believes that these features could improve execution quality for those customers who do not seek an immediate execution, and generally increase the depth and liquidity of NYSE's market. The Commission

[390] *See, e.g.*, IBAC Letters I and II, ICI Letter III, Rutherfurd Letters I, III, and V, and Vanguard Letter.

[391] *See* Rutherfurd Letter III.

[392] *See* IBAC Letters I and II and ICI Letter III.

[393] *See* Vanguard Letter.

[394] *See also* note and Sections 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1), and 19(g)(1) of the Act, 15 U.S.C. 78s(g)(1).

believes the decision by NYSE to provide investors with the ability to place AL and AM orders is within its discretion and consistent with the requirements of the Act.

G. Intermarket Sweep Order

To implement the requirements of Rule 600(b)(30) of Regulation NMS,[395] the Exchange proposes to amend NYSE Rule 13 to adopt a new order type—an Intermarket Sweep order. As proposed, an Intermarket Sweep order would be a limit order designated for automatic execution in a particular security that meets the following requirements: (1) It is identified as an intermarket sweep in the manner prescribed by the Exchange; and (2) simultaneously with the routing of the Intermarket Sweep order to the Exchange, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bids (offers) in the case of a limit order to sell (buy), with a price that is superior to the limit price of the limit order identified as an Intermarket Sweep order. These additional routed orders must be identified as Intermarket Sweep orders. An Intermarket Sweep order would be immediately and automatically executed against the displayed bid (offer) up to its full size in accordance with and to the extent provided by NYSE Rules 1000 through 1004, and would then sweep the Display Book system, as provided in NYSE Rule 1000(d)(iii), with the portion not so executed to be immediately and automatically cancelled. The Commission believes that NYSE's proposed definition of Intermarket Sweep order is designed, among other things, to meet the requirements of Regulation NMS,[396] and to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest, and thus, is consistent with the requirements of the Act.

H. Implementation Plan

NYSE proposed to implement the Hybrid Market in four stages over a period of months, to allow its members to familiarize themselves with these functionalities and to perform tests on its systems. As noted above, the Pilot implemented testing of the initial stage of the Hybrid Market on a temporary basis. The Commission believes that the staggered implementation would allow a gradual transition from the current auction market model to the Hybrid Market.[397] Further, the Commission believes that the implementation plan would provide NYSE the opportunity to test the changes to its systems. The Commission believes that the proposed implementation plan is consistent with the requirements of the Act. Due to the phased implementation of the Hybrid Market, NYSE represented that it will provide Information Memoranda to its members and update its online rulebook and Web site accordingly during each phase. The Commission believes that the Information Memoranda and web site updates should provide NYSE members with reasonable notice of and clarification on which rules or portions thereof will be effective during a particular implementation phase of the Hybrid Market.

I. Interpretive Issues

The Exchange has requested that the Commission extend its previous approval of certain interpretations of NYSE rules as they relate to automatic executions that occur with specialists pursuant to NYSE Rule 1001(a)(iv).[398] Specifically, pursuant to NYSE Rule 1001(a)(iv), specialists are required to take the contra side of an automatic execution against the published quotation, even if the specialist's interest was not part of such quotations. This requirement to take the contra side of certain automatic executions may be inconsistent with other NYSE rules or may lead to additional obligations by the specialist. Accordingly, NYSE requested and the Commission approved the following interpretations.

1. NYSE Rule 123A.40. The specialist would not be required to fill any stop orders elected by the execution of an Auto Ex Order at the price of the electing sale in any instance where the specialist was required by NYSE Rule 1001(a)(iv) to take the contra side of the automatic execution.

2. NYSE Rule 91. Because the specialist does not accept an Auto Ex Order for execution or act as agent for such order, the transaction confirmation requirements for NYSE Rule 91 would not apply in any instance where the specialist is the contra party to an automatic execution.

3. NYSE Rule 104. NYSE Rule 104 contains the specialist's affirmative and negative obligations, and restricts the specialist's ability to purchase stock on direct plus ticks or see on direct minus ticks. The Exchange proposed that any instance in which the specialist is effecting a direct tick transaction only because he or she has been required to assume the contra side of an automatic execution pursuant to NYSE Rule 1001(a)(iv) shall be deemed a ''neutral'' transaction for purposes of NYSE Rule 104 and shall be deemed not a violation of the rule. According to the Exchange, it believes this interpretation was appropriate because the specialist is not setting the price, but is simply being required to trade at a price set by other market participants.

The Commission finds that these interpretations are consistent with the requirements of the Act because they would allow the specialist to provide liquidity in certain situations without triggering other rules or obligations. As noted above, the Commission previously approved these interpretations in the approval of Direct+.[399] The Commission believes that they should promote just and equitable principles of trade and protect investors and the public interest because they should assist in the execution of Auto Ex Orders.

V. Accelerated Approval of Amendment Nos. 6, 7, and 8

As set forth below, the Commission finds good cause to approve Amendment Nos. 6, 7, and 8 to the proposed rule change, as amended, prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.

In Amendment No. 6, NYSE proposes to amend the rules that would allow specialists to provide price improvement to incoming orders. Specifically, NYSE proposed to reinstate the requirement that the specialist be represented in the bid (offer) in order to provide price improvement.[400] In

[395] 17 CFR 242.600(b)(30).

[396] An Intermarket Sweep order would allow market participants to simultaneously route orders to multiple markets at multiple price points. An Intermarket Sweep order is defined in Regulation NMS as ''a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders.'' *See id.*

[397] If there is any delay in the implementation plan, the Commission expects the Exchange to consider whether additional rule changes would need to be filed with the Commission.

[398] *See* note *supra*.

[399] *See* note 203 *supra.*

[400] In the Second Notice, NYSE proposed to require specialists to be represented in the bid (offer) by the lesser of 10,000 shares or twenty percent of the size of the market on the side which the transaction would take place. In the Third

Continued

Amendment No. 6, NYSE proposed to require specialists to be represented in the bid (offer) in a ''meaningful amount,'' which it proposes to define as a minimum of 1,000 shares for most securities. The Commission notes that NYSE proposes to further amend this provision in Amendment No. 8, as described below. Finally, the Exchange amended Rule 104 to state that specialists may only provide price improvement to incoming orders that are marketable.

The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register**. The Commission finds that prohibiting specialists from providing price improvement to non-marketable orders should provide investors with more current information regarding the prices at which other investors are willing to trade.

In Amendment No. 6, NYSE also proposes to limit the ability of interest in the floor broker agency interest file to trade on parity with orders on the Book outside of the Exchange BBO. Specifically, floor brokers would be required to designate the size that it would display should a price outside of the BBO move to the BBO. The size designated for display would be permitted to trade on parity with orders on the Book during a sweep at the clean-up price. The size designated to be placed in reserve (*i.e.*, remain undisplayed) would yield to displayed interest.

The Commission finds good cause to accelerate approval of this change prior to the thirtieth day after publication in the **Federal Register** because the proposed change limits the ability of undisplayed interest to trade with displayed interest, which should enhance the execution of orders displayed on the Book, and may provide incentives to floor brokers to increase the size of interest eligible for display.

In Amendment No. 7, NYSE proposes to modify to its proposed changes to its Rule 92. Specifically, NYSE proposes to define when a specialist has knowledge for purposes of the rule in the context of the Specialist Algorithm. Specifically, a specialist would not be deemed to have knowledge of an order that is received while the Specialist Algorithm is transmitting a quoting or trading message based on the knowledge of an earlier order, if the Specialist Algorithm is designed and operated in a manner that prevents a quoting or trading message from being affected by the knowledge of the later order.

The Commission finds good cause to accelerate approval of this change prior to the thirtieth day after publication in the **Federal Register** because it better defines the scope of knowledge for purposes of the Specialist Algorithm. The Commission believes that the change is narrowly tailored to this specific circumstance to ensure that specialists cannot trade for their own accounts when they have knowledge of an order.

In addition, NYSE proposes to amend its Rule 13.30 and the definition of stop orders to reflect that elected stop orders in the Display Book system would be eligible for automatic execution in Direct+.[401] This change conforms NYSE's Hybrid Market proposal to changes proposed by NYSE in an earlier filing.[402] Accordingly, the Commission finds good cause to accelerate approval of this change because it updates NYSE's proposal to make it consistent with previously filed rule changes. Finally, NYSE proposes to amend its rule text to correct typographical errors, reflect other rule changes that have been approved by the Commission, and further clarify its rules. For example, NYSE modified its definition of All or None Order in its Rule 13 to reflect current NYSE rule text, amended other definitions to reflect new citations to Regulation NMS, and amended NYSE Rule 60(e) to clarify that Autoquote will automatically update the NYSE BBO to reflect floor broker agency interest and specialist interest as well as non-marketable limit orders. The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register** because they better clarify the NYSE's rules, which should assist members' ability to comply with their requirements, and assist investors in understanding their application and scope.

Finally, in Amendment No. 8, NYSE proposes to: (1) Amend proposed NYSE Rules 13 and 124 to specify that a round lot portion of a PRL order is an Auto Ex Order and that the odd lot portion of a PRL order would be executed in the Odd Lot Execution System at the same price as the round lot portion of the PRL; (2) amend proposed NYSE Rule 13 to reflect that stop orders and stop limit orders may still be represented manually by a floor broker in the Crowd; (3) amend the definition of IOC order in proposed NYSE Rule 13 to: (a) Propose an IOC order that is designed to be in compliance with Regulation NMS; (b) specify that NYSE IOC orders would be eligible to be routed away during a sweep; and (c) eliminate the previously proposed changes to the treatment of ITS Commitments;[403] (4) amend the definition of Intermarket Sweep order in proposed NYSE Rule 13 to permit such order to sweep the Display Book system and then immediately cancel any portion remaining unexecuted; (5) amend proposed NYSE Rule 36 to state that a specialist may only use a wired or wireless device that has been registered with the Exchange to communicate with the Specialist Algorithms and provide that specialist firms must create and maintain records of all messages generated by the Specialist Algorithm; (6) amend proposed NYSE Rule 60 to: (a) Set forth the instances during which Autoquote will update the quote even if automatic executions are not available; (b) set forth the instances during which Autoquote will update the quote when Autoquote and automatic execution are suspended and disseminate a 100 share quote in certain situations; and (c) propose to use an indicator when the NYSE quote is not available for automatic execution due to a gapped quotation or LRP to signify that the NYSE quote is not firm; (7) amend proposed NYSE Rule 70.20 to: (a) Permit a floor broker to leave the Crowd without canceling its floor broker agency interest file to recharge its handheld device and (b) specify the procedures for entering interest in the floor broker agency interest file before the open; (8) amend proposed NYSE Rule 72 to specify the priority and parity rules for instances when there are shares remaining after a sweep that triggers an LRP; (9) amend NYSE Rule 76 to reflect that it would not apply to elected stop or stop limit orders other than those manually represented in the Crowd by a floor broker; (10) amend proposed NYSE Rule 104 to: (a) Permit specialists to manually layer proprietary interest in the specialist interest file; (b) permit specialists to enter certain quoting messages when automatic executions and Autoquote are suspended; (c) amend the definition of ''meaningful amount'' for purposes of determining when a specialist could provide price improvement; and (d) require specialists to hire independent auditors to review their algorithms on an annual basis; (11) amend proposed NYSE Rule 123A.30 to: (a) Provide

Notice, NYSE proposed to eliminate this requirement to be represented in the bid (offer).

[401] The Commission notes that NYSE proposed further changes to these rules and NYSE Rule 76 regarding stop orders in Amendment No. 8.

[402] *See* Securities Exchange Act Release No. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005).

[403] *See also* note 22 *supra*.

systematic conversion of CAP–DI orders on the same side as a specialist when the specialist is bidding (offering) or trading and an automatic execution occurs against the specialist's proprietary interest and (b) clarify the execution of contra-side elected and converted CAP–DI orders; (12) amend proposed NYSE Rule 123F to codify that NYSE may execute an AL order or AM order at a price that matches a better away market; (13) amend proposed NYSE Rule 1000 to: (a) Clarify that automatic executions will resume in the same manner as Autoquote; (b) prohibit short sale orders, except those for Regulation SHO pilot securities, from sweeping the Display Book system; (c) eliminate the provision that would have suspended the operation of Direct+ when an away market disseminates a better quote; (d) eliminate the proposal that would have permitted automatic executions to continue while the specialist reports a block trade until the quote decremented to 100 shares; (e) specify the process for determining when a high-priced security would be eligible for automatic executions; (f) specify that automatic executions would be suspended on one side of the market when a bid (offer) is outside the MLRP; (g) specify that any shares remaining after an execution in IOC orders, NYSE IOC orders, or Intermarket Sweep orders would be cancelled after sweeping the Display Book system; and (h) clarify that auto ex limit orders, except IOC orders, that are not able to be immediately executed due to a suspension of Direct+ would be placed in the Book; and (14) amend Rule 1001.

The Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register** for the reasons discussed below. The Commission notes that many of the changes proposed in Amendment No. 8 were previously disclosed in earlier amendments and notices and the Pilot. The Exchange, in Amendment No. 8, merely proposes to codify these requirements in its rules, which the Commission believes should ensure that market participants are fully apprised on how the Hybrid Market would operate and ensure that NYSE rules are complete. Specifically, NYSE proposes the following changes, which were published in one of the three Hybrid Market notices or the Pilot.

1. NYSE proposes to amend proposed NYSE Rules 13 and 124 to reflect the execution of PRL orders, which was discussed in both the Second and Third Notices. In the Second Notice, NYSE proposed to amend NYSE Rule 124 to reflect that the round lot portion of a PRL order would be automatically executed in Direct+. In Amendment No. 8, NYSE proposes to make a conforming change to NYSE Rule 13. In the Third Notice, NYSE represented that the odd lot portions of PRL orders would be executed in the Odd-Lot Execution System. In Amendment No. 8, NYSE proposes to reflect this language in its Rule 124 and to state that the odd lot portion of a PRL would be executed at the same price as the round lot portion.

2. NYSE proposes to amend its Rules 60(e)(iv)(a) and 1000(c) to specify that when the NYSE bid (offer) is outside the MLRP range and such MLRP has not yet been reached, automatic executions on that side of the market would not be available but Autoquote would remain active. NYSE discussed this aspect of the Hybrid Market in its Third Notice.

3. NYSE proposes to add language to its Rule 1000(b) to provide that automatic executions would resume in the same manner as Autoquote as set forth in proposed NYSE Rule 60(e). This process was discussed in the Second Notice.

4. NYSE proposes to specify in its Rule 70.20(j) that a floor broker may enter interest in its floor broker agency interest file prior to the open regardless of its location on the floor. The floor broker, however, must be in the Crowd at the open in order to participate. NYSE discussed this provision in the Third Notice.

5. NYSE proposes to amend its Rule 123F to codify that NYSE may execute an AL order or AM order at a price that matches a better away market. NYSE originally proposed this function in the Third Notice.

6. NYSE proposes to amend NYSE Rule 1000 to provide that short sale orders must comply with Commission Rule 10a–1 and Exchange Rule 440B, which would prohibit short sale orders, other than orders for those securities included in the Regulation SHO pilot, from sweeping the Display Book system. The NYSE proposed this restriction in the Second Notice.

7. Proposed NYSE Rule 13—Stop and Stop Limit Orders. In Amendment No. 8, NYSE proposes to permit floor brokers to continue to represent stop and stop limit orders in the Crowd. NYSE originally proposed this change in the Pilot. The Commission finds good cause to accelerate approval of this change because it could provide investors with an additional means to have their orders represented on NYSE and is consistent with NYSE's current rule.

8. NYSE proposes to amend its Rule 104 to allow specialists to manually place interest in the specialist interest file to ensure that the specialist would be able to place its interest in the Display Book system if its algorithm is not operating. NYSE originally proposed this provision in the Pilot. The Commission finds good cause to accelerate approval of this change because it should ensure that specialists can continue to participate in the Hybrid Market and fulfill their obligations to maintain a fair and orderly market.

9. NYSE proposes to amend NYSE Rule 76 to provide that its requirements would not apply to elected stop or stop limit orders other than those represented in the Crowd. NYSE originally proposed this change in the Pilot. The Commission finds good cause to accelerate approval of this change because it reflects the change NYSE proposes with regard to the automatic execution of elected stop and stop limit orders in the Display Book system.

The Commission also finds good cause to accelerate approval of the other changes proposed in Amendment No. 8 for the reasons discussed below.

10. Proposed NYSE Rule 13. Definition of IOC. In Amendment No. 8, NYSE proposes to amend its definition of IOC order. As originally proposed, NYSE defined two types of IOC orders—one that would sweep the Display Book system after trading with interest at the BBO and could be routed to away markets if such away market is displaying a better price (this order would now be called a NYSE IOC order), and ITS Commitments that would only trade with interest displayed at the BBO. In Amendment No. 8, NYSE proposes to remove its proposed changes relating to ITS Commitments because its current rule needs to remain in effect in order to comply with the provisions of the ITS Plan.[404] NYSE also proposes to allow another type of IOC order to be entered on the Exchange for purposes of Regulation NMS. This type of IOC order would be permitted to sweep the Display Book system but would not be routed to away markets if such away market displays a price better than the NYSE BBO or sweep clean up price. In such circumstances, the IOC order (or residual if a portion is executed at the NYSE BBO) would be cancelled. The Commission finds good cause to accelerate approval of this change because it would provide investors with a means to immediately access NYSE liquidity without relying on NYSE to access away markets' liquidity, and is

[404] *See also* note 22 *supra*.

designed to be consistent with Regulation NMS.

11. Proposed NYSE Rule 13. Definition of Intermarket Sweep Order. In Amendment No. 8, NYSE proposes to amend its definition of Intermarket Sweep Order to provide that this type of order may sweep the Display Book system but would not be routed to away markets that display a better quote. In such circumstances, the Intermarket Sweep would be cancelled. The Commission finds good cause to accelerate approval of this change because it is designed to be consistent with Regulation NMS.

12. Proposed NYSE Rule 36. In Amendment No. 8, NYSE proposes to amend its Rule 36 relating to the means by which specialists on the floor can communicate with their Specialist Algorithms. NYSE had originally proposed language to amend its Rule 36 in the Third Notice. In Amendment No. 8, NYSE limits the types of communications that may be transmitted over a wired or wireless device and limits where the communications can be sent to ensure that these communications are consistent with NYSE's current telephone policy. The Commission finds good cause to accelerate approval of this change because it allows NYSE to control the ability of specialists on the floor to communicate off the floor. NYSE also proposes that specialist firms create and maintain records of all messages generated by the firms' wired or wireless devices. The Commission finds good cause to accelerate approval of this requirement because it codifies in the rules the specialist firms' recordkeeping obligations to comply with Exchange and SEC rules.

13. Proposed NYSE Rule 60. In Amendment No. 8, the NYSE proposes several changes. First, NYSE proposes to identify quotations that are disseminated when automatic executions and Autoquote are suspended by a LRP or gapped quotation as non-firm. The Commission finds good cause to accelerate approval of this change because it will provide investors with more accurate information about the state of the NYSE quotation. Next, NYSE proposes to update the quote in high-priced securities even though automatic executions are not available. First, NYSE would keep Autoquote active when an order or a cancellation of an order arrives that would not result in a locked or crossed market in a high-priced security or a manual execution takes place in such security. Second, if there is a cancellation of the Exchange best bid (offer) in a high-priced security when the market in such security is internally locked or crossed, and autoquoting of the next best bid (offer) would create a locked or crossed market on the Exchange, NYSE would automatically generate a quote of 100 shares at the bid (offer) price that existed at the time of the cancellation. The Commission finds good cause to accelerate approval of this change because it would provide investors with additional quotation data in high-priced securities. Finally, the Exchange proposes to update its quote in the following situations even though Autoquote is suspended due to an LRP or a gapped quotation, and automatic executions are not available: (1) If part of the existing Exchange best bid (offer) cancels, the Exchange would use Autoquote to update its quote to reflect the remaining volume; (2) if the entire existing Exchange best bid (offer) cancels, the Exchange would automatically generate a quote of 100 shares at the bid (offer) price that existed at the time of the cancellation; or (3) if there is a cancellation of the Exchange best bid (offer) when the market is internally locked or crossed, and autoquoting of the next best bid (offer) would create a locked or crossed market on the Exchange, NYSE would automatically generate a quote of 100 shares at the bid (offer) price that existed at the time of the cancellation. The Commission finds good cause to accelerate approval of this change because it would provide investors with additional quotation data during the time when Autoquote and automatic executions are otherwise suspended and would alert investors that a previously disseminated quotation had been cancelled.

14. Proposed NYSE Rule 70.20. NYSE proposes to permit floor brokers to leave the Crowd for short periods of time to recharge their handheld devices. The Commission finds good cause to accelerate approval of this change because it reflects a reasonable accommodation to allow floor brokers to ensure that their equipment is operable while permitting them to continue to represent their customers.

15. Proposed NYSE Rule 72. In Amendment No. 8, NYSE proposes to specify the priority and parity of residual shares when a LRP has been triggered. The Commission finds good cause to accelerate approval of this change because it provides specificity to the execution of orders during these limited situations and is generally consistent with the Exchange's current rules.

16. Proposed NYSE Rule 104. In Amendment No. 8, NYSE proposes to make several changes to its Rule 104. First, NYSE proposes to amend what it would consider to be a ''meaningful amount'' of shares that a specialist must be represented in the BBO for purposes to determining when a specialist can provide price improvement to an incoming order. Specifically, NYSE proposes to define a ''meaningful amount'' as at least 1,000 shares for the 100 most active securities on the Exchange, based on the average daily volume, and at least 500 shares for all other securities. NYSE would disseminate, at least quarterly, the list of the 100 most active securities. In Amendment No. 8, NYSE proposes to set the minimum number of shares for all securities rather than its previous proposal, which was not specific as to all securities. The Commission believes that having the minimums set forth in the rule for all securities should ensure that specialists can comply with the rule's requirements and ensure that all market participants are aware of the instances when a specialist would be allowed to price improve incoming marketable orders. Accordingly, the Commission finds good cause to accelerate approval of this change. Second, NYSE proposes to permit specialists to enter certain quoting messages when automatic executions and Autoquote are suspended. Specifically, specialists would be permitted to enter quotes that are outside of the Exchange's BBO, and manually enter quotes at prices that are within a previously-established locking or crossing quotation. The Commission finds good cause to accelerate approval of this change because it could enable specialists to add liquidity in preparation for the after-market and assist specialists in satisfying their obligation to make markets with appropriate depth and price continuity. Finally, NYSE proposes to require specialists to hire independent third party auditors to review their algorithms on an annual basis to ensure that the algorithms are operating in accordance with Federal securities laws and NYSE rules. The Commission finds good cause to accelerate approval of this change because it could assist specialists and the Exchange in monitoring the operation of the Specialist Algorithms.[405]

17. Proposed NYSE 123A.30. In Amendment No. 8, NYSE proposes to provide for the systematic conversion of marketable CAP–DI orders on the same side as a specialist when a specialist quotes or trades and an automatic execution occurs against the specialist's

[405] *See* Section IV(E)(4), *supra.*

proprietary interest. The Commission finds good cause to accelerate approval of this change because it should ensure the proper execution of CAP–DI orders when the specialist is trading. In addition, NYSE added language to its rule to specify the manner of execution of contra-side elected and converted CAP–DI orders when an automatic execution occurs against the Exchange BBO and when an Auto Ex Order sweeps the Display Book system. The Commission finds good cause to accelerate approval of this change because it clarifies in the NYSE rules how executions of contra-side CAP–DI orders occur.

18. Proposed NYSE Rule 1000. In Amendment No. 8, NYSE proposes to make several changes to its Rule 1000. First, NYSE proposes to eliminate the provision that would have suspended automatic executions when another market disseminated a better quotation. The Commission finds good cause to accelerate approval of this change because this provision was inconsistent with NYSE's proposal to immediately route orders to markets that display quotes better than NYSE's displayed quote. Second, NYSE is eliminating its proposal to allow automatic executions to continue while the specialist manually reports a block trade that involves orders on the Display Book system until the NYSE quote decremented to 100 shares. NYSE proposes to suspend automatic executions as soon as the reporting of the block transaction begins. The Commission finds good cause to accelerate approval of this change because when the specialist manually reports a block trade that involves orders on the Display Book system, the NYSE quotation is not updated to reflect new quotations, orders, or cancellations. Since the NYSE quote that is disseminated when a block trade that involves orders on the Display Book system is manually reported may not reflect the current state of the market, the Commission believes it is appropriate in that situation for the Exchange to discontinue automatic executions. Third, NYSE proposes to amend the process for determining when a high-priced security would be eligible for automatic execution. Specifically, NYSE proposes to look at the closing price of a security (or if the security did not trade during the day, then the closing bid), and if the closing price/closing bid is $300.00 or more, then automatic executions would not be available on the next trading day on either side of the market. The Commission finds good cause to accelerate approval of this change because it better defines the process by which NYSE would determine the availability of automatic executions for high-priced securities. Fourth, NYSE proposes to specify in its rule that any shares remaining after the execution of an IOC, NYSE IOC or Intermarket Sweep order would be cancelled. The Commission finds good cause to accelerate approval of this change because it codifies the handling of these types of orders in the NYSE rules. Fifth, NYSE proposes to amend NYSE Rule 1000 to clarify that certain Auto Ex Orders that are not able to be automatically executed due to the suspension of automatic executions would be placed on the Book. The Commission finds good cause to accelerate approval of this change because it provides specificity in NYSE rules regarding how orders would be handled.

19. Proposed NYSE Rule 1001. In Amendment No. 8, NYSE proposes to eliminate language that it had originally proposed in its Rule 1001(iv) to clarify instead in NYSE Rule 70.20(f) that the floor broker would be held to all executions involving its agency interest files, including interest that the floor broker does not cancel when leaving the Crowd. The Commission finds good cause to accelerate approval of this change because floor brokers would be responsible for executions against interest in their files and would be responsible for ensuring that their files reflect accurate information. Accordingly, there is no need for the additional language originally proposed by NYSE to Rule 1001(iv).

VI. Solicitation of Comments on Amendment Nos. 6, 7, and 8

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 6, 7, and 8, including whether such amendments are 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–NYSE–2004–05 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–NYSE–2004–05. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–05 and should be submitted on or before April 21, 2006.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5) of the Act[406] and 6(b)(8) of the Act.[407]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[408] that the proposed rule change (SR–NYSE–2004–05) and Amendment Nos. 1, 2, 3, and 5 are approved, and that Amendment Nos. 6, 7, and 8 thereto are approved on an accelerated basis.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–3012 Filed 3–30–06; 8:45 am]

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[406] 15 U.S.C. 78f(b)(5).

[407] 15 U.S.C. 78f(b)(8).

[408] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53549; File No. SR–NYSE–2006–11]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Modification to the Existing Moratorium on the Qualification and Registration of Registered Competitive Market Makers

March 24, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2006, the New York Stock Exchange, Inc. (''NYSE'' 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 Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) 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

This Exchange is proposing a modification to the recently implemented moratorium on the qualification and registration of new Registered Competitive Market Makers (''RCMMs'') covered in NYSE Rule 107A.[5] The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently implemented a moratorium on the qualification and registration of new Competitive Traders (''CTs'') and RCMMs while the Exchange conducts a study on their future viability.[6] In this filing, the Exchange seeks to modify the moratorium in order to permit the registration of a replacement of a firm's existing RCMM, should such employee cease being an RCMM.

The Exchange noted in the Release that the moratorium on registrations would not impact existing RCMMs and CTs.[7] In furtherance of this goal, the Exchange proposes to allow any firm that loses a registered RCMM during the moratorium because such person ceases being an RCMM, to replace him or her by registering a new RCMM. Any RCMM working with a firm continues to be free to transfer to another firm or to become independent, but the firm he/she is leaving will not have the right of replacing him/her by registering a new RCMM unless the existing RCMM gives up his or her registration. Any RCMM firm will continue to have the choice to hire an existing RCMM as a replacement.

As noted in the Release,[8] the Exchange will promptly file for approval with the Commission any changes to its rules that the Exchange determines are warranted upon completion of its review of the future viability of CTs and RCMMs. The review is currently estimated to be completed on or about June 30, 2006.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR–NYSE–2005–63) (the ''Release'').

[6] *See supra* note 5.

[7] *Id.*

[8] *See id.*

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

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–NYSE–2006–11 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–NYSE–2006–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–11 and should be submitted on or before April 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4674 Filed 3–30–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53548; File No. SR–Phlx–2005–42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Establishment of a Neutral ''Referee''

March 24, 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 June 10, 2005, 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 June 20, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.[3] On February 16, 2006, the Phlx filed Amendment No. 2 to the proposed rule change.[4] On March 10, 2006, the Phlx filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend: (1) Exchange By-Law Article X, Section 10–9, Audit Committee; (2) Exchange Rule 124, Disputes; Exchange Rule 1092, Obvious Errors; (3) Option Floor Procedure Advice (''OFPA'') F–27, Floor Official Rulings—Options; OFPA G–2, Trading Rotations, Halts or Reopenings; and (4) Equity Floor Procedure Advice (''EFPA'') F–27, Floor Official Rulings—Equity. The proposal would establish a neutral ''Referee,'' an Exchange employee or independent contractor who would have authority to review and rule on appeals from Floor Official rulings concerning the nullification and adjustment of trades, and authorize the Referee to make other initial rulings currently made only by Floor Officials.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Phlx indicated that the Exchange's Board of Governors approved the proposed amendment to Exchange By-Law Article X, Section 10–9 for filing with the Commission on June 15, 2005.

[4] Amendment No. 2 superseded and replaced in their entirety the orginal filing and Amendment No. 1 thereto.

[5] In Amendment No. 3, the Phlx made minor changes to the purpose section and rule text of the proposed rule change.

The text of the proposed rule change is set forth below. [Brackets] indicate deletions; *italics* indicate new text.

PHILADELPHIA STOCK EXCHANGE, INC. BY-LAWS

* * * * *

Article X

Standing Committees

Sec. 10–1.–10–8. No change.

Audit Committee

Sec. 10–9. (a)–(c) No change.

(d) The Audit Committee shall recommend for appointment by the Board of Governors a qualified Exchange employee or independent contractor, the Referee, to review Floor Official rulings concerning the nullification and/or adjustment of transactions, and to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of certain Exchange rules, Equity Floor Procedure Advices and Option Floor Procedure Advices. The Audit Committee shall determine that the Referee has sufficient expertise in the area of securities trading to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief and to conduct reviews of Floor Official rulings, and possesses sufficient knowledge of Exchange rules and the relevant sections of the Securities Exchange Act of 1934, as amended, and the rules thereunder.

* * * * *

PHILADELPHIA STOCK EXCHANGE, INC. RULES OF THE BOARD OF GOVERNORS

* * * * *

Disputes

Rule 124. (a) Disputes occurring on and relating to the trading floor, if not settled by agreement between the members interested, shall be settled, if practicable, by vote of the members knowing of the transaction in question; if not so settled, they shall be settled by a Floor Official [summoned to the trading crowd] *designated by Market Surveillance to rule on the dispute.*

In issuing decisions for the resolution of trading disputes, Floor Officials [may] *shall* institute the course of action deemed to be most fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, two Option Floor Officials may nullify a transaction if they determine the transaction to have been in violation of

Rules 1014 (Obligations and Restrictions Applicable to Specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers) or 1080 (AUTOM). Two Equity Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 110 (Bids and Offers—Precedence), 111 (Bids and Offers—Binding), 118 (Bids and Offers Outside Best Bid and Offer), 119 (Precedence of Highest Bid), 120 (Precedence of Offers at Same Price), 126 (Crossing), 203 (Agreement of Specialists), 218 (Customer Order Receives Priority), 229 (PACE System), 232 (Handling Orders When the Primary Market is Not Open for Free Trading), or 455 (Short Sales). This Rule 124(a) shall not apply to options transactions that are the result of an Obvious Error (as defined in Rule 1092). Options transactions that are the result of an Obvious Error shall be subject to the provisions and procedures set forth in Rule 1092.

(b) All rulings rendered by Floor Officials *or the Referee (as defined in Commentary .02 to this Rule)* are effective immediately and must be complied with promptly. Failure to promptly comply with *an initial Floor Official ruling or a Referee* [ruling] *decision upon review of a Floor Official ruling* concerning a trading dispute may result in referral to the Business Conduct Committee. Failure to promptly comply with other *Floor Official* rulings issued pursuant to Order and Decorum Regulations (Rule 60) or Floor Procedure Advices (Rule 970) and not concerning a trading dispute may result in an additional violation.

(c) Review—Floor Official [R] *r*ulings issued pursuant to Order and Decorum Regulations are reviewable pursuant to Rule 60. Floor Official rulings issued pursuant to Floor Procedure Advices are reviewable pursuant to Rule 970. All other Floor Official rulings are reviewable pursuant to paragraph (d) of this Rule.

(d) Review of Floor Official Rulings (Trading Disputes)—[Options] *All* Floor Official rulings are reviewable by [a] *the Referee* [minimum of three members of the Sub-Committee on Rules and Rulings, a sub-committee of the standing committee, which shall be empowered to review such rulings, or the Chairperson of the standing committee (or his designee) if three Sub-Committee members cannot be promptly convened. Equity Floor Official Rulings are reviewable by a minimum of three members of the Floor Procedure Committee, or the Chairperson of the Floor Procedure Committee (or his designee) if three members cannot be promptly convened. This constitutes a Review Panel for Floor Official rulings. Any person who appeals an Options Floor Official ruling concerning a trading dispute and loses will be subject to a $250.00 fee upon a finding by the Review Panel, that such appeal is frivolous].

(i) Market Surveillance staff must be advised within 15 minutes of a Floor Official's ruling that a party to such ruling has determined to appeal from such ruling to the Referee. The Exchange may establish the procedures for the submission of a request for a review of a Floor Official ruling. Floor Official rulings *concerning the nullification or adjustment of transactions* may be sustained, overturned or modified by *the Referee* [a majority vote of the Review Panel members present]. In making a determination, the [Review Panel] *Referee* may consider facts and circumstances not available to the ruling Floor Official as well as action taken by the parties in reliance on the Floor Official's ruling (*e.g.*, cover, hedge and related trading activity). [Decisions of the Review Panel will be considered final decisions of a standing floor committee and may be appealed to the Exchange's Board of Governors pursuant to Exchange By-Law Article XI.]

(ii) All decisions made by the Referee in connection with initial rulings on requests for relief and with the review of a Floor Official ruling pursuant to this paragraph (d) shall be documented in writing and maintained by the Exchange in accordance with the record keeping requirements set forth in the Securities Exchange Act of 1934, as amended, and the rules thereunder.

(iii) A member or member organization seeking the Referee's review of a Floor Official ruling shall be assessed a fee of $250.00 for each Floor Official ruling to be reviewed that is sustained and not overturned or modified by the Referee.

(iv) Decisions of the Referee concerning (A) the review of Floor Official rulings relating to the nullification or adjustment of transactions, and (B) initial requests for relief shall be final and may not be appealed to the Exchange's Board of Governors.

(v) As appropriate, the Chairman of the Options Committee, Foreign Currency Options Committee, or of the Floor Procedure Committee, or their respective designees, shall refer a Referee that fails to make any ruling in accordance with Exchange rules to the Audit Committee for possible disciplinary action, including removal. A Floor Official that fails to make any ruling in accordance with Exchange rules may be subject to possible disciplinary action by the Exchange.

(vi) Failure to promptly comply with a Floor Official or Referee decision under this Rule may result in referral to the Business Conduct Committee.

Commentary:

.01. No change.

.02. The Referee.

(a) An Exchange employee or independent contractor, the Referee, shall be appointed by the Board of Governors on the recommendation of the Audit Committee to review Floor Official rulings concerning the nullification and adjustment of transactions in accordance with Rule 124(d), and to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of Exchange Rules relating to:

(i) bid/ask differentials pursuant to Rule 1014(c) and Options Floor Procedure Advice (''OFPA'') F–6;

(ii) disengagement of Exchange automatic execution systems pursuant to Rule 1080(e) and OFPA A–13;

(iii) the determination pursuant to Rule 1080(c)(i) that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, as defined in Exchange Rule 1082(a)(iii) (the ''Quote Rule''), and that quotes in options on the Exchange or another market or markets previously subject to such relief are no longer subject to such relief; and

(iv) trading halts, openings and re-openings pursuant to Rules 1017, 1047 and 1047A and OFPAs A–12, A–14 and G–2.

(b) The Audit Committee shall recommend for appointment by the Board of Governors any other Exchange employee(s) or independent contractor(s) to function as the Referee in the event that the Referee is unavailable (''Backup Referees'') as set forth in Commentary .02(f) below. The Exchange's rules and procedures applicable to the Referee shall also apply to Backup Referees, and any reference to the Referee in these rules shall be deemed to include Backup Referees.

(c) The Referee shall be an employee of the Exchange or an independent contractor designated by the Audit Committee. The Referee shall not be a member of the Exchange nor affiliated with any Exchange member or member organization and shall not be an immediate family member of any Exchange member. The Referee shall not be a debtor or creditor of any

Exchange member or member organization.

(d) The Audit Committee shall have supervision over the Referee, and, based on the advice of the Exchange's General Counsel and Human Resources management, may recommend the level of compensation of the Referee to the Board of Governors, and may establish other conditions of employment of the Referee. The Audit Committee or its designee shall conduct annual performance evaluations, and shall consider any written complaints from members and member organizations concerning the Referee. The Audit Committee shall not have the authority to overrule or modify any ruling made by the Referee. The Audit Committee may terminate the employment of the Referee for good cause shown, and may otherwise discipline the Referee as appropriate for good cause shown.

(e) The Exchange's General Counsel or his or her designee may assign additional duties and responsibilities to the Referee not related to Referee rulings. Notwithstanding the foregoing, the Referee shall not:

(i) participate in any Exchange enforcement action, investigation, market surveillance activity, hearing (other than as a witness) or other activity related to disciplinary matters;

(ii) issue citations for violations of Exchange rules;

(iii) rule on any matter concerning order and decorum pursuant to Exchange Rule 60 and the regulations thereunder; and

(iv) prepare, research, draft, review, or file a proposed rule change with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 and the rules thereunder concerning the Exchange's disciplinary rules.

(f) If the Referee is unavailable or unable to make a ruling for any reason (including, without limitation, absence from the Exchange trading floor, vacation, illness, or in the process of making another Referee ruling), Market Surveillance staff will immediately notify the Exchange's General Counsel, or his/her designee, who would designate a Backup Referee to make such a ruling.

(g) The Referee shall make fair and impartial rulings in accordance with Exchange rules and By-Laws.

* * * * *

PHILADELPHIA STOCK EXCHANGE, INC. OPTIONS RULES

* * * * *

Obvious Errors

Rule 1092. The Exchange shall either nullify a transaction or adjust the execution price of a transaction that results in an Obvious Error as provided in this Rule.

(a)–(e) No change.

(f) Request for Review. If a party affected by a determination made under this Rule so requests within the time permitted, [a Review Panel of Floor Officials] *the Referee* will review decisions made under this Rule in accordance with Exchange Rule 124(d). A request for review under this paragraph must be made within thirty minutes after a party receives verbal notification of a final determination by the Floor Official(s) under this Rule, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. Such a request for review must be in writing or otherwise documented. The [Review Panel] *Referee* shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.

* * * * *

PHILADELPHIA STOCK EXCHANGE, INC. OPTIONS FLOOR PROCEDURE ADVICES AND ORDER AND DECORUM REGULATIONS

* * * * *

F–27 Floor Official Rulings-Options

Floor Officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. All rulings rendered by Floor Officials are effective immediately and must be comp[i]l*i*ed with promptly. Failure to promptly comply with a ruling concerning a trading dispute may result in referral to the Business Conduct Committee. Failure to promptly comply with other rulings issued pursuant to Order and Decorum Regulations or Floor Procedure Advices and not concerning a trading dispute may result in an additional violation. Floor Officials need not render decisions in any instance where the request for a ruling was not made within a reasonable period of time. A Floor Official should not render a decision or authorize a citation where such Floor Official was involved in or affected by the dispute, as well as in any situation where the Floor Official is not able to objectively and fairly render a decision.

Floor Officials shall endeavor to be prompt in rendering decisions. However, in any instance where a Floor Official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed rulings, the Floor Official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, Floor Officials shall institute the course of action deemed by the ruling [f]*F*loor Official to be more fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, o[f]*r* adjust the transaction terms or participants to an executed order on the floor. However, two Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 1014 (Obligations and Restrictions Applicable to specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers) or 1080 (AUTOM).

[A minimum of three members of the Sub-Committee on Rules and Rulings, a sub-committee of the standing committee, or the Chairperson of the standing committee (or his designee) if three Sub-Committee members cannot be promptly convened, shall be empowered by the standing committee to review Floor Official rulings (''Review Panel''). Requests for a review must be submitted to the Director of the Market Surveillance Department of the Exchange (or his designee) within 15 minutes from the time the contested ruling was rendered. Any person who appeals a Floor Official ruling concerning a trading dispute and loses will be subject to a $250.00 fee upon a finding by the Review Panel that such appeal is frivolous. The Review Panel shall endeavor to meet on the matter as soon as practicable after notice of a request for a review of a Floor Official ruling. Floor Official rulings may be sustained, overturned or modified by a majority vote of the Review Panel members present. In making a determination, the Review Panel may consider facts and circumstances not available to the ruling Floor Official as well as action taken by the parties in reliance on the Floor Official's ruling (*e.g.*, cover, hedge, and related trading activity). Decisions of the Review Panel will be considered final decisions of the standing committee and may be appealed to the Exchange's Board of Governors pursuant to Exchange By-Law Article XI. Neither Floor Official

rulings nor Review Panel decisions reviewing Floor Official rulings preclude a person from also availing upon the Exchange's Arbitration facilities.]

Exchange staff may determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where a Floor Official: (a) Is directly or indirectly affiliated with a party seeking a Floor Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; (c) is a debtor or creditor of a party seeking a Floor Official ruling; or (d) is an immediate family member of a party seeking a Floor Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Floor Official to participate in a particular ruling due to a conflict of interest.

All Floor Official rulings concerning the adjustment and nullification of transactions are reviewable by the Referee (as defined in Rule 124).

(i) Market Surveillance staff must be advised within 15 minutes of a Floor Official's ruling that a party to such ruling has determined to appeal from such ruling to the Referee. The Exchange may establish the procedures for the submission of a request for a review of a Floor Official ruling. Floor Official rulings concerning the nullification or adjustment of transactions may be sustained, overturned or modified by the Referee. In making a determination, the Referee may consider facts and circumstances not available to the ruling Floor Official as well as action taken by the parties in reliance on the Floor Official's ruling (e.g., cover, hedge and related trading activity).

(ii) All decisions made by the Referee in connection with initial rulings on requests for relief and with the review of a Floor Official ruling pursuant to Rule 124(d) shall be documented in writing and maintained by the Exchange in accordance with the record keeping requirements set forth in the Securities Exchange Act of 1934, as amended, and the rules thereunder.

(iii) A member or member organization seeking the Referee's review of a Floor Official ruling shall be assessed a fee of $250.00 for each Floor Official ruling to be reviewed that is sustained and not overturned or modified by the Referee.

(iv) Decisions of the Referee concerning (A) the review of Floor Official rulings relating to the nullification or adjustment of transactions, and (B) initial requests for relief shall be final and may not be appealed to the Exchange's Board of Governors.

(v) As appropriate, the Chairman of the Options Committee, Foreign Currency Options Committee, or of the Floor Procedure Committee, or their respective designees, shall refer a Referee that fails to make any ruling in accordance with Exchange rules to the Audit Committee for possible disciplinary action, including removal. A Floor Official that fails to make any ruling in accordance with Exchange rules may be subject to possible disciplinary action by the Exchange.

(vi) Failure to promptly comply with a Floor Official or Referee decision under this Rule may result in referral to the Business Conduct Committee.

FINE SCHEDULE

$250.00

* * * * *

G–2 Trading Rotations, Halts or Reopenings

(a)–(b) No change.

(c) Halts: Trading on the Exchange in any option may be halted with the approval of [one] *two* Floor Officials*, with the concurrence of a Market Surveillance officer,* whenever trading on the primary market in underlying securities representing more than 10% of the current index value is halted or suspended. Trading shall be halted whenever [the Exchange] *two Floor Officials, with the concurrence of a Market Surveillance officer,* deem[s] such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:

(i)–(iii) No change.

(d)–(f) No change.

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PHILADELPHIA STOCK EXCHANGE, INC. EQUITY FLOOR PROCEDURE ADVICES AND ORDER & DECORUM REGULATIONS

* * * * *

F–27 Floor Official Rulings—Equity

Floor Officials are empowered to render rulings on the trading floor to resolve disputes occurring on and respecting activities on the trading floor. All rulings rendered by Floor Officials are effective immediately and must be compiled with promptly. Failure to promptly comply with a ruling concerning a trading dispute may result in referral to the Business Conduct Committee. Failure to promptly comply with other rulings issued pursuant to Order and Decorum Regulations of Floor Procedures Advices and no[r]*t* concerning a trading dispute may result in an additional violation. Floor Officials need not render decisions in any instance where the request for a ruling was not made within a reasonable period of time. A Floor Official should not render a decision or authorize a citation where such Floor Official was involved in or affected by the dispute, as well as in any situation where the Floor Official is not able to objectively and fairly render a decision.

Floor Officials shall endeavor to be prompt in rendering decisions. However, in any instance where a Floor Official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed ruling, the Floor Official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, Floor Officials shall institute the course of action deemed by the ruling Floor Official to be most fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, two Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 110 (Bids and Offers—Precedence), 111 (Precedence of Highest Bid), 120 (Precedence of Offers at Same Price), 126 (Crossing), 203 (Agreement of Specialists), 218 (Customer's Order Receives Priority), 229 (PACE System), 232 (Handling Orders When the Primary Market is Not Open for Free Trading), or 455 (Short Sales).

[Equity Floor Official Rulings are reviewable by a minimum of three members of the Floor Procedure Committee, or the Chairperson of the Floor Procedure Committee (or his designee) if three members cannot be promptly convened (''Review Panel''). Requests for a review must be submitted to the Director of the Market Surveillance Department of the Exchange (or his designee) within 15 minutes from the time the contested ruling was rendered. The Review Panel shall endeavor to meet on the matter as soon as practicable after notice of a request for a review of a Floor Official ruling. Floor Official rulings may be sustained, overturned or modified by a majority vote of the Review Panel members present. In making a determination, the Review Panel may

consider facts and circumstances not available to the ruling Floor Official as well as action taken by the parties in reliance on the Floor Official's ruling (e.g., cover, hedge, and related trading activity). Decisions of the Review Panel will be considered final decisions of a standing floor committee and may be appealed to the Exchange's Board of Governors pursuant to Exchange By-Law Article XI. Neither Floor Official rulings nor Review Panel decisions reviewing Floor Official rulings preclude a person from also availing upon the Exchange's Arbitration facilities.]

All Floor Official rulings concerning the adjustment and nullification of transactions are reviewable by the Referee (as defined in Rule 124).

(i) Market Surveillance staff must be advised within 15 minutes of a Floor Official's ruling that a party to such ruling has determined to appeal from such ruling to the Referee. The Exchange may establish the procedures for the submission of a request for a review of a Floor Official ruling. Floor Official rulings concerning the nullification or adjustment of transactions may be sustained, overturned or modified by the Referee. In making a determination, the Referee may consider facts and circumstances not available to the ruling Floor Official as well as action taken by the parties in reliance on the Floor Official's ruling (e.g., cover, hedge and related trading activity).

(ii) All decisions made by the Referee in connection with initial rulings on requests for relief and with the review of a Floor Official ruling pursuant to Rule 124(d) shall be documented in writing and maintained by the Exchange in accordance with the record keeping requirements set forth in the Securities Exchange Act of 1934, as amended, and the rules thereunder.

(iii) A member or member organization seeking the Referee's review of a Floor Official ruling shall be assessed a fee of $250.00 for each Floor Official ruling to be reviewed that is sustained and not overturned or modified by the Referee.

(iv) Decisions of the Referee concerning (A) the review of Floor Official rulings relating to the nullification or adjustment of transactions, and (B) initial requests for relief shall be final and may not be appealed to the Exchange's Board of Governors.

(v) As appropriate, the Chairman of the Options Committee, Foreign Currency Options Committee, or of the Floor Procedure Committee, or their respective designees, shall refer a Referee that fails to make any ruling in accordance with Exchange rules to the Audit Committee for possible disciplinary action, including removal. A Floor Official that fails to make any ruling in accordance with Exchange rules may be subject to possible disciplinary action by the Exchange.

(vi) Failure to promptly comply with a Floor Official or Referee decision under this Rule may result in referral to the Business Conduct Committee.

NO FINE SCHEDULE APPLICABLE.

* * * * *

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 improve the process of resolving trading disputes and Floor Official rulings by creating a new regulatory position on the Exchange, who would be either an Exchange employee or an independent contractor known as a neutral ''Referee.'' The Referee would have the authority to: (1) Review and rule on appeals from Floor Official rulings concerning the nullification or adjustment of trades; and (2) act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of certain Exchange rules, Equity Floor Procedure Advices,[6] and Option Floor Procedure Advices.[7]

Current Floor Official Program. Pursuant to Exchange By-Law Article VIII, Floor Officials, as designees [8] of the Chairmen of the Options Committee,[9] Floor Procedure Committee,[10] and Foreign Currency Options Committee,[11] respectively, are authorized to administer the provisions of Exchange By-Laws and Rules of the Exchange pertaining to the respective trading floors and the immediately adjacent premises of the Exchange. They may impose penalties as applicable, for breaches of the Exchange's rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors. Additionally, they may rule to nullify, or adjust the terms of, executed trades under specific and limited conditions contained in Exchange rules, and may grant relief from certain requirements of on-floor members and member organizations if authorized to do so by rule.

Currently, Floor Official rulings and appeals for review from such rulings are governed by Exchange Rule 124, Disputes. Rule 124(d) provides that Options Floor Official rulings may be appealed to a Review Panel consisting of three members of the Options Subcommittee on Rules and Rulings (the ''Subcommittee''),[12] or the Chairperson of the standing committee (or his designee) if three Subcommittee members cannot be promptly convened, and Equity Floor Official rulings may be appealed to a Review Panel consisting of three members of the Floor Procedure Committee, or the Chairperson of the Floor Procedure Committee (or his designee) if three members cannot be promptly convened.[13] Decisions of the Review Panel are considered final decisions of the standing committee and may be appealed to an Advisory

[6] The Exchange clarified that a Referee may also have the authority to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of Equity Floor Procedure Advices. Telephone conversation between Richard Rudolph, Vice President and Counsel, Phlx, and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission, on March 10, 2006 (''Telephone Conversation'').

[7] Floor Officials would retain their authority to make such initial rulings. The Referee would simply have the same authority as a Floor Official concerning such initial rulings.

[8] The designees of the respective floor Committee chairmen are generally members of the respective committees and subcommittees thereof.

[9] The Options Committee has general supervision of the dealings of members on the options trading floor. *See* Exchange By-Law Article X, Section 10–20.

[10] The Floor Procedure Committee has general supervision of the dealings of members on the equity trading floor. *See* Exchange By-Law Article X, Section 10–16.

[11] The Foreign Currency Options Committee has general supervision of the dealings of members on the foreign currency options trading floor. *See* Exchange By-Law Article X, Section 10–17.

[12] Each Standing and Special Committee may appoint such subcommittees as it may deem necessary for the efficient discharge of its duties. *See* Exchange By-Law Article X, Section 10–3(b). The Options Committee has appointed the Subcommittee to review and recommend the adoption of new rules or the amendment of current rules to the full Options Committee, and to discuss rulings made on the floor of the Exchange by Floor Officials.

[13] The Exchange clarified the current process for Equity Floor Official rulings. Telephone Conversation.

Committee on Appeals of the Board of Governors.

Floor Officials are also authorized to rule on requests for relief from the requirements of certain rules, including, without limitation, quote spread parameters,[14] and disengagement of Exchange automatic execution systems under extraordinary circumstances.[15]

The Referee. The Referee would be either an Exchange employee or an independent contractor who is not an employee of the Exchange who has entered into an employment contract with the Exchange for a fixed period of time. The Referee would be appointed by the Exchange's Board of Governors pursuant to the recommendation of the Audit Committee. Candidates for the Referee position would be recruited in the same fashion as candidates for other Exchange positions through the Exchange's Human Resources Department. After conducting an interview process with the various candidates, the Audit Committee would recommend its selection to the Board of Governors, who would then vote on the Audit Committee's recommendation. Upon the Commission's approval of this proposal, the Referee would be appointed to the new position.

The proposal would provide that decisions of the Referee concerning both (i) the review of Floor Official rulings relating to the nullification or adjustment of transactions, and (ii) and initial requests for relief, would be final and may not be appealed to the Exchange's Board of Governors.[16] The Referee would be authorized to sustain, overturn, or modify rulings made by Floor Officials and to make initial rulings in certain instances (as described below).

Because the Referee would be authorized to review Floor Official decisions to nullify or adjust trades on both the Exchange's equity and options floors, the proposed rule change includes conforming amendments to OFPA F–27 and to EFPA F–27 concerning such reviews of Floor Official rulings, as discussed more fully below.

As stated above, Floor Officials are authorized to rule on requests for relief from the requirements of certain rules, including, without limitation, quote spread parameters and disengagement of Exchange automatic execution systems under extraordinary circumstances. The proposed rule change would authorize the Referee to make such rulings in the same manner as Floor Officials.

In order to ensure the neutrality of the Referee, the Referee would report to the Exchange's Audit Committee,[17] which would have supervision over the Referee. The Exchange's General Counsel or his/her designee would be responsible for purely administrative matters such as, without limitation, personnel issues and vacation. Additionally, based on the advice of the Exchange's General Counsel and Human Resources management, the Audit Committee may recommend the level of compensation of the Referee to the Board of Governors, and may establish other conditions of employment of the Referee. The Audit Committee or its designee would conduct annual performance evaluations, and would consider any written complaints from members and member organizations concerning the Referee. The Audit Committee would not, however, have the authority to overrule or modify any ruling made by the Referee. The Audit Committee would have the authority to terminate the employment of the Referee for good cause shown, and to otherwise discipline the Referee as appropriate for good cause shown.

The Referee would have jurisdiction over all Exchange trading floors and systems, except with regard to issues of order and decorum pursuant to Exchange Rule 60. The Options Committee would continue to have jurisdiction over order and decorum issues on the options floor;[18] the Floor Procedure Committee would continue to have jurisdiction over order and decorum issues on the equity floor;[19] and the Foreign Currency Options Committee would continue to have jurisdiction over order and decorum issues on the foreign currency options floor.[20]

The proposed rule change would provide that the Audit Committee would recommend for appointment by the Board of Governors other Exchange employee(s) or independent contractor(s) to function as the Referee in the event that the Referee is unavailable (''Backup Referees''). The Exchange's rules and procedures, including qualifications, applicable to the Referee would also apply to Backup Referees, and any reference to the Referee in the proposed rules would be deemed to include Backup Referees. This is to ensure that a Backup Referee would be available if the Referee is not available due to, for example, a ruling on another matter that is in progress, vacation, illness, etc.

The proposal also would provide that the Market Surveillance staff would assign available Floor Officials to rule on disputes. The Exchange believes that this provision should ensure the neutrality of Floor Officials by assigning the next available Floor Official to rule on a particular matter.

Qualifications of the Referee. Under the proposal, the Referee would be required to have sufficient expertise in the area of trading to act in the capacity of a Floor Official concerning requests for relief and to conduct reviews of Floor Official rulings concerning the nullification and adjustment of trades. The Referee must possess sufficient knowledge of Exchange rules and the relevant sections of the Act (and the rules thereunder) to administer the Referee's responsibilities and authority.

In order to ensure neutrality, the proposal would provide that the Referee may not be a member of the Exchange, may not be directly or indirectly affiliated with any Exchange member or member organization, and may not be an immediate family member of any Exchange member. The Referee may not be a debtor or creditor of any Exchange member or member organization.

Duties of the Referee. The primary responsibility of the Referee would be to rule on appeals from Floor Official decisions concerning the nullification and adjustment of trades, and to have the same authority as Floor Officials concerning rulings on member requests for relief from the requirements of certain rules. The Referee would replace the current three-member Review Panel, which is currently comprised of Floor Officials, and would be authorized to review Floor Official rulings concerning the adjustment of the terms of a trade, or the nullification or ''bust'' of trades on appeal, and either uphold, overturn, or modify appealed Floor Official rulings pursuant to proposed amended Rule 124. If the Referee is unavailable or unable to make a ruling for any reason (including, without limitation, absence from the Exchange trading floor, vacation, illness, or in the process of making another Referee ruling), Market Surveillance staff will immediately notify the Exchange's General Counsel, or his designee, who would designate a Backup Referee to make such a ruling.

The proposed rule change would provide that the Exchange's General Counsel or his or her designee may assign additional duties and

[14] Relief from the established bid/ask differentials may be granted upon the receipt of an approval of two Floor Officials. *See* OFPA F–6.

[15] *See* Exchange Rule 1080(e).

[16] The Exchange clarified that a Referee may review Floor Official rulings relating to the nullification or adjustment of transactions. Telephone Conversation.

[17] *See* proposed Exchange By-Law Article X, Section 10–9.

[18] *See* Exchange By-Law Article X, Section 10–20.

[19] *See* Exchange By-Law Article X, Section 10–16.

[20] *See* Exchange By-Law Article X, Section 10–17.

responsibilities to the Referee not related to Referee rulings. In order to ensure the Referee's neutrality respecting any matter on which he or she is to rule, and to avoid the possibility that the Referee could be biased as a result of his or her knowledge of any pending investigation or disciplinary action concerning a person that is a party to a dispute or that requests relief from the requirements of an Exchange rule, the proposal would prohibit the Referee from: (i) Participating in any Exchange enforcement action, investigation, market surveillance activity, hearing (other than as a witness) or other activity related to disciplinary matters; (ii) issuing citations for violations of Exchange rules; (iii) ruling on any matter concerning order and decorum pursuant to Exchange Rule 60 and the regulations thereunder; and (iv) preparing, researching, drafting, reviewing, or filing of a proposed rule change with the Commission pursuant to the Act and the rules thereunder concerning the Exchange's disciplinary rules.

The proposed rules would require the Referee to make fair and impartial decisions in accordance with Exchange rules and By-Laws.

Procedures for Review of Floor Official Rulings. Proposed amended Rule 124(d), OFPA F–27, and EFPA F–27 would require that Market Surveillance staff be advised within 15 minutes of a Floor Official ruling concerning the nullification or adjustment of a trade that a party to such ruling has determined to seek the Referee's review of such ruling. The purpose of the notification requirement is to provide reasonably prompt notice to Market Surveillance and to participants in a trade subject to the rule that such ruling is subject to appeal and that the process set forth in the proposed rule has begun, and ultimately a decision to sustain, overturn, or modify the initial Floor Official decision concerning the trade will be made.[21]

As appropriate, the Chairman of the Options Committee, the Foreign Currency Options Committee or of the Floor Procedure Committee, or their respective designees,[22] would be required to refer a Referee that fails to make any ruling in accordance with Exchange rules to the Audit Committee for possible disciplinary action, including removal. A Floor Official that fails to make any ruling in accordance with Exchange rules may be subject to possible disciplinary action by the Exchange.

In order to minimize the likelihood of frivolous appeals from Floor Official rulings, a member or member organization seeking the Referee's review of a Floor Official ruling concerning the nullification or adjustment of a trade would be assessed a fee of $250.00 for each Floor Official ruling they seek to have reviewed if the Referee upholds the Floor Official decision. No fee would be assessed to the member or member organization seeking a review if the Floor Official decision is overturned or modified. This fee is currently imposed on options floor appeals that are found by the Review Panel to be frivolous.[23] The Exchange believes that the proposed rule concerning the $250.00 fee provides an objective standard for imposition of the fee (*i.e.*, the fee would be imposed in situations where the Referee sustains a Floor Official ruling on the nullification or adjustment of a trade). Thus, the Referee would not have the discretion to impose the fee that Floor Officials currently have, and Exchange members and member organizations would have actual notice of the circumstances giving rise to the imposition of the fee.

Rulings on Requests for Relief. Proposed Rule 124, Commentary .02(a) would authorize the Referee to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of Exchange Rules relating to: (i) Bid/ask differentials pursuant to Rule 1014(c) and OFPA F–6; (ii) disengagement of Exchange automatic execution systems pursuant to Rule 1080(e) and OFPA A–13; (iii) the determination that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement pursuant to Exchange Rule 1080(c)(i); and (iv) trading halts, openings and re-openings pursuant to Rules 1017, 1047 and 1047A and OFPAs A–12, A–14 and G–2.

Rule 1014(c) and OFPA F–6 set forth the maximum allowable bid/ask differentials, or quote widths, that may be disseminated by specialists and ROTs on the Exchange, depending on the price of the series to be quoted. The Exchange believes that these requirements can have the unintended consequence of requiring those making markets to quote at prices that are unnecessarily narrow, thereby exposing them to great risk if markets move quickly.[24] Therefore, as stated in OFPA F–6, two Floor Officials may grant relief from these differentials during times of peak market activity where options markets and/or the market for securities underlying the option move quickly. Under the proposal, the Referee would have the same authority as a Floor Official to make such a ruling.

Rule 1080(e) and OFPA A–13 provide that, in the event extraordinary circumstances with respect to a particular class of options exist, two Floor Officials may determine to disengage AUTO–X with respect to that option, in accordance with Exchange procedures. The rule and OFPA go on to describe the procedures to be followed to bring about such disengagement. Under the proposal, the Referee would have the same authority as a Floor Official to make such a determination.

Rule 1080(c)(i) provides that the Chairman of the Exchange's Options Committee or his designee (or if neither is available, two Floor Officials) may determine that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule,[25] (thereby excluding such quotes from the Exchange's calculation of the National Best Bid/Offer (''NBBO'')) and that quotes in options on the Exchange or another market or markets previously subject to such relief are no longer subject to such relief. The Referee would have the same authority as a Floor Official in making determinations concerning the above enumerated rules that require Floor Official rulings.

Rules 1017, 1047 and 1047A and OFPAs A–12, A–14[26] and G–2 govern trading halts, openings and re-openings on the Exchange.[27] Under the proposal, the Referee would have the same authority as a Floor Official to make rulings in the capacity of a Floor Official

[21] This is consistent with Exchange Rule 1092, Obvious Errors, which establishes a similar notice period. Under the proposal, Floor Official rulings made pursuant to Rule 1092 would be reviewed by the Referee, provided that the party seeking the review so requests within the time permitted. *See* proposed Rule 1092(f).

[22] The Exchange clarified that the Chairman of the Foreign Currency Options Committee, or his designee, would also be required to refer a Referee to the Audit Committee for disciplinary action, if appropriate. Telephone Conversation.

[23] This fee is not currently imposed on equity floor appeals. Telephone Conversation.

[24] *See, e.g.,* Securities Exchange Act Release No. 50728 (November 23, 2004), 69 FR 69982 (December 1, 2004) (SR–Phlx–2004–74) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to $5 Bid/Ask Differentials).

[25] 17 CFR 242.602.

[26] The Exchange clarified that the Referee would also have the same authority as a Floor Official to make rulings in the capacity of a Floor Official under OFPA A–14. Telephone Conversation.

[27] For consistency, the Exchange is proposing a conforming amendment to OFPA G–2, as described below.

concerning rules that require Floor Official approval, as enumerated above.

Referee's Decision Final. As stated above, currently decisions of the Review Panel are considered final decisions of the standing committee and may be appealed to an Advisory Committee on Appeals of the Board of Governors. Initial rulings to grant or deny relief from the requirements of certain rules are not currently considered final decisions of a standing committee and are thus not currently appealable to the Exchange's Board of Governors.

The proposed rule change would provide that decisions of the Referee concerning (A) the review of Floor Official rulings relating to the nullification or adjustment of transactions, and (B) initial requests for relief, shall be final and may not be appealed to the Exchange's Board of Governors. The Exchange does not believe that these are the types of decisions that are appropriate for such appeals particularly because the need for speedy resolution and certainty are important, whereas other standing committee decisions are often prospectively applied.

This provision would not operate to preclude any aggrieved member or member organization from proceeding with any other legal remedy to which such member or member organization might be entitled (*e.g.*, arbitration or appeal to the Commission if allowable by law).

Obvious Errors. The Exchange also proposes to amend Exchange Rule 1092, Obvious Errors. Currently, Rule 1092(f), Request for Review, provides that a Review Panel of Floor Officials will review decisions made under the Rule in accordance with Exchange Rule 124(d). For consistency, the Exchange proposes to amend Rule 1092(f) to provide that the Referee will review such decisions.

Conforming Amendment to OFPA G–2. As a housekeeping matter, the Exchange proposes to amend OFPA G–2(c), to reflect that trading on the Exchange in any option may be halted with the approval of two Floor Officials, with the concurrence of a Market Surveillance officer. Current Rule 1047A(c) includes this provision, and the Exchange proposes to amend OFPA G–2 for consistency.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [28] in general, and furthers the objectives of Section 6(b)(5) of the Act [29] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by establishing a neutral Referee to rule on appeals from Floor Official decisions and to rule initially on requests for relief from certain requirements under Exchange rules. The Exchange further believes that the proposal is consistent with 6(b)(1) of the Act,[30] in that the proposal is designed to enable the Exchange to continue to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange by improving the Exchange's Floor Official process and improving the review process of Floor Official rulings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were 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 the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–42 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–2005–42. 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–2005–42 and should be submitted on or before April 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4701 Filed 3–30–06; 8:45 am]

BILLING CODE 8010–01–P

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78f(b)(1).

[31] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11)), we are issuing public notice of our intent to establish a new system of records, entitled the *Representative Payee and Beneficiary Survey Data System*, 60–0370, and routine uses applicable to this system of records. Hereinafter, we will refer to the proposed system of records as the RPBSD system. We invite public comment on this proposal.

DATES: We filed a report of the proposed new system of records and proposed routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on March 17, 2006. The proposed system of records and routine uses will become effective on April 26, 2006, unless we receive comments warranting them not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Contact Margo Wagner, Social Insurance Specialist, Disclosure Policy Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, in Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone at (410) 965–1482, e-mail: *margo.wagner@ssa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed RPBSD System

A. General Background

The proposed new RPBSD system will support SSA's compliance with Section 107 of Pub. L. No. 108–203, the Social Security Protection Act of 2004, that amended Section 1110 of the Social Security Act (42 U.S.C. 1310) by mandating SSA to perform a study to determine how payments made to representative payees under Title II or Title XVI of the Social Security Act are managed and used on behalf of the beneficiaries of these programs. The proposed new system will maintain information collected during the course of a cross-sectional national survey of representative payees and a subsample of beneficiaries. The survey data in this proposed new system will be the basis for the mandated study and a subsequent report outlining the Agency's findings and recommendations for change or further review of SSA's representative payment policies. Information in this system will also be used for ongoing assessment of how payments made to representative payees are managed and used on behalf of beneficiaries.

B. Collection and Maintenance of the Data for the RPBSD System

The information that SSA will collect and maintain in the RPBSD system will consist of data gathered during a specific study period to assess SSA's representative payee policies. This data will include identifiable information, such as name, Social Security number (SSN) and address of selected representative payees and beneficiaries who agree to participate in the associated survey and other pertinent information, such as financial account information related to benefit payments and information associated with the representative payee's particular responsibilities while acting in that capacity. We will retrieve information from the proposed system by using the individual's name and/or SSN. Thus, the RPBSD System will constitute a system of records under the Privacy Act.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed RPBSD System

A. Proposed Routine Use Disclosures

1. We are proposing to establish routine uses of information that will be maintained in the proposed RPBSD System as discussed below.

To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to information contained in this system of records. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to information contained in this system of records. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To a contractor under contract to the Social Security Administration (SSA), or under contract to another agency with funds provided by SSA, for the performance of research and statistical activities as directly related to this system of records.

We will disclose information under this routine use only as necessary to enable a contactor to assist SSA in accomplishing an Agency function relating directly to this system of records.

4. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) The Social Security Administration (SSA), or any component thereof; or

(b) any SSA employee in his/her official capacity; or

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines that the litigation is likely to affect the operation of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed new system of records and ensure that courts and other tribunals have appropriate information.

5. To student volunteers, individuals working under a personal service contract, and other workers who technically do not have the status of Federal employees, when they are performing work for the Social Security

Administration (SSA), as authorized by law and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs include: 5 U.S.C. 3111 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned Agency duties.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA regulations permits us to disclose information under a routine use where necessary to carry out SSA programs. The proposed routine uses will ensure SSA's efficient administration of its programs related to the Agency's representative payment policies. Thus, all routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Record Storage Medium and Safeguards for the Information Maintained in the Proposed RPBSD System

The proposed new system of records will maintain information in electronic and manual forms. Only authorized SSA and contractor personnel who have a need for the information in the performance of their official duties are permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Manually maintained records are kept in locked cabinets or in otherwise secure areas.

All SSA personnel receive annual reminders of the need to protect personal data to which they have access for official purposes and are reminded of the criminal penalties that apply to unauthorized access to or disclosure of personal information. See 5 U.S.C. 552a(i)(1). Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

IV. Effect of the Proposed RPBSD System on the Rights of Individuals

The proposed RPBSD system consists of data gathered during a specific period to assess SSA's representative payee policies and prepare a subsequent report outlining potential recommendations for change or further review. Participation in the survey is voluntary and selected individuals will be given the opportunity to agree to participate in the survey or decline to do so. SSA will adhere to all applicable provisions of the Privacy Act and other Federal statutes that govern our use and disclosure of the information that will be maintained in the proposed RPBSD system. Therefore, we do not anticipate that the proposed system of records will have any unwarranted adverse effect on the privacy or other rights of individuals.

Dated: March 17, 2006.

Jo Anne B. Barnhart,

Commissioner.

SYSTEM NUMBER: 60–0370

SYSTEM NAME:

Representative Payee and Beneficiary Survey Data System, Social Security Administration (SSA)/Office of Income Security Programs (OISP).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Income Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Records may also be maintained at contractor sites. Contact the system manager at the address below to obtain contractor addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about selected samples of representative payees and their beneficiaries receiving benefits under Title II and/or Title XVI of the Social Security Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system consists of data gathered during a specific study period to assess SSA's representative payee policies. This data will include identifiable information, such as name, Social Security number (SSN) and address, and survey information concerning representative payee and beneficiary demographic characteristics, record identifiers, descriptions of residence and living situations, and relationship of beneficiaries to the representative payees. Survey data will also cover the beneficiary's financial account information related to the representative payee's responsibilities, information concerning both the beneficiary and representative payee's knowledge of actual representative payee duties, and their perceptions of the beneficiary's need for this particular relationship and how these duties are being performed. Some limited information such as SSN, monthly benefit amount and diagnostic codes from SSA's administrative records and from current systems maintaining information relative to the selection of representative payees to claimants and beneficiaries may also be captured in this system to supplement and effectively support SSA's use of the survey data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 107 of Pub. L. No. 108–203, the Social Security Protection Act of 2004, that amended Section 1110 of the Social Security Act (42 U.S.C. 1310).

PURPOSE(S):

Information in this system will assist SSA in assessing how payments made to representative payees, who are not subject to on-site reviews or other random reviews under SSA policy or law, are managed and used on behalf of the beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To the Office of the President for responding to an inquiry received from that individual or from a third party acting on that individual's behalf.

2. To a congressional office in response to an inquiry from that office made on behalf of a subject of a record.

3. To a contractor under contract to the Social Security Administration (SSA), or under contract to another agency with funds provided by SSA, for the performance of research and statistical activities as directly related to this system of records.

4. To Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

a. The Social Security Administration (SSA), any component thereof, or

b. Any SSA employee in his/her official capacity; or

c. Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

5. To student volunteers, individuals working under a personal service contract, and other workers who technically do not have the status of Federal employees, when they are performing work for the Social Security Administration (SSA), as authorized by law and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained electronically and manually.

RETRIEVABILITY:

Records in this system will be retrieved by the name or SSN of the representative payee, or name or SSN of the beneficiary/recipient.

SAFEGUARDS:

The system of records will maintain information in electronic and manual forms. Only authorized SSA and contractor personnel who have a need for the information in the performance of their official duties are permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Manually maintained records are kept in locked cabinets or in otherwise secure areas.

Contractor personnel having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA and contractor personnel having access to the data in this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to, or disclosure of, information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

RETENTION AND DISPOSAL:

Survey data will be populated into the system via a flat file produced by SSA's Office of Systems from the Master Representative Payee File system of records using the criteria specified by section 205(j) of the Social Security Act. This flat file will also contain current beneficiary contact data from the Master Beneficiary Record and/or the Supplemental Security Income and Special Veterans Benefits Record systems of records and some limited information from SSA's administrative records.

The system will cover only events related to the closed period of May through September of 2006, through the initial population of the database from SSA's RPS in March 2006.

In order to comply with the National Archives and Records Administration regulations, data will be destroyed after a seven-year retention period per Records Schedule NC1–47–81–9.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

NOTIFICATION PROCEDURE:

This system contains limited data selected for statistical analysis. Individuals inquiring about their records in SSA programs may wish to consult other SSA systems of records which contain more detailed information.

An individual can determine if this system contains a record about him/her by writing to the systems manager at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses, is a criminal offense. These procedures are in accordance with SSA's Regulations at 20 CFR 401.40(c).

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels information in the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date and place of birth, along with one other piece of information, such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual. These procedures are in accordance with SSA's Regulations at 20 CFR 401.40(c).

If notification is requested by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for access to records concerning another individual under false pretense is a criminal offense. These procedures are in accordance with SSA Regulations at 20 CFR 401.40(c).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Also, an individual requesting access should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from representative payees, beneficiaries and existing SSA systems of records such as the Master Beneficiary Record, 60–0090; Supplemental Security Income and Special Veterans Benefits Record, 60–0103; Master Representative Payee File, 60–0222; and survey data collected by the Contractor.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E6–4666 Filed 3–30–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5358]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Africa Workforce Development

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/NEAAF–06–60.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: May 18, 2006.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, United States Department of State, announces an open competition for grants to support programs promoting ''Africa Workforce Development'' through professional exchanges and collaboration. In carrying out a proposed program, roughly equal numbers of participants should travel between the U.S. and the focus African country. U.S. public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop and implement programs of exchange, collaboration and training that involve participants from Sub-Saharan Africa, including consultations, planning, and training conducted both in Sub-Saharan Africa and in the United States. These U.S. organizations should provide evidence of relevant expertise in Sub-Saharan Africa. Up to two grants not exceeding $200,000 each may be awarded.

I. Funding Opportunity Description

Authority: Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Conference Report accompanying the FY–2006 Science, State, Justice, Commerce Appropriations Bill (Pub. L. 109–108) which earmarks $400,000 to support Africa Workforce Development.

Purpose: The Bureau seeks proposals for exchange programs on African Workforce Development. In pursuit of that goal, proposals should also build a relevant professional partnership between the applicant organization and its African colleagues. Also, in carrying out the proposed program, roughly equal numbers of African and U.S. participants should travel between the U.S. and the focus African country and for roughly equal time periods. U.S.-African partnership is emphasized as a mutually beneficial, direct and efficient method of promoting this goal. Partnerships promote the interests and long-term commitment of African and American participants going beyond U.S. government financing. The Bureau encourages applicants to consider carefully the choice of target countries. Applicants should research the work of development agencies (such as USAID, UN agencies) on the target themes, and select countries for which there has been limited investment on the issue. Applicants are encouraged to contact the Public Affairs Sections (PAS) in U.S. Embassies in Africa, and the Office of Citizen Exchanges, to discuss proposed activities and their relevance to mission priorities.

It is the Bureau's intention to allocate one grant for work with South Africa and one grant for work in one of the following countries: Angola, Ethiopia, Liberia, or Sierra Leone. Therefore, proposals should focus on either South Africa or one of these four other countries, and each proposal should clearly identify the single country with which it would work. The Bureau offers the following programming ideas and suggestions.

Africa Workforce Development: The purpose of this program is to enhance Workforce Development efforts in Sub-Saharan Africa through Citizen Exchanges. ECA has set the following broad goals for the program this year:

- To help foster a more productive and fully employed workforce in Africa through collaboration between U.S. and African workforce development specialists;
- To develop professional and personal linkages between African and U.S. host institutions and communities that will lead to sustained collaboration in workforce development;
- To promote mutual understanding between cultures and societies in the U.S. and Africa.

The Office realizes that there are many different approaches to workforce development, and it is open to a wide variety of program plans. However, in order to be eligible for consideration, each proposal must explain its methodology for assessing workforce development needs and explain how its choice of needs to be addressed in the proposed program is relevant to the focus country. In addition, the Office recommends that each applicant consider addressing the following objectives in its plan when they are relevant to the chosen country:

- Assist citizens in making the transition from academia to the workforce;
- Assist citizens in learning skills and attitudes which make them more employable;
- Guide citizens in seeking jobs and in carrying them out satisfactorily;
- Assist Africans in identifying workforce needs and developing plans to ameliorate those needs;
- Develop programs which are adaptable to local and individual needs; and
- Develop programs that will attract and maintain the attention of citizens, encouraging their initiative and commitment.

South Africa poses a different challenge in workforce development from other African countries. For example, a substantial effort is already underway in entrepreneurial skills training. By contrast, an area that is weaker is that of market analysis to identify new areas in which to build businesses, especially in manufacturing and trade, and how to guide the unemployed workforce into new businesses. Given the favorable trade status that South Africa currently enjoys with the U.S., it would be valuable to develop skills in identifying opportunities for new businesses and in starting such new businesses that would lead to new jobs.

Thus, proposals for South Africa should emphasize developing a class of ''middle-men'' in relatively disadvantaged communities who can identify export market potential, particularly building on the AGOA market-opening opportunities, and guide the development of new businesses for those opportunities. Of particular value would be plans to promote the talents of those who can bridge government-supported programs in skills development and small-scale entrepreneurship, linking them into new sales opportunities overseas, in order to create new jobs.

The commitment of African partners will be essential to long-term program success, and applicants should consider the possibility of selecting African partners through a competitive process to assess their commitment and capability.

II. Award Information

Type of Award: Grant Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2006.

Approximate Total Funding: $400,000.

Approximate Number of Awards: 2.

Approximate Average Award: $200,000.

Anticipated Award Date: Pending availability of funds, September 22, 2006.

Anticipated Project Completion Date: June 2008.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* Proposals that clearly demonstrate significant cost sharing—with 20% of the amount requested from ECA as the preferred minimum—will be judged more competitive.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, grantees must maintain written records to support all costs that are claimed as cost sharing, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the grantee does not provide the minimum amount of cost sharing as stipulated in the approved budget, the Bureau's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* a. Bureau policy stipulates that grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Since this competition seeks grantees that will conduct projects with Bureau support of approximately $200,000, applicants with less than four years of international exchange experience will not be eligible.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 *Contact Information to Request an Application Package:* To obtain an application package for this competition, please see IV.2 below. To get other information, contact one of the officers listed in Section VII below near the end of this announcement.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* or from the grants.gov Web site at *http://www.grants.gov*. Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. Failure to do so may lead to the proposal being declared technically ineligible. The application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements. Failure to adhere to all of these requirements may lead to the proposal being declared technically ineligible.

IV.3c. Applicants must have nonprofit status with the IRS at the time of application. If the applicant is a private nonprofit organization which has not received a grant or cooperative agreement from ECA in the past three years, or if the applicant received nonprofit status from the IRS within the past four years, it must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause the proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. *Adherence to All Regulations Governing the J Visa:* The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If the applicant has experience as a designated Exchange

Visitor Program Sponsor, the proposal should discuss their record of compliance with 22 CFR part 62 et seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. Africans funded to any extent for travel to the United States on this program must obtain J visas. The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to apply for J visas.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 Fourth Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

IV.3d.2. *Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Also, Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the fullest extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation:* Proposals must contain an evaluation plan that describes how the applicant organization intends to gather and analyze data on the project's effectiveness in achieving its outcomes. To be competitive, evaluation plans will include the following five components:

a. A restatement of anticipated outcomes;

b. A list of data the applicant would collect in order to assess progress toward each outcome;

c. A description of how the applicant would collect the information (for example, through surveys);

d. A draft timeline for collecting data;

e. Draft questionnaires, surveys, focus group questions, or other instruments with which the applicant would gather quantitative and qualitative data. Proposals should indicate how each instrument would provide information on progress toward each project outcome.

f. A statement of the methodology to be used in analyzing the data and drawing conclusions.

Statement of Anticipated Outcomes: Proposals should indicate the category of each outcome such as participant satisfaction, participant learning, participant behavior, or institutional change. See examples below.

Data to Be Collected: Each proposal should list the data that the applicant would collect. Applicants may use quantitative data or qualitative data to measure progress toward outcomes. Below are examples of data that applicants might collect for each type of outcome as well as sample survey questions that applicants might use to gather this data:

Example 1:

Outcome: Participants are satisfied with the exchange experience.

Outcome type: Participant Satisfaction.

Data to be collected: Percentage of participants who express satisfaction with the exchange experience based on an average of several factors.

Sample question: On a scale of one to five (1 = very dissatisfied, 5 = very satisfied), please rate your satisfaction with (a) project administration, (b) content, (c) variety of experiences, (d) relevance to professional or educational development.

Example 2:

Outcome: Participants increase their abilities to analyze workforce development needs in their home communities.

Outcome type: Participant Learning.

Data to be collected: Percent of participants who improved their understanding of workforce development concepts and their ability to design relevant projects.

Sample question: On a scale of one to four (1 = no or very limited ability, 4 = substantial ability), please rate your ability in the following areas: (a) Knowledge of workforce development concepts, (b) methodology to analyze workforce needs, (c) design and management of workforce development classes, (c) community outreach, (d) resource management.

Example 3:

Outcome: Participants increase their participation and/or responsibility in community or civil society.

Outcome type: Participant Behavior.

Data to be collected: Percent of participants who increase their participation or level of responsibility.

Sample question: As a direct result of your participation in the exchange, have you done or received any of the following in your community (answer yes or no to each item): (a) Assumed a leadership role or position in your community, (b) organized or initiated new activities or projects in your community, (c) established a new organization in your community.

Example 4:

Outcome: Increased collaboration and linkages.

Outcome type: Institutional changes.

Data to be collected: Percent of participants who establish or continue professional collaboration.

Sample question: Have you established or continued any professional collaboration that grew out of your exchange experience? (Answer yes or no).

Methods and Timeline: Applicant organizations should plan to gather data a minimum of three times during the project in order to assess progress: (1) Before exchange activities, (2) mid-term in the program, and (3) as a follow-up (approximately three-to-six months after exchange activities are completed). The exact timing depends on the nature of the project itself. Proposals should plan grant durations of sufficient length to collect follow-up information.

Applicants should consider the timing of data collection for each level of outcome. For example, grantees may measure participant learning at the end of an activity since this is a shorter-term outcome. Behavioral and institutional outcomes are longer-term, and it might not be possible to assess them adequately until a follow-up survey. Pre-program surveys should collect baseline data as appropriate.

Draft data collection instruments: Proposals should include sample surveys, lists of questions, or other instruments that the applicant organization proposes to use. Applicants should include samples of instruments they would use during each

evaluation activity (pre-program, post-program, and follow-up).

Evaluation plans should describe how the applicant will tabulate data, where the data will be kept, and who will have access to such data. Interim and final reports should provide summary data in tabular and graphic form as well as tabulated raw data. ECA may ask for immediate notice of information that indicates significant progress or delay in achieving outcomes. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. *Budget:* Please take the following information into consideration when preparing the proposal budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. That budget must include a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants are encouraged to provide separate sub-budgets for each program component, phase, location, or activity to provide clarification, as such details demonstrate good planning and often help proposal reviewers to understand financial planning.

IV.3e.2. Allowable costs for the program include the following: (1) Direct Program Expenses (including general program expenses, such as orientation and program-related supplies, educational materials, traveling campaigns, consultants, interpreters, and room rental; and participant program expenses, such as domestic and international travel and per diem).

(2) Administrative Expenses, including indirect costs (i.e. salaries, telephone/fax, and other direct administrative costs).

(3) Travel costs for visa processing purposes: All foreign participants coming to the United States with funding by any grant agreement resulting from this competition must travel on J–1 visas. Failure to secure a J–1 visa for the foreign participant will preclude charging the participant's cost to the grant agreement. Participants will apply for J–1 visas only after the Office of Citizen Exchanges and the mission Public Affairs Section or consulate have approved their participation in this program. The Office of Citizen Exchanges will issue the necessary DS–2019 forms and deliver them to foreign program visitors through the U.S. Embassy Public Affairs Section (PAS). All J visas for African program visitors must be distributed by the PAS in the target country, so proposals should include costs for potential participants to travel to those Posts to pick up DS–2019 forms and for visa interviews and processing.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Application Deadline and Methods of Submission:*

Application Deadline Date: Thursday, May 18, 2006.

Reference Number: ECA/PE/C/NEAAF–06–60.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. *Submitting Printed Hard-Copy Applications:*

Due to heightened security measures, hard-copy proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Important note: Please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/NEAAF–06–60, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2. *Submitting Electronic Applications:* Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire applications have been uploaded to the grants.gov site. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you separately upon receipt of electronic applications.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

For hard-copy submissions, applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy and/or consulate for its (their) review.

V. Application Review Information

V.1. *Review Process:* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance

awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Each proposal must explain its methodology for assessing workforce development needs and explain how its choice of needs to be addressed in the proposed program is relevant to the focus country. Also, there should be evidence that relevant work of other agencies (e.g., USAID and UN agencies) has been considered. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. To the extent possible, proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff.

8. *Post-grant Plan:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau-supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. This plan should follow the guidance given above in IV.3d.3.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Per III.2 above, proposals that clearly demonstrate significant cost sharing—with 20% of the amount requested from ECA as the preferred minimum—will be judged more competitive.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus two copies of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

2. Quarterly program and financial reports.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact one of the following: (a) James E. Ogul, Office of Citizen Exchanges, ECA/PE/C/NEA–AF, Room 216 U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone: 202–453–8161, Fax: 202–453–8168, E-mail address: *ogulje@state.gov*, or (b) Curtis E. Huff, Office of Citizen Exchanges, same address, telephone 202–453–8159, E-mail address: *HuffCE@state.gov.* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/NEAAF–06–60.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 27, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–4744 Filed 3–30–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect To Land at Lynchburg Regional Airport, Lynchburg, VA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of approximately thirty (30) acres of land at the Lynchburg Regional Airport, Lynchburg, Virginia from all Federal obligations, since the land is no longer needed for airport purposes. Reuse of the land for commercial/light industrial purposes represents a compatible land use. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The proceeds from the disposal of land acquired with Federal grants will be used for land acquisition and construction costs associated with the southerly extension to Runway 4–22. The proceeds from the disposal of land acquired without Federal grants will be used for Airport operating and capital costs.

DATES: Comments must be received on or before May 1, 2006.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark F. Courtney, Airport Director Lynchburg Regional Airport, at the following address: Mr. Mark F. Courtney, A.A.E., Airport Director, Lynchburg Regional Airport, 4308 Wards Road, Lynchburg, Virginia 24502.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airport District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1270, e-mail *Terry.Page@ffa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Dulles, Virginia on March 17, 2006.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 06–3109 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Raleigh County Memorial Airport, Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 23.945 acres of land at Raleigh County Memorial Airport, Beckley, West Virginia to the Raleigh County Airport Authority and the Raleigh County Commission for the development of an industrial park. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be paid to the Raleigh County Airport and the Raleigh County Commission, and used for Airport purposes.

DATES: Comments must be received on or before May 1, 2006.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Connie Boley-Lilly, Program Specialist, Federal Aviation Administration, Beckley Airports District Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas Cochran, Airport Manager, Raleigh County Memorial Airport at the following address: Thomas Cochran, Airport Manager, Raleigh County Memorial Airport, 176 Airport Circle, Room 105, Beaver, West Virginia 25813.

FOR FURTHER INFORMATION CONTACT: Connie Boley-Lilly, Program Specialist, Beckley Airport District Office, (304) 252–6216 ext. 125, FAX (304) 253–8028.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (April 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Beckley, West Virginia on March 13, 2006.

Larry F. Clark,

Manager, Beckley Airport District Office, Eastern Region.

[FR Doc. 06–3139 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–16944]

Operating Limitations at Chicago O'Hare International Airport

ACTION: Notice of order.

SUMMARY: On March 13, 2006, the Federal Aviation Administration (FAA) issued an order to show cause, soliciting written views on extending through October 28, 2006, the August 2004 order limiting scheduled operations at O'Hare International Airport (O'Hare). The August 2004 order made effective a series of schedule adjustments that air carriers individually agreed to during a scheduling reduction meeting convened under 49 U.S.C. 41722. The FAA previously extended the order twice, most recently through April 1, 2006. After careful reflection on the written

views submitted in this matter, the FAA is now extending the August 2004 order through October 28, 2006, but reserves the right to terminate the August 2004 order before that date if a final rule on congestion and delay reduction at O'Hare earlier takes effect.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations Services, Air Traffic Organization; Telephone: (202) 267–9424; E-mail: *gerry.shakley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Order to Show Cause

Third Order Extending the August 2004 Limitation of Scheduled Operations at O'Hare International Airport

On March 13, 2006, the Federal Aviation Administration (FAA) issued an order to show cause, soliciting written views on extending through October 28, 2006, the August 2004 order limiting scheduled operations at O'Hare International Airport (O'Hare).[1] The August 2004 order made effective a series of schedule adjustments that air carriers individually agreed to during a scheduling reduction meeting convened under 49 U.S.C. 41722. The FAA previously extended the order twice, most recently through April 1, 2006. After careful reflection on the written views submitted in this matter, the FAA is now extending the August 2004 order through October 28, 2006, but reserves the right to terminate the August 2004 order before that date if a final rule on congestion and delay reduction at O'Hare earlier takes effect.

The FAA is taking this action to ensure that congestion and delay at O'Hare remain at manageable levels through the upcoming summer scheduling season while the agency finalizes a more detailed rule that will likewise reduce congestion and delay at O'Hare. The FAA has separately received written comments on a proposed rule that would limit scheduled arrivals at O'Hare and establish allocation, transfer, and other procedures not included in the August 2004 order.[2] The FAA intends to publish a final rule in that proceeding as promptly as possible; however, it is not possible to make such a rule effective before the August 2004 order's previously scheduled expiration.

The FAA's authority to extend the August 2004 order is the same authority cited in that order. The FAA proposed to extend the August 2004 order under the agency's broad authority in 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use. In addition, 49 U.S.C. 41722 authorizes the FAA to conduct scheduling reduction meetings. The FAA's authority under section 41722 to negotiate and implement schedule reductions would be unworkable if the FAA lacked the related authority to capture and to administer voluntary schedule reductions in FAA orders.

Discussion of the Written Submissions

A total of eight respondents filed written views on the FAA's proposed extension of the August 2004 order. The respondents included two air carriers (American Airlines and United Airlines), one airport organization (Airports Council International—North America), the City of Chicago (City), and four private individuals. Neither of the air carrier respondents opposed the extension of the August 2004 order through October 28, 2006.

As the operator of O'Hare, the City registers its preference that the FAA allow the August 2004 order to expire. Echoing the views that the City expressed before the FAA's prior extension of the August 2004 order, the City repeats that technological and procedural developments have rendered obsolete the limitations in the August 2004 order. According to the City, the air carriers serving O'Hare have learned from past overscheduling experience and are unlikely to repeat it in the absence of scheduling limits; nevertheless, if debilitating congestion and delay return to O'Hare, the City asserts that it might create market-based incentives to discourage overscheduling or that the FAA may convene another scheduling reduction meeting where the FAA may negotiate and impose a new order.[3]

As the FAA found when it last extended the August 2004 order, the recent air traffic procedural improvements and equipment upgrades that the City identifies will not increase O'Hare's capacity so significantly that intolerable delay will not recur if the FAA allowed the August 2004 order to expire as now scheduled. In the absence of the negotiated schedules set forth in the August 2004 order, experience leaves little doubt that O'Hare would return to the peak-hour congestion and intolerable delay that prevailed before the August 2004 order took effect. The performance at O'Hare historically declines in the late afternoon and evening hours, when demand at the airport and in the National Airspace System is at its highest and the impact of convective and other weather adverse to aviation is greatest. The addition of even a few new flights or the shifting of existing flights into the peak period could increase O'Hare's delays exponentially. Because the FAA currently approves a number of exchanges among air carriers in order to maintain the status quo, we have a clear sense of the air carriers' inclinations if the August 2004 order were to expire before a rule took effect, and our experience reflects a strong likelihood that schedule peaking would return absent the August 2004 order's scheduling limits. Accordingly, as expressed in the written views of United Airlines, the single biggest user of O'Hare's capacity, the risk of resumed overscheduling and congestion-related delay at O'Hare if the August 2004 order were to expire on April 1, 2006, is ''very real.''

The FAA agrees with the City that capacity increases, not schedule reductions or other restrictions on demand, are the preferred means of curtailing congestion-related delay. Toward this end, the City has embarked on an O'Hare Modernization Program that would significantly increase O'Hare's capacity. However, the City does not expect to realize capacity increases from that project while the August 2004 order is in effect, even as extended through October 28, 2006. Rather than impose on air carriers and passengers the harmful instability of successive expiration and reinstitution of voluntary schedule reductions at O'Hare, the FAA will extend the August 2004 order beyond April 1, 2006, as specified in this order.

Anticipating that the FAA would extend the August 2004 order, the City alternatively asks the FAA to increase from eighty-eight to ninety-two per hour the number of peak-hour arrival authorizations that the August 2004 order permits and to reallocate via lottery the ten arrival authorizations assigned to Independence Air before it ceased operations on January 6, 2006. The Airports Council International—North America echoes these views of the City.

With respect to the City's request to increase the number of peak-hour arrival authorizations, the FAA notes that the City previously raised a similar request and that the FAA previously

[1] 71 FR 13668 (Mar. 16, 2006).

[2] 70 FR 15520 (Mar. 25, 2005).

[3] The City also repeats an assertion that the FAA lacks the statutory authority to extend the August 2004 order. We addressed the City's argument in the context of previously extending the August 2004 order, and the rationale expressed there continues to apply. Oct. 2, 2005, Order at 4–5.

explained why it is ill-advised to increase the number of peak-hour arrival authorizations in the context of extending the voluntary scheduling reduction order.[4] The City cites several recent operational changes at O'Hare to support an upward change in the prescribed hourly limits. In the order in which the City raises them: (1) The implementation of runway usage Hybrid Plan B; (2) implementation of Domestic Reduced Vertical Separation Minima (DRVSM) between Flight Levels 290 and 410; (3) reclassification of certain MD–80–series aircraft that would enable their use of land and hold short operations (LAHSO) procedures at O'Hare under additional runway configurations; and (4) new Category II/III approaches to Runways 27 Left and 27 Right.

Our analysis indicates that the average airport acceptance rate has not materially changed since the FAA addressed the City's similar arguments to increase the hourly limits in March 2005. In the case of the MD–80 LAHSO-related changes, which are also integral to Hybrid Plan B, there has not been any significant increase in the use of the permitted LAHSO procedures by air carriers to date, so potential capacity gains have not materialized. Although we are optimistic that those gains will materialize in the future, it is premature at this time to base an operational increase on those projections. DVRSM has increased high altitude flight options and the operational flexibility of the system, as the City notes. While en route capacity is important, the constraints at O'Hare are primarily driven by terminal airspace and runway limits. The ability to conduct Category II/III approaches on Runways 27 Left and 27 Right reduces overall aircraft delay and the number of flight cancellations experienced at O'Hare during inclement or poor weather conditions. At present, however, the FAA must continue to monitor the effect of these operational initiatives to assess their practical effect on scheduling limits.

With regard to the ten arrival authorizations previously operated by Independence Air, the FAA explained in the March 13 show cause order why those arrival authorizations are not excess capacity. Independence Air ceased all operations on January 6, and because arrival authorizations cannot be sold, leased, or transferred except on a one-for-one basis under the August 2004 order,[5] they have been dormant since that date. The FAA does not consider the Independence Air arrival authorizations to be excess capacity, because when negotiating schedule reductions in anticipation of the August 2004 order, the FAA had to allocate arrival authorizations in some peak afternoon and evening hours at levels that exceed the peak-hour target of eighty-eight scheduled arrivals per hour. The Independence Air arrival authorizations, particularly in the peak afternoon and evening hours, if unused, would help to offset these periods of continued scheduling over the operational target.

Despite the fact that some peak afternoon and evening hours continue to exceed our preferred scheduling limits, the City and the Airports Council International—North America assert that the FAA should reallocate Independence Air's arrival authorizations to other air carriers. However, the August 2004 order does not contain a usage requirement that would require Independence Air or any other air carrier to surrender any arrival authorization after a period of non-use.[6] In addition, the August 2004 order lacks an agreed upon reallocation mechanism for any arrival authorization that might be voluntarily surrendered. By contrast, the pending rulemaking to reduce congestion and delay at O'Hare includes proposed use-or-lose standards and allocation procedures that, if adopted, could permit the allocation of unused and underutilized arrivals.

Therefore, in order to permit the FAA the flexibility to recover unused arrival authorizations and to reallocate them if appropriate, the FAA reserves the right to terminate the August 2004 order before October 28, 2006, to coincide with an earlier date on which the final rule might take effect. At the same time, the FAA is cognizant of the scheduling practicalities and seasonal scheduling changes that are endemic to air carrier operations, and in considering whether to terminate early the August 2004 order, the FAA will primarily consider the potential operational burden such a decision might have.

The City also asks the FAA to modify the August 2004 order to forgo all limitations on international operations at O'Hare. The City previously raised this issue at several junctures in this docket, and the FAA addressed the matter in detail when extending the August 2004 order in March 2005.[7] The City also filed similar comments in the public docket associated with the related rulemaking proceeding, which is a forum more suited to addressing the policy questions that the City raises. Because the present proceeding is limited to the contemplated short-term extension of the August 2004 order, and because the FAA will address the merits of the City's comments in the rulemaking process, the FAA declines to alter the August 2004 order as the City requests at this time.

Conclusion

The FAA proposed to extend the August 2004 order through October 28, 2006, on the basis of its tentative finding that such an extension is necessary to prevent a recurrence of overscheduling at O'Hare. After considering the responses, the FAA has determined to make this finding final and to extend the order through October 28, 2006, reserving the right to terminate the August 2004 order earlier if a final rule on congestion and delay reduction at O'Hare takes effect before October 28, 2006.

Accordingly, with respect to scheduled flight operations at O'Hare, *it is ordered that:*

1. Ordering paragraph seven of the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport is amended to state that the order shall expire at 9 p.m. on October 28, 2006, unless earlier terminated by the Administrator.

Issued in Washington, DC, on March 27, 2006.

Joseph A. Conte,

Acting Assistant Chief Counsel, Regulations Division.

[FR Doc. 06–3113 Filed 3–28–06; 11:20 am]

BILLING CODE 4910–13–P

[4] Mar. 21, 2005, Order at 5–8.

[5] Aug. 18, 2004, Order at 43–44 (ordering paragraph six).

[6] Aug. 18, 2004, Order at 35–36.

[7] Mar. 21, 2005, Order at 9–10.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–08]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 20, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2006–24203 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lender (202) 267–8029 or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 27, 2006.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions For Exemption

Docket No.: FAA–2006–24203.

Petitioner: AFT Group d/b/a Southwest Airframe.

Section of 14 CFR Affected: 14 CFR 145.109(d).

Description of Relief Sought: This exemption, if granted, would exempt the AFT Group from the requirement to maintain a library of data under 14 CFR 145.109(d). The AFT Group performs work at customers' facilities and has access to appropriate data that has been maintained current by the customer and that is made available to AFT Group for AFT Group's use on a particular project.

[FR Doc. E6–4724 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be on May 17, 2006, at 10 a.m.

ADDRESS: The meeting will take place at the Federal Aviation Administration, 700 Independence Avenue, SW., Washington, DC 20591, 4th floor, Southeast Town Center Suite.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on November 9, 2005, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda includes:

- ISO Feedback.
- Future of ARAC.
- Presentation.
- Nominations to the vacant ''Assistant Chair'' positions.
- Issue Area Status Reports from Assistant Chairs.
- Remarks from other EXCOM members.

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by May 5. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by May 5 to present oral statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, March 28, 2006.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. E6–4714 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems Second Joint Plenary Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 205/EUROCAE Working Group 71 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems.

DATES: The meeting will be held April 24–28, 2006 starting at 8:30 a.m.

ADDRESSES: The meeting will be held at The Boeing Company, 3855 Lakewood Blvd, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 205/EUROCAE Working Group 71 meeting.

Note: On arrival at Boeing please have photo identification available (either a passport, a drivers license bearing a photograph or an identity card) to assist in your badge being issued.

- April 24:
- Sub-group Meetings—Times per sub-group leaders
- New Member Orientation

- Committee Operations Tutorial
- Web site Tutorial
- April 25:
- Registration
- Opening Plenary Session (Welcome and Introductory Remarks, Review/Accept Meeting Agenda and of Previous Minutes)
- Discussion of Terms of Reference (TOR)–13 Method of Accomplishment
- Report of Sub-Group Activities
- Other Committee/Other Documents Interfacing Personnel Reports
- Sub-group leaders to identify any common SG issues and chairs to identify the lead SG to coordinate the resolution.
- Invited Guest Speaker—if scheduled
- Review Committee Text Approval Process
- Sub-Group Break Out Sessions
- April 26:
- Executive Committee and SC Chairs/Secretaries Meeting
- Sub-Group Break Out Sessions
- Sub-Group Joint Sessions (Other Joint Sessions as Required)
- April 27
- Sub-Group Break Out Sessions
- Sub-Group Joint Sessions (Other Joint Sessions as Required)
- April 28:
- Sub-Group Reports (including Sub-group Product Outline Tracking)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Meeting Evaluation, Adjourn)
- Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 21, 2006.

Francisco Estrada, C.,

RTCA Advisory Committee.

[FR Doc. 06–3110 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 147 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held April 27, 2006, starting at 9 a.m.

ADDRESSES: The meeting will be held at Embassy Suites Hotel, 2577 W. Greenway Rd., Phoenix, AZ 85023.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 147 meeting. The agenda will include:

- April 27:
- Opening Session (Welcome and Introductory Remarks, Review/Approve meeting agenda for 62nd meeting, Review/Approve Summary of Previous Meeting, Review of Open Action Items).
- FAA TCAS II Program Office activities and charter.
- Plenary and working group leadership changes.
- SC–147 Activity Reports.
- Surveillance Working Group: Hybrid Surveillance MOPS.
- Operations Working Group: ''Adjust Vertical Speed, Adjust'' RAs.
- Requirements Working Group (RWG).
- Closing Session (Other Business, Future Actions/Activities, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 27, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–3138 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24147]

Notice of Request for Clearance of a New Information Collection: Assessing the Effectiveness of the Arbitration Program as a Means of Settling Household Goods Disputes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FMCSA's plan to submit the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval. The ICR is related to the current arbitration dispute resolution procedures used to settle loss and damage claims by shippers who have contracted with household goods (HHGs) carriers for interstate transport of their household goods shipments. On October 24, 2005, the agency published a **Federal Register** notice with a 60-day comment period to solicit the public's views on the information collection pertaining to this subject. One comment was received.

DATES: Comments must be submitted on or before May 1, 2006. A comment to OMB is most effective if OMB receives it within 30 days of this publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention DOT/FMCSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Ruban, (202) 385–2400, Commercial Enforcement Division (MC–ECC), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This package contains the following supplementary information:

Title: Assessing the Effectiveness of the Arbitration Program as a Means of Settling Household Goods Disputes.

OMB Control Number: 2126–XXXX.

Type of Request: New information collection.

Background: The Secretary of Transportation (Secretary) is authorized

to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct interstate transportation services only if they are registered pursuant to 49 U.S.C. 13901. As a condition of registration under 49 U.S.C. 13902 and 13903 [The Interstate Commerce Commission Termination Act of 1995 (ICCTA), (Pub. L. 104–88, 109 Stat. 803), (now codified at 49 U.S.C. 14708(a))], a carrier providing transportation of household goods subject to jurisdiction under subchapters I or III of chapter 135, title 49, U.S.C., must agree to offer arbitration to HHGs shippers as a means of settling disputes concerning damage or loss to the household goods transported, and to determine whether carrier charges, in addition to those collected at delivery, must be paid by shippers for transportation and services related to transportation of household goods [Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144, Aug. 10, 2005 (H.R. 3, Sec. 4208. Arbitration Requirements)].

Under 49 U.S.C. 14708(g), the Secretary is required to complete an assessment of the dispute settlement program and if, after notice and opportunity for comment, it is determined that changes to the program are necessary, the Secretary will implement such changes and provide a report to Congress on the changes made. The General Accountability Office (GAO) recommended such an assessment in their March 2001 review (Report Number GAO–01–318). The Secretary has delegated authority pertaining to these registrations and arbitration matters to FMCSA.

Since the passage of the ICCTA, the level of Federal involvement in mitigating interstate HHGs disputes has been significantly reduced. FMCSA is responsible for overseeing the arbitration process, but has provided only limited attention, staffing, and resources to this non-safety related function. Shippers of household goods unhappy about loss or damage to property during their move with an interstate HHGs carriers may follow one of several paths to settle disputes as follows: (1) File a complaint with consumer assistance organizations or FMCSA; (2) agree to participate in a binding arbitration process with the American Moving and Storage Association (AMSA) or some other organization that runs an arbitration process; or (3) pursue civil litigation. Each carrier providing transportation of household goods must agree to offer to shippers of HHGs neutral arbitration, as well as a concise easy-to-read, accurate summary of the arbitration procedure, any applicable costs, and disclosure of the legal effects of election to utilize arbitration and inform shippers about the availability of this process to resolve complaints (49 U.S.C. § 14708(a) and (b)(2)). As mandated by Congress, FMCSA is required to determine the effectiveness of arbitration as a means of settling HHGs disputes from the point of view of both interstate shippers and carriers. The increasing number of consumer complaints related to HHGs shipments received by FMCSA and other consumer protection organizations demonstrates the current need for such an assessment.

Frequency: Annually.

Respondents: Household goods shippers and carriers.

Estimated Number of Respondents: 324 [100 respondents × 3 surveys + 24 respondents × 1 survey = 324 respondents].

Average Burden per Response: 30 minutes per survey.

Total Annual Hours Requested: The estimated total annual burden is 162 hours for the information collection comprised of four arbitration satisfaction surveys—one for HHGs arbitration users, one for HHGs arbitration complainants, one for HHGs carriers; and one for HHGs arbitration filers who have filed complaints with FMCSA [100 respondents × 3 surveys + 24 respondents × 1 survey × 30 minutes/60 minutes = 162 hours].

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of FMCSA, including whether the information will have practical utility; (b) the accuracy of the estimated burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, without reducing the quality of the collected information. All responses to this notice will be summarized and included in the request for OMB approval.

Issued on: March 24, 2006.

Annette M. Sandberg,

Administrator.

[FR Doc. E6–4684 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5578, FMCSA–99–6156, FMCSA–99–6480, FMCSA–2002–13411, FMCSA–2003–16241, FMCSA–2003–16564]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 16 individuals. FMCSA has statutory authority to exempt individuals from its vision standards if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 14, 2006. Comments must be received on or before May 1, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–99–5578, FMCSA–99–6156, FMCSA–99–6480, FMCSA–2002–13411, FMCSA–2003–16241 and FMCSA–2003–16564, using any of the following methods.

- Web site: *http://dmses.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information

provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** Notice published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@fmcsa.dot.gov* FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This Notice addresses 16 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 16 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Lawrence M. Daley
Clifford H. Dovel
Glenn E. Gee
Robert N. Heaton
Laurent G. Jacques
Jay W. Jarvis
Michael W. Jones
Earl E. Martin
Craig W. Miller
Jack D. Miller
Eric M. Moats, Sr.
Robert W. Nicks
Tommy L. Ray, Jr.
Wolfgang V. Spekis
Edward J. Sullivan
Steven L. Valley

These exemptions are extended subject to the following conditions: (1) That each individual have an examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 16 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 67 FR 10475; 69 FR 8260; 64 FR 54948; 65 FR 159; 67 FR 17102; 69 FR 17267; 64 FR 68195; 65 FR 20251; 67 FR 76439; 68 FR 10298; 68 FR 61857; 68 FR 75715; 68 FR 74669; 69 FR 10503). Each of these 16 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 1, 2006.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31315 and 31136(e) can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequently comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 16 individuals from the vision requirement in 49 CFR 391.41(b)(10). That final decision to grant the exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its Notices of applications. Those Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties possessing information that would suggest that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e), FMCSA will take immediate steps to revoke the exemption(s) in question.

Issued on: March 24, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–4683 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Request for Emergency Processing of Collection of Information by the Office of Management and Budget

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking an extension of the following currently approved information collection activities. These information collection activities received a six-month emergency approval from OMB. FRA seeks this extension while it works on developing a proposed rule related to the same topic of railroad operating rules. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 30, 2006.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0568.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Mr. Angelo at *victor.angelo@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–20, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

OMB Control Number: 2130–0568.

Title: FRA Emergency Order No. 24, Notice No. 1.

Abstract: The collection of information is due to a recent rash of railroad accidents caused by human failure to properly set hand-operated main track switches in non-signaled territory. FRA has determined that public safety compels the issuance of Emergency Order No. 24 and necessitates this collection of information in order that railroads modify their operating rules and take certain other actions necessary to ensure that their employees who operate hand-operated main track switches in non-signaled territory restore the switches to their proper (normal) position after use. The Emergency Order is intended to reduce the risk of serious injury or death both to railroad employees and the general public.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads; 100,000 Railroad Employees.

Frequency of Submission: One-time; On occasion.

REPORTING BURDEN

Emergency order item no.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
(1)—Instruction On Railroad Operating Rule—Operation of manual main track switches in non-signal territory.	685 Railroads; 100,000 employees.	100,000 instruction sessions.	60 minutes	100,000 hours	$4,700,000.
—Instruction Records	685 Railroads	100,000 records ...	2 minutes	3,333 hours	$126,654.

REPORTING BURDEN—Continued

Emergency order item no.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
(2) Hand-Operated Main Track Switches—Confirmation of Switch Position.	6,000 Dispatchers	60,000 verbal confirmations.	30 seconds	500 hours	$20,500.
—Review of SPAF by Train Dispatcher.	6,000 Dispatchers	15,000 reviews	5 seconds	21 hours	$987.
(3) Switch Position Awareness Form (SPAF).	100,000 employees.	20,000 forms	3 minutes	1,000 hours	$47,000.
(4) Job Briefings	100,000 employees.	60,000 briefings ...	1 minute	1,000 hours	$47,000.
(5) Radio Communication—Crewmember communication with engineer.	100,000 employees.	60,000 verbal communications.	15 seconds	250 hours	$11,750.
—Notation of Inoperable Radio on SPAF.	900,000 Crew members.	500 form entries ...	5 seconds	3 hours	$141.
(6) Operational Tests and Inspections	685 Railroads	Burden Covered Under OMB No. 2130–0035.	Burden Covered Under OMB No. 2130–0035.	Burden Covered Under OMB No. 2130–0035.	Burden Covered Under OMB No. 2130–0035
(7) Distribution of Emergency Order—Copies to Employees.	685 Railroads; 100,000 Employees.	100,000 copies	2 seconds	56 hours	$2,128.
—Written Receipt and Acknowledgment of Copy.	685 Railroads; 100,000 Employees.	100,000 receipts + 100,000 records.	1 second + 1 second.	56 hours	$2,380.
(8) Relief—Petitions For Special Approval.	685 Railroads	10 petitions	60 minutes	10 hours	$380.

Total Responses: 715,510.

Total Annual Estimated Burden: 106,229 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 6, 2006.

Belinda Ashton,

Acting Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–3479 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of March 9, 2006, Meeting with VISA Participants.

The VISA program requires that a notice of the time, place, and nature of each JPAG meeting be published in the **Federal Register**. The program also requires that a list of VISA participants be periodically published in the **Federal Register**. The full text of the VISA program, including these requirements, is published in 70 FR 55947–55955, dated September 23, 2005.

On March 9, 2006, the Maritime Administration (MARAD) and the U.S. Transportation Command (USTRANSCOM) co-hosted a meeting of the VISA JPAG at the Military Sealift Command in Washington, DC. Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 52 U.S.-flag carrier corporate participants enrolled in the VISA program only the 13 companies whose vessels were modeled in the Department of Defense's Mobility Capabilities Study (MCS) were invited to the JPAG meeting. A representative for maritime labor also participated in the meeting. In addition, representatives from MARAD and the Department of Defense attended the meeting.

James Caponiti, Associate Administrator for National Security for MARAD and Margaret Leclaire, Deputy Director, Strategy, Plans, Policy and Programs for USTRANSCOM welcomed the participants. Both Mr. Caponiti and Ms. Leclaire noted that they expected the meeting would provide sealift planners with a better appreciation of how industry could provide additional commercial sealift resources to meet Department of Defense (DOD) requirements.

The meeting was a follow-on meeting to the December 5, 2005, JPAG meeting which focused on the overall structure and findings of DOD's Mobility Capabilities Study (MCS). The purpose of the meeting was to address questions raised by DOD related to the MCS at the December meeting. The discussion of questions and responses was led by Mr. Caponiti. Industry representatives expressed that DOD needed to provide more clarification on possible scenarios where commercial sealift might be used to meet DOD requirements. It was noted that if industry had a clear indication of the types of cargo to be moved, timelines, and the various locations of cargo origin and destination, they could provide DOD information on how requirements could be satisfied in the most effective manner by commercial carriers. As a result of the discussion, industry and government officials agreed that a future JPAG table top exercise would be the best method to address industry capabilities to meet DOD requirements.

As of March 9, 2006, the following commercial U.S.-flag vessel operators were enrolled in the VISA program with MARAD: AAA Shipping No. 1 L.L.C.; A Way to Move, Inc.; America Cargo Transport, Inc.; American Automar, Inc.; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; American Shipping Group; APL Marine Services, Ltd.; Beyel Brothers Inc.; Canal Barge Company, Inc.; Central Gulf Lines, Inc.; Cherokee Nation

Distributors; Coastal Transportation, Inc.; Columbia Coastal Transport, LLC; CP Ships USA, LLC; CRC Marine Services, Inc.; Crowley Liner Services, Inc.; Crowley Marine Services, Inc.; Farrell Lines Incorporated; Fidelio Limited Partnership; Foss Maritime Company; Horizon Lines, LLC; Laborde Marine Lifts, Inc.; Laborde Marine, L.L.C.; Liberty Global Logistics, LLC; Liberty Shipping Group Limited Partnership; Lockwood Brothers, Inc.; Lynden Incorporated; Maersk Line, Limited; Marine Transport Management; Matson Navigation Company, Inc.; Maybank Navigation Company, LLC; McAllister Towing and Transportation Co., Inc.; Northland Services, Inc.; OSG Car Carriers, Inc.; Pasha Hawaii Transport Lines LLC; Patriot Shipping, L.L.C.; Patriot Titan LLC; Red River Holdings LLC; Resolve Towing & Salvage, Inc.; Samson Tug & Barge Company, Inc.; SeaTac Marine Services, LLC; Sealift Inc.; Signet Maritime Corporation; Smith Maritime; Stevens Towing Co., Inc.; Strong Vessel Operators LLC; Superior Marine Services, Inc.; Trailer Bridge, Inc.; TransAtlantic Lines LLC; Troika International, Ltd.; and Waterman Steamship Corporation.

Contact Person for Additional Information: Mr. Taylor E. Jones II, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.

Dated: March 28, 2006.

Joel C. Richard,

Secretary.

[FR Doc. E6–4725 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

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** Notice with a 60-day comment period was published on January 4, 2006.

DATES: Comments must be submitted on or before May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Carman Hayes National Highway Traffic Safety Administration, Office of Injury Control Operations & Resources (NTI–200), 202–366–2685, 400 Seventh Street, SW., 5119E, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR Part 1313 Certificate Requirements for Section 410 Alcohol Impaired Driving Countermeasures.

OMB Number: 2127–0501.

Type of Request: Extension of a currently approved collection.

Abstract: Title 23 of the U.S. Code established a federal alcohol incentive grant program designed to encourage State to enact strong, effective anti-drunk driving legislation and improve the enforcement of these laws.

Affected Public: All 50 States, District of Columbia, Puerto Rico, and the Territories.

Estimated Total Annual Burden: 51,530 hours.

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 Departments 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 23, 2006.

Marlene Markison,

Associate Administrator for Office of Injury Control Operations & Resources.

[FR Doc. E6–4682 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–2006–24293]

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** Notice with a 60-day comment period was published on January 10, 2006 (71 FR 1583).

DATES: Comments must be received on or before May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Dana Sade, Office of Chief Counsel, NCC–110, telephone (202) 366–1834, fax (202) 366–3820; NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Designation of Agent for Service of Process.

OMB Control Number: 2127–0400.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a previously approved collection.

Affected Public: Business or other for-profit.

Form Number: N/A.

Abstract: This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (''foreign manufacturers''). Section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. 30164) requires a foreign manufacturer offering a motor vehicle or motor vehicle equipment for importation into the United States to designate a permanent resident of the United States as its agent upon whom service of notices and processes may be made in administrative and judicial proceedings. These designations are required to be filed with NHTSA. NHTSA requires this information in case it needs to advise a foreign manufacturer of a safety related defect

in its products so that the manufacturer can, in turn, notify purchasers and correct the defect. This information also enables NHTSA to serve a foreign manufacturer with all administrative and judicial processes, notices, orders, decisions and requirements.

NHTSA recently amended the regulation implementing that statutory requirement, codified at 49 CFR part 551, subpart B, rephrasing it in a plain language, question and answer format and inserting an appendix containing a suggested designation form for use by foreign manufacturers and their agents. The purpose of the suggested designation format was to simplify the information collection and submission process, and thereby reduce the burden imposed on each covered manufacturer by 49 CFR part 551, subpart D. To further streamline the information collection process, NHTSA has set up a customer Web site that may be accessed at *http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html.*

Estimated Annual Burden: 120 hours.

Estimated Number of Respondents: 240 respondents.

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.

The Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: March 28, 2006.

John Donaldson,

Assistant Chief Counsel for Legislation and General Law.

[FR Doc. E6–4716 Filed 3–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5712 and 5712–A

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 Form 5712, Election To Be Treated as a Possessions Corporation Under Section 936, and Form 5712–A, Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5).

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as a Possessions Corporation Under Section 936 (Form 5712), and Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5) (Form 5712–A).

B Number: 1545–0215.

Form Number: Forms 5712 and 5712–A.

Abstract: Domestic corporations may elect to be treated as possessions corporations on Form 5712. This election allows the corporation to take a tax credit. Possession corporations may elect on Form 5712–A to share their taxable income with their affiliates under Internal Revenue Code section 936(h)(5). These forms are used by the IRS to ascertain if corporations are entitled to the credit and if they may share their taxable income with their affiliates.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 7 hrs., 2 min.

Estimated Total Annual Burden Hours: 7,037.

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 20, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4669 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–67

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 2002–67, Settlement of section 351 Contingent Liability Tax Shelter Cases.

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Settlement of Section 351 Contingent Liability Tax Shelter Cases.

OMB Number: 1545–1808.

Revenue Procedure Number: Revenue Procedure 2002–67.

Abstract: Revenue Procedure 2002–67 prescribes procedures for taxpayers who elect to participate in a settlement initiative aimed at resolving tax shelter cases involving contingent liability transactions that are the same or similar to those described in Notice 2001–17 (''contingent liability transaction''). There are two resolution methodologies: a fixed concession procedure and a fast track dispute resolution procedure that includes binding arbitration.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 150.

Estimated Average Time per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 7,500.

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 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4670 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8

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 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedures should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8.

Abstract: The information requested in these revenue procedures is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 83,068.

Estimated Time Per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 177,986.

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 22, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4672 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–8–91]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, CO–8–91 (TD 8643), Distributions of Stock and Stock Rights (Section 1.305–5(b)(5)).

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Distributions of Stock and Stock Rights.

OMB Number: 1545–1438.

Regulation Project Number: CO–8–91.

Abstract: The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 333.

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 22, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4675 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 982

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 Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

OMB Number: 1545–0046.

Form Number: 982.

Abstract: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or a qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, Federal government and state, local or tribal government.

Estimated Number of Responses: 667.

Estimated Time Per Response: 10 hrs. 45 min.

Estimated Total Annual Burden Hours: 7,171.

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 20, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4676 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–A

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 Form 1120–A, U.S. Corporation Short-Form Income Tax Return.

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Corporation Short-Form Income Tax Return.

OMB Number: 1545–0890.

Form Number: 1120–A.

Abstract: Form 1120–A is used by small corporations with less than $500,000 of income and assets to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether these corporations have correctly computed their tax liability.

Current Actions: Two line items have been added to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Responses: 262,446.

Estimated Time per Respondent: 74 hours, 47 minutes.

Estimated Total Annual Burden Hours: 19,626,221.

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 22, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4677 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8800

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 Form 8800, Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

OMB Number: 1545–1057.

Form Number: Form 8800.

Abstract: Form 8800, Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts, is used by partnerships, REMIC, and by certain trusts to request an additional extension of time (up to 3 months), to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 484,393.

Estimated Time per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 92,093.

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 20, 2006

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4678 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–27–83; LR–54–85]

Proposed Collection; Comment Request for Regulation Project

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 existing temporary regulations, LR–27–83 (TD 7882), Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks (Section 145.4051–1) and LR–54–85 (TD 8050), Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements (Section 145.4052–1).

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: (LR–27–83) Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and (LR–54–85) Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

OMB Number: 1545–0745.

Regulation Project Number: LR–27–83; LR–54–85.

Abstract: LR–27–83 requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser musts be registered and the purchaser must give the seller a resale certificate.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,100.

Estimated Time per Respondent: 1 hour, 1 minute.

Estimated Total Annual Burden Hours: 4,140.

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 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4679 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208172–91]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, REG–208172–91 [TD 8787], Basis Reduction Due to Discharge of Indebtedness, (§§ 1.108–4,and 1.1017–1).

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Basis Reduction Due to Discharge of Indebtedness.

OMB Number: 1545–1539.

Regulation Project Number: REG–208172–91.

Abstract: This regulation provides ordering rules for the reduction of bases of property under Internal Revenue Code sections 108 and 1017. The regulation affects taxpayers that exclude discharge of indebtedness from gross income under Code section 108. The collection of information is required for a taxpayer to elect to reduce the adjusted bases of depreciable property under section 108(b)(5), to elect to treat section 1221(l) real property as either depreciable property or depreciable real property, and to account for a partnership interest as either depreciable property or depreciable real property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Responses: 10,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

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 22, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4680 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production and Refined Coal Production, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2006

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 2006 as required by section 45(e)(2)(A) (26 U.S.C. 45(e)(2)(A)) and section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)).

SUMMARY: The 2006 inflation adjustment factor and reference prices are used in determining the availability of the credit for renewable electricity production and refined coal production under section 45.

DATES: The 2006 inflation adjustment factor and reference prices apply to calendar year 2006 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2006 sales of refined coal produced in the United States or a possession thereof.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2006 is 1.2981.

Reference Prices: The reference price for calendar year 2006 for facilities producing electricity from wind is 2.89 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $42.78 per ton for calendar year 2006. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production have not been determined for calendar year 2006. The IRS is exploring methods of determining those reference prices for calendar year 2007.

Because the 2006 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2006. Because the 2006 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section

45(e)(8)(B) does not apply to refined coal sold during calendar year 2006. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2006.

Credit Amount By Qualified Energy Resource And Facility, And Refined Coal: As required by section 45(b)(2), the 1.5-cent amount in section 45(a)(1), the 8-cent amount in section 45(b)(1), and the $4.375 amount in section 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2006 under section 45(a) is 1.9 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 0.9 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2006 under section 45(e)(8)(A) is $5.679 per ton on the sale of qualified refined coal.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:PSI:5, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3040 (not a toll-free call).

Heather Maloy,

Associate Chief Counsel (Passthroughs & Special Industries).

[FR Doc. E6–4668 Filed 3–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, Deletion of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Board of Veterans' Appeals (BVA) is deleting a system of records entitled, ''Representatives' Fee Agreement Records System,'' (81VA01), first published at 56 FR 18874 (April 24, 1991) and amended at 57 FR 8792 (March 12, 1992), 63 FR 37941 (July 14, 1998), and 66 FR 47725 (Sept. 13, 2001). The records in this system were merged into the system of records entitled, ''Veterans Appellate Records System—VA'' (44VA01), rendering 81VA01 superfluous. Notice of that merger was published at 70 FR 6079 (February 4, 2005).

A ''Report of Intent to Publish a **Federal Register** Notice of Deletion of a System of Records'' and an advance copy of the system notice have been provided to the appropriate Congressional committees and to the Director, Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

This system deletion is effective March 31, 2006.

Approved: March 17, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E6–4718 Filed 3–30–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
March 31, 2006

Part II

Social Security Administration

20 CFR Parts 404, 405, 416, and 422
Administrative Review Process for Adjudicating Initial Disability Claims; Final Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 416, and 422

RIN 0960–AG31

Administrative Review Process for Adjudicating Initial Disability Claims

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration is committed to providing the high quality of service the American people expect and deserve. In light of the significant growth in the number of disability claims and the increased complexity of those claims, the need to make substantial changes in our disability determination process has become urgent. We are publishing a final rule that amends our administrative review process for applications for benefits that are based on whether you are disabled under title II of the Social Security Act (the Act), or applications for supplemental security income (SSI) payments that are based on whether you are disabled or blind under title XVI of the Act. We expect that this final rule will improve the accuracy, consistency, and timeliness of decision-making throughout the disability determination process.

DATES: This rule is effective August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Chatel, Executive Director, Disability Service Improvement, Social Security Administration, 500 E Street, SW., Suite 854, Washington DC 20254, 202–358–6094 or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Introduction

Today, as part of our continuing efforts to make fundamental improvements in our disability decision-making, we are publishing this rule establishing our new disability determination process, known as the Disability Service Improvement (DSI) process. This rule explains our new procedures for adjudicating the disability portion of initial claims for Social Security disability insurance (DI) benefits and for supplemental security income (SSI) based on disability or blindness. The purpose of the rule is to improve the accuracy, consistency, and fairness of our disability determination process and to make the right decision as early in the process as possible.

Under this rule, the administrative review process consists of several steps, which must be requested within certain time periods. When you file for benefits, we will make an initial determination on your claim, and in certain circumstances refer your claim for a quick disability determination (QDD). If you are dissatisfied with our initial determination, you may request review by a Federal reviewing official. If you are dissatisfied with the Federal reviewing official's decision, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless your claim is referred to the Decision Review Board (DRB). When the DRB reviews your claim and issues a decision, that decision is our final decision. If you are dissatisfied with our final decision, you may seek judicial review in Federal district court.

Following is a description of our various initiatives towards improving the disability process, an explanation of the new process created by this rule, and a discussion of the comments that we received in response to our notice of proposed rulemaking (NPRM), 70 FR 43590 (July 27, 2005).

Background

During the five decades that have elapsed since its enactment, the DI program has provided many millions of disabled American workers and their families with critically needed income support. The SSI program, enacted 34 years ago, has similarly helped many millions of low income disabled individuals meet their basic needs. These two programs are a vital part of the nation's social insurance and income support systems.

The number of disability beneficiaries in our programs has grown significantly over the years. In January 2005, nearly eight million disabled workers and their dependents received DI benefits, double the number of beneficiaries in 1985 (about a 100% increase). Nearly six million disabled adults and children received SSI disability payments, more than double the number in 1985 (a 130% increase).

The adjudication of disability claims now constitutes the major part of our workload and nearly every one of our components has a role in administering the disability programs. In fiscal year 2005, the State disability determination services (DDSs) processed more than 2.6 million initial claims for DI benefits and SSI based on disability or blindness. Our hearing offices processed approximately 500,000 disability claims on behalf of claimants who appealed their denials.

As the disability programs have grown in both size and complexity, we have been increasingly challenged to provide the high quality of service that disabled claimants and the public expect and deserve. Over the last four years we have undertaken a number of major initiatives designed to fundamentally improve the administration of these programs.

To further one of those initiatives, on July 27, 2005, we published an NPRM that described the changes we have already begun and those we intend to make in the months to come to improve the accuracy, consistency, and fairness of our disability determination process, to make the right decision as early in the process as possible, and to assist disabled individuals who want to work to do so.

We determined that to accomplish these objectives, we needed a two-pronged strategy: (1) Strengthen our disability determination process through structural and qualitative change, and (2) make important institutional improvements to better support our disability programs. The important institutional improvements we are making include:

- Implementing a new electronic disability system;
- Establishing a new, integrated, and more comprehensive quality system;
- Enhancing our management information;
- Updating medical and vocational policy and strengthening our ability to address policy issues; and
- Implementing new work opportunity initiatives.

These improvements go hand-in-hand with the process changes that we are making in this rule. Both are essential if our disability programs are to meet the needs of the claimants and public whom we serve.

A New Electronic Disability System

At this time, we are well along in replacing our old paper disability approach with an electronic system that will enable us to handle all new claims in an expedited manner. Each component in our adjudicative process, from beginning to end, is increasingly able to process claims electronically. This new electronic system, which we

call eDib, permits us to avoid delays that result from having to mail, locate, and organize paper folders. It also enables more than one employee or component to work on a claim at the same time, thus speeding up the process. Medical records can be quickly scanned into the system and made readily accessible to adjudicators. The electronic system also includes safeguards to help adjudicators avoid mistakes, which will result in more accurate decision-making. It also protects the confidentiality of claimant information.

The implementation of this new electronic system has progressed rapidly. All of our 1,338 field offices are now using the Electronic Disability Collect System (EDCS), taking 20,000 claims per day. This system enables them to immediately transfer a disability claim to a DDS, thus avoiding delays.

The rollout of eDib in the DDSs has been phased in gradually so that we can provide each DDS with the support needed for successful implementation. Once rollout begins in a DDS, the number of DDS decision-makers working with electronic folders gradually expands as the DDS develops expertise with the process. To date, all of the 50 States have rolled out the electronic disability folder. Nationally, over 80% of DDS decision-makers are now adjudicating cases in an electronic environment.

In January 2005, the Mississippi DDS became the first in the nation to start processing its cases in a totally electronic environment. Another 20 States have joined Mississippi and are processing all new disability claims in a totally electronic environment, thus eliminating the need for a paper folder. We plan to continue implementation in the DDSs in 2006.

Within the Office of Hearings and Appeals (OHA), all of our hearing offices are outfitted with our new electronic Case Processing and Management System (CPMS), which controls case flow and provides current management information. In addition, hearing offices in 47 States are equipped to work cases electronically.

eDib also improves our ability to manage decisional quality. Access to the electronic folder provides quality reviewers greater flexibility. This will allow us to transition to our new quality system that will rely on both in-line and end-of-line reviews and will provide timely and efficient feedback to decision-makers to enable them to improve how we administer our programs.

In 2006, each of the field offices, DDSs, and hearing offices will be processing workloads with electronic disability folders on a regular basis.

A New Quality System

Over the last two years we have been designing a new integrated quality system that we believe will significantly improve our disability determination process as well as other program areas within our responsibility, including the Social Security retirement program and the SSI age-based program. We expect to begin the implementation of our new quality system this spring. This system employs a multi-dimensional definition of quality that includes five elements: accuracy, service, timeliness, productivity, and cost. It will emphasize in-line, as well as end-of-line, quality assurance.

The new, comprehensive quality system will be implemented throughout our Agency, including in teleservice centers, program service centers, field offices, DDSs, and hearing offices, as well as for the Federal reviewing official, Medical and Vocational Expert System (MVES), and the DRB. The centrally-managed quality system will replace the current regionally-based Disability Quality Branches that review State DDS determinations.

Data will be gathered in-line and end-of-line to provide timely, meaningful feedback. Specialized units comprised of trained employees who will be responsible for fostering continuous improvements in the Agency's work products will work together with employees in all components to improve the process on an ongoing basis. Quality will not be separate from, but will be integrated into every step of, the process.

The new quality system is being designed to improve accountability and to provide feedback to adjudicators at all administrative levels, including the individual, unit, component, State, region, and headquarters. The system will provide administrators with the detailed data they need to understand the strengths and weaknesses of their performance, and what they need to do to improve it. To ensure successful implementation, we will be providing training so that employees will understand what is expected of them and will be able to fulfill their responsibilities. This will improve the quality of our decisions throughout the disability determination process.

Improving Management Information

The new DSI process that we describe below is intended to improve our service to the public. Critical to achieving this objective is having the management information that is needed to measure both the overall impact of the new disability determination process and the effectiveness of its component parts.

We are currently undertaking a major effort to enhance our management information capacity. We anticipate that these enhancements will not only improve our current capability to perform such ongoing functions as tracking program and administrative costs, but will also help us measure the success of the new DSI process. These enhancements will enable us to determine whether our performance matches our business goals, and whether these changes result in the intended objectives.

For example, we will be able to answer the following types of questions:

- Did overall disability processing time improve? Did the new QDD process contribute to that improvement?
- Did our new Medical and Vocational Expert System (MVES) enhance adjudicators' access to the medical and vocational expertise they need to make better decisions?
- Did the accuracy, timeliness, and consistency of decisions improve as a result of our new in-line and end-of-line quality initiatives?

We intend to use our improved management information tools dynamically, resolving management problems as we find them, and making continuous improvements as the new process is rolled out.

Improvements in Policy

We are undertaking a major effort to review, and update if necessary, our medical and vocational policies and to improve our capacity to identify and make needed changes in our disability policies and procedures.

Medical Policy. As part of this effort, we have implemented a new business process to streamline the updating of our medical listings.

In fiscal year 2005, we published revised medical criteria for malignant neoplastic diseases, impairments that affect multiple body systems, and genitourinary impairments. In addition, we provided timely cross-component training and guidance on these provisions. We also published an NPRM for vision impairments. We will continue to update additional medical listings throughout fiscal year 2006. For example, the final cardiovascular listing was published in January 2006.

We have taken steps to increase outside participation in the development of our medical listings. As a first step, we now publish an advance

NPRM to encourage members of the public to comment on the current medical criteria and to provide suggestions on how the medical criteria could be updated.

In fiscal year 2005, we published advance notices involving impairments related to the respiratory and endocrine systems, growth impairments, and neurological impairments, as well as portions of the special senses (hearing impairments and disturbances of the labyrinthine-vestibular function). We also proposed the development of a new listing covering language and speech impairments.

Following up on the advance notices, we have held numerous public outreach events. These sessions provide an opportunity for medical experts, claimants, and advocates to comment on our current policies and to advise us on the future content of the medical criteria.

Vocational Policy. We are working to update and clarify our vocational policy to assist adjudicators in the field. We recently published a Social Security Ruling to communicate the Supreme Court's decision on how adjudicators should apply our rules when determining whether a claimant can return to his/her past relevant work. We are also building a comprehensive policy access tool, known as Disability Online, which will give our adjudicators electronic access to all vocational rules and training materials.

Disability Program Policy Council. Recognizing the need for a more integrated approach in addressing policy issues, we are establishing a new Disability Program Policy Council (DPPC) that will be responsible for recommending changes in our disability policies and procedures to improve the quality of our disability determination process. This Council will be chaired by the Deputy Commissioner for Disability and Income Security Programs. It will include representatives from components that are responsible for policy and for the operations of the disability determination process, as well as the Office of Quality, the Office of the General Counsel, and the DRB. The Council will serve as a forum for making policy recommendations for consideration by the Commissioner.

Electronic Disability Guide. In support of our eDib initiative, we have created an electronic disability guide (eDG) for use by adjudicators. This guide consolidates disability policies and procedures in one convenient place and serves as an instructional manual for processing disability claims as we transition from paper to an electronic environment. This electronic repository is also accessible to the public. It has proven to be extremely helpful when we discover policy or procedural weaknesses that arise with the conversion from our paper approach to our new electronic system. In such instances, we identify the problem, make necessary changes, and update our eDG repository accordingly so that they can be implemented immediately.

Our Work Opportunity Initiatives

In addition to the above improvements in our infrastructure, we are implementing a number of initiatives designed to encourage and assist individuals to participate in employment opportunities.

Our initiatives recognize that the DI and SSI programs serve a diverse population of individuals with disabilities. Our beneficiaries are from various age groups with different impairments, levels of education, work experience, and capacities for working. While many cannot work at all on a sustained basis, others may be able to work part time or full time with reasonable accommodations and/or ongoing supports. As we have been developing our return-to-work initiatives, we have been mindful that the unique needs of every beneficiary cannot be met by one return-to-work program. In conjunction with our plans to improve our disability determination process, we will be conducting a number of diverse demonstration projects aimed at helping individuals who want to work to do so. Our demonstration projects are as follows:

DI Benefit Offset Demonstration Project. We are developing a benefit offset demonstration that will reduce DI benefits by $1 for every $2 earned over a certain threshold. Currently, a beneficiary could lose DI entitlement, and therefore all benefit payments, as soon as earnings exceed the substantial gainful activity level. This potential loss of benefits and eventually the corresponding access to Medicare benefits is thought to discourage many beneficiaries from attempting to work. We are working with a contractor on the design, implementation, and evaluation of the project. The contractor also will develop a model that will test an early intervention strategy focusing on DI benefit applicants. Enrollments in the national project are expected by the end of this year.

At the same time, we are conducting a small DI benefit offset demonstration project in four States: Connecticut, Utah, Vermont, and Wisconsin. To date, approximately 200 beneficiaries are enrolled.

Youth Transition Projects. We have cooperative agreements in six States for the purpose of assisting youths with disabilities to successfully transition from school, which may include post-secondary education, to employment and ultimately economic self-sufficiency. The States have formed partnerships with Federal, State, and local entities to improve employment outcomes for persons who are age 14–25 and who receive SSI or DI benefits on the basis of their own disability. The projects are providing a broad array of transition-related services and supports for these individuals.

Accelerated Benefits. Under current law, there is a 24-month wait before Medicare is available to a person whom we determine to be disabled and eligible for DI. A contract was recently awarded to implement and evaluate the accelerated benefits demonstration project, which will provide immediate private health insurance to individuals who have medical impairments expected to improve within two to three years. Project participants will be recruited at the point that disability beneficiaries are informed of their benefit allowance. Participants will also be provided with employment supports with return to work as the goal at the end of the two to three-year time frame. At the end of the time frame, participants will be assessed to see whether they have medically improved. Enrollments are expected by the end of this year.

Mental Health Treatment Study. We will provide comprehensive health care to DI beneficiaries who have schizophrenia or affective disorders. The purpose of this study is to determine what treatment and support variables for persons with mental illness lead to better employment outcomes. The project will use provider networks that offer a range of psychiatric, pharmaceutical, and employment supports. The project will provide an individualized, comprehensive care and support plan for each participant. Services will be provided in 21 nationally representative sites across the United States. We expect participants will be enrolled by summer 2006.

Human Immunodeficiency Virus/ Auto-Immune Disorder (HIV/AI) Demonstration. The HIV/AI demonstration will provide support services and private health benefits to current DI beneficiaries with a diagnosis of HIV, immune disorder, and/or auto-immune disorder. The purpose of this California-based demonstration is to provide immediate access to comprehensive health care services and resources required for a successful

return to work. The health benefits will be designed to provide beneficiaries with HIV or other immune-related disorders with health coverage to ensure they receive necessary medical treatment for their impairments. Project participants will also receive employment service coordination. Each beneficiary enrolled will be assessed to determine the types of services and/or interventions needed for a sustained and successful return to work. An expert medical unit, comprised of medical specialists in the HIV/auto-immune field, will be established to provide expert guidance regarding issues relevant to this population.

Development of the New Disability Service Improvement Process

We believe that the improvements described above will provide a strong underpinning for the successful operation of our new DSI process. The new process will apply to claims for DI benefits and for SSI payments based on disability or blindness.

The new approach was presented to the Subcommittee on Social Security of the House Committee on Ways and Means in September 2003. As we discussed in the July 2005 NPRM, this initial presentation was followed by extensive discussions with all interested parties so that we could have the benefit of their views and recommendations in developing our new proposed rules. We met with hundreds of interested organizations, groups, and individuals, including Members of Congress and congressional staff; representatives of claimants and beneficiaries; organizations representing the legal and medical professions, including Federal judges; and organizations representing State and Federal employees who are engaged in the disability determination process. We also established an Internet site to provide additional access to individuals and organizations who wanted to submit their views and recommendations.

As a result of this outreach effort, the July 27, 2005 NPRM included numerous improvements over our original proposal. During the 90-day comment period after our NPRM was published, we received nearly 900 new written comments from interested individuals and organizations. We have carefully read and considered each of them. They are available on our Web site, *http://www.ssa.gov.*

The comments we received were detailed and insightful, and they have been extremely helpful to our deliberations. We deeply appreciate the extraordinary effort that was expended to help us make the decisions that are needed to bring about fundamental improvement in our disability process. The final rule that we are publishing today contains a number of changes from our NPRM and reflects the thoughtful input that the many individuals and organizations have provided. Below we discuss and respond to the significant comments; we have not addressed, however, most technical comments, those comments that are outside the scope of the NPRM, or those comments that do not otherwise require a response.

Summary of Differences Between the Proposed Rule and the Final Rule

Quick Disability Determinations

The proposed rule stated that in order for a State DDS to make a quick disability determination, a medical or psychological expert must verify the claimant's diagnosis. The final rule clarifies this language by providing that the expert must ''verify that the medical evidence in the file is sufficient to determine'' that the claimant's impairments meet the standards we establish for making QDDs. The final rule provides further that if there is disagreement between the examiner and the expert as to whether a claim meets the QDD standards, the claim will not be allowed as a quick disability determination. Rather, it will be transferred out of the QDD unit to be processed by the DDS in the normal manner.

The proposed rule established a 20-day processing standard for States to make QDDs, but did not address performance support for the States. The final rule keeps the 20-day processing standard but adds a provision stating that we may offer, or the State may request, performance support to assist a DDS in enhancing performance. If monitoring and review reveal that the processing standard is not met for one calendar quarter, we will provide mandatory performance support to a DDS. The preamble to the final rule also makes clear that we will not find that a State has substantially failed to meet our processing standard until the predictive model that is used to identify QDDs has been implemented and tested for one year. Thereafter, as new States begin implementation of the QDD process they will be given a six-month grace period before sanction provisions will be applied to them.

The proposed rule stated that when we provide notice of the initial determination, we would inform the claimant of the right to review by a Federal reviewing official. The final rule adds that the notice will also explain that the claimant has the right to be represented.

Medical and Vocational Expertise

The name of the expert system was changed in the final rule from Federal Expert Unit to Medical and Vocational Expert System (MVES). The rule clarifies the organizational structure to provide that the MVES will be comprised of a Medical and Vocational Expert Unit that will oversee a national network of medical, psychological, and vocational experts and will also maintain a national registry of vocational experts.

The proposed rule stated that the expert system would provide assistance to adjudicators at all levels of the disability review process. The final rule does not provide for assistance from the MVES in reviewing a claim at the DRB level.

The preamble to the proposed rule stated that we expect to issue qualification standards for experts on or before the issuance of a final rule, but that they would be published no later than six months after the effective date of the final rule. The preamble to the final rule states that we expect to issue initial qualification standards in the near future.

Federal Reviewing Official Level

We added language to the final rule to make it clear that a claimant may submit additional evidence to the Federal reviewing official even if that evidence is not originally submitted by the claimant when the claimant requests review. In addition, we added language in the final rule to make clear that a claimant may request additional time to file a request for Federal reviewing official review before the 60-day period has ended as well as after it has ended.

The proposed rule provided that a Federal reviewing official may remand a claim to the State DDS under specified circumstances. The final rule does not permit a Federal reviewing official to remand a claim to a State DDS but does permit the Federal reviewing official to ask the State agency to clarify or provide additional information about the basis for its determination. In such a situation, the Federal reviewing official retains the authority to make the decision as to whether a claimant is disabled.

The proposed rule did not address subpoena authority at the Federal reviewing official level. The final rule adds subpoena authority and states that the Office of the General Counsel may seek enforcement of the subpoena.

Administrative Law Judge Hearing Level

The proposed rule stated that claimants must submit evidence no later than 20 days before a hearing. The final rule provides that claimants must submit evidence no later than five business days before the hearing. The proposed rule stated that there were only two exceptions to the 20-day limit and both had to be raised at the hearing. The final rule makes clear that the five-day limit is subject to several exceptions, depending on when the claimant attempts to submit the additional evidence and expands the range of circumstances under which an administrative law judge may accept and consider evidence that the claimant does not submit timely.

The proposed rule stated that the administrative law judge must notify the claimant of the hearing date at least 45 days before the date of the hearing. The final rule states that the administrative law judge will notify the claimant of the time and place of the hearing at least 75 days before the date of the hearing.

The proposed rule provided that claimants must submit all available evidence that supports the claim, even evidence that might undermine or appear contrary to the allegations. The final rule states that claimants must provide evidence, without redaction, showing how their impairments affect functioning during the time they say they are disabled.

Decision Review Board

The final rule allows claimants whose claims are reviewed by the DRB to submit statements explaining why they agree or disagree with the administrative law judge's decision, regardless of whether the DRB requests the statement. The proposed rule provided that such statements may be no longer than three pages with typeface no smaller than 12 point font. The final rule provides that such statements may be no longer than 2,000 words and, if typed, that the typeface must be 12 point font or larger.

Reopening; Other Provisions

The proposed rule revised the current reopening criteria that allow us to reopen a determination or decision within one year of the date of the notice of initial determination for any reason. The proposed rule also deleted new and material evidence as a basis for finding good cause to reopen. Under the final rule, our existing reopening rules continue to operate for all claims adjudicated prior to the hearing level. The final rule only makes changes at the post-administrative law judge decision level so that once a decision is issued, reopening for good cause is limited to six months. Under the final rule, ''new and material evidence'' is not a basis for finding good cause in such circumstances.

The proposed rule stated that claimants may establish good cause for missing a deadline if they show that ''some other unusual and unavoidable circumstance'' beyond their control prevented timely filing. The final rule states that claimants can establish good cause for missing a deadline if they can show that ''some other unusual, unexpected, or unavoidable circumstance'' beyond their control prevented timely filing.

The proposed rule provided that discrimination complaints must be filed by a claimant within 60 days of the date upon which the claimant becomes aware of the discrimination. The final rule changes the date by which a claimant must file a discrimination claim with us from 60 days to 180 days of the date upon which the claimant becomes aware of the discrimination.

Implementation

The final rule changes this section by specifying that Boston is the first region for implementation and that we will wait at least one year after implementing in Boston before we implement in a second region. We added a provision to the final rule to address instances where a claimant moves from a region where DSI has been implemented to a region where it has not, and visa versa. In such situations, the claim will continue to be reviewed using the same procedures under which the claim was originally filed.

The final rule adds language making it clear that throughout the period during which we are implementing these new rules across the country, the Appeals Council will continue to perform the non-disability review functions and some of the other review functions that it currently performs (*e.g.*, review of retirement and survivors insurance cases and overpayment waiver claims).

Overview of the New DSI Process

In summary, the rule we are publishing today provides for the following:

- Individuals who are clearly disabled will have a process through which favorable determinations can be made within 20 calendar days after the date the DDS receives the claim.
- The Medical and Vocational Expert System will enhance the quality and availability of medical and vocational expertise that our adjudicators need to make accurate and timely decisions.
- A new position at the Federal level—the Federal reviewing official—will be established to review DDS initial determinations upon the request of the claimant.
- The right of claimants to request and be provided a de novo hearing conducted by an administrative law judge is preserved.
- The record will be closed after the administrative law judge issues a decision, with provision for good cause exceptions to this rule.
- A new body, the Decision Review Board, will be created to identify and correct decisional errors and to identify issues that may impede consistent adjudication at all levels of the process.
- The Appeals Council will be gradually phased out as the new process is implemented throughout the nation.

This final rule contains a significant number of changes designed to provide the high quality of service that the public expects and deserves. In drafting this final rule, we understood that, although there was broad agreement on the need for change, numerous commenters perceived our proposed rule as favoring administrative efficiency over fairness. Our expectation is that the changes we are making will give claimants a meaningful opportunity to present their claim and at the same time provide them with more accurate, consistent, fair, and timely decisions. Our improvements are aimed at strengthening the disability determination process from beginning to end. If, as implementation proceeds, we find that further improvements are needed, we will make them.

We also recognize that for various reasons many of our claimants need assistance in pursuing their claims, and we continually assist claimants throughout the claims process by:

- Obtaining information needed to support a claim;
- Arranging for a representative payee to assist in the development of the information for the claim and to administer the benefit payment, if a claimant is mentally incompetent;
- Providing extra assistance to the homeless to complete the proper forms and obtain evidence and an interpreter if the claimant has limited English proficiency, or is hearing impaired;
- Using the expedited procedures in place for terminal illness cases, military service casualties, severe impairment, and disaster cases;
- Explaining denial notices and how to file an appeal; and
- Referring claimants for services outside the scope of the Social Security

program using information and referral files that detail public and private agencies available in the service area to assist with housing, food, clothing, counseling, child care, medical needs, legal services, and other needs.

DDSs and hearing offices also have the responsibility of helping claimants who need assistance in collecting medical evidence. They request evidence from treating sources and arrange and pay for consultative examinations when medical evidence from a treating source is unobtainable or incomplete. Some field offices also have special arrangements with hospitals and mental institutions to obtain medical evidence. We are currently working with medical sources to encourage the submission of evidence electronically whenever possible in order to expedite the decisional process. Special arrangements are in place to obtain both medical and non-medical records from large governmental agencies such as the Department of Veterans Affairs, the Military Personnel Records Center, and the Division of Vital Statistics. Additionally, in 2005 we sponsored a national training conference to help educate DDS employees on how best to secure electronic medical evidence (EME). We also recently hosted a national outreach conference for major providers of EME to help them gain familiarity with new options for submitting EME.

As we roll out the new DSI process, we intend to continue and expand our efforts to ensure that all adjudicators make their disability determinations and decisions based upon a record that is as complete as possible. We intend to review and improve our informational services to claimants and to medical providers so that they will better understand what adjudicators need to make accurate determinations or decisions. As noted below, we also intend to develop requirements for training and certification of physicians who perform our consultative examinations to make certain that they understand our disability determination process and the information we need to make accurate determinations and decisions. We are developing templates that adjudicators will use when they request consultative examinations for common types of cases to ensure that the appropriate information is requested.

We have also been developing decisional templates for use by adjudicators at the DDS, Federal reviewing official, and administrative law judge levels that will assist them in writing decisions. Each of these levels of adjudication will have a template that is appropriate for that level. We believe that the use of these templates will help to ensure that disability claims are properly developed and that decisions are legally sustainable and consistent with our policies. These templates are being developed and tested in close consultation with adjudicators in the field. All adjudicators will receive training in their use.

Initial Determination Level

Quick Disability Determinations (QDDs)

We believe that many individuals who are clearly disabled are being required to wait too long to get DI or SSI payments based on disability or blindness. Therefore, as we proposed in our NPRM, this rule provides for establishing at the initial claims level a system for expediting fully favorable decisions for those individuals.

A predictive model will identify claims that involve a high potential that the claimant is disabled and that evidence of the claimant's allegations can be easily and quickly obtained. Through the predictive model, selected claims will be automatically referred from the field office to a State QDD unit. This rule provides that any State that currently performs the disability determination function will be deemed to have given us notice that it wishes to perform the QDD function. In order to participate in the QDD process, however, each DDS must establish a separate QDD unit to process the QDD claims.

Given the importance we assign to the QDD process, we believe that the DDS employees who are involved in making these decisions must be examiners who are experienced in making disability determinations. Several commenters opposed our decision to use experienced disability examiners for the QDD process. One commenter thought it would be a waste of resources, while another thought that we could use inexperienced examiners if we clearly delineated a set of conditions and symptoms that would establish disability. It was also suggested that this requirement might lead to a decline in the quality of cases that are not adjudicated by the QDD units. It is critical that QDDs be made both quickly and accurately. We intend that DDS administrators should use their considered judgment, assigning to the QDD unit those examiners who have demonstrated that they have the skills that are needed to meet our performance requirements. QDDs will be subject to both processing and quality standards, and it is important to us, to DDSs, and claimants that these standards be met.

We understand the concern expressed by smaller DDSs that have limited numbers of staff and want flexibility to assign them to where they are most needed. We intend that they will have that flexibility. For example, if the DDS director determines that an examiner is needed only half-time to carry out the QDD assignment, the DDS examiner may be assigned to non-QDD work as well as to the QDD unit.

The objective is to ensure that QDDs are processed by individuals with the knowledge, training, and experience to effectively carry out the QDD function and that they will be held accountable for performing this important task.

This rule makes clear that a QDD will be made using a team approach involving sign-off by both an examiner and a medical expert. The medical expert may be employed by or under contract with the DDS, or be part of the national network of medical experts that we maintain. The role of the expert will be to verify that the medical evidence that has been provided is sufficient to determine that a claim meets the standards relating to a claimant's medical condition established by us for making a QDD. If there is disagreement between the examiner and the expert as to whether a claim meets our QDD standards, the claim will not be allowed. Instead, it will be transferred out of the QDD unit to be processed by the DDS according to the date the claim originally was received by the QDD unit so that there will be no delay in making a determination regarding those claims.

This rule requires that the DDS meet timeliness standards for processing QDDs in order to retain their QDD adjudication responsibilities. We provide that QDD units must make favorable determinations for those who meet our QDD criteria within 20 calendar days after they receive a claim from the field office. (We also plan to carry out expedited pre-effectuation reviews of some of these determinations within this 20-day period.) If the QDD unit determines that a fully favorable determination cannot be made within 20 days of receiving the claim or if there is disagreement between the disability examiner and the medical or psychological expert, the DDS will transfer the claim out of the QDD unit and adjudicate it using its regular claim determination procedures.

One commenter indicated that the proposed regulation was not clear as to whether the 20-day restriction means 20 working days or 20 calendar days. The rule clearly defines ''day'' to mean calendar day, unless otherwise indicated. Thus, the 20-day time frame

for a QDD includes all weekends and holidays.

We will monitor the performance of the QDD units to ensure that these claims are being processed in conformance with our regulations. As with other claims, QDDs will be subject to quality review by the Office of Quality. We will also review claims that are transferred out of the QDD unit for regular adjudication to ascertain that these transfers are being made appropriately.

We will be issuing administrative guidance to the States which will further explain how we expect DDSs to carry out these requirements and the flexibility that they will be given to ensure that they can perform as required.

We anticipate that the number of QDD claims will initially be relatively small. As we gain experience with the new QDD system, we expect that the number and characteristics of claims that are identified as potential QDDs will gradually increase.

The predictive model that we will use to identify potential QDD claims will score claims by taking into account such factors as medical history, treatment protocols, and medical signs and findings. As noted above, those claims with scores that indicate a high likelihood of a quick allowance will be referred to a QDD unit.

We intend to carefully test the QDD predictive model to ensure its efficacy and integrity before we will implement the provision in this rule that requires a DDS to meet our processing requirements or be subject to sanction. In addition, this rule provides for performance support at any time that the regular monitoring and review process reveals that support could enhance performance. However, if for two or more consecutive calendar quarters a State agency falls below our 20-day QDD processing standard without good cause, we will notify the State agency that we propose to find that it has substantially failed to comply with our standards. After notice and opportunity for a hearing, if it is found that a State agency has substantially failed to meet our standards, we will assume responsibility for performing the QDD function. However, we will not make this finding with respect to any State agency until the model has been initially implemented and tested for one year. Additionally, as new States begin implementation of the QDD process they will be given a six-month grace period before our sanction provisions will be applied to them.

This rule provides that we will not impose sanctions if we determine that a State agency's failure to meet our requirements is the result of: a natural disaster that affects the agency's ability to carry out its work; strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function; or sudden and unanticipated workload changes that result from changes in Federal law, regulations, or written guidelines, systems modification or systems malfunctions, or rapid, unpredictable caseload growth for a six-month period or longer.

We intend to process presumptive disability and terminally ill cases under current procedures.

Requirements for DDS Determination Notices

This rule requires that DDS notices sent to claimants will explain in clear and understandable language the specific reasons for and the effect of the initial determination. Claimants must also be informed of the right to review by a Federal reviewing official and their right to representation. We believe that better articulation of the reasons for the determination will result in more accurate decisions and will assist in any further adjudication by a Federal reviewing official, an administrative law judge, or the DRB.

Response to Public Comments About Initial Determinations Including QDDs

While many commenters voiced broad support for the QDD process generally, some had questions about how it would operate. We have clarified that DDSs will adjudicate QDDs, using the same definition and procedural rules as are applied to all other initial determinations. Some comments suggested that State adjudicators should have the power to make determinations without the use of a medical or psychological expert. We are making clear that QDDs will require sign-off by both a disability examiner and a medical expert, reflecting our decision to maintain a team approach. Other comments revealed confusion regarding the role of the expert in making a QDD, and for clarity we have revised the rule. Instead of indicating that the expert will be used to verify a claimant's diagnosis, our final rule states that the expert will verify that the medical evidence in the file is sufficient to determine that as of the claimant's alleged onset date, the claimant's impairment(s) meets the standards we establish.

A number of commenters supported, but provided suggestions regarding, our proposal to use a predictive model software tool to identify claims for processing by the QDD units. Additionally, several commenters asked us to provide a list of conditions that would be identified by the predictive model. The predictive model will not necessarily identify specific conditions. Instead, as described above, it will consider a variety of factors, including medical history, treatment protocols, and medical signs and findings.

Some commenters suggested that implementation of the new process be delayed until the predictive model software is fully tested and one commenter stated that we should not require that State agencies establish separate QDD units until we have sufficient data and workload estimates. We have decided not to postpone implementation of the QDD because we believe the new, expedited process will be of such great benefit to many claimants. However, as noted above, we do have a careful rollout plan that should alleviate any concerns. Finally, we had invited comments on whether to accelerate the rollout of the QDD process and we received only one comment on the issue. We will continue to examine the issue of the manner in which the QDD process should be rolled out.

We agree with those commenters who recommended that we give State agencies input as we complete the development of the predictive model screening software. In fact, the QDD predictive model will be based upon the analysis of actual DDS determination data: nearly two million initial DDS determinations were analyzed to determine factors which consistently resulted in quick allowances.

A number of commenters thought that the 20-day time period in which to make a QDD was impractical because it would be difficult for some applicants, especially individuals with low incomes or those who are homeless and have little or no medical care, to obtain necessary documentation in that time frame. Claimants will not have an unusual burden to obtain medical evidence under the QDD process. In fact, because the predictive model is designed to identify those applicants with obvious, severe, disabling conditions that do not require an assessment of residual functional capacity, it is likely that the available or readily obtainable medical records of individuals whose cases have been selected for the QDD process will be sufficient.

Given the difficulty and complexity of implementing this proposal, we will not implement suggestions by other commenters to have pre-determination contact, either face-to-face or via video

teleconference, with the State agency. As noted elsewhere in this preamble, however, we do regard as a high priority the adequate development of the evidence so that our adjudicators can make accurate determinations and decisions and we are including in this rule a number of requirements that we believe will help to achieve this objective. In addition, claimants will retain the right to a face-to-face hearing before an administrative law judge.

Additionally, although the comments revealed some confusion regarding the public availability of any expert opinions we receive during the initial determination process, we intend that all expert evidence will be made part of the record to assist both the claimant and our adjudicators with any further review.

Commenters disagreed about whether a standardized decision-writing format should be utilized for QDDs or whether a detailed rationale is necessary for initial determination notices. We believe that better articulation of the reasons for the determination is central to more accurate decisions and will assist in any further adjudication by Federal reviewing officials, administrative law judges, or the DRB. Accordingly, we are developing and intend to use standardized decision-writing formats at each level of adjudication, including QDDs. We agreed with the suggestion that our initial determination notices should include information regarding a claimant's right to representation, and, as noted above, we have revised § 405.115 to state this requirement.

Several commenters opposed § 405.835, under which we would notify the State agency that it has failed to comply with our QDD standards, and suggested that we provide technical assistance to the State agency before we propose to take action. We agree and have changed the rules to provide for mandatory and optional technical assistance to State agencies. As explained above, we also intend to test thoroughly the QDD predictive model before implementing our sanction provisions. State agencies will be given a grace period before any sanctions will be applied to them.

Enhanced Medical and Vocational Expertise

Description of the Medical and Vocational Expert System (MVES)

We believe that the quality of the disability determination process at all levels of adjudication will be significantly enhanced if we provide adjudicators with the medical, psychological, and vocational expertise they need to make accurate and consistent decisions. We have studied the approaches used by other entities that must make these complex decisions, including those in the private sector. We have also sought the advice of the Institute of Medicine (IOM), National Academy of Sciences. The IOM established a Committee on Improving the Disability Process in January 2005 and published an interim report with recommendations to us in December 2005.

We have heard broad agreement on the part of persons both within our Agency and without, that the expertise needed by our disability adjudicators is currently not available at all levels of the process or in all parts of the country. We have therefore determined that we need to make major changes both in our institutional arrangements and procedures. The changes we are making in this rule are based on careful study and analysis of our needs.

While many disability impairments may be properly evaluated by medical generalists, claims that involve difficult or complex issues require medical specialist or subspecialist expertise. We therefore provide in this rule for the establishment of an MVES, which will provide the expert assistance that adjudicators need to render disability determinations and decisions that are accurate, consistent, and fair. The MVES will be composed of a Medical and Vocational Expert Unit (MVEU) and a national network of medical, psychological, and vocational experts who meet qualification standards required by the Commissioner. After we establish qualification standards for vocational experts, the MVEU will maintain a separate registry of vocational experts who meet those standards which will be available for use by DDSs.

The MVEU will be staffed by individuals who will be able to advise adjudicators on the nature of the expertise that they may need and to arrange for the provision of that expertise. It will develop and oversee a national network of medical and psychological experts who will be available to advise on complex medical issues, and it will arrange for consultative examinations that are requested by Federal reviewing officials and administrative law judges. Federal reviewing officials and administrative law judges who request the assistance of a medical, psychological, or vocational expert must do so through the MVEU. When the MVEU arranges for medical, psychological, or vocational expertise needed by Federal reviewing officials and administrative law judges, it will do so on a rotational basis, ensuring that the expert has not been involved in the claim at a prior level of adjudication.

We are currently reviewing the IOM's interim report and expect to issue our initial qualification standards within the near future. We anticipate that over time we will establish additional qualification standards that experts will be required to meet in order to participate in the adjudication of claims involving those impairments that require special expertise. These qualification standards for specialists and subspecialists will apply to medical expert participation at all levels of the adjudication process, including DDSs, Federal reviewing officials, and administrative law judges. Experts who are employed by a State agency will have to meet qualification standards established by us no later than one year after the date such standards are published. Thereafter, we will neither accept a medical sign-off from an expert who does not meet applicable qualification standards nor reimburse State agencies for the costs associated with work performed on our behalf by such experts.

Our plan is to develop a network capable of serving adjudicators throughout the country. Our electronic record will enable experts to examine case records regardless of the location of the claimant or the expert. We will establish safeguards to keep such information secure. Medical experts will be drawn from various sources, including medical schools and academic clinical research centers that focus on conditions that are difficult to evaluate. DDS physicians and psychologists who meet our standards will also qualify for service with the network. Medical, psychological, and vocational experts who are in the network will be compensated according to a fee schedule that we establish for services arranged by the MVEU.

In summary, this rule provides for use of the MVES by DDSs and by Federal reviewing officials and administrative law judges as follows:

If the DDS does not have a medical or psychological expert who meets our qualification standards, once they are established, for adjudicating a claim involving a specific impairment, the MVES will provide such an expert. If the DDS otherwise requests the assistance of a medical or psychological expert, the MVES will, to the extent practicable, provide such assistance. After standards for vocational experts are established, the DDSs may use the national registry of vocational experts maintained by the MVEU.

The Federal reviewing official must consult with an MVES medical or psychological expert (1) if the claim involves new medical evidence or (2) if the Federal reviewing official disagrees with the DDS determination.

Both Federal reviewing officials and administrative law judges may request evidence from a claimant's treating source, including requesting a treating physician to conduct a consultative examination. However, if they need additional medical, psychological, or vocational documentary or testimonial evidence to adjudicate a claim, they must use the MVES.

We are currently studying the recommendation by the IOM Committee that we should encourage the use of licensed medical personnel other than physicians or psychologists in appropriate cases, such as occupational therapists, physical therapists, registered nurses, and psychiatric social workers.

As noted above, a national registry of vocational experts will also be maintained by the MVEU. The Commissioner will issue qualification standards for participation in the registry. DDSs may arrange for vocational services by individuals on the registry and will be responsible for payment.

The IOM Committee also expressed the view that fuller case development at the front end of the process should reduce the impetus for appeal, reduce the number of reversals on appeal, and shorten the average length of time before reaching final adjudication. The Committee made recommendations for strengthening claim development, beginning at the DDS level.

We believe there are a number of steps that we should take as quickly as possible. We agree with the IOM Committee that fully performing the DDS medical consultant role requires mastery of three domains of knowledge. Medical consultants must be experts in their medical field (e.g., cardiology and orthopedics); they need to understand how to evaluate disability; and they must be knowledgeable about SSA's policies and procedures. We believe that a nationally standardized training program for medical experts who are part of the national network will improve both the accuracy and consistency of our disability determinations. To achieve that objective, we intend to develop a program to provide both initial and ongoing training that all medical consultants and experts will attend. This training will concentrate on the second and third domains cited above.

We also intend to develop requirements for training and certification of physicians who perform our consultative examinations. The IOM report recommends that consultative examiner training should focus on two competencies: (1) Evaluation of limitations on ability to work resulting from impairments; and (2) evidentiary and other requirements of our disability decision-making process. As another step in improving our consultative examination process, we are developing templates that adjudicators will use when they request consultative examinations for common types of cases to help ensure that the appropriate information is requested. In addition, we expect to develop qualification standards that consultative examiners must meet in order to perform consultative examinations in the case of impairments that require special expertise.

Recognizing the need of the DDSs for improved vocational expertise, we are also planning a standardized national training program for DDS personnel so that they will be better able to adjudicate claims that involve vocational issues. DDSs may also use the national registry of vocational experts that is maintained by the MVEU if they need expertise that is not otherwise available to them regarding vocational issues.

We will be consulting closely with adjudicators throughout the disability process as we move forward with these efforts.

Response to Public Comments About Enhanced Medical and Vocational Expertise

Many commenters supported our plan to establish a Federal Expert Unit with medical and psychological experts who have needed specialties. Some commenters raised concerns about our plan to use a centralized Federal Expert Unit. These commenters pointed out that having experts in only one part of the country would not be useful because the experts would not know how medicine is practiced in another part of the country. One commenter recommended that we continue to rely on ''generalist'' medical consultants in the State agencies, but supplement their expertise with regionally-based Federal Expert Units.

We expect that, through the network, we will be able to draw from expertise throughout the country. It is not necessary that medical experts are licensed to practice in the State in which a claimant lives or receives medical treatment. Our experience with the Federal Disability Determination Services, which handles DDS cases from around the nation, also indicates that the lack of familiarity with local medical practice is not a barrier to providing the needed medical expertise. Using a national network will allow us to use such expertise in cases regardless of their location. One commenter suggested that we test the use of the national network and the expert unit. As described in the implementation section of this preamble, we will be rolling out the DSI process, including the implementation of the MVES, on a gradual basis. We intend to monitor its use and effectiveness carefully and to make improvements as needed.

Some commenters asked about the provision in proposed § 405.15 which states that experts who are called by the claimant ''and that the administrative law judge approves'' are not required to be affiliated with the national network. The commenters asked what we intended by this provision and whether it would be used to suppress evidence from claimants' experts. We have removed that language, but under this rule, an adjudicator would not exclude evidence from a claimant's physician or reject the opinion of a claimant's physician because he/she is not a member of the network. The evidence would be admissible and if it is opinion evidence, must be evaluated under our evaluation-of-opinion-evidence rules at 20 CFR 404.1527 and 416.927.

Federal Reviewing Official Level

Description of Federal Reviewing Official Level

For many years there has been a perception that initial determinations of disability are not being made in a consistent manner. We believe that confidence in decision-making can be significantly enhanced by establishing a new Federal position—the Federal reviewing official—to review initial determinations upon the request of a claimant. A major objective of using Federal reviewing officials to review disability claims is to ensure to the maximum extent possible the accuracy and consistency—and thus the fairness—of determinations made at the front end of the process.

The Federal reviewing official position will be centrally managed. The comments were split in favor of and against our proposal to hire attorneys for this position. As proposed in our NPRM, we intend to hire attorneys to serve as Federal reviewing officials. We believe that attorneys are ideally suited to perform certain activities that are essential to the Federal reviewing official function, including careful

development and documentation of the evidence and the drafting of a legally sound decision.

We received many comments on the Federal reviewing official's role in developing the evidentiary record. The comments ranged from recommending that the Federal reviewing official assist claimants in obtaining all available evidence to recommending that the Federal reviewing official have authority to subpoena records from uncooperative medical providers. We are committed to giving the Federal reviewing official both the responsibility and the resources to assure that a claimant's record is adequately developed. To further this objective, we are giving the Federal reviewing official specific authority to issue a subpoena if an evidentiary source is uncooperative in responding to a request for evidence.

We plan to employ highly qualified individuals who are thoroughly trained in the policies and procedures of our disability programs. Federal reviewing officials will be able to affirm, deny, or modify the initial determination. If, in reviewing a claim, the Federal reviewing official determines that additional medical evidence is necessary, the Agency may obtain such evidence from other sources, including from the State agency or a treating source. The Federal reviewing official may ask the State agency to clarify or to provide additional information about the basis for its determination. In such circumstances, the Federal reviewing official will retain the authority to make the decision as to whether you are disabled.

This rule specifies that the Federal reviewing official will consult with an MVES medical expert in cases involving medical evidence that was not considered by the DDS. The Federal reviewing official will also consult with an MVES medical expert before issuing a decision that disagrees with the DDS determination. After consultation, the Federal reviewing official will issue a decision as to whether a claimant is disabled under our rules. To ensure decisional objectivity, any medical expert used by the Federal reviewing official for these purposes must not have been involved in the DDS initial determination.

Some commenters believed that under the proposed rules, the Federal reviewing official did not need to consider new medical evidence unless the claimant submitted it at the time that he/she requested review. This is incorrect. In making a decision, the Federal reviewing official will consider evidence submitted by the claimant, even if not submitted with the request for review, as well as any other evidence that the Federal reviewing official obtains. The Federal reviewing official may order a consultative examination if the Federal reviewing official determines that this is necessary. This rule provides that a claimant should submit additional evidence (evidence obtained since the prior decision) when making the request for review by the Federal reviewing official, but may submit evidence up to the date the Federal reviewing official issues a decision.

The Federal reviewing official will make a decision based on the developed record. Although several commenters suggested that Federal reviewing officials conduct hearings, we decided that in the interests of efficiency claimants will not be given a hearing before the Federal reviewing official.

The Federal reviewing official's decision will explain in clear and understandable language the specific reasons for the decision, including an explanation as to why the Federal reviewing official agrees or disagrees with the rationale articulated in the initial determination. We believe that this requirement will provide a clearer understanding of why the claimant is or is not disabled under our rules. The decision will be sent to the State agency that made the determination, thereby providing feedback to DDS adjudicators and managers.

The Federal reviewing official will mail a written notice of his/her decision to the claimant at the claimant's last known address. The notice will also inform the claimant of his/her right to a hearing before an administrative law judge.

In our NPRM we provided that, if a claimant does not request review of an initial determination timely (within 60 days after receiving notice of the initial denial), the claimant may ask for more time to request review. In response to a commenter's recommendation, this rule clarifies that a claimant may request an extension of time both before and after the 60-day period has elapsed.

We intend to address performance requirements for the Federal reviewing official position when we announce our plan for a new quality system. Two commenters recommended that we include performance standards for Federal reviewing officials like those the State agencies must meet under the current reconsideration process. We are developing performance standards for Federal reviewing officials but have not included them in this rule. We also intend that Federal reviewing official decisions will be subject to both in-line and end-of-line review, including pre-effectuation review by the Office of Quality.

Response to Public Comments About Federal Reviewing Official Level

Some commenters objected to the creation of the Federal reviewing official position because they believed that this administrative step would cause delays. Others expressed concern based on their experience with other models of pre-hearing review that have been tested by the Agency. They suggested we impose a limit on the time a Federal reviewing official has to make a decision. We believe that the benefit from review by a Federal reviewing official will far outweigh the time that this administrative step will take because we expect Federal reviewing officials will work to create a complete record and will explain fully the rationale underlying their decisions. In addition, we wanted to ensure that claimants retain the right to two levels of Federal review. Further, claims may be selected for review by the DRB.

We also received comments concerning the particular evidence the claimant must submit to the Federal reviewing official. We wish to emphasize that we are not requiring the claimant to submit any particular evidence to the Federal reviewing official. Section 405.210(a) requires only that the request for review be in writing and lists several items that ''should'' be included in a request for review. Nevertheless, in response to these comments, we have revised the section to clarify that the claimant should, but is not required to, specify reasons why he/she disagrees with the initial determination.

Some commenters questioned what we meant by ''available'' in the request to submit available evidence along with the request for Federal reviewing official review in § 405.210(a)(4) (and in § 405.310 at the administrative law judge level). We believe that it is sufficiently clear and that our rule will encourage claimants to present evidence to us as early as possible.

We received a number of comments expressing concern that the proposed rule did not sufficiently describe the circumstances under which a Federal reviewing official can remand the case to the State agency. We have revised the rule and deleted the Federal reviewing official authority to remand a case back to the State agency. If the Federal reviewing official determines that additional information from the State agency is necessary, we may ask the State agency to clarify or provide additional information about the basis

for its determination. Under these circumstances, the Federal reviewing official will retain authority over the claim.

We received a comment recommending that the Federal reviewing official be allowed to dismiss a request for review in the event that the claimant withdraws the request for review, is not entitled to review, or requests review in an untimely manner and cannot demonstrate good cause for late filing. We have decided not to give the Federal reviewing official dismissal authority. Rather, under the circumstances mentioned above, the field office will retain the authority to dismiss the request for review.

One comment suggested that we not call the Federal reviewing official's work product a ''decision.'' The commenter believed the use of the term ''decision'' at the Federal reviewing official level could undermine the separate and independent status of the administrative law judge's decision and confuse claimants. We have decided to continue calling the Federal reviewing official's work product a decision. The Federal reviewing official level is a level of Federal review. Accordingly, we believe that it is appropriate to call the work product a decision. The rule makes clear that the Federal reviewing official's decision is not evidence; thus, we do not believe that there is any undermining of the separate and independent status of the administrative law judge's decision-making authority.

We received a number of comments suggesting that a claimant not be required to separately request a hearing if the claimant is dissatisfied with the Federal reviewing official's decision, but instead allow an automatic appeal. Under usual administrative adjudication processes, an administrative agency's determination is final unless the claimant timely requests further review. We believe that allowing an automatic appeal to the administrative law judge or making the Federal reviewing official's decision only a recommended decision would run counter to the normal administrative adjudication process. Additionally, the hearing before an administrative law judge is de novo, which allows the administrative law judge to consider the matter anew, as if no determination had previously been made. We believe that allowing an automatic appeal or making the Federal reviewing official's decision a recommended decision would inappropriately tie the hearing to the proceedings and decision that went before.

We also received comments concerning the Federal reviewing official's role in increasing the quality and consistency of the State agency determinations. One commenter recommended that the Federal reviewing official review a random sample of all favorable State agency determinations, and one commenter believed that the Federal reviewing official should function in a manner similar to the current Disability Quality Branches, which review determinations by the State agencies. The Federal reviewing official is not a quality reviewer for the State agencies, so we have decided not to require random reviews of State agency determinations by Federal reviewing officials. However, as already noted, Federal reviewing official decisions will be sent to the State agency that made the initial determination to provide qualitative feedback to the DDS. In addition, under the Agency's new quality system, both DDS allowances and denials will be subject to quality review.

Administrative Law Judge Hearing Level

Description of Administrative Law Judge Hearing Level

This rule preserves a claimant's right to a de novo hearing before an administrative law judge if the claimant disagrees with the decision of the Federal reviewing official.

We are, however, changing some of the procedures to improve the disability decision-making process at the hearing level. For example, in order to improve timeliness, we are revising the rule that addresses the time frames for submitting evidence to the administrative law judge. Our current rule states that, if possible, a claimant should submit the evidence, or a summary of the evidence, within 10 days after filing the request for a hearing. In many cases, however, claimants submit evidence to us well after that time frame.

Our program experience has convinced us that the late submission of evidence to the administrative law judge significantly impedes our ability to issue hearing decisions in a timely manner. When new and voluminous medical evidence is presented at the hearing or shortly before, the administrative law judge does not have the time needed to review and consider that evidence. We often must reschedule the hearing, which not only delays the decision on that claim, but also delays other claimants' hearings.

To improve the timeliness of our hearing process and to ensure appropriate consideration of all claims, we are setting as an administrative goal that within 90 days of the date we receive a hearing request, the administrative law judge will establish the time and place for the hearing. In response to comments that Agency goals should not be made a part of the rule, we removed this 90-day goal from the rule, but are retaining it as an administrative goal. This 90-day time frame does not provide the claimant with a substantive right to have the hearing date established within this period. However, by setting this administrative goal we are stressing to our hearing offices and administrative law judges our commitment to providing timely service.

To ensure claimants have adequate time in which to prepare for the hearing, this rule requires administrative law judges to notify a claimant of the time and place of the hearing at least 75 days before the date of the hearing, unless the claimant agrees to a shorter notice period.

This rule provides that if a claimant objects to the time or place of the hearing, the claimant should notify the administrative law judge in writing as soon as possible after receiving the notice of hearing, but no later than 30 days after receiving the notice. If the claimant objects to the issues to be decided at the hearing, the claimant will be required to notify the administrative law judge in writing at least five business days prior to the hearing date.

Claimants will be encouraged to submit evidence as soon as possible after they file their request for a hearing. They will be required to submit all of the evidence to be relied upon in a case no later than five business days before the hearing. This is a reasonable deadline given that we also require the administrative law judge to notify the claimant of the hearing date at least 75 days before the hearing. It will ensure that the administrative law judge and any medical or vocational expert or other individual who will be participating in the hearing will have time to review the record before the hearing in order to adequately prepare for the hearing, and that the hearing will not have to be postponed.

The five-day time limit for submitting evidence is subject to exceptions, depending on when the claimant attempts to submit additional evidence. If the claimant requests to submit evidence within the five-day time limit before the hearing takes place, the administrative law judge will accept and consider the evidence if:

1. Our action misled the claimant;

2. The claimant had a physical, mental, educational, or linguistic limitation(s) that prevented him from submitting the evidence earlier; or

3. Some other unusual, unexpected, or unavoidable circumstance beyond the claimant's control prevented the claimant from submitting the evidence earlier.

If the claimant requests to submit evidence after the hearing but before the hearing decision is issued, the administrative law judge will accept and consider the evidence if the claimant makes one of these three showings and there is a reasonable possibility that the evidence would affect the outcome of the claim.

Our rule provides that when a claimant files a written request for a hearing, the claimant should include in the request his/her name and social security number, the specific reasons why the claimant disagrees with the Federal reviewing official's decision, a statement of the medically determinable impairment(s) that the claimant believes prevents him/her from working, any evidence that is available to the claimant, and the name and address of the claimant's representative, if any.

At any time before the hearing begins, a claimant may submit, or the administrative law judge may request the claimant to submit, a prehearing statement as to why the claimant is disabled. This statement should discuss briefly: (1) The issues involved in the proceeding, (2) facts, (3) witnesses, (4) the evidentiary and legal basis upon which the claim can be approved, and (5) any other comments, suggestions, or information that might assist in preparing for the hearing.

Also before the hearing, the administrative law judge may decide on his/her own initiative or at the claimant's request to conduct a prehearing conference if the administrative law judge believes that such a conference would facilitate the hearing or the decision in a claim. This rule provides that these conferences will normally be held by telephone unless the administrative law judge decides that it would be more efficient and effective to conduct the prehearing conference in a different manner. During these conferences, the administrative law judge will consider matters that may expedite the hearing, such as simplifying or amending issues or obtaining and submitting evidence. The administrative law judge will have a record made of the prehearing conference and will either summarize the actions taken as a result of the conference in writing or make a statement in the record summarizing them during the hearing. The rule also states that if neither the claimant nor the representative appears for the prehearing conference and there is not a good reason for the failure to appear, the claimant's hearing request might be dismissed.

The purpose of these provisions is to ensure that each claimant's hearing is as fair, timely, and comprehensive as possible. Both claimants and the Agency have the responsibility to work toward this objective.

This rule also provides that when setting the time and place of the hearing, the administrative law judge will determine whether the claimant and any other person will appear at the hearing in person, which for experts would include by telephone as is our current practice, or by video teleconference. As we explained in 2003 when we published the final rule on video hearings, we believe that the ability to conduct hearings via video teleconference provides us with greater flexibility in scheduling and holding hearings, improves hearing process efficiency, and extends another service delivery option to individuals requesting a hearing. Greater efficiency is accomplished through savings in administrative law judge travel time, faster case processing, and higher ratios of hearings held to hearings scheduled.

Our rule provides that unless a claimant objects to appearing at a hearing by video teleconference, the administrative law judge will direct that a person's appearance be conducted by video teleconference: (1) If video teleconferencing is available, (2) if use of the technology would be more efficient than conducting an examination of a witness in person, and (3) if the administrative law judge does not determine that there is another reason why a video hearing should not be conducted. If a claimant objects to appearing by video teleconference, the claimant's hearing will be rescheduled so that the claimant can appear in person before the administrative law judge. However, if the claimant objects to having any other person appear by video teleconference, the administrative law judge will decide whether that person should appear in person or by video teleconference.

The claimant may request, or the administrative law judge may decide, to hold a posthearing conference to facilitate the hearing decision. The conference will normally be held by telephone. If neither the claimant nor the representative appears at the posthearing conference and there is not a good reason for failing to appear, the administrative law judge will make a decision based on the hearing record.

In addition to these above provisions, this final rule specifies that the administrative law judge will retain discretion at the time of the hearing to hold the record open for the submission of additional evidence. If a claimant is aware of any additional evidence that the claimant was unable to obtain and submit before or at the hearing, or if the claimant is scheduled to undergo additional medical evaluation after the hearing for any impairment that forms the basis of the claim, the claimant should inform the administrative law judge of the circumstances during the hearing. If the claimant requests additional time to submit the evidence, the administrative law judge may exercise discretion and choose to keep the record open for a defined period of time to give the claimant the opportunity to obtain and submit the additional evidence. Once the additional evidence is received, the administrative law judge will close the record and issue a decision.

One of our major goals in promulgating this rule is to improve the quality of decision-making at all levels of our adjudicatory process. As discussed above, one of the new features of this process is the use of a Federal reviewing official who, upon the request of a claimant, will review the State agency's initial determination and make a decision on the claim. To help improve the quality of State agency determinations, we are requiring the Federal reviewing official to explain in the decision why he/she agrees or disagrees with the rationale in the State agency's determination.

We are including a similar rule at the hearing level. Under the rule, the administrative law judge's decision will explain in clear and understandable language the specific reasons for the decision. While the administrative law judge will not consider the Federal reviewing official's decision to be evidence, the written decision will explain in detail why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the Federal reviewing official's decision. The decision will be made part of the record and will be sent to the Federal reviewing official who adjudicated the claim as well as to the claimant. We believe that this requirement will provide useful information to claimants. It also will be an important educational tool for Federal reviewing officials to help them improve the quality of their decisions, and will be very useful for management and training purposes.

The notice to the claimant which accompanies the decision will inform the claimant whether the decision is our final decision. If it is not, the notice will explain that the DRB, described below,

will review the claim. If the DRB does not review the claim, the administrative law judge's decision will stand as our final decision, and the claimant may seek review of the administrative law judge's decision in Federal district court.

We recognize, however, that there are certain limited circumstances in which a claimant may have a good reason for failing to provide evidence in a timely manner to the administrative law judge. Therefore, for those cases where the claimant's decision has not been referred to the DRB, we are providing that the administrative law judge will consider new evidence submitted after the issuance of the decision if, within 30 days of the date the claimant receives notice of the decision, the claimant requests consideration and shows that there is a reasonable probability that the evidence, alone or when considered with other evidence of record, would change the outcome of the decision, and that either: (1) Our action misled the claimant; (2) the claimant had a physical, mental, educational, or linguistic limitation that prevented him from submitting the evidence earlier; or (3) some other unusual, unexpected, or unavoidable circumstance beyond the claimant's control prevented the submission of evidence earlier.

In those cases where the administrative law judge's decision is not our final decision, the claimant must submit the evidence to the DRB no later than 30 days after the date the claimant receives notice of the decision and make the same showings regarding the probity of evidence and the reasons why it was not provided earlier. The DRB will review and consider the evidence.

Response to Public Comments About the Administrative Law Judge Level

In general, commenters expressed concern with our proposed rules on the submission of evidence. Some supported the imposition of time limits and thought that the rules should be revised to give administrative law judges stronger authority to curb abuses in the submission of evidence. Others disagreed with our proposal to impose such time limits. They believed our proposed 20-day deadline unrealistic because many claimants do not contact a representative until shortly before the hearing and because it is difficult for some claimants, such as the homeless, to obtain medical evidence from medical providers and vocational sources, especially HIV or mental health records, which often require specialized authorizations. As an alternative, they recommended that we notify claimants earlier than 45 days before the hearing or allow claimants to provide evidence to the administrative law judge less than 20 days before the hearing date. As explained in more detail above, we have decided to change our proposed rules in response to the public comments and will provide 75 days notice of the hearing date and allow evidence to be submitted up to five business days before the hearing with certain exceptions to that five-day requirement allowed.

We did not adopt a comment to revise proposed § 405.301 to specify the circumstances under which we may assign a claim to another administrative law judge for decision because we believe the language of the regulation should be flexible enough to cover circumstances that we may not foresee today. One commenter suggested that we change the language in § 405.302 that administrative law judge authority over these hearings derives from the Social Security Act. Although we deleted § 405.302, we did not remove the concept because we added language to § 405.1(a) clarifying that all adjudicators' authority derives from the Act.

Some commenters suggested that we delete ''specific'' from proposed § 405.310(a)(3) because many unrepresented claimants may not be able to articulate specific reasons why they disagree with the initial determination. We did not delete ''specific'' from that provision because we believe it is important to highlight for adjudicators the issues that claimants wish them to review. We do not intend for this requirement to preclude administrative law judges from reviewing other issues raised in the claim, and we clarified in § 405.320 that the administrative law judge ''will look fully look into all of the issues raised by your claim.''

We accepted suggestions to revise § 405.310 to state that a claimant ''should'' include certain items with their request for a hearing, rather than ''must include,'' as the proposed rule states.

Consistent with comments, we revised proposed § 405.310 to allow a claimant to request an extension of time to request a hearing before the time period has passed. Because many commenters were unclear regarding the video hearing provisions of the proposed rules, we revised them to follow our present rules and retain our present practice, except we also clarified in § 405.315(c) that administrative law judges retain the authority to allow, over a claimant's objection, witnesses other than the claimant to appear by video teleconference.

A number of commenters disagreed with the provisions of proposed § 405.317(a), which would require a claimant to notify the administrative law judge in writing within 10 days after receiving the hearing notice if he/she objects to the time and place of the hearing. We agreed and have changed the time frame to allow the claimant 30 days to object. We changed the time limit for objecting to issues from 10 days after receipt of the notice to five business days before the date of the hearing.

Some commenters also raised concerns about proposed §§ 405.330(d) and 405.366(b), which would allow an administrative law judge to dismiss a hearing request if neither the claimant nor his/her representative appeared at either prehearing or posthearing conferences. Although we retained the authority to dismiss in prehearing situations because it is akin to failing to show for the hearing itself, we agree that it is not appropriate to dismiss the hearing request once the hearing has been held. Thus, we will issue a decision based on the record if neither a claimant nor his/her representative appears at a posthearing conference. We decided not to define ''reasonable'' notice or include specific time frames for the prehearing conference notice because we expect that administrative law judges will understand reasonable notice and claimants will have the opportunity to raise the issue of unreasonable notice to the DRB if an administrative law judge dismisses a claim where the claimant failed to attend the conference. In response to a comment, we also modified § 405.380 to address res judicata.

One commenter recommended that we allow DRB review of the administrative law judge's finding that there is no good cause for the late submission of evidence. We have rejected this suggestion, but as discussed above, we relaxed the rules, before and after the hearing, regarding circumstances under which the late submittal of evidence would be excused.

Because a number of commenters asked about the provisions of proposed § 405.333, which states that all documents must use type face no smaller than 12 point font, we clarified that the rule applies to documents that are prepared and submitted by the claimant or his/her representative, not to medical or other evidentiary documents.

Some commenters thought that we should revise or delete proposed

§ 405.334 governing prehearing statements, recommending that we request claimants to file such a statement, and that we should not require these statements. We did not delete the provision because we believe such statements can be helpful for the adjudication process. However, we agreed with the commenters to make it a request rather than a requirement and to change the language regarding the items to be included in the statement from ''must discuss'' to ''should discuss.'' We hope that, when requested, claimants and their representatives will take the opportunity to thoughtfully prepare such statements.

Some commenters objected to requiring an administrative law judge to explain why he/she disagrees with the Federal reviewing official's decision, expressing concerns that the requirement could undermine the de novo nature of the administrative law judge hearing process, compromise an administrative law judge's decisional independence, and add an unnecessary burden to the administrative law judge's decision-making process. We have clarified that the Federal reviewing official's decision is not evidence before the administrative law judge. Nevertheless, for purposes of quality feedback, the administrative law judge must address the Federal reviewing official's substantive findings and rationale. We do not believe that this requirement infringes in any way on administrative law judges' decisional independence.

We considered comments in favor of and against closing the record after the administrative law judge decision. Many thought that if we did close the record, there should be an exception that would allow claimants to submit new and material evidence within the meaning of section 205(g) of the Act. Some commenters, who recommended that we delete proposed § 405.373, believed it harsh to require the submission of requests to consider new evidence within 10 days of the decision. They also objected to requiring an ''unforeseen and material change'' in the claimant's condition and were concerned that the rule did not require the administrative law judge to keep the record open. Similarly, commenters objected to our proposed definition of ''material,'' believing it to be too restrictive.

Upon consideration of these concerns, we deleted ''material'' from the definitions section and for the most part specifically describe the likely effect, depending on when submitted, new evidence would need to have on a decision in order to be considered. For example, we changed the final rule on submitting new evidence after the administrative law judge's decision is issued to allow claimants to submit such evidence within 30 days of receiving the decision, relaxed the materiality requirement to a ''reasonable probability'' standard, and required administrative law judges to consider the evidence if the claimant and his/her evidence meets the regulatory requirements.

Finally, we agreed to remove language requiring claimants to submit evidence adverse to their claims because the comments revealed that the requirement was too confusing. We clarified, however, that when claimants submit evidence, such as a medical report, the evidence must not be redacted.

Decision Review Board (DRB)

Description of DRB Level

This rule provides for establishing a new body, the DRB, and phasing out, in a very gradual and carefully monitored process, the current Appeals Council. We believe that the DRB, the members of which will be appointed by the Commissioner, will be a vital tool in our efforts to improve the decision-making process.

The purpose of the DRB is to promote accurate, consistent, and fair decision-making. In carrying out this purpose the DRB will review and correct administrative law judge decisions. It may also identify issues that may impede consistent adjudication at all levels of the disability adjudication process, and recommend ways to improve the process.

The DRB will review both allowances and denials. Claims will be reviewed before the decision of the administrative law judge has been effectuated. The DRB will have the authority to affirm, modify, or reverse the administrative law judge's decision. It may also remand a claim to the administrative law judge for further action and decision.

The DRB also may take any of these actions consistent with the instructions of a Federal court when the court has remanded a case to us for further administrative proceedings.

The DRB may also select a claim for review after the administrative law judge's decision has been effectuated for purposes of studying our decision-making process. In the case of such claims, however, the DRB will not change the administrative law judge's decision, except in those limited circumstances when our rules for reopening claims are applicable. These rules (which have been modified since we issued our NPRM) are described below.

The DRB will serve as the final step in the administrative review process if a request for a hearing has been dismissed by an administrative law judge. A claimant must timely request the administrative law judge to vacate the dismissal order before requesting the DRB to vacate the order.

Consistent with its purpose, the claims that the DRB will review may include claims where there is an increased likelihood of error, or claims that involve new policies, rules, or procedures in order to ensure that they are being interpreted and used as intended. The DRB will review both allowances and denials of benefits. It will not review claims based on the identity of the administrative law judge who decided the claim.

If a claim is selected for review, the claimant will be notified at the same time that the claimant receives the decision of the administrative law judge. The claimant will be told that his/her claim is being reviewed by the DRB and the administrative law judge's decision is not our final decision. The notice will explain that the DRB will complete its action on the claim within 90 days of the date the claimant receives notice. The notice will also explain that if the DRB does not complete its action within the 90-day time frame, the administrative law judge's decision will become our final decision. If the claimant is dissatisfied with the final decision, the claimant may seek judicial review.

If the DRB does not complete its review of a claim within 90 days, it will take no further action with respect to the claim unless it determines that it can make a decision that is fully favorable to the claimant. In that case, it will reopen the administrative law judge's decision and revise it as appropriate. If the claimant has already sought judicial review, the DRB will notify the Office of the General Counsel, which will take appropriate action with the Department of Justice in order to request that the court remand the case for the purpose of issuing the DRB's favorable decision.

When the DRB reviews a claim it will apply a substantial evidence standard to questions of fact and consider the record that was closed at the time that the administrative law judge issued the decision (subject to the exception described above when the claimant has good cause for failing to submit evidence timely). Some commenters agreed that the DRB should use a substantial evidence standard, while others advocated that the DRB should

re-weigh the record and issue its own decision without remanding cases to administrative law judges. We retained the substantial evidence standard for DRB review of questions of fact, as well as the plenary standard for questions of law, because those are the usual standards for appellate review of decisions of triers of fact. In those cases where the record clearly shows that an administrative law judge's decision simply should be reversed, the DRB has that authority.

When the DRB issues a decision, it is our final decision. If a claimant is dissatisfied with the decision, the claimant may seek judicial review.

The DRB will be composed of experienced administrative law judges and administrative appeals judges who are highly knowledgeable about our decision-making process. Individuals who serve on the DRB will serve on a rotational basis, as the Commissioner determines, and terms will be staggered to ensure a high degree of continuity in DRB membership. It will be centrally located and will be supported by a highly qualified staff.

To enhance accountability and to provide feedback in the decision-making process, DRB decisions that are in disagreement with administrative law judge hearing decisions will be sent to the administrative law judge who issued the decision.

We believe that the DRB, as established in this rule, will significantly strengthen our disability adjudication process and that, in combination with the other changes we are making, our decisions will become more accurate, consistent, fair, and timely than under the current process.

We recognize, however, that there are many who are deeply concerned that elimination of the Appeals Council and the right to appeal, which we provide in this rule, may have a detrimental effect on claimants and result in an increased burden on the Federal courts.

To provide time for our new process to demonstrate its value while responding to these concerns, we intend to phase out the Appeals Council and the right to appeal gradually. As described more fully below, we will eliminate the right of claimants to appeal disability decisions to the Appeals Council only with respect to claims that have been initially filed in those States where our new process has been implemented. The claimants initially affected will be those filing a claim in one of our smallest regions, the Boston region. The only claims that will be affected will be those that have gone through the new process, including review by a Federal reviewing official and the de novo hearing as provided in this rule. Claimants will retain the right to appeal their claims to the Appeals Council in all other cases.

As we carefully roll out our new DSI process, we will closely monitor the effects our changes are having. If we determine that our proposed changes are not having the positive effects that we believe they will have, we will amend our regulations as necessary.

Response to Public Comments About the Decision Review Board

We received a large number of comments regarding our proposal to establish a DRB, and gradually shift the Appeals Council's functions to the DRB. Although some commenters agreed that the Appeals Council should be eliminated, many opposed the proposal, believing that the Appeals Council provides a reasoned, timely, and consistent response to claimants and intercepts a large number of claims that would not withstand district court review.

We believe that the DRB will perform more effectively than the Appeals Council and provide better relief for claimants, in that we can identify the most error-prone claims. Moreover, the DRB will review the claims that are most likely to be problematic and will be able to focus on promptly identifying decision-making errors that, when corrected, will improve decision-making at all levels of the disability determination process.

While claimants may appeal to the DRB a dismissal by an administrative law judge, we have decided not to allow the claimant the right to request DRB review of our final decision. Claimants have two levels of Federal administrative review after the initial determination, and the administrative law judge level of review allows the claimant the opportunity for a face-to-face hearing. Neither the Social Security Act nor due process requires further opportunities for administrative review. We believe that our plan to gradually roll out the new process in a careful and measured manner will allow us to closely monitor any effects that our changes have on the disability determination process and will allow us to quickly address any unintended consequences.

Contrary to some of the comments, we do not believe the new process will be more complicated for the claimant. The claimant will receive notice of the administrative law judge's decision and, if the DRB has decided to review the case, the claimant will simultaneously receive notice of the DRB's intent to review. The claimant need take no further action until such time as the DRB issues its decision, although the claimant may submit a written statement to the DRB. The new process will benefit the claimant by providing an opportunity for further administrative review if the case is one that is likely to be problematic. Otherwise, the new process provides the claimant with a final decision more quickly so that the claimant can proceed to Federal district court if the claimant still disagrees with the decision.

Some commenters pointed out that the elimination of the claimant's right to request administrative review of an administrative law judge's decision would prejudice claimants because of the expenses associated with filing a civil action, including a filing fee, and because of the delays in the Federal court system. Still other commenters noted that eliminating the claimant's right to request review would increase the likelihood that erroneous administrative law judge decisions would not be reviewed, because the claimant's representative would be unable to alert the DRB to subtle problems with the administrative law judge's decision that may be overlooked in a screening process.

We do not agree that the removal of a right to appeal an administrative law judge's decision is prejudicial. We believe our selection process for DRB review will identify problematic cases and discrete issues, and we will continuously fine-tune the screening tools based on the experience and knowledge we gain. With respect to a representative's opportunity to alert the DRB to subtle problems, the final rule does allow claimants whose claims have been selected for review to submit a written statement to the DRB.

Some commenters questioned why persons who have claims that do not involve disability have a right to request Appeals Council review, while a disability claimant does not, and thought that retaining the ability of a claimant to request Appeals Council review in non-disability claims would be confusing. As explained in the implementation section, the Appeals Council will continue to review administrative law judge disability decisions in regions where the DSI has not been implemented or administrative law judge decisions that involve non-disability claims and issues, and in those circumstances, claimants will continue to have the right to seek Appeals Council review. Because our focus is on improving the disability claims process, our changes, including the elimination of Appeals Council review, do not include claims involving

issues other than when a claimant is disabled. Our notices in individual claims will clearly explain where appeals will be held.

Some commenters were under the impression that the proposed rule allowed favorable decisions to be reviewed, but did not provide administrative review for unfavorable decisions. The commenters thought that this provision would make the review process more unbalanced. Other commenters were concerned that the DRB might be used to target individual administrative law judges and that some administrative law judges on the DRB would not be inclined to overturn their ''peers.'' They suggested clarifying the roles and workloads of the DRB to alleviate these concerns, including specifying that the DRB will review favorable and unfavorable decisions in equal numbers.

As explained above, and as set out in § 405.410, the DRB will review favorable, partially favorable, and unfavorable cases, and cases will not be selected for DRB review based on the identity of the administrative law judge. We do not believe that administrative law judges serving on the DRB will allow their peer status to interfere with their honest review of disability decisions because administrative law judges currently engage in such review through our peer quality review process.

Some commenters thought that we should not use a computer profile to identify error-prone administrative law judge decisions for review by the DRB and expressed other concerns with the DRB's selection process. As explained above, we will select cases for review by the DRB in several different ways. This varied approach to selecting cases for review will efficiently identify problematic cases without unfairly targeting any specific category of claimant. We have decided against including in this rule a specific statement regarding the method and range of sample sizes because, as explained above, our methods of selecting cases for review will change over time as we gain experience and knowledge in the use of our computer-based tools.

One commenter asked us to clarify what we meant by cases that involve ''fact patterns that increase the likelihood of error'' in proposed § 405.410(b)(2). We have revised § 405.410, and it no longer contains that phrase.

Some commenters questioned how claimants will know when the 90-day period for DRB review of an administrative law judge's decision specified in proposed § 405.420(a)(2) has passed. Other commenters thought that the 90-day time period did not provide a meaningful time limit because the proposed rule did not specify how long the DRB could hold a claim before it issued a notice of intent to review the administrative law judge's decision. Section 405.420(a)(2) explains that the 90-day period begins on the date the claimant receives notice that the DRB will review the claim. We intend that the DRB will make its decision on whether to review a claim within 10 days after the administrative law judge's decision. If the DRB decides to review a claim, the claimant will receive notice of the DRB's intent to review the claim at the same time that the claimant receives the administrative law judge's decision.

Some commenters noted that the DRB must act within 90 days of the date that the claimant receives the administrative law judge decision, but they thought that the provision could conflict with the requirement in section 223(h) of the Act that we pay interim benefits to claimants in instances in which we do not make a final decision within 110 days after an administrative law judge makes a favorable decision. One commenter recommended that, rather than place a 90-day limit on the DRB's action, we provide that we will pay a claimant interim benefits if the DRB does not act within 90 (or 110) days of the date of the administrative law judge's decision.

As explained in § 405.420(a), if the DRB decides to review a favorable administrative law judge decision, the administrative law judge's decision will not be our final decision. However, if the DRB does not complete its review within 90 days of the date the claimant receives notice that the DRB will review the claim, the administrative law judge's decision will become our final decision. Section 223(h) of the Act applies when the administrative law judge issues a favorable decision, the Appeals Council takes review of that favorable decision, and the Appeals Council fails to issue our final decision within 110 days after the date of the administrative law judge's decision. Section 223(h) will not apply to cases where the DRB does not complete its review within 90 days of the date the claimant receives notice that the DRB will review the claim because, at that point, the administrative law judge's decision will be our final decision.

A number of commenters objected to the provisions of proposed § 405.425(b)(1), under which the DRB could request that the claimant submit a written statement of no longer than three pages to the DRB for its consideration. Some commenters thought that the proposed rule raised due process concerns. Others thought that the provision would result in significant legal and factual errors not being identified for the DRB, that the inability of claimants to submit briefs to the DRB would make the process more unbalanced against claimants, and that the page limit would deprive the DRB of an accurate recitation of the facts of the case. We do not believe the limits we have imposed regarding the length of submissions to the DRB raise any due process concerns as other administrative agencies and certainly courts impose similar limitations. In addition, we have amended § 405.425 to allow the claimant to submit a written statement to the DRB, even without a request from the DRB. We have also amended the provision to allow for a maximum of 2,000 words to account for handwritten or typeface larger than 12 point.

Some commenters objected to the 10-day time limit for filing a request for permission to submit a written statement. We have removed the requirement for permission to submit a written statement. However, we have retained the 10-day time period for filing a written statement so that the DRB will be able to complete its review in a timely manner. The written statement need not be submitted by an attorney.

Some commenters objected to the provision of proposed § 405.425(d), which would allow the DRB to obtain advice from experts affiliated with the national network. We have accepted the comments and have removed the provision. The DRB nevertheless may consult with the MVES for background information about various conditions, but not in the context of a specific case before it.

Many commenters, including the Administrative Office of United States Courts, thought that the shift of the Appeals Council's functions to the DRB would have an adverse effect on the Federal court system and would result in an increase in the number of cases appealed to the Federal courts. To address these concerns, we plan a gradual rollout to minimize the impact on the judiciary. We plan to begin implementation of the new process in the Boston region, which is one of our smallest regions. Because we are beginning in a small region, we will be able to have the DRB initially review all or most of the administrative law judge decisions that are issued in the Boston region. At the same time, we will be fine-tuning the screening tools for selecting cases for DRB review in those regions where we cannot review every

decision. In addition, the DRB will monitor administrative law judge decisions in order to identify trends or developments that we need to address. Lastly, we believe that comparing DSI with the process it is replacing fails to consider the many positive changes outlined in today's rule.

Another commenter recommended that we revise the rule to require us to provide unrepresented claimants with information about pursuing a civil action in Federal court, including the availability of in forma pauperis applications, and information regarding the name and address of the clerk of the district court in the venue in which review would be sought. We have amended § 405.445 to clarify that, in addition to explaining how to seek judicial review, the notification of the DRB's action will explain the claimant's right to representation. We have decided against including more detailed information, such as information on the specific court, due to variations in the information that may be applicable to each jurisdiction.

Some commenters recommended that we provide that if the DRB fails to act within a specified time period, the claimant would receive a ''right to sue'' letter that would inform the person that he/she could seek judicial review within 60 days of the date the right to sue letter was received. We have not made any changes based on this recommendation because § 405.420 already provides that the administrative law judge's decision becomes final if the DRB does not complete its review within 90 days of the date the claimant receives notice that the DRB will review the claim. Section 405.420 explains that the claimant may then seek judicial review of the administrative law judge's decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period.

Reopening

Our current rules allow us to reopen and revise a determination or decision that has become final under certain specified circumstances. We have amended this reopening rule to provide that a final decision made after a hearing may be reopened and revised within six months of the date of the final decision, and we have removed new and material evidence as a basis for finding good cause to reopen such claims. We have not made any other changes to our current reopening rules.

Many commenters opposed our proposal to limit the reopening of prior claims, believing that the proposed rules governing reopening were unfair to claimants who did not have representatives, had mental impairments, had impairments that were difficult to diagnose, such as multiple sclerosis, or whose date last insured had expired. A commenter recommended that we not have separate reopening rules for disability and non-disability claims, but that we use the same rules for all types of claims. Many commenters asked that we retain our current reopening policies. Many commenters recommended that we retain our current standard under which we consider reopening a claim based on ''new and material'' evidence in certain instances. Some commenters also opposed our proposal to eliminate the ability of adjudicators to reopen a prior determination or decision for one year after the date of the notice of the initial determination ''for any reason.''

Given these comments, we decided to retain our existing reopening rules except that once an administrative law judge decision is made, reopening for good cause is limited to six months after the administrative law judge's decision and new and material evidence will not be a basis for good cause. We did this to reinforce our view that claimants should make every effort to submit evidence to us as soon as possible. Thus, our existing reopening rules continue to apply unchanged to determinations made by the State agency. In addition, the current reopening rules will apply to Federal reviewing official decisions that become final. Our amendments only apply to final decisions made after a claimant has received a hearing before an administrative law judge.

Response to Public Comments About Other Issues

Although some commenters supported our goal of providing a uniform, fair, and flexible standard for all good cause findings, several commenters recommended that we revise the language on good cause. Some commenters thought that we should include good cause exceptions for each of the time limits set out in the proposed rule. We agreed that, except for good cause for filing an appeal, we should state the good cause exceptions for the time limits.

Several commenters objected to our standards for determining good cause in proposed § 405.20. They were concerned that the phrase ''unusual and unavoidable circumstances beyond your control'' was ambiguous and suggested that if we kept the standard, we should change ''and'' to ''or.'' We accepted the comment to change ''and'' to ''or'' and we added ''unexpected,'' but we retained ''unusual'' and ''unavoidable'' without adding further explanation because we have provided a non-exclusive list of situations that are examples of such circumstances.

Several commenters noted that proposed § 405.20(a)(2) required a claimant to show that a ''reasonable person'' would have been prevented from complying with a deadline due to a physical, mental, educational, or linguistic limitation. These commenters questioned how we intended to use a ''reasonable person'' standard for individuals with mental impairments or those who were not proficient in English. We agree and have removed the ''reasonable person'' language.

One commenter questioned what we meant by the phrase ''must document'' in proposed § 405.20(a). To clarify, we decided to simply use the term ''show,'' which allows adjudicators to consider various types of evidence in determining good cause for missing deadlines to file appeals.

Although some commenters supported proposed § 405.30, which would govern the filing of discrimination complaints against adjudicators, a number of commenters thought that the provision lacked specificity. The commenters recommended that we revise the section to incorporate a thorough, complete, and meaningful complaint procedure that would explain matters such as to whom the complaint will be sent, how it will be investigated, and what relief could be afforded to the claimant.

We presently have procedures in place to deal with allegations of administrative law judge bias and complaints of discrimination from the public, but we did not believe that it was necessary to include those procedures in this particular rule which primarily concerns the processing of disability claims, not discrimination complaints. Nevertheless, in response to a comment, we increased the time period for filing a claim of discrimination from 60 to 180 days.

How We Will Implement the New Process

As noted above, we plan to roll out the new DSI process in a measured and careful manner. Gradual implementation will allow us to monitor the effects that our changes are having on the entire disability determination process, and lessons learned during the early stages of implementation will allow us to proceed in an increasingly efficient and effective manner in the later stages of implementation. We will begin implementation in one of our smallest regions, the Boston region, which is

comprised of the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.

We will carefully monitor the implementation process in the Boston region and quickly address any problems that may arise. We plan to wait an entire year before implementing this rule in a second region so we can be sure that our improved disability determination process is functioning in the manner that we expect and to be certain that we have resolved any unanticipated issues that arise during the first phase of implementation. As we decide to roll this process out to other geographic areas, we will amend the appendix to subpart A of part 405 by publishing a notice in the ''Notices'' section of the **Federal Register**. Because we have solicited and responded to public comment for the new disability process through the proposed rule of July 27, 2005 (70 FR 43590), and through this final rule, the notice(s) amending the appendix to subpart A will serve as a technical amendment(s) and will not undergo a formal rulemaking process. The new DSI process will not take effect in the region(s) identified in the notice until the date identified in the **Federal Register** notice.

We expect that the experience and knowledge we gain while implementing this rule in the Boston region will help make implementation in the remaining regions proceed more efficiently. We anticipate that after this first year, we will be able to implement the DSI process at a faster pace.

Under our implementation plan, this final rule will only apply to claims that are filed in a region where the new DSI process has been implemented. If a claim is filed in a region where we have not yet implemented the new process, we will use our current procedural regulations, 20 CFR 404.900–404.999d and 416.1400–416.1499, to adjudicate that claim. For example, if a disability claim is filed in New Hampshire after we have rolled out the new DSI process in the Boston region, this rule will apply to the adjudication of that claim. Such a claim will be screened for possible adjudication as a QDD claim and could be considered by a Federal reviewing official, an administrative law judge, and possibly the DRB if the claim reached those levels. However, if a claim is filed in a State in a region where we have not yet rolled out the new process, that claim will be adjudicated under the present process. In other words, the State DDS will issue an initial determination on that claim and the claimant will be able to seek DDS reconsideration and subsequent review by an administrative law judge and the Appeals Council, if necessary.

If a claimant moves from one State to another after he/she files a claim, adjudicators at subsequent levels of review will apply the regulations that were applicable to the claim initially. For example, if a claimant files a claim in the Boston region after we have rolled out the new DSI process there, part 405 will apply to the claim at subsequent levels of review, even if the claimant moves to a State in a region where we have not yet rolled out the new process. Conversely, if a claimant files a claim in a region where we have not yet rolled out the new process, the pre-existing procedural regulations in parts 404 and 416 will apply, even if the claimant subsequently moves to a State where we have rolled out the new process.

As noted above, many of the comments we received regarding our proposed rule expressed concern about the possible effects of the elimination of the Appeals Council and the right of claimants to appeal administrative law judge decisions. We believe that our plan to gradually roll out the new DSI process in a careful and measured manner will allow us to closely monitor any effects that our changes may have on the disability determination process or on the Federal courts, and will allow us to quickly address any unintended consequences.

Under our implementation plan, a claimant will not be able to seek Appeals Council review if his/her claim was initially filed in a region where our new rule has been implemented and the claim was reviewed by a Federal reviewing official and an administrative law judge. In other words, the elimination of the right to Appeals Council review will only apply in regions where we have rolled out the new DSI process and to claims that have been processed from the start under this rule. The Appeals Council will continue to function and review claims that have been filed in regions where we have not yet rolled out the new DSI process. That means that in those regions where we have not yet rolled out the new DSI process, the Appeals Council will continue to perform all of the functions that they currently perform, including: Considering requests to review administrative law judge decisions; considering requests to review hearing request dismissals; considering cases referred from other components; preparing court transcripts; and handling court remand cases.

In addition, the Appeals Council will continue to perform its responsibilities pertaining to review of administrative law judge decisions that involve claims not covered by this rule (such as retirement and survivors insurance claims) or claims involving issues other than whether a claimant is disabled (such as whether a disability claimant has received an overpayment and whether that overpayment should be waived). Our new rule addresses the administrative review process for adjudicating disability claims; claimants will continue to have the right under our pre-existing regulations to seek Appeals Council review of administrative law judge decisions regarding issues that do not pertain to the administrative adjudication of whether a claimant is disabled. The Appeals Council will continue to perform these non-disability functions throughout the entire implementation process. However, once the new process has been rolled out in every region, we plan to transfer these remaining Appeals Council functions to the DRB.

We will be fine-tuning the screening tools we will use in the future to select cases for DRB review in those regions where we cannot review every single decision. As implementation begins and the DRB is reviewing all or most of the decisions issued in the Boston region, we will evaluate our screening tools to ensure that they will capture the appropriate cases for review. In addition, the DRB will monitor administrative law judge decisions in order to identify trends or developments that we need to address. If we determine that this rule adversely affects the disability determination process or the Federal courts over time, we will make changes to the process as necessary.

Throughout the implementation process, we will meet regularly with individuals representing organizations with various perspectives with respect to the disability process, including claimant representatives and advocates, State agency directors and employees, administrative law judges, and members of the judiciary. Through these discussions, we will continue, and further expand, the dialogue that began when our new approach was first proposed. The meetings will ensure that both we and these interested parties have an opportunity to discuss and better understand the impact of these changes as they are rolled out and to make any needed modifications to achieve the goal of making the right decision as early in the process as possible.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and have

determined that this rule meets the criteria for an economically significant regulatory action under Executive Order 12866. Thus, it was reviewed by OMB.

The Office of the Chief Actuary (OCACT) estimates that this rule will result in increased program outlays resulting in the following costs (in millions of dollars) over the next 10 years:

Fiscal year	Title II	Title XVI	Medicare	Medicaid	Total
2006	$5	$1	$0	$2	$7
2007	40	7	0	17	63
2008	94	11	−1	31	135
2009	209	43	−2	114	364
2010	307	43	−7	119	461
2011	277	39	−14	106	408
2012	156	8	−24	26	166
2013	31	2	−35	−5	−8
2014	2	2	−46	−21	−63
2015	−9	0	−57	−40	−107
Total:					
2006–2010	654	104	−10	282	1,031
2006–2015	1,110	155	−186	347	1,427

Note: The totals may not equal the sum of the rounded components.

Cost estimates for the new disability determination process were developed by the OCACT under the assumptions of the mid-session review of the Fiscal Year 2006 Budget. For these estimates, the OCACT assumed that a significant number of disability allowances would be determined quickly under the quick determinations made by special units at the State DDS. In addition, the new Federal reviewing official determinations are assumed to provide allowances substantially in excess of the number produced by the reconsideration in the current process. The effects of the allowances and documentation are assumed to diminish the number of allowances made by administrative law judges. With careful implementation of the new process, the OCACT estimates that about the same total number of disability allowances will be made ultimately for each group of new applicants, but that these allowances will, on average, be made somewhat more quickly. Due to this speeding-up of the determination process program costs are expected to be increased somewhat for about the next 10 years. However, after this transitional period, annual costs for the disability programs are not expected to be substantially different, again assuming that the new process is implemented carefully.

We anticipate no more than negligible increases, if any, in the Agency's administrative costs as a result of the issuance of this rule.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf),* in the following table (Table 1) below we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the increase in benefit payments as a result of the changes to the administrative review process presented in this final rule. All expenditures are classified as transfers to beneficiaries whose benefits are paid on the basis disability under title II of the Act or under disability or blindness under title XVI of the Act.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS

[In millions]

Category	Transfers
Annualized Monetized Transfers	$140.6.
From Who to Whom?	OASI, DI, HI, and SMI and General Fund of the Treasury to Disability Beneficiaries.

Benefits of New Procedures

This final rule addresses the challenges and issues in the current disability determination process identified through an extensive outreach effort to all interested parties in the disability determination process including the Congress, advocates, claimant representatives, the Federal Judiciary, and State and Federal adjudicators.

It provides for significant changes in our disability process and administrative procedures to improve service and stewardship. The changes will reduce processing time and increase accuracy to help ensure the right decision is made as early in the process as possible. These changes will ensure that adjudicators are accountable for the quality of disability adjudications at every step of the process by ensuring the development and documentation of a complete record for each claimant.

The new quick disability determination process ensures that beneficiaries who are clearly disabled receive favorable determinations within 20 calendar days or less from the date their completed application for benefits is sent to the State agency for adjudication. The creation of the Federal reviewing official provides for a Federal review earlier in the process. The establishment of a national network of experts will provide additional specialized expertise to assist adjudicators at all levels. The new comprehensive quality system will help ensure program integrity as well as continued improvement in decision-making. The Decision Review Board will provide the final agency opportunity to ensure the accuracy of decisions and reduce remands from the Federal courts. In addition, new

procedures will help ensure that adjudicators receive evidence in a timely manner resulting in a more efficient determination process while protecting the rights of the claimant.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities as they affect only individuals or States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Federalism Impact and Unfunded Mandates Impact

We have reviewed this rule under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. This rule does not affect the roles of the State, local, or tribal governments. However, the rule takes administrative notice of existing statutes governing the roles and relationships of the State agencies and SSA with respect to disability determinations under the Act.

Paperwork Reduction Act

This final rule contains information collection requirements that require Office of Management and Budget clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, we have submitted a clearance request to OMB for approval. We will publish the OMB number and expiration date upon approval.

As required by the PRA, we have published a notice of proposed rulemaking on July 27, 2005 at 70 FR 43590 and solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. While commenters did not specifically address the issues specified above, a number of comments concerned timeframes for sending information to us. For example, commenters disagreed with our proposed 20-day deadline for submitting evidence for a hearing. As a result, we decided to change the proposed rule and will provide 75 days notice of the hearing date and allow evidence to be submitted up to five business days before the hearing with certain exceptions to that five-day requirement. In addition, we expanded timeframes in other sections of the regulation for submitting documentation/evidence to us.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs, Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, subparts J, P, and Q of part 404, subparts I, J, and N of part 416 and subparts B and C of part 422 of chapter III of title 20 of the Code of Federal Regulations are amended and part 405 is added as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 2. Amend § 404.903 by removing ''and'' at the end of paragraph (v), by removing the ''.'' at the end of paragraph (w) and replacing it with ''; '' and by adding paragraphs (x) and (y) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(x) Determining whether to select your claim for the quick disability determination process under § 405.105 of this chapter; and

(y) The removal of your claim from the quick disability determination process under § 405.105 of this chapter.

Subpart P—[Amended]

■ 3. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 4. Amend § 404.1502 by revising the definition of ''nonexamining source'' to read as follows:

§ 404.1502 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, and at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See § 404.1527.

■ 5. Amend § 404.1503 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

(a) * * * Subpart I of part 405 of this chapter contains additional rules that

the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

■ 6. Amend § 404.1512 by revising paragraph (b)(6) and the second sentence of paragraph (c) to read as follows:

§ 404.1512 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions based on their review of the evidence in your case record expressed by medical experts or psychological experts that we consult. See § 404.1527(f)(2)–(3).

(c) * * * You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. * * *

* * * * *

■ 7. Amend § 404.1513 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants, medical and psychological experts (as defined in § 405.5 of this chapter), and other program physicians and psychologists to be ''statements about what you can still do'' made by nonexamining physicians and psychologists based on their review of the evidence in the case record. * * *

■ 8. Amend § 404.1519k by revising paragraph (a) to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) Subject to the provisions of § 405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 404.1624 and 404.1626 of this part.

* * * * *

■ 9. Amend § 404.1519m by revising the third sentence to read as follows:

§ 404.1519m Diagnostic tests or procedures.

* * * A State agency medical consultant, or a medical expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

■ 10. Amend § 404.1519s by revising paragraph (c) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(c) Subject to the provisions of § 405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

■ 11. Amend § 404.1520a by revising the third sentence and adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 404.1520a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter. * * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 404.941 of this part, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

■ 12. Amend § 404.1526 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(c) * * * A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. * * *

■ 13. Amend § 404.1527 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

* * * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and the Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

■ 14. Amend § 404.1529 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 404.914 through 404.918 of this chapter), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the Federal reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

■ 15. Amend § 404.1546 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

* * * * *

(d) *Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter.* In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process, the Federal reviewing official, administrative law judge, or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart Q—[Amended]

■ 16. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

■ 17. Amend § 404.1601 by adding a new third sentence to the introductory text to read as follows:

§ 404.1601 Purpose and scope.

* * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

■ 18. Amend § 404.1616 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§ 404.1616 Medical or psychological consultants.

* * * * *

(b) * * * In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

(e) * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

■ 19. Amend § 404.1624 by revising the first sentence to read as follows:

§ 404.1624 Medical and other purchased services.

Subject to the provisions of § 405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will

determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. * * *

■ 20. A new part 405 is added to read as follows:

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

Subpart A—Introduction, General Description, and Definitions

Sec.
405.1 Introduction.
405.5 Definitions.
405.10 Medical and Vocational Expert System.
405.20 Good cause for extending deadlines.
405.25 Disqualification of disability adjudicators.
405.30 Discrimination complaints.

Appendix to Subpart A of Part 405—Claims That Will Be Handled Under the Procedures in This Part

Subpart B—Initial Determinations

405.101 Disability determinations.
405.105 Quick disability determination process.
405.110 Standards for making quick disability determinations.
405.115 Notice of the initial determination.
405.120 Effect of an initial determination.

Subpart C—Review of Initial Determinations by a Federal Reviewing Official

405.201 Reviewing an initial determination—general.
405.210 How to request review of an initial determination.
405.215 Procedures before a Federal reviewing official.
405.217 Subpoenas.
405.220 Decision by the Federal reviewing official.
405.225 Notice of the Federal reviewing official's decision.
405.230 Effect of the Federal reviewing official's decision.

Subpart D—Administrative Law Judge Hearing

405.301 Hearing before an administrative law judge—general.
405.305 Availability of a hearing before an administrative law judge.
405.310 How to request a hearing before an administrative law judge.
405.315 Time and place for a hearing before an administrative law judge.
405.316 Notice of a hearing before an administrative law judge.
405.317 Objections.
405.320 Administrative law judge hearing procedures—general.
405.325 Issues before an administrative law judge.
405.330 Prehearing conferences.
405.331 Submitting evidence to an administrative law judge.
405.332 Subpoenas.
405.333 Submitting documents.
405.334 Prehearing statements.
405.340 Deciding a claim without a hearing before an administrative law judge.
405.350 Presenting evidence at a hearing before an administrative law judge.
405.351 Closing statements.
405.360 Official record.
405.365 Consolidated hearing before an administrative law judge.
405.366 Posthearing conferences.
405.370 Decision by the administrative law judge.
405.371 Notice of the decision of an administrative law judge.
405.372 Finality of an administrative law judge's decision.
405.373 Requesting consideration of new evidence.
405.380 Dismissal of a request for a hearing before an administrative law judge.
405.381 Notice of dismissal of a request for a hearing before an administrative law judge.
405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.
405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

Subpart E—Decision Review Board

405.401 Procedures before the Decision Review Board—general.
405.405 Decision Review Board.
405.410 Selecting claims for Decision Review Board review.
405.415 Notification by the Decision Review Board.
405.420 Effect of Decision Review Board action on the right to seek judicial review.
405.425 Procedures before the Decision Review Board.
405.427 Procedures before the Decision Review Board in claims dismissed by an administrative law judge.
405.430 Record before the Decision Review Board.
405.440 Actions that the Decision Review Board may take.
405.445 Notification of the Decision Review Board's action.
405.450 Effect of the Decision Review Board's action.

Subpart F—Judicial Review

405.501 Judicial review.
405.505 Extension of time to file a civil action.
405.510 Claims remanded by a Federal court.
405.515 Application of circuit court law.

Subpart G—Reopening and Revising Determinations and Decisions

405.601 Reopening and revising determinations and decisions.

Subpart H—Expedited Appeals Process for Constitutional Issues

405.701 Expedited appeals process—general.
405.705 When the expedited appeals process may be used.
405.710 How to request an expedited appeal.
405.715 Agreement in expedited appeals process.
405.720 Notice of agreement to expedite appeal.
405.725 Effect of expedited appeals process agreement.

Subpart I—Quick Disability Determination Unit and Other State Agency Responsibilities

405.801 Purpose and scope.
405.805 Basic responsibilities for us and the State.
405.810 Deemed notice that the State wishes to perform the quick disability determination function.
405.815 Making quick disability determinations.
405.820 Notifying claimants of the quick disability determination.
405.825 Processing standard.
405.830 How and when we determine whether the processing standard is met.
405.835 Action we will take if a State agency does not meet the quick disability determination processing time standard.
405.840 Good cause for not following the Act, our regulations, or other written guidelines.
405.845 Hearings and appeals.
405.850 Assumption of the quick disability determination function when we make a finding of substantial failure.

Subpart J—Payment of Certain Travel Expenses

405.901 Reimbursement of certain travel expenses.

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

Subpart A—Introduction, General Description, and Definitions

§ 405.1 Introduction.

(a) *General.* This part explains our procedures for adjudicating the disability portion of initial claims for entitlement to benefits based on disability under title II of the Social Security Act or for eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. All adjudicators derive their authority from the Commissioner and have the authority to find facts and, if appropriate, to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

(b) *Explanation of the administrative review process.* Generally, the administrative review process consists of several steps, which must be requested within certain time periods. The administrative review process steps are:

(1) *Initial determination.* When you claim disability benefits and a period of disability under title II of the Act or eligibility for disability or blindness

payments under title XVI of the Act, we will make an initial determination on your claim. See §§ 404.902–.903 and 416.1402–.1403 of this chapter for a description of what is and what is not an initial determination.

(2) *Review of initial determination.* If you are dissatisfied with our initial determination, you may request review by a Federal reviewing official.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with a decision made by the Federal reviewing official, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless your claim is referred to the Decision Review Board.

(4) *Decision Review Board.* When the Decision Review Board reviews your claim and issues a decision, that decision is our final decision.

(5) *Federal court review.* If you are dissatisfied with our final decision as described in paragraphs (b)(3) and (4) of this section, you may request judicial review by filing an action in Federal district court.

(c) *Nature of the administrative review process.* (1) *Non-adversarial proceeding.* In making a determination or decision on your claim, we conduct the administrative review process in a non-adversarial manner.

(2) *Evidence considered and right to representation.* Subject to the provisions of §§ 405.331 and 405.430, you may present and we will consider information in support of your claim. We also will consider any relevant information that we have in our records. To help you present your claim to us, you may have someone represent you, including an attorney.

(3) *Evidentiary standards applied.* When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence standard, except that the Decision Review Board will review findings of fact under the substantial evidence standard.

(4) *Clarity of determination or decision.* When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language the specific reasons for allowing or denying your claim.

(5) *Consequences of failing to timely follow this administrative appeals process.* If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(d) *Expedited appeals process.* You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

§ 405.5 Definitions.

As used in this part:

Act means the Social Security Act, as amended.

Administrative appeals judge means an official, other than an administrative law judge, appointed by the Commissioner to serve on the Decision Review Board.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

Board means Decision Review Board.

Commissioner means the Commissioner of Social Security, or his or her designee.

Date you receive notice means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

Day means calendar day, unless otherwise indicated.

Decision means the decision made by a Federal reviewing official, an administrative law judge, or the Decision Review Board.

Decision Review Board means the body comprised of administrative law judges and administrative appeals judges that reviews decisions and dismissal orders by administrative law judges.

Disability claim or *claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms ''disability claim'' or ''claim'' do not include a continuing disability review or age-18 redetermination.

Document includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

Evidence means evidence as defined under §§ 404.1512 and 416.912 of this chapter.

Initial determination means the determination by the State agency.

Medical expert means a medical professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

Medical and Vocational Expert System means the body comprised of medical, psychological, and vocational experts, who have qualifications required by the Commissioner. It provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

Medical and Vocational Expert Unit means the body within the Medical and Vocational Expert System that is responsible, in part, for overseeing the national network of medical, psychological, and vocational experts.

National network means those medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, who have the qualifications required by the Commissioner and who, under agreement with the Medical and Vocational Expert Unit, may provide advice within their areas of expertise to adjudicators at all levels of the administrative review process.

Preponderance of the evidence means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

Psychological expert means a psychological professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

Quick disability determination means an initial determination on a claim that we have identified as one that reflects a high degree of probability that you will be found disabled and where we expect that your allegations will be easily and quickly verified.

Quick Disability Determination Unit means the component of the State agency that is authorized to make quick disability determinations.

Federal reviewing official means a Federal official who reviews the initial determination.

State agency means the agency of a State that has been designated by the State to carry out the disability determination function. It also means the Federal disability determination services and agencies that carry out the disability determination function in Puerto Rico, Guam, and the District of Columbia.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Vacate means to set aside a previous action.

Vocational expert means a vocational professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

Waive means to give up a right knowingly and voluntarily.

We, *us*, *or* our refers to the Social Security Administration.

You or *your* refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

§ 405.10 Medical and Vocational Expert System.

(a) *General.* The Medical and Vocational Expert System is comprised of the Medical and Vocational Expert Unit and a national network of qualified medical, psychological, and vocational experts, which is overseen by the Medical and Vocational Expert Unit. These experts from the national network will assist Federal reviewing officials and administrative law judges in deciding claims. Medical and psychological experts from the national network may assist a State agency in determining disability when the State agency does not have the necessary expertise available to it. The Medical and Vocational Expert Unit also will maintain a national registry of vocational experts having qualifications required by the Commissioner who could provide vocational evidence at the initial level.

(b) *Network of medical, psychological, and vocational experts.* From time to time, the Commissioner may establish qualifications that medical, psychological, and vocational experts must meet in order to join the network. Any medical, psychological, or vocational experts meeting those qualifications, including State agency medical or psychological consultants, may become part of the network.

(1) *Use of medical and psychological experts at the State level.* (i) If a State agency requests assistance from us, the Medical and Vocational Expert Unit may assign, to the extent practicable, a network expert to a claim.

(ii) If a State agency is unable to obtain expertise that the Commissioner requires to adjudicate claims involving particular impairments, the Medical and Vocational Expert Unit will assign a network expert to a claim.

(iii) The medical or psychological expert so assigned will serve on the State agency's adjudication team as a medical or psychological consultant and will be deemed qualified as such under §§ 404.1616 and 416.1016 of this chapter.

(2) *Use of network experts at Federal level.* Both Federal reviewing officials and administrative law judges may request evidence from a claimant's treating source, including requesting a treating physician to conduct a consultative examination. However, if they need additional medical, psychological, or vocational documentary or testimonial evidence to adjudicate a claim, they must use the Medical and Vocational Expert System.

(3) *Experts who provide evidence at your request.* Experts whom you ask to provide evidence on your claim are not required to be affiliated with the network or meet the qualifications that we establish.

(c) *National registry of vocational experts.* Vocational experts having the qualifications established by the Commissioner may be included in a registry that we will maintain. The registry will be maintained for and made available to State agencies.

§ 405.20 Good cause for extending deadlines.

(a) If you wish us to extend the deadline to request a review under § 405.210, a hearing under § 405.310, action by the Decision Review Board under § 405.427(a), or judicial review under §§ 405.501–.505, you must establish that there is good cause for missing the deadline. To establish good cause, you must show us that—

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from filing a timely request; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from filing a timely request.

(b) Examples of circumstances that, if documented, may establish good cause include, but are not limited to, the following:

(1) You were seriously ill, and your illness prevented you from contacting us in person, in writing, or through a friend, relative, or other person;

(2) There was a death or serious illness in your immediate family;

(3) Important records were destroyed or damaged by fire or other accidental cause;

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time period;

(5) Within the time limit for requesting further review, you asked us for additional information explaining our action, and within 60 days of receiving the explanation, you requested a review;

(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;

(7) You did not receive notice of the determination or decision; or

(8) You sent the request to another Government agency in good faith within the time limit, and the request did not reach us until after the time period had expired.

§ 405.25 Disqualification of disability adjudicators.

Adjudicators at all levels of the administrative review process recognize the need for fair and impartial consideration of the merits of your claim. Any adjudicator who has any personal or financial interest in the matter pending for determination or decision will withdraw from conducting any proceeding with respect to your disability claim. If the adjudicator so withdraws, we will assign your claim to another adjudicator for a determination or decision.

§ 405.30 Discrimination complaints.

At all levels of the administrative review process, we do not give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of your impairment(s). If you believe that an adjudicator has improperly discriminated against you, you may file a discrimination complaint with us. You must file any such complaint within 180 days of the date upon which you became aware that you may have been discriminated against.

Appendix to Subpart A of Part 405—Claims That Will Be Handled Under the Procedures in This Part

(a) *What is this Appendix for?* This appendix lists the type of claims that will be handled under the procedures in this part, and in which States we will apply these procedures. If you meet the criteria in paragraphs (b) and (c) of this appendix, we will apply the procedures in this part when we decide your disability claim.

(b) *What claims will be handled under the procedures in this part?* (1) We will apply the procedures in this part if you file a disability claim (as defined in § 405.5) in one of the States listed in paragraph (c) of this appendix.

(2) If you move from one State to another after your disability claim has been filed, adjudicators at subsequent levels of review

will apply the regulations that initially applied to the disability claim. For example, if you file a claim in a State in a region in which we have implemented the procedures in this part, the procedures in this part will apply to the disability claim at subsequent levels of review, even if you move to a State in a region where we have not yet implemented these procedures. Conversely, if you file a claim in a State in a region where we have not yet implemented the procedures in this part, we will adjudicate the claim using the procedures in part 404 or 416 of this chapter, as appropriate, even if you subsequently move to a State where we have implemented the procedures in this part.

(c) *Which States are using the procedures in this part?* The procedures in this part apply in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

(d) Section 405.835 will be effective one year from the effective date of this rule.

Subpart B—Initial Determinations

§ 405.101 Disability determinations.

The State agency, unless it makes a quick disability determination under §§ 405.105–.110, will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both. The disability examiner will make a determination based on all of the evidence. The written determination will explain in clear and understandable language the specific reasons for and the effect of the initial determination. It will also inform you of your right to review by a Federal reviewing official and your right to representation.

§ 405.105 Quick disability determination process.

(a) If we identify your claim as one involving a high degree of probability that you are disabled, and we expect that your allegations will be easily and quickly verified, we will refer your claim to a Quick Disability Determination Unit, comprised of experienced State agency disability examiners.

(b) If we send your claim to a Quick Disability Determination Unit, within 20 days of the date your claim is received by the unit, that unit must:

(1) Have a medical or psychological expert (as defined in § 405.5 of this part) verify that the medical evidence in the file is sufficient to determine that, as of your alleged onset date, your physical or mental impairment(s) meets the standards we establish for making quick disability determinations, and

(2) Subject to the provisions of paragraph (c) of this section, make the quick disability determination as described in § 405.110.

(c) If the Quick Disability Determination Unit cannot make a determination that is fully favorable to you within 20 days of receiving it or if there is an unresolved disagreement between the disability examiner and the medical or psychological expert, the State agency will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both, and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§ 405.110 Standards for making quick disability determinations.

Subject to § 405.105, when making a quick disability determination, the State agency will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§ 405.115 Notice of the initial determination.

We will mail a written notice of the initial determination to you at your last known address. The written notice will explain in clear and understandable language the specific reasons for and the effect of the initial determination. The notice also will inform you of the right to review by a Federal reviewing official and explain your right to representation.

§ 405.120 Effect of an initial determination.

An initial determination is binding unless—

(a) You request review by a Federal reviewing official within the 60-day time period stated in § 405.210 of this part, or

(b) We revise the initial determination under subpart G of this part.

Subpart C—Review of Initial Determinations by a Federal Reviewing Official

§ 405.201 Reviewing an initial determination—general.

If you are dissatisfied with the initial determination on your disability claim, you may request review by a Federal reviewing official.

§ 405.210 How to request review of an initial determination.

(a) *Written request.* You must request review by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act under an account other than your own, the name and social security number of the wage earner under whose account you are filing,

(3) The reasons you disagree with the initial determination on your disability claim,

(4) Additional evidence that you have available to you, and

(5) The name and address of your representative, if any.

(b) *Time limit for filing request.* We will review an initial determination if you request review in writing no later than 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (d) of this section).

(c) *Place for filing request.* You should submit a written request for review at one of our offices. If your disability claim is under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request review.* If you want us to review the initial determination on your disability claim, but you do not request review timely, you may ask us for more time to request review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we will use the standards explained in § 405.20 of this part.

§ 405.215 Procedures before a Federal reviewing official.

(a) *General.* The Federal reviewing official will review existing evidence and accept and obtain new evidence in order to make a decision on your claim. The decision will be based on all evidence in the record.

(b) *Developing the record.* If you have additional evidence that you did not submit with your request for review, you should submit that evidence to the Federal reviewing official as soon as possible. If there is additional evidence that you wish to submit and you are having difficulty obtaining it, the Federal reviewing official may issue a subpoena for the evidence using the process and standards described in § 405.217. If the Federal reviewing official determines that additional evidence is necessary, we may obtain such evidence from other sources, including the State agency.

(c) *Seeking State agency clarification.* In reviewing your claim, if the Federal reviewing official determines that additional information, beyond that provided by the claimant, is necessary, the Federal reviewing official may

obtain it from other sources, including the State agency or a treating source. The State agency will provide such clarification or additional information to the Federal reviewing official on a timely basis. In such circumstances, the Federal reviewing official will retain the authority to make the decision as to whether or not you are disabled.

§ 405.217 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, we may issue subpoenas for the production of any documents that are relevant to an issue before the Federal reviewing official.

(b) To have documents subpoenaed, you must file a written request for a subpoena with us.

The written request must:

(1) Identify the documents with sufficient detail to find them;

(2) State the important facts that the document is expected to show; and

(3) Indicate why these facts could not be shown without that document.

(c) We will pay the cost of issuing the subpoena.

(d) Within five days of receipt of a subpoena, the person against whom the subpoena is directed may ask us to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

§ 405.220 Decision by the Federal reviewing official.

(a) The Federal reviewing official will make a decision based on all of the evidence. The written decision will explain in clear and understandable language the specific reasons for the decision, including an explanation as to why the Federal reviewing official agrees or disagrees with the rationale in the initial determination.

(b) Before making his or her decision, the Federal reviewing official may consult with a medical, psychological, or vocational expert through the Medical and Vocational Expert System if the Federal reviewing official determines that such consultation is necessary. If the Federal reviewing official disagrees with the initial determination, or if you submit, or the Federal reviewing official otherwise obtains, new and material medical evidence, the Federal reviewing official will consult with a medical or psychological expert through the Medical and Vocational Expert System before making a decision. At all times, the Federal reviewing official retains the authority to make the decision as to whether you are disabled under our rules.

§ 405.225 Notice of the Federal reviewing official's decision.

We will mail a written notice of the Federal reviewing official's decision to you at your last known address. We will inform you of your right to a hearing before an administrative law judge.

§ 405.230 Effect of the Federal reviewing official's decision.

The Federal reviewing official's decision is binding unless—

(a) You request a hearing before an administrative law judge under § 405.310 of this part within 60 days of the date you receive notice of the Federal reviewing official's decision and a decision is made by the administrative law judge,

(b) The expedited appeals process is used, or

(c) We revise the Federal reviewing official's decision under subpart G of this part.

Subpart D—Administrative Law Judge Hearing

§ 405.301 Hearing before an administrative law judge—general.

(a) This subpart explains what to do if you are dissatisfied with a decision by a Federal reviewing official. In it, we describe how you may ask for a hearing before an administrative law judge, and what procedures we will follow when you ask for a hearing.

(b) The Commissioner will appoint an administrative law judge to conduct the hearing. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), the Commissioner may assign your claim to another administrative law judge.

(c) You may examine the evidence used in making the Federal reviewing official's decision, submit evidence, appear at the hearing, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, any new evidence that is timely submitted, and any evidence that the administrative law judge obtains.

§ 405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if you are dissatisfied with the Federal reviewing official's decision on your disability claim.

§ 405.310 How to request a hearing before an administrative law judge.

(a) *Written request.* You must request a hearing by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act under an account other than your own, the name and social security number of the wage earner under whose account you are filing,

(3) The specific reasons you disagree with the decision made by the Federal reviewing official,

(4) A statement of the medically determinable impairment(s) that you believe prevents you from working,

(5) Additional evidence that you have available to you, and

(6) The name and address of your representative, if any.

(b) *Time limit for filing request.* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the Federal reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (d) of this section). The administrative law judge may decide your disability claim without an oral hearing under the circumstances described in § 405.340.

(c) *Place for filing request.* You should submit a written request for a hearing at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request a hearing.* If you want a hearing before an administrative law judge, but you do not request it timely, you may ask us for more time to request a hearing. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 405.20 of this part.

(e) *Waiver of the right to appear.* After you submit your request for a hearing, you may ask the administrative law judge to decide your claim without a hearing, as described in § 405.340(b).

The administrative law judge may grant the request unless he or she believes that a hearing is necessary. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

§ 405.315 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. The administrative law judge will notify you of the time and place of the hearing at least 75 days before the date of the hearing, unless you agree to a shorter notice period. If it is necessary, the administrative law judge may change the time and place of the hearing. If the administrative law judge changes the time and place of the hearing, he or she will send you reasonable notice of the change.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(c) *Determination regarding in-person or video teleconference appearance of witnesses at the hearing.* In setting the time and place of the hearing, the administrative law judge will determine whether you or any other person will appear at the hearing in person or by video teleconferencing. If you object to appearing personally by video teleconferencing, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge. If you object to any other person appearing by video teleconferencing, the administrative law judge will decide whether to have that person appear in person or by video teleconference. Section 405.350 explains how you and witnesses appear and present evidence at hearings. Except when you object to appearing by video teleconferencing as described below, the administrative law judge will direct that a person's appearance will be conducted by video teleconferencing when:

(1) Video teleconferencing technology is available,

(2) Use of video teleconferencing technology would be more efficient than conducting an examination of a witness in person, and

(3) The administrative law judge does not determine that there is another reason why video teleconferencing should not be used.

§ 405.316 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service. We will mail or serve the notice at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

(b) *Notice information.* The notice of hearing will tell you:

(1) The specific issues to be decided,

(2) That you may designate a person to represent you during the proceedings,

(3) How to request that we change the time or place of your hearing,

(4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under § 405.20,

(5) Whether your or a witness's appearance will be by video teleconferencing, and

(6) That you must submit all evidence that you wish to have considered at the hearing no later than five business days before the date of the scheduled hearing, unless you show that your circumstances meet the conditions described in § 405.331 for missing the deadline.

(c) *Acknowledging the notice of hearing.* In the notice of hearing, we will ask you to return a form to let us know that you received the notice. If you or your representative do(es) not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you let us know that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

§ 405.317 Objections.

(a) *Time and Place.* (1) If you object to the time or place of your hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the date set for the hearing, but no later than 30 days after receiving notice of the hearing. You must state the reason(s) for your objection and propose a time and place you want the hearing to be held.

(2) The administrative law judge will consider your reason(s) for requesting the change and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether we previously granted to you any changes in the time or place of your hearing.

(b) *Issues.* If you believe that the issues contained in the hearing notice are incorrect, you should notify the administrative law judge in writing at the earliest possible opportunity, but must notify him or her no later than five business days before the date set for the hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the hearing or in writing before the hearing.

§ 405.320 Administrative law judge hearing procedures—general.

(a) *General.* A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. The administrative law judge will conduct the proceedings in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into all of the issues raised by your claim, will question you and the other witnesses, and will accept any evidence relating to your claim that you submit in accordance with § 405.331.

(b) *Conduct of the hearing.* The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the notice of the decision is sent to you, the administrative law judge may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described below. If an administrative law judge requires testimony or other evidence from a medical, psychological, or vocational expert in your claim, the Medical and Vocational Expert Unit (see § 405.10 of this part) will provide an appropriate expert who has not had any prior involvement in your claim.

§ 405.325 Issues before an administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues raised by your claim, regardless of whether or not the issues may have already been decided in your favor.

(b) *New issues.* Any time after receiving the hearing request and before mailing notice of the hearing decision, the administrative law judge may consider a new issue if he or she, before deciding the issue, provides you an opportunity to address it. The administrative law judge or any party may raise a new issue; an issue may be raised even though it arose after the request for a hearing and even though it

has not been considered in an initial or reconsidered determination.

(c) *Collateral estoppel—issues previously decided.* In one of our previous and final determinations or decisions involving you, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act, we already may have decided a fact that is an issue before the administrative law judge. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in the previous determination or decision, unless he or she has reason to believe that it was wrong, or reopens the previous determination or decision under subpart G of this part.

§ 405.330 Prehearing conferences.

(a)(1) The administrative law judge, on his or her own initiative or at your request, may decide to conduct a prehearing conference if he or she finds that such a conference would facilitate the hearing or the decision on your claim. A prehearing conference normally will be held by telephone, unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised at the conference. We will give you reasonable notice of the time, place, and manner of the conference.

(2) At the conference, the administrative law judge may consider matters such as simplifying or amending the issues, obtaining and submitting evidence, and any other matters that may expedite the hearing.

(b) The administrative law judge will have a record of the prehearing conference made.

(c) We will summarize in writing the actions taken as a result of the conference, unless the administrative law judge makes a statement on the record at the hearing summarizing them.

(d) If neither you nor the person you designate to act as your representative appears at the prehearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

§ 405.331 Submitting evidence to an administrative law judge.

(a) You should submit with your request for hearing any evidence that you have available to you. Any written evidence that you wish to be considered at the hearing must be submitted no later than five business days before the date of the scheduled hearing. If you do not comply with this requirement, the administrative law judge may decline to consider the evidence unless the circumstances described in paragraphs (b) or (c) of this section apply.

(b) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence during the five business days before the hearing or at the hearing, the administrative law judge will accept the evidence if you show that:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(c) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence after the hearing and before the hearing decision is issued, the administrative law judge will accept the evidence if you show that there is a reasonable possibility that the evidence, alone or when considered with the other evidence of record, would affect the outcome of your claim, and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

§ 405.332 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, an administrative law judge may, on his or her own initiative or at your request, issue subpoenas for the appearance and testimony of witnesses and for the production of any documents that are relevant to an issue at the hearing.

(b) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 10 days before the hearing date. The written request must:

(1) Give the names of the witnesses or documents to be produced;

(2) Describe the address or location of the witnesses or documents with sufficient detail to find them;

(3) State the important facts that the witness or document is expected to show; and

(4) Indicate why these facts could not be shown without that witness or document.

(c) We will pay the cost of issuing the subpoena and pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(d) Within five days of receipt of a subpoena, but no later than the date of the hearing, the person against whom the subpoena is directed may ask the administrative law judge to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

§ 405.333 Submitting documents.

All documents prepared and submitted by you, i.e., not including medical or other evidence that is prepared by persons other than the claimant or his or her representative, should clearly designate the name of the claimant and the last four digits of the claimant's social security number. All such documents must be clear and legible to the fullest extent practicable and delivered or mailed to the administrative law judge within the time frames that he or she prescribes. Documents that are typewritten or produced with word processing software must use type face no smaller than 12 point font.

§ 405.334 Prehearing statements.

(a) At any time before the hearing begins, you may submit, or the administrative law judge may request that you submit, a prehearing statement as to why you are disabled.

(b) Unless otherwise requested by the administrative law judge, a prehearing statement should discuss briefly the following matters:

(1) Issues involved in the proceeding,

(2) Facts,

(3) Witnesses,

(4) The evidentiary and legal basis upon which your disability claim can be approved, and

(5) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

§ 405.340 Deciding a claim without a hearing before an administrative law judge.

(a) *Decision wholly favorable.* If the evidence in the record supports a decision wholly in your favor, the administrative law judge may issue a decision without holding a hearing. However, the notice of the decision will inform you that you have the right to a hearing and that you have a right to examine the evidence on which the decision is based.

(b) *You do not wish to appear.* The administrative law judge may decide a

claim on the record and not conduct a hearing if—

(1) You state in writing that you do not wish to appear at a hearing, or

(2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the evidence, which, except for the transcript of the hearing, will contain the material described in § 405.360. The decision of the administrative law judge must be based on this record.

§ 405.350 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the administrative law judge determines that the conditions in § 405.315(c) exist, by video teleconferencing, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* The administrative law judge may receive any evidence at the hearing that he or she believes relates to your claim.

(c) *Witnesses at a hearing.* Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask the witnesses any questions relating to your claim.

§ 405.351 Closing statements.

You or your representative may present a closing statement to the administrative law judge—

(a) Orally at the end of the hearing,

(b) In writing after the hearing and within a reasonable time period set by the administrative law judge, or

(c) By using both methods under paragraphs (a) and (b).

§ 405.360 Official record.

All hearings will be recorded. All evidence upon which the administrative law judge relies for the decision must be contained in the record, either directly or by appropriate reference. The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were used in making the decision under review and any additional evidence or written statements that the administrative law judge admits into the record under §§ 405.320(a) and 405.331. All exhibits introduced as evidence must be marked for identification and incorporated into the record. The official record of your claim will contain all of the marked exhibits and a verbatim recording of all testimony offered at the hearing; it also will include any prior initial determinations or decisions on your claim. Subject to § 405.373, the official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

§ 405.365 Consolidated hearing before an administrative law judge.

(a) *General.* (1) We may hold a consolidated hearing if—

(i) You have requested a hearing to decide your disability claim, and

(ii) One or more of the issues to be considered at your hearing is the same as an issue involved in another claim you have pending before us.

(2) If the administrative law judge consolidates the claims, he or she will decide both claims, even if we have not yet made an initial determination or a Federal reviewing official decision on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced at the hearing becomes the evidence of record in each claim adjudicated. The administrative law judge may issue either a consolidated decision or separate decisions for each claim.

§ 405.366 Posthearing conferences.

(a) The administrative law judge may decide, on his or her own initiative or at your request, to hold a posthearing conference to facilitate the hearing decision. A posthearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised. We will give you reasonable notice of the time, place, and manner of the conference. A record of the conference will be made and placed in the hearing record.

(b) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we will issue a decision based on the information available in your claim.

§ 405.370 Decision by the administrative law judge.

(a) The administrative law judge will make a decision based on all of the evidence, including the testimony adduced at the hearing. The administrative law judge will prepare a written decision that explains in clear and understandable language the specific reasons for the decision. While the administrative law judge will not consider the Federal reviewing official's decision to be evidence, the written decision will explain in detail why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the decision.

(b) During the hearing, in certain categories of claims that we identify in advance, the administrative law judge may orally explain in clear and understandable language the specific reasons for, and enter into the record, a wholly favorable decision. The administrative law judge will include in the record a document that sets forth the key data, findings of fact, and narrative rationale for the decision. Within five days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference and that explains why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the Federal reviewing official's decision. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a record of the oral decision.

§ 405.371 Notice of the decision of an administrative law judge.

We will send a notice and the administrative law judge's decision to you at your last known address. The notice accompanying the decision will inform you whether or not the decision is our final decision, and will explain your right to representation. If it is not our final decision, the notice will explain that the Decision Review Board has taken review of your claim.

§ 405.372 Finality of an administrative law judge's decision.

The decision of the administrative law judge becomes our final decision and is binding on you unless—

(a) The Decision Review Board reviews your claim,

(b) An administrative law judge or the Decision Review Board revises the decision under subpart G of this part,

(c) A Federal court reverses the decision or remands it for further administrative action, or

(d) The administrative law judge considers new evidence under § 405.373.

§ 405.373 Requesting consideration of new evidence.

(a) If the administrative law judge's decision is our final decision, the administrative law judge will consider new evidence submitted after the issuance of the decision if your claim has not been referred to the Decision Review Board. To obtain such consideration, you must request consideration by the administrative law judge at the earliest possible opportunity, but no later than 30 days after the date you receive notice of the decision.

(b) The administrative law judge will accept the evidence if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(c)(1) The administrative law judge will notify you within 10 days whether or not he or she will reconsider the final decision.

(2) If the administrative law judge declines to reconsider his or her decision, the decision remains final. If you choose to seek judicial review, you must file in Federal court within the 60-day period beginning with the date you originally received the final decision.

(3) If the administrative law judge agrees to reconsider his or her decision based on the new evidence, the final decision is vacated and not subject to judicial review. After considering the new evidence, the administrative law judge will take appropriate action, including rendering a decision under § 405.370, and we will send you notice of the decision under § 405.371.

(d) If the administrative law judge's decision is not our final decision, you must submit your evidence to the Decision Review Board, and the Board will consider it if you make the showings required in paragraph (b) of this section.

§ 405.380 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing;

(b)(1) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we previously notified you that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear; or

(2) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we had not previously notified you that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in § 405.20(a) of this part;

(c) If the doctrine of res judicata applies because we have made a previous determination or decision on your disability claim on the same facts and on the same issue or issues, and this previous determination or decision has become final;

(d) If you have no right to a hearing under § 405.305;

(e) If you did not request a hearing in time and we have not extended the time for requesting a hearing; or

(f) If you die and your estate or any person to whom an underpayment may be distributed under §§ 404.503 or 416.542 of this chapter has not pursued your claim.

§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.

We will mail a written notice of the dismissal of the hearing request to you at your last known address. The notice will tell you that you may ask the administrative law judge to vacate the dismissal (see § 405.382), and will explain your right to representation. The notice will also tell you that you may ask the Decision Review Board to review the dismissal if the administrative law judge does not vacate it.

§ 405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.

If you ask in writing within 30 days after the date you receive the notice of dismissal, an administrative law judge may vacate a dismissal of a hearing request. The administrative law judge will vacate the dismissal if he or she finds that it was erroneous. We will notify you of whether the administrative law judge granted or denied your request.

§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

The administrative law judge's dismissal of a request for a hearing is binding and not subject to further review, unless it is vacated by the administrative law judge under § 405.382 or by the Decision Review Board under § 405.427 of this part.

Subpart E—Decision Review Board

§ 405.401 Procedures before the Decision Review Board—general.

(a) This subpart describes the Decision Review Board and explains the Board's procedures for reviewing administrative law judge decisions. It explains which claims the Board will review and the effects of that review on your claim.

(b) This subpart also describes how the Board may review the administrative law judge's dismissal of your hearing request and sets out the procedures that we use when you request that the Board vacate the administrative law judge's dismissal order.

§ 405.405 Decision Review Board.

(a) The Board is comprised of administrative law judges and administrative appeals judges, who are appointed to the Board by the Commissioner. It is responsible for evaluating and reviewing certain decisions made by administrative law judges under this part before the decisions are effectuated.

(b) As described in § 405.410, the Board will review administrative law judge decisions. You may not appeal an administrative law judge's decision to the Board. The Board may affirm, modify, or reverse the administrative law judge's decision. It also may remand your claim to the administrative law judge for further action and decision.

(c) The Board is also the final step in the administrative review process if the administrative law judge dismissed your request for a hearing under § 405.380 of this part. As explained in § 405.382 of this part, you must ask the administrative law judge to vacate his or her dismissal order before you may ask the Board to vacate the order.

(d) In addition, the Board may review your claim after the administrative law judge's decision has been effectuated to study our disability determination process. If the Board reviews your claim under this paragraph, it will not change the administrative law judge's decision in your claim, unless the Board determines that the rules in subpart G of this part apply. If the Board

determines that subpart G applies, it may reopen and revise the administrative law judge's decision.

(e) The Board also may identify issues that impede consistent adjudication at all levels of the disability determination process and may recommend improvements to that process.

§ 405.410 Selecting claims for Decision Review Board review.

(a)(1) The Board may review your claim if the administrative law judge made a decision under §§ 405.340 or 405.370 of this part, regardless of whether the administrative law judge's decision was unfavorable, partially favorable, or wholly favorable to you.

(2) Claims the Board will review may include those where there is an increased likelihood of error or that involve the application of new policies, rules, or procedures. The Board will review both allowances and denials of benefits. It will not review claims based on the identity of the administrative law judge who decided the claim.

(b)(1) The Board may reopen claims under subpart G of this part without regard to the time limits therein, if, in the view of our effectuating component, the administrative law judge's decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim, the decision is clearly inconsistent with the Act or our regulations, or the decision is unclear regarding a matter that affects the outcome of the claim.

(2) If the Board reopens your claim, it will do so no later than 60 days from the date of the administrative law judge's decision.

§ 405.415 Notification by the Decision Review Board.

When the Board reviews your claim, we will notify you. The notice will explain that the Board will review the decision and will complete its action on your claim within 90 days of the date you receive notice. The notice also will explain that if the Board does not complete its action on your claim within 90 days, the administrative law judge's decision will become our final decision.

§ 405.420 Effect of Decision Review Board action on the right to seek judicial review.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, if the Board reviews your claim, the administrative law judge's decision will not be our final decision.

(2) If the Board does not complete its review within 90 days of the date you receive notice that the Board will review your claim, the administrative law judge's decision will become our final decision. If you are dissatisfied with this final decision, you may seek judicial review of the decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period. The Board will take no further action with respect to your claim, unless it determines that it can make a decision that is fully favorable to you under the provisions of paragraph (a)(3) of this section.

(3) If the administrative law judge's decision becomes our final decision under the provisions of paragraph (a)(2) of this section, but the Board determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision in accordance with subpart G of this part without regard to the time limits therein, and revise it as appropriate. If you have already sought judicial review of the final decision under section 205(g) of the Act, the Board will notify the Office of the General Counsel, which will then take appropriate action to request that the court remand the claim for the purpose of issuing the Board's decision.

(4) Paragraphs (a)(2) and (3) of this section do not apply to dismissals that you have asked the Board to review. You must wait for the Board to take action. The appeal rights, if any, that will be available at that time depend on the nature of the Board's action and will be explained in the Board's notice.

(b)(1) When the Board reviews your claim, it will either make our final decision or remand the claim to an administrative law judge for further proceedings consistent with the Board's remand order.

(2) If the Board makes our final decision in your claim, it will send you notice of the decision, as explained in § 405.445. If you are dissatisfied with the final decision, you may seek judicial review of the decision under section 205(g) of the Act.

(3) If the Board remands your claim to an administrative law judge, the Board's remand order is not our final decision and you may not seek judicial review of the remand order under section 205(g) of the Act. The administrative law judge's decision after remand will become our final decision, unless the Board reviews the decision under § 405.410.

(c) The Board's action under § 405.427 on your request to vacate the administrative law judge's dismissal of your request for review is not subject to further review.

§ 405.425 Procedures before the Decision Review Board.

(a) The Board may limit the issues that it considers and when it does, will notify you of those issues.

(b) You may submit a written statement within 10 days of the date you receive notice of the Board's review or the Board may ask you to submit a written statement within a certain time period. The written statement may be no longer than 2,000 words, and if typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite applicable law and specific facts in the record.

§ 405.427 Procedures before the Decision Review Board in claims dismissed by an administrative law judge.

(a) If you are dissatisfied with the administrative law judge's action on your request to vacate a dismissal under § 405.382 of this part, you may request that the Board vacate it. The Board will not consider your request to vacate a dismissal until the administrative law judge has ruled on your request. Your request to the Decision Review Board must be in writing and must be filed within 60 days after the date you receive the notice of the administrative law judge's action under § 405.382 of this part.

(b) When you request the Board to review the administrative law judge's dismissal of your claim, you may submit additional evidence, but the Board will accept only evidence that is relevant to the dismissal issue. All other evidence will be returned to you.

(c)(1) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, you may submit a written statement with the Board at the time that you ask the Board to vacate the dismissal order. The written statement may be no more than 2,000 words, and, if it is typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite to the relevant facts in the record and applicable law.

(2) If you file a written statement with the Board after you request it to vacate the dismissal, the Board will not consider your written statement and will return it to you without placing it in the record.

(d) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, the Board will take one of the following actions:

(1) Vacate the administrative law judge's dismissal order. If the Board issues an order vacating the administrative law judge's dismissal order, it will remand the claim to the administrative law judge for further proceedings consistent with the Board's order, or

(2) Decline to vacate the dismissal order.

§ 405.430 Record before the Decision Review Board.

Subject to § 405.373(b) of this part, in claims reviewed by the Board, the record is closed as of the date of the administrative law judge's decision, and the Board will base its action on the same evidence that was before the administrative law judge. When it reviews a claim, the Board will consider only that evidence that was in the record before the administrative law judge.

§ 405.440 Actions that the Decision Review Board may take.

(a) *General.* The Board may review the administrative law judge's findings of fact and application of the law. It will apply the substantial evidence standard in reviewing the findings of fact, but review de novo the application of the law.

(b) Subject to the provision of § 405.420(a)(2), when it reviews a claim that has been referred to it, the Board may take one of the following actions:

(1) If the administrative law judge's decision is supported by substantial evidence and there is no significant error of law, affirm the decision;

(2) Where there is an error of law, issue its own decision which affirms, reverses, or modifies the administrative law judge's decision;

(3) Where there are factual findings that are unsupported by substantial evidence and further development is necessary to reach a decision, remand your claim to the administrative law judge for further proceedings consistent with the Board's order. If the Board remands your claim to the administrative law judge for further proceedings, the administrative law judge must take any action that is specified by the Board in its remand order and may take any additional action that is not inconsistent with the Board's remand order.

§ 405.445 Notification of the Decision Review Board's action.

We will send notice of the Board's action to you at your last known address. The notice will explain in clear and understandable language the specific reasons for the Board's action. If the Board issues a decision, it will explain in clear and understandable language the specific reasons for its decision and the notice will also explain how to seek judicial review, and explain your right to representation. If the Board issues a remand order, the notice will explain that the remand order is not our final decision.

§ 405.450 Effect of the Decision Review Board's action.

(a) The Board's decision is binding unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(b) The administrative law judge's decision is binding if the Board does not complete its action within 90 days of the date you receive notice that the Board will review your claim, unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(c) The Board's action to remand your claim to an administrative law judge is binding and not subject to judicial review.

(d) The Board's action under § 405.427 on a request to vacate an administrative law judge's dismissal order is binding and not subject to further review.

Subpart F—Judicial Review

§ 405.501 Judicial review.

You may file an action in a Federal district court within 60 days of the date our decision becomes final and judicially reviewable.

§ 405.505 Extension of time to file a civil action.

If you have received our final decision, you may request that we extend the time for seeking judicial review in a Federal district court. Your request must be in writing and explain why the action was not filed, or cannot be filed, on time. The request must be filed with the Board. If you show that you have good cause for missing the deadline, we will extend the time period. We will use the standards in § 405.20 of this part to determine if you have good cause for an extension of time.

§ 405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part to us for further consideration, the Board may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Board remands a claim to an administrative law judge, it will send you a notice.

§ 405.515 Application of circuit court law.

We will follow the procedures in §§ 404.985 and 416.1485 of this chapter for claims decided under this part.

Subpart G—Reopening and Revising Determinations and Decisions

§ 405.601 Reopening and revising determinations and decisions.

(a) Subject to paragraph (b), the reopening procedures of §§ 404.987 through 404.996 of this chapter apply to title II claims and the procedures of §§ 416.1487 through 416.1494 of this chapter apply to title XVI claims.

(b) When we have issued a final decision after a hearing on a claim that you seek to have reopened, for purposes of this part, the time frames for good cause under §§ 404.988(b) and 416.1488(b) of this chapter are six months from the date of the final decision and we will not find that ''new and material evidence'' under §§ 404.989(a)(1) and 416.989(a)(1) of this chapter is a basis for good cause.

Subpart H—Expedited Appeals Process for Constitutional Issues

§ 405.701 Expedited appeals process—general.

You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. By using the expedited appeals process you may go directly to a Federal district court without first completing the administrative review process that is generally required before the court will hear your claim.

§ 405.705 When the expedited appeals process may be used.

If you have filed a disability claim, you may use the expedited appeals process if all of the following requirements are met:

(a) You have received an initial determination and a decision by a Federal reviewing official, but an administrative law judge has not made a decision;

(b) You have submitted a written request for the expedited appeals process; and

(c) You have our written agreement to use the expedited appeals process as required in § 405.715.

§ 405.710 How to request an expedited appeal.

(a) *Time limit for filing request.* If you wish to use the expedited appeals process, you must request it—

(1) No later than 60 days after the date you receive notice of the Federal

reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (c) of this section), or

(2) At any time after you have filed a timely request for a hearing but before you receive notice of the administrative law judge's decision.

(b) *Place for filing request.* You should file a written request for an expedited appeal at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(c) *Extension of time to request expedited appeals process.* If you want to use the expedited appeals process but do not request it in time, you may ask for more time to submit your request. Your request for an extension of time must be in writing and must give the reasons why the request for the expedited appeals process was not filed in time. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 405.20 of this part.

§ 405.715 Agreement in expedited appeals process.

If you meet all the requirements necessary for using the expedited appeals process, our authorized representative shall prepare an agreement. The agreement must be signed by you and by our authorized representative. The agreement must provide that—

(a) The facts in your claim are not in dispute;

(b) The sole issue in dispute is whether a provision of the Act that applies to your claim is unconstitutional;

(c) Except for your belief that a provision of the Act is unconstitutional, you agree with our interpretation of the law;

(d) If the provision of the Act that you believe is unconstitutional were not applied to your claim, your claim would be allowed; and

(e) Our decision is final for the purpose of seeking judicial review.

§ 405.720 Notice of agreement to expedite appeal.

If we agree that you can use the expedited appeals process, a signed copy of the agreement will be mailed to you and will constitute notice. If you do not meet all of the requirements necessary to use the expedited appeals process, we will advise you that your request to use this process is denied and that your request will be considered as a request for a hearing, if you have not already requested a hearing.

§ 405.725 Effect of expedited appeals process agreement.

After an expedited appeals process agreement is signed, you will not need to complete the remaining steps of the administrative review process. Instead, you may file an action in the Federal district court in the district where you reside. You must file within 60 days after the date you receive notice that the agreement has been signed by our authorized representative.

Subpart I—Quick Disability Determination Unit and Other State Agency Responsibilities

§ 405.801 Purpose and scope.

This subpart describes the standards of performance and administrative requirements and procedures for States making quick disability determinations for the Commissioner under titles II and XVI of the Act. It also establishes the Commissioner's responsibilities in carrying out the disability determination function and what action we will take if the State agency does not meet the quick disability determination processing standard. It supplements, and does not replace, the standards of subpart Q of part 404 or subpart J of part 416 of this chapter.

§ 405.805 Basic responsibilities for us and the State.

(a) *General.* We will work with the State to provide and maintain an effective system for processing quick disability determinations. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of Quick Disability Determination Units, except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) *Our responsibilities.* In addition to the responsibilities we have under §§ 404.1603 and 416.1003 of this chapter, we will:

(1) As described in § 405.10 of this part, to the extent practicable, provide medical, psychological, and vocational expertise needed for adjudication of a claim if such expertise is not otherwise available to the State, and

(2) Pay the established Federal rate for the State agency's use of any medical or psychological expert affiliated with the national network and arranged by the Medical and Vocational Expert System.

(c) *Responsibilities of the State.* (1) In addition to the responsibilities the State has under subpart Q of part 404 or subpart J of part 416 of this chapter, any State that performs the quick disability determination function will organize a separate Quick Disability Determination Unit that will comply with the requirements set out in this subpart. The unit will use experienced disability examiners in making quick disability determinations.

(2) In all States to which this part applies, the medical, psychological, and vocational experts employed by or under contract with the State agency must meet the Commissioner's qualification standards prescribed under § 405.10 of this part in order for the State agency to receive reimbursement for the experts' salaries or the cost of their services.

§ 405.810 Deemed notice that the State wishes to perform the quick disability determination function.

Any State that currently performs the disability determination function under subpart Q of part 404 or subpart J of part 416 of this chapter will be deemed to have given us notice that it wishes to perform the quick disability determination function, in lieu of or in addition to the disability determination function.

§ 405.815 Making quick disability determinations.

(a) When making a quick disability determination, the State agency will apply subpart B, part 405, of our regulations.

(b) The State agency will make quick disability determinations based only on the medical and nonmedical evidence in its files.

(c) Quick disability determinations will be made by the Quick Disability Determination Unit and a medical or psychological expert, as defined in § 405.5 of this part.

(d) The State agency will certify each determination of disability to us in the manner that we prescribe.

(e) The State agency will furnish us with all the evidence it considered in making its determination.

(f) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

§ 405.820 Notifying claimants of the quick disability determination.

The State agency will prepare notices in accordance with § 405.115 of this part

whenever it makes a quick disability determination.

§ 405.825 Processing standard.

The processing standard for quick disability determinations is processing 98 percent of all of the claims that we refer to the Quick Disability Determination Unit within 20 days from the day each claim is received by the State agency, including Saturdays, Sundays, and holidays.

§ 405.830 How and when we determine whether the processing standard is met.

(a) *How we determine processing time.* For all quick disability determinations, we calculate the number of days, including Saturdays, Sundays, and holidays, from the day the claim is received by the State agency until the day the State agency releases the claim to us or until the day the State agency places the claim into its regular disability claims adjudication process.

(b) *Frequency of review.* We will monitor the processing time for quick disability determinations on a quarterly basis separately from the other State disability determinations. We will determine whether or not the processing standard has been met at the end of each quarter.

(c) *Provision of performance support for the processing standard.* (1) *Optional support.* We may offer, or a State agency may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. The State agency does not have to be below the processing standard described § 405.825. Support will be offered, or granted upon request, based on available resources.

(2) *Mandatory support.* We will provide a State agency with mandatory performance support if regular monitoring and review reveal that the processing standard described in § 405.825 is not met for one calendar quarter.

(3) *Support we may provide.* In determining what support we may provide, we will apply §§ 404.1662 and 416.1062 of this chapter.

§ 405.835 Action we will take if a State agency does not meet the quick disability determination processing time standard.

If a State agency does not meet the established processing standard described in § 405.825 for two or more consecutive calendar quarters and does not have good cause under § 405.840 for failing to meet the processing standard, we will notify the State agency in writing that we propose to find it has substantially failed to comply with our standards regarding quick disability determinations and that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make quick disability determinations consistent with the Act, our regulations, or other written guidelines, we will assume responsibility for performing the quick disability determination function.

§ 405.840 Good cause for not following the Act, our regulations, or other written guidelines.

We will follow the procedures in §§ 404.1671 and 416.1071 of this chapter to determine if the State has good cause for not following the Act, our regulations, or other written guidelines.

§ 405.845 Hearings and appeals.

We will follow the provisions of §§ 404.1675 through 404.1683 and §§ 416.1075 through 416.1083 of this chapter when we propose to find that the State agency has substantially failed to comply with our standards regarding quick disability determinations.

§ 405.850 Assumption of the quick disability determination function when we make a finding of substantial failure.

(a) *Notice to State.* When we find that substantial failure exists, we will notify the State in writing that we will assume responsibility for performing the quick disability determination function from the State agency and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of assumption of the quick disability determination function from a State agency may not be earlier than 180 days after our finding of substantial failure, and not before compliance with the requirements of §§ 404.1692 and 416.1092 of this chapter.

(c) *Other regulations.* The provisions of §§ 404.1691, 404.1693, 404.1694, 416.1091, 416.1093 and 416.1094 of this chapter apply under this subpart to the same extent that they apply under subpart Q of part 404 and subpart J of part 416 of this chapter.

Subpart J—Payment of Certain Travel Expenses

§ 405.901 Reimbursement of certain travel expenses.

When you file a disability claim, you may incur certain travel expenses that may be reimbursable. We use §§ 404.999a through 404.999d of this chapter for title II claims and §§ 416.1495 through 416.1499 of this chapter for title XVI claims in determining reimbursable expenses and for explaining how and where you may request reimbursement.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 21. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98'460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

Subpart I—[Amended]

■ 22. Amend § 416.902 by revising the definition of ''nonexamining source'' to read as follows:

§ 416.902 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, and at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See § 416.927.

* * * * *

■ 23. Amend § 416.903 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§ 416.903 Who makes disability and blindness determinations.

(a) * * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

■ 24. Amend § 416.912 by revising paragraph (b)(6) and the second sentence of paragraph (c) to read as follows:

§ 416.912 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, and at the Federal reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions based on their review of the evidence in your case record expressed by medical experts or psychological experts that we consult. See §§ 416.927(f)(2) and (f)(3).

(c) * * * You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. * * *

* * * * *

■ 25. Amend § 416.913 by revising the first sentence of paragraph (c) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants, medical and psychological experts (as defined in § 405.5 of this chapter), and other program physicians and psychologists to be ''statements about what you can still do'' made by nonexamining physicians and psychologists based on their review of the evidence in the case record. * * *

* * * * *

■ 26. Amend § 416.919k by revising paragraph (a) to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) Subject to the provisions of § 405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 416.1024 and 416.1026 of this part.

* * * * *

■ 27. Amend § 416.919m by revising the third sentence to read as follows:

§ 416.919m Diagnostic tests or procedures.

* * * A State agency medical consultant, or a medical expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

■ 28. Amend § 416.919s by revising paragraph (c) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(c) Subject to the provisions of § 405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

■ 29. Amend § 416.920a by revising the third sentence and adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter. * * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the Federal reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the

appropriate Federal component, using the rules in § 416.1441 of this part, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

■ 30. Amend § 416.924 by revising the text of paragraph (g) to read as follows:

§ 416.924 How we determine disability for children.

* * * * *

(g) * * * When we make an initial or reconsidered determination whether you are disabled under this section or whether your disability continues under § 416.994a (except when a disability hearing officer makes the reconsideration determination), we will complete a standard form, Form SSA–538, Childhood Disability Evaluation Form. We will also complete the standard form when we make an initial determination in claims adjudicated under the procedures in part 405 of this chapter. The form outlines the steps of the sequential evaluation process for individuals who have not attained age 18. The State agency medical or psychological consultant (see § 416.1016 of this part) or other designee of the Commissioner, or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, has overall responsibility for the content of the form and must sign the form to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges, and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step of the sequential evaluation process in their determinations or decisions. In addition, in claims adjudicated under the procedures in part 405 of this chapter, Federal reviewing officials, administrative law judges, and the Decision Review Board will not complete the form but will indicate their findings at each step of the sequential evaluation process in their decisions.

■ 31. Amend § 416.926 by revising the first sentence of paragraph (d) and by revising paragraph (e) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(d) * * * A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. * * *

(e) *Responsibility for determining medical equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016 of this part) has the overall responsibility for determining medical equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in § 405.5 of this chapter) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council. In claims adjudicated at the Federal reviewing official, administrative law judge, and the Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding medical equivalence rests with the Federal reviewing official, administrative law judge, or Decision Review Board.

■ 32. Amend § 416.926a by revising paragraph (n) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(n) *Responsibility for determining functional equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016 of this part) has the overall responsibility for determining functional equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in § 405.5 of this chapter) has the overall responsibility for determining functional equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining functional equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding functional equivalence rests with the administrative law judge or Appeals Council. In claims adjudicated at the Federal reviewing official, administrative law judge, and Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding functional equivalence rests with the Federal reviewing official, administrative law judge, or Decision Review Board.

■ 33. Amend § 416.927 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404 of this chapter, and your residual

functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

* * * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

■ 34. Amend § 416.929 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 416.1414 through 416.1418 of this part), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the Federal reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

■ 35. Amend § 416.946 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

* * * * *

(d) *Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter.* In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process, the Federal reviewing official, administrative law judge, or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart J—[Amended]

■ 36. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

■ 37. Amend § 416.1001 by adding a new third sentence to the introductory text to read as follows:

§ 416.1001 Purpose and scope.

* * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

■ 38. Amend § 416.1016 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§ 416.1016 Medical or psychological consultants.

* * * * *

(b) * * * In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

(e) * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

■ 39. Amend § 416.1024 by revising the first sentence to read as follows:

§ 416.1024 Medical and other purchased services.

Subject to the provisions of § 405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. * * *

Subpart N—[Amended]

■ 40. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

■ 41. Amend § 416.1403 by removing ''and'' at the end of paragraph (a)(20), by removing the ''.'' at the end of paragraph (a)(21) and replacing it with ''; '' and by adding paragraphs (a)(22) and (23) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(22) Determining whether to select your claim for the quick disability determination process under § 405.101 of this chapter; and

(23) The removal of your claim from the quick disability determination process under § 405.101 of this chapter.

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

■ 42. The authority citation for subpart B of part 422 is revised to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Pub. L. 108–458.

■ 43. Amend § 422.130 by revising the first sentence of paragraph (b) and the first and second sentences of paragraph (c) to read as follows:

§ 422.130 Claim procedure.

* * * * *

(b) * * * An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration's records (see subpart H of part 404 of this chapter

for evidence requirements in nondisability cases and subpart P of part 404 of this chapter and part 405 of this chapter for evidence requirements in disability cases). * * *

(c) * * * In the case of an application for benefits, the establishment of a period of disability, a lump-sum death payment, a recomputation of a primary insurance amount, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, the Social Security Administration, after obtaining the necessary evidence, will make a determination as to the entitlement of the individual claiming or for whom is claimed such benefits, and will notify the applicant of the determination and of his right to appeal. Section 404.1520 and subpart I of part 405 of this chapter have discussions of the respective roles of State agencies and the Administration in the making of disability determinations and § 404.1521 and subparts B and I of part 405 of this chapter have information regarding initial determinations as to entitlement or termination of entitlement in disability claims. * * *

* * * * *

■ 44. Revise § 422.140 to read as follows:

§ 422.140 Reconsideration or review of initial determination.

Subject to the provisions of subpart C of part 405, if you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. In claims adjudicated under the procedures in part 405 of this chapter, if you are dissatisfied with an initial determination, you may request review by a Federal reviewing official. The information in § 404.1503 and part 405 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration (or review by Federal reviewing officials) of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered (or reviewed by a Federal reviewing official in claims adjudicated under the procedures in part 405 of this chapter), we will mail you written notice and inform you of your right to a hearing before an administrative law judge (see § 422.201 and subpart D of part 405, and 42 CFR 405.904(a)).

Subpart C—[Amended]

■ 45. The authority citation for subpart C of part 422 continues to read as follows:

Authority: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

■ 46. Amend § 422.201 by revising the first and second sentences in the introductory text and by adding a new third sentence to the introductory text and by revising paragraphs (b) and (c) to read as follows:

§ 422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Hearings and Appeals, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 408, 410 and 416 of this chapter. It also describes the procedures for requesting such hearing or Appeals Council review, and for instituting a civil action for court review for cases decided under these parts. Procedures related to hearings before an administrative law judge, review by the Decision Review Board, or court review in claims adjudicated under the procedures in part 405 of this chapter are explained in subparts D, E, and F of part 405 of this chapter. * * *

* * * * *

(b) Title VIII of the Act, §§ 408.1040 through 408.1060 of this chapter;

(c) Title XVI of the Act, §§ 416.1429 through 416.1483 of this chapter;

* * * * *

[FR Doc. 06–3011 Filed 3–27–06; 12:39 pm]

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Federal Register

Friday,
March 31, 2006

Part III

Department of Veterans Affairs

38 CFR Part 5
General Provisions; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AL87

General Provisions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language general provisions applicable to its compensation and pension regulations, including definitions. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants, beneficiaries and VA personnel in locating and understanding these general provisions.

DATES: Comments must be received by VA on or before May 30, 2006.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL87.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Bob White, Acting Chief, Regulations Rewrite Project (00REG2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 ''VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs.'' The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding the scope of the regulations in new part 5, general definitions, and general policy provisions.

Outline

Overview of New Part 5 Organization
Overview of Proposed Subpart A Organization
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Overview of New Part 5 Organization

We plan to organize the new part 5 regulations so that most provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. This organization will allow claimants, beneficiaries, and their representatives, as well as VA adjudicators, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be ''Subpart A—General Provisions.'' It would include information regarding the scope of the regulations in new part 5, general definitions and general policy provisions for this part. This subpart is the subject of this document.

''Subpart B—Service Requirements for Veterans'' would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

''Subpart C—Adjudicative Process, General'' would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRM)s due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published on May 10, 2005. *See* 70 FR 24680.

''Subpart D—Dependents and Survivors'' would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations.

''Subpart E—Claims for Service Connection and Disability Compensation'' would define service-connected disability compensation and service connection, including direct and secondary service connection. This subpart would inform readers how VA determines service connection and entitlement to disability compensation. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published on July 27, 2004. *See* 69 FR 44614.

''Subpart F—Nonservice-Connected Disability Pensions and Death Pensions'' would include information regarding the three types of nonservice-connected pension: Improved Pension, Old-Law Pension, and Section 306 Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension and the effective dates governing each pension. This subpart will be published as two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578.

''Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary'' would contain regulations governing claims for dependency and indemnity compensation (DIC); death

compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart will be published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective-date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published on October 21, 2005. *See* 70 FR 61326.

''Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors'' would pertain to special and ancillary benefits available, including benefits for children with various birth defects.

''Subpart I—Benefits for Certain Filipino Veterans and Survivors'' would pertain to the various benefits available to Filipino veterans and their survivors.

''Subpart J—Burial Benefits'' would pertain to burial allowances.

''Subpart K—Matters Affecting Receipt of Benefits'' would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits.

''Subpart L—Payments and Adjustments to Payments'' would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, proposed regulations in subpart L will be published in two separate NPRMs.

The final subpart, ''Subpart M—Apportionments and Payments to Fiduciaries or Incarcerated Beneficiaries,'' would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the Supplementary Information, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted ''[regulation that will be published in a future Notice of Proposed Rulemaking]'' where the part 5 regulation citation would be placed.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

Overview of Proposed Subpart A Organization

This NPRM pertains to general provisions applicable to compensation and pension programs. These regulations would be contained in proposed Subpart A of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, as are some regulations that do not have counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the relationship between the current regulations in part 3 and the proposed regulations contained in this NPRM:

Proposed or redesignated part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or ''New'')
5.0	New.
5.1—Active military Service	New.
5.1—Agency of original jurisdiction	New.
5.1—Alien	New.
5.1—Armed Forces	3.1(a).
5.1—Beneficiary	New.
5.1—Benefit	New.
5.1—Certified statement	New.
5.1—Child born of the marriage and child born before the marriage	3.54(d).
5.1—Claimant	New.
5.1—Competent evidence	New.
5.1—Direct service connection	New.
5.1— Discharged or released from active military service (1)	3.1(h).
5.1— Discharged or released from active military service (2)	New.
5.1—Final decision	New.
5.1—Former prisoner of war (or former POW)	Introduction to 3.1(y)(1), 3.1(y)(2)(i), and 3.1(y)(5).
5.1—Fraud (1)	3.901(a).
5.1—Fraud (2)	3.1(aa)(1).
5.1—Fraud (3)	3.1(aa)(2).
5.1—In the waters adjacent to Mexico	3.1(t).
5.1—Insanity	New.
5.1—Notice	3.1(q).
5.1—Nursing home	3.1(z).
5.1—On the borders of Mexico	3.1(s).
5.1—Political subdivision of the United States	3.1(o).
5.1—Reserve component	3.1(b).
5.1—Reserve, or reservist	3.1(c).
5.1—Secretary concerned	3.1(g).

Proposed or redesignated part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or ''New'')
5.1—Service medical records	New.
5.1—State	3.1(i).
5.1—Uniformed services	New.
5.1—Veteran	3.1(d).
5.2	[Reserved].
5.3(a)	New.
5.3(b)(1)	Second and third sentences of 3.102.
5.3(b)(2)	Fourth and sixth sentences of 3.102.
5.3(b)(3)	Seventh sentence of 3.102.
5.3(c) and (d)	New.
5.4(a)	3.103(a), second sentence.
5.4(b)	First sentence of 3.102; 3.103(a), second sentence.

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

5.0 Scope of Applicability

The first proposed regulation in this NPRM is a new general scope provision. The regulation informs readers that, except as otherwise provided, the provisions of the regulations in proposed part 5 apply only to benefits governed by part 5.

We are aware that some parts of 38 CFR that do not relate to benefits governed by part 5 may rely expressly or implicitly on certain part 3 regulations and that part 3 will eventually be superceded by part 5. As part of the Project, VA will determine whether adjustments in other parts are necessary to specifically adopt part 5 regulations by reference, or whether to add equivalent regulations to other parts to ensure continued coverage after part 3 is removed from title 38, CFR. We anticipate that we will make the determination regarding other parts of title 38, CFR, on or about the time that the final version of part 5 is adopted.

We propose not to carry forward the scope provision in current § 3.2100, which applies only to the provisions in subpart D of part 3, because the content of that provision would be subsumed by proposed § 5.0.

5.1 General Definitions

The next proposed regulation in this NPRM is based primarily on current § 3.1 and includes definitions of words and phrases commonly used in proposed part 5. Some of the definitions in current § 3.1 would simply be rewritten in proposed § 5.1 to provide the same information in a more logically organized form. Some proposed definitions are new. Some current § 3.1 definitions are not addressed in proposed § 5.1 because we propose to incorporate them into new part 5 subparts dealing with specific types of benefits. (Those definitions will be, or have already been, addressed in other NPRMs.) All terms defined in proposed § 5.1 would be arranged in alphabetical order.

Proposed § 5.1 provides a general definition for ''active military service.'' We propose to use this term in lieu of the longer term ''active military, naval, and air service'' used in 38 U.S.C. 101(24) and current part 3 for simplicity with no change in meaning. We have also included a cross-reference to proposed § 5.21, the section that describes service VA recognizes as active military service. *See* 69 FR 4820, 4833 (Jan. 30, 2004).

Proposed § 5.1 includes the following definition of the term ''agency of original jurisdiction'': ''Agency of original jurisdiction means the VA activity that is responsible for making the initial determination on an issue affecting a claimant's or beneficiary's right to benefits.'' We note that this definition differs somewhat from a definition of the same term in 38 CFR 20.3(a) which reads as follows:''*Agency of original jurisdiction* means the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.'' The difference is because of the narrower scope of part 5 and because the definitions in § 20.3 are geared to an appellate context while the definitions in proposed § 5.1 are not.

Proposed § 5.1 provides the definition of the term ''alien,'' which appears several times throughout current part 3, but it is not defined in current part 3 or in title 38, United States Code. Such a definition is contained in chapter 12, ''Immigration And Nationality, General Provisions,'' of title 8, ''Aliens And Nationality,'' of the United States Code. ''Alien'' is defined in 8 U.S.C. 1101(a)(3) as ''any person not a citizen or national of the United States.'' We propose to adopt this definition for part 5. It is simple and clear and is the definition used in the U.S.C. title primarily applicable to determinations of immigration and nationality matters by the United States.

Proposed § 5.1 defines ''beneficiary'' as ''an individual in receipt of benefits under any of the laws administered by VA.''

We propose to define ''benefit'' as ''any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by VA pertaining to veterans and their dependents and survivors.'' The definition of ''benefit'' parallels the definition of that term at 38 CFR 20.3(e).

Proposed § 5.1 defines a ''certified statement,'' another undefined term used in current part 3, as a ''statement made and signed by an individual who affirms that the statement's content is true and accurate to the best of that individual's knowledge and belief.'' This is consistent with VA usage and

consistent with the common understanding of that term. For example, see the definition of ''certify'', *Black's Law Dictionary* 220 (7th ed. 1999), ''1. To authenticate or verify in writing. 2. To attest as being true or as meeting certain criteria.''

Proposed § 5.1 next addresses the concepts of ''child born of the marriage'' and ''child born before the marriage.'' The recognition of an individual as the veteran's surviving spouse can turn on whether a child was born of his or her marriage to the veteran, or was born to the veteran and the surviving spouse before their marriage. *See* 38 U.S.C. 103(a) (concerning claims from spouses who entered into a marriage with a veteran without knowledge of a legal impediment to the marriage); 1102(a) (concerning marriage requirements for death compensation); 1304 and 1318(c) (concerning marriage requirements for dependency and indemnity compensation); 1532(d), 1534(c), 1536(c), and 1541(f) (concerning marriage requirements for various pension benefits). The proposed definition is based on current § 3.54(d) with the clarification that adopted children and stepchildren are not included in these terms, for the following reasons.

The United States Court of Appeals for Veterans Claims (CAVC) interpreted the language ''child born of the marriage'' and ''child born before the marriage'' in the context of a claim for pension under chapter 15, title 38, United States Code, as follows:

> Applying the ''fundamental canon of statutory construction'' that ''unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning'' * * *, the statutory phrase ''child * * * born of the marriage'' of § 1541(f)(3) cannot be expanded by the B[oard of Veterans Appeals] or this Court to read ''child * * * born of *or adopted during* the marriage''. When a statute is clear and unambiguous, and a term of that statute is ''plain on the face of the statute, our statutory inquiry is at an end.'' * * * An adopted child is not a ''child * * * born of the marriage'' for the purpose of determining whether a surviving spouse is qualified for a pension under 38 U.S.C. 1541 and 38 CFR 3.54.

Tapuro v. *Derwinski*, 2 Vet. App. 154, 155 (1992) (citations omitted). The Court has clearly construed the relevant statutory language to exclude adopted children in the context of 38 U.S.C. 1541, and identical language appears in the other statutes governing the benefits to which the proposed regulation applies, i.e., to 38 U.S.C. 103(a), 1102(a), 1304, 1318(c), 1532(d), 1534(c), 1536(c) and 1541(f). Therefore, we propose to adopt the CAVC's interpretation in proposed § 5.1. Following the Court's logic, which is sound, we also propose to clarify that stepchildren are not included. Clearly, a stepchild cannot be a ''child * * * born of the marriage'' between a veteran and his or her spouse.

The definition of ''claimant'' in proposed § 5.1, ''any individual applying for, or submitting a claim for, any benefit under the laws administered by VA,'' is based on the statutory definition of that term found at 38 U.S.C. 5100, ''Definition of 'claimant'.''

Proposed § 5.1 provides a definition of the term ''competent evidence.'' Since the process of adjudicating claims is not adversarial, VA is not concerned with the technical ''admissibility'' of evidence and does not exclude any evidence from the record (as we propose to remind readers in a note associated with the proposed definition). However, VA must evaluate the probative value of evidence. One of the qualities upon which VA evaluates whether evidence is probative is whether or not it is ''competent.'' Basically, this means that VA evaluates evidence on whether its source was someone who had a sound basis for stating the opinion or reporting the facts contained in the evidence.

The new proposed definition would specify that competent evidence is evidence of one of two types, ''competent expert evidence'' or ''competent lay evidence.'' In that respect, this new definition is similar to § 3.159(a)(1) and (2), which distinguishes between ''competent medical evidence'' and ''competent lay evidence.'' However, instead of defining ''competent medical evidence,'' paragraph (1) of the proposed definition defines ''competent expert evidence,'' which would be evidence that must be provided by someone with specialized education, training, or experience. ''Expert evidence'' is sufficiently broad to encompass requiring a valid foundation for any evidence, not just medical evidence, which is based on special technical expertise. Examples might include such things as opinions from a handwriting analysis expert or an accident reconstruction expert.

Paragraph (2) of the proposed definition defines ''competent lay evidence.'' It is substantively similar to the definition of the same term in current § 3.159(a)(2) in most respects. However, we propose to add that to be competent the lay evidence must be provided by a person who has *personal* knowledge of the facts or circumstances addressed by the evidence. Mere hearsay would not be competent evidence. ''It bears repeating that [lay] testimony is competent only so long as it remains centered upon matters within the knowledge and personal observations of the witness. Should the testimony stray from this basic principle and begin to address, for example, medical causation, that portion of the testimony addressing the issue of medical causation is not competent.'' *Layno* v. *Brown*, 6 Vet.App. 465, 470 (1994). We also propose to state that a lay person is a person without *relevant* specialized education, training, or experience. A person could be an expert in a field unrelated to the subject matter of the evidence at hand and still be considered to be a ''lay person'' in the context of evaluating the competency of that evidence. For example, with respect to evaluating a medical opinion provided by a witness without medical training, that person would be considered to be a lay person even though he or she might have the credentials to provide expert evidence concerning structural engineering.

Proposed § 5.1 defines direct service connection in language consistent with VA's traditional usage. ''Direct service connection'' is a term commonly used in veterans law. For example, the term is used in the titles of current §§ 3.304 and 3.305. However, it is not specifically defined anywhere in current part 3. The term ''direct service connection'' is commonly used within VA to distinguish service connection granted on the basis of evidence showing that a disease or injury was incurred in or aggravated in line of duty during active military service from service connection granted on the basis of a presumption; service connection for a disease or injury that is secondary to another service-connected disease or injury; or service connection based on aggravation of a nonservice-connected disability by a service-connected disability. For that reason, the proposed definition clarifies that direct service connection is ''established without consideration of presumptions of service connection in subpart E of this part or secondary service connection under § 3.310 of this chapter.''

Currently, § 3.310(a) provides that except as provided in § 3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.

The holding of *Allen* v. *Brown*, 7 Vet.App. 439, 448 (1995), states that when aggravation of a nonservice-connected disability is proximately due to or the result of a service-connected disability, the veteran is entitled to

compensation for the degree of disability over and above the disability in existence prior to the aggravation.

In order to conform § 3.310 to this judicial precedent, VA drafted a proposed regulation entitled ''Claims Based on Aggravation of a Nonservice-Connected Disability,'' an amendment that reflects the principles stated in *Allen,* supra. 62 FR 30547 (1997). In referencing § 3.310 in our definition for direct service connection we intend to include the principles stated in that proposed amendment, which we anticipate will be issued as a final rule in the near future.

Proposed § 5.1 includes an expanded definition of ''discharged or released from active military service.'' The current definition of that term in § 3.1(h) simply notes that discharge or release includes retirement from the active military, naval, or air service. This concept, which is based on 38 U.S.C. 101(18)(A), would be retained in paragraph (1) of the proposed definition.

However, under 38 U.S.C. 101(18)(B), ''discharge or release'' also includes the following:

> [T]he satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

Paragraph (2) of the proposed definition of ''discharge or release'' restates this aspect of the definition in somewhat simpler language. It also substitutes the phrase ''intervening change in military status'' for the statutory phrase ''enlistment or reenlistment.'' ''Change in military status'' is defined in § 5.37, ''Effect of extension of service obligation due to change in military status on eligibility for VA benefits.'' See 69 FR 4820 (Jan. 30, 2004) for a full explanation of the meaning of the term, its relationship to 38 U.S.C. 101(18)(B) as interpreted by VA, and the text of proposed § 5.37.

Proposed § 5.1 includes a definition of the term ''final decision.'' The proposed definition, which is similar to the definition of ''finally adjudicated claim'' in current § 3.160(d), provides that a decision on a claim for VA benefits is final if VA provides notice of that decision and the claimant either does not initiate and complete a timely appeal or the Board of Veterans' Appeals issues a final decision on the claim. The definition includes references to the relevant regulations outlining the notice requirement and the applicable steps in the administrative appellate process.

Proposed § 5.1 defines the term ''former prisoner of war (former POW)'' and is based on portions of current § 3.1(y). Portions of § 3.1(y) that contain substantive rules concerning proof of POW status will be addressed in another regulation in a separate NPRM.

Proposed § 5.1 provides definitions for the term ''fraud,'' which vary depending upon context. It is derived from current §§ 3.1(aa) and 3.901(a).

Although the definition of ''fraud'' in current § 3.901(a) appears in a regulation dealing with forfeiture for fraud, it is an accurate general definition that need not be confined to the forfeiture context. Therefore, we propose it as a general definition of fraud in paragraph (1) of the § 5.1 definition of fraud.

Current § 3.1(aa)(1) references fraud ''[a]s used in 38 U.S.C. 103 and implementing regulations.'' Current § 3.1(aa)(2) references fraud ''[a]s used in 38 U.S.C. 110 and 1159 and implementing regulations.'' We believe it would be much more useful to regulation users to directly reference the regulations that implement the cited statutes, rather than to reference the statutes and their unidentified ''implementing regulations.'' Therefore we have made this change in paragraphs (2) and (3) of the proposed definition of fraud.

Current § 3.1(t) defines ''in the waters adjacent thereto.'' This definition applies only to the definition of a period of war known as the ''Mexican Border Period'' defined in current § 3.2(h) and in proposed § 5.20(a). (For the text of the latter, see 69 FR 4820, 4832 (Jan. 30, 2004).) We propose no substantive change to the definition, but the definition in § 5.1 is of ''in the waters adjacent to Mexico,'' rather than of ''in the waters adjacent thereto,'' to conform to revisions to § 5.20(a). We intend no substantive change.

In § 5.1 we propose to define insanity in the context of insanity as a defense to commission of an act. The standard for determining insanity for purposes of administering VA benefits is contained in current 38 CFR 3.354(a), which states ''An insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.''

This standard is difficult to apply and has not met with judicial favor. For example, in *Zang* v. *Brown,* 8 Vet. App. 246 (1995), the CAVC stated that the regulation is ''less than clear given its obvious drafting defects,'' *id.* at 252; that ''a literal interpretation of the regulation would produce an illogical and absurd result that could not have been intended by the Secretary,'' *id.* at 253; and that the regulation ''illustrates still another 'confusing tapestry''' of VA regulations. *Id.* at 256 (Steinberg, J., separate views).

However, the CAVC commented favorably in *Cropper* v. *Brown,* 6 Vet. App. 450 (1994), on VA's application of the insanity defense articulated in a now-superseded section of VA Adjudication Procedure Manual M21–1. In *Cropper,* the Court stated:

> Thus, [38 U.S.C. 5303(b)] sets out the authority for allowing veterans benefits where a party has received an [other than honorable (OTH)] discharge but has been adjudged insane, and [38 CFR 3.354] simply define[s] the term ''insanity.'' It is the VA ADJUDICATION PROCEDURE MANUAL, Part IV, §§ 11.01, 11.04, 11.05 (Apr. 3, 1992) and Part VI, § 4.10 (Sept. 21, 1992), which sets out the application of the insanity defense and the application of the definition of insanity. The M21–1 Manual defines insanity as ''whether, at the time of commission of the act(s), the veteran was laboring under such a defect of reason, from disease or mental deficiency, as not to know or understand the nature or consequence of the act(s) or that what he or she was doing was wrong.'' M21–1 Part VI, § 4.10(c); *see also* M21–1 Part IV, § 11.10(d)(2)(a)–(b) (Apr. 3, 1992) (for purposes of considering factors in wrongful and intentional killing cases, it defines insanity as a condition when, ''at the time of commission of the act, the party accused was laboring under such a defect of reason, from disease of mind or mental deficiency, that he or she did not know the nature and consequence of the act or * * * [i]f known, that the claimant did not perceive the act as wrong''). We find this provision to be consistent with both the statute and the regulation because it serves to limit the use of the insanity defense to those situations where the acts leading to the discharge were the result of insanity. Thus, the M21–1 Manual provision allows the insanity defense only where it should be most properly applied. That is, the defense may not be used where a claimant has received an OTH discharge due to acts of misconduct over which he ultimately had control but failed, in fact, to control. Conversely, the defense may be used properly where the claimant has received a dishonorable discharge due to some ''defect of reason, from disease or mental deficiency,'' which is beyond his control.

Cropper, 6 Vet. App. at 453.

We propose to adopt a definition of insanity based on the definition approved by the CAVC in *Cropper,* and to make that definition applicable to all cases where an insanity determination may provide ''a defense to a commission of an act'' (as opposed to limiting the definition to the issue in *Cropper,* i.e., cases where insanity led to an act causing an OTH discharge). This definition has the advantage of incorporating a concept long familiar to the law. The law has recognized since at least the mid-19th century that a person should not be held criminally responsible for his or her behavior if that person was ''insane'' at the time of committing a crime. *M'Naghten's Case,* 8 Eng.Rep. 718 (1843). In addition, the definition we propose is similar to the following insanity-defense test endorsed by the American Psychiatric Association: ''A person charged with a criminal offense should be found not guilty by reason of insanity if it is shown that as a result of mental disease or mental retardation he was unable to appreciate the wrongfulness of his conduct at the time of the offense.'' *The Insanity Defense,* American Psychiatric Association, at *http://www.psych.org/edu/other_res/lib_archives/archives/198202.pdf.*

We propose to supplement the definition of ''insanity'' discussed by the CAVC in *Cropper* by adding injury to the list of potential sources of impairment of the ability to reason responsibly. For example, brain trauma can produce severe mental impairment.

Current § 3.303(c) states that a personality disorder is not a disease or injury for VA disability purposes. We anticipate that part 5 will have a counterpart to § 3.303(c).) In addition, a personality disorder is not mental deficiency. Our proposed definition of insanity requires that a person be laboring under a defect of reason resulting from injury, disease, or mental deficiency. Therefore, we propose to add in proposed § 5.1, an additional sentence explicitly stating that behavior attributable to a personality disorder does not satisfy the definition of insanity.

Accordingly, we propose to provide in § 5.1 that insanity, as a defense to commission of an act, means a person was laboring under such a defect of reason resulting from injury, disease, or mental deficiency as not to know or understand the nature or consequence of the act, or that what he or she was doing was wrong. Behavior that is attributable to a personality disorder does not satisfy the definition of insanity.

The definition of ''insanity'' in proposed § 5.1 is quite different from the definition in § 3.354. We have previously referenced the § 3.354 regulatory definition of insanity in § 5.33, ''Insanity as a defense to acts leading to a discharge or dismissal from the service that might be disqualifying for VA benefits.'' 69 FR 4820, 4839 (Jan. 30, 2004). We explained, however, that the definition of ''insanity'' would be revised and published for comment as a proposed part 5 regulation. Accordingly, we intend that when proposed § 5.33 is issued as a final rule, it will cross reference § 5.1 rather than § 3.354. Readers are invited to comment at this time on the effect of § 5.1 on § 5.33. We do not anticipate or intend any effect on insanity determinations by VA.

The proposed definition of ''notice'' in § 5.1 is based on current § 3.1(q). We propose to add that, if a claimant or beneficiary is represented, the notice must also be sent to the representative. *See* 38 U.S.C. 5104(a) (requiring that notice of a decision affecting the provision of benefits to a claimant be provided to the claimant's representative). We also propose to require that if a claimant or beneficiary has a fiduciary, notice must also be sent to the fiduciary.

Proposed § 5.1 defines ''on the borders of Mexico,'' with regard to service during the Mexican border period, by listing applicable border States and countries. The definition is based on the definition of ''on the borders thereof'' in current § 3.1(s), which includes British Honduras. British Honduras is now Belize. The proposed definition includes the current name of that nation. We have defined ''on the borders of Mexico,'' rather than ''on the borders thereof,'' to conform to revisions to proposed § 5.20(a).

Proposed § 5.1 includes a definition of a ''political subdivision of the United States'' that is based on the definition in current § 3.1(o). The definition in current § 3.1(o) states that a ''[p]olitical subdivision of the United States includes the jurisdiction defined as a State in paragraph (i) of this section, and the counties, cities or municipalities of each.'' The word ''includes'' suggests that this is a partial list. We propose to omit it in the new definition, because, with one possible exception, that is not the case. (Note that the definition includes ''a State'' and that the definition of ''State'' brings in ''the several States, Territories, and possessions of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.'') The possible exception is that the current definition includes counties, but not parishes. Parishes in Louisiana are the equivalent of counties in other states. Therefore, we propose to define a political subdivision of the United States as ''the jurisdictions defined as a State and the counties (or parishes), cities or municipalities of each.''

Proposed § 5.1 departs from the definition of ''reserve'' in current § 3.1(c) in three respects. First, it would change ''reserves'' to ''reserve,'' as is the case in 38 U.S.C. 101(26). This is not a substantive change. Second, it would define ''reserve or reservist.'' ''Reservist'' is a more commonly used word with the same meaning. Finally, we propose to shorten the current ''Reserve component of one of the Armed Forces'' to just ''reserve component.'' ''[O]f one of the Armed Forces'' is redundant because of the way that reserve component is defined in § 5.1.

Proposed § 5.1 carries forward the current definition of ''Secretary concerned'' in § 3.1(g) with one revision. The Coast Guard is now under the jurisdiction of the Secretary of Homeland Security, not the Secretary of Transportation. *See* Public Law 107–296, § 888(b), 116 Stat. 2135.

Proposed § 5.1 defines ''service medical records'' as ''records of medical treatment or medical examination provided by the Armed Forces to either an applicant for membership into, or a member of, the Armed Forces.'' We are aware that, for a variety of reasons, the Armed Forces may provide a service member with medical care through civilian resources. Therefore, the proposed definition also provides that service medical records ''include records of medical examination and treatment by a civilian health care provider at Armed Forces' expense.''

Proposed § 5.1 defines ''uniformed services.'' As with the several other new terms we have defined, the term ''uniformed services'' (or ''uniformed service'') is used in current part 3, but is not defined. *See* 38 CFR 3.157, 3.211, and 3.804 (all using the term ''uniformed service'' or ''uniformed services''). The statute that contains the definitions generally applicable to title 38 United States Code (38 U.S.C. 101), does not include a definition of ''uniformed services.'' However, there is a definition in 38 U.S.C. chapter 43, ''Employment and Reemployment Rights of Members of the Uniformed Services.'' *See* 38 U.S.C. 4303(16). We propose to adopt this definition for part 5.

Proposed § 5.1 defines ''veteran.'' This definition is based on the definition in current § 3.1(d) and largely mirrors that provision except that we propose to

slightly modify the language of current § 3.1(d)(1) (pertaining to the definition of a veteran for purposes of DIC or death compensation).

The current provision, § 3.1(d)(1), reads: ''For compensation and dependency and indemnity compensation the term veteran includes a person who died in active service and whose death was not due to willful misconduct.'' The language specifying that this alternative definition of veteran applies to cases of death compensation and DIC is unnecessary. Eligibility criteria for various benefits are contained in separate provisions. The key issue is whether a veteran by definition may only be a person who was alive when he or she was discharged from active military service, or whether a veteran can also be a person who died in active military service. Therefore proposed § 5.1 will simply provide ''The term veteran also includes a person who died in active service and whose death was not due to willful misconduct.''

We also propose to add a cross-reference to the regulation that defines ''willful misconduct,'' and to add a cross-reference (which concerns the meaning of ''veteran'' in the context of death pension claims) to the subpart of proposed part 5 that deals with pension eligibility.

Current § 3.1(e) defines ''veteran of any war.'' We have not included a similar definition in § 5.1 because we anticipate that the term would be used, at most, in one part 5 regulation. If that should be the case, the definition could be included in that regulation.

5.2 [Reserved]

Proposed § 5.1 contains definitions applicable throughout part 5, but proposed part 5 will also contain a number of definitions that are more limited in scope. In keeping with our goal of locating information applicable to specific programs together in one subpart of proposed part 5 to the extent possible, definitions that apply to specific VA programs and procedures would be located in subparts of proposed part 5 that deal with those programs and procedures. We do not currently know with certainty what all of those definitions will be and where they will be located because some proposed part 5 subparts are still in development. We have reserved proposed § 5.2 as the future location for a convenient cross-reference table to assist claimants, beneficiaries, and VA staff in locating these definitions in other subparts of part 5. We plan to publish § 5.2 for notice and comment in a future NPRM issued for the Project.

5.3 Standards of proof.

The next regulation in this NPRM, proposed § 5.3, addresses the standards of proof used in the adjudication of claims for VA benefits. New proposed § 5.3(a), ''Applicability,'' explains that § 5.3 states the general standards of proof for proving facts and rebutting presumptions and that these standards apply unless a statute or another regulation specifically provides otherwise. For example, 38 U.S.C. 1111 requires ''clear and unmistakable evidence'' that an injury or disease existed before acceptance and enrollment for service and was not aggravated by service to rebut the presumption that a veteran was in sound condition when examined, accepted, and enrolled for service. Accordingly the default standard in § 5.3(b) for rebutting a presumption would not apply because there is a statute that specifically provides another standard.

Proposed § 5.3(b) addresses the default standard for proving a specific fact or facts material to the determination of a claim. The relevant statute, 38 U.S.C. 5107(b), specifies that in cases where ''there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, [VA] shall give the benefit of the doubt to the claimant.'' This language has been interpreted to mean, essentially, that when there is a balance of evidence for and against the existence of a fact, and proof of that fact would support a veteran's claim, VA must consider the fact proven. An excellent illustration of this point may be found in *Gilbert* v. *Derwinski,* 1 Vet. App. 49 (1991), an early opinion by the CAVC in which it first considered the ''benefit of the doubt'' doctrine (then contained in 38 U.S.C. 3007).

> Perhaps the analogy most helpful to an understanding of the application of the ''benefit of the doubt'' rule was provided by Deputy Assistant General Counsel Mullen at oral argument when he stated that the ''benefit of the doubt'' standard is similar to the rule deeply embedded in sandlot baseball folklore that ''the tie goes to the runner.'' If the ball clearly beats the runner, he is out and the rule has no application; if the runner clearly beats the ball, he is safe and, again, the rule has no application; if, however, the play is close, then the runner is called safe by operation of the rule that ''the tie goes to the runner.'' * * * Similarly, if a fair preponderance of the evidence is against a veteran's claim, it will be denied and the ''benefit of the doubt'' rule has no application; if the veteran establishes a claim by a fair preponderance of the evidence, the claim will be granted and, again, the rule has no application; if, however, the play is close, *i.e.*, ''there is an approximate balance of positive and negative evidence,'' the veteran prevails by operation of 38 U.S.C. 3007(b).
>
> *Gilbert,* 1 Vet. App. at 55–56.

Turning to the exact language of proposed § 5.3(b), we propose to define ''equipoise'' in paragraph (b)(1). Although the language is considerably simpler than current § 3.102, the definition of ''equipoise'' that we propose is consistent with the longstanding explanation of the ''reasonable doubt'' doctrine in current § 3.102 concerning ''an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim.'' This proposed definition is that equipoise means that there is ''an approximate balance between the weight of the evidence for and the weight of the evidence against the truth of the asserted fact, such that it is as likely as not that the asserted fact is true.''

Paragraph (b)(2) would require VA to apply the benefit of the doubt ''[w]hen the evidence is in equipoise and the fact or issue to be proven would support a claim.'' Paragraph (b)(2) would emphasize that if the evidence is in equipoise and ''the fact or issue to be proven would not support a claim, the matter will not be considered proven.'' Such facts or issues must be established by a preponderance of the evidence. Finally, paragraph (b)(2) clarifies that the ''benefit of the doubt applies even in the absence of official records,'' as described in current § 3.102. This rule is consistent with the statutory statement of these same principles in 38 U.S.C. 5107(b): ''When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.''

Proposed paragraph (b)(3) would define the ''preponderance of the evidence'' by stating: ''A fact or issue is established by a preponderance of evidence when the weight of the evidence in support of that fact or issue is greater than the evidence in opposition to it.'' This definition accords with the generally accepted definition of the term. *See* Black's Law Dictionary 1064 (5th Ed., 1981).

Proposed § 5.3(b)(5) provides that the equipoise standard does not govern determinations as to whether evidence is new and material when offered to reopen a previously denied claim; instead ''VA will reopen a claim when the new and material evidence merely raises a reasonable possibility of substantiating the claim. While the explicit statement of this exception is new, the law underlying it is not. This

rule is consistent with *Annoni* v. *Brown,* 5 Vet. App. 463 (1993). In *Annoni,* the CAVC, citing *Gilbert,* noted that the benefit of the doubt rule (the equipoise standard) does not apply during the process of gathering evidence and that it does not shift the initial burden to submit a valid claim from the claimant to VA. *Annoni,* 5 Vet. App. at 467. Additionally, new and material evidence determinations do not involve the usual weighing of ''all information and lay and medical evidence of record'' within the meaning of 38 U.S.C. 5107(b), but instead require threshold determinations of the significance of discrete items of evidence, which VA must presume credible and to which VA must give full weight. *See Justus* v. *Principi,* 3 Vet. App. 510, 513 (1992). Such threshold determinations as to whether a claimant has submitted new and material evidence are governed by the standards set forth in 38 CFR 3.156(a).

The default standard of proof applicable to rebuttal of a presumption is addressed in proposed § 5.3(c). In some cases, Congress has specifically provided the standard of proof applicable to rebutting a presumption. For example, Congress has imposed rather high standards of proof in two circumstances. Section 1111 of title 38, ''Presumptions of sound condition,'' requires ''clear and unmistakable evidence'' to rebut the presumption of sound condition upon entry into military service. Section 1154(b) of title 38 requires ''clear and convincing evidence'' to rebut a combat veteran's satisfactory evidence of combat incurrence of a disease or injury. The question remains as to what standard of proof applies to the rebuttal of a presumption where Congress has not provided a specific standard.

The Court of Appeals for the Federal Circuit addressed this issue recently in *Thomas* v. *Nicholson,* 423 F.3d 1279 (Fed. Cir. 2005). The specific issue considered by the court was determining the correct standard of proof for rebutting the presumption in 38 U.S.C. 105(a) that an injury or disease incurred during service was incurred in line of duty. Section 105(a) does not specify a standard. Because of the significance of the court's opinion in this case, we quote from it at length.

> The government acknowledges that § 105(a) does not specify the evidentiary standard necessary to rebut the presumption that a peacetime disability was incurred in line of duty, but argues that Congress established the general evidentiary standard for factual determinations of veterans' cases in 38 U.S.C. 5107(b). The government urges this court to apply § 5107, and the evidentiary standard applicable to § 5107, to § 105(a) in this case.
>
> In support, the government points out that this court in *Forshey* examined 38 U.S.C. 5107 for the purpose of determining the proper evidentiary standard under § 105(a), although *Forshey* declined to decide whether § 5107 set out a ''preponderance of evidence'' or ''clear and convincing'' standard. *Forshey,* 284 F.3d at 1351–52. The government therefore contends that 38 U.S.C. 5107 establishes a general evidentiary standard governing determinations by the Board on issues material to the resolution of claims which is applicable to § 105(a) and the determination of willful misconduct for peacetime disabilities.
>
> The government further relies on language in other opinions by this court as support that § 5107 sets out the ''preponderance of evidence'' standard. Although acknowledging that § 5107 does not explicitly state an evidentiary standard, the government points out that this court has found that § 5107(b), ''the benefit of the doubt rule,'' does not apply ''in cases in which the Board finds that a preponderance of the evidence is against the veteran's claim for benefits.'' *Ortiz* v. *Principi,* 274 F.3d 1361, 1364 (Fed. Cir. 2001). Furthermore, the government points to language by this court quoting similar language by the Veterans Court. *Forshey,* 284 F.3d at 1340–41 (relying upon *Gilbert* v. *Derwinski,* 1 Vet. App. 49 (1990)).
>
> We need not rely on the applicability of § 5107(b) alone, however, to reject Thomas's argument that ''clear and convincing'' rather than ''preponderance of the evidence'' is the proper evidentiary standard here. Indeed, we find as strong or stronger argument to be that Congress did not specifically set out that a heightened standard was necessary to rebut the presumption of service connection in § 105(a) where the veteran's own willful misconduct or abuse of alcohol was involved.
>
> ''The 'preponderance of the evidence' formulation is the general burden assigned in civil cases for factual matters.'' *St. Paul Fire & Marine Ins. Co.* v. *United States,* 6 F.3d 763, 769 (Fed. Cir. 1993). The Supreme Court has explained that suits over money damages, as opposed to suits to deny liberty or life or individual interests, appropriately fall under the less stringent ''fair preponderance of the evidence'' standard. *Santosky* v. *Kramer,* 455 U.S. 745, 755, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982); *see also Gilbert,* 1 Vet. App. at 53. Indeed, the normal standard in civil suits is the ''preponderance'' standard. The ''clear and convincing'' standard is ''reserved to protect particularly important interests in a limited number of civil cases'' where there is a clear liberty interest at stake, such as commitment for mental illness, deportation, or denaturalization. *California ex rel. Cooper* v. *Mitchell 'Bros. Santa Ana Theater,* 454 U.S. 90, 93, 70 L. Ed. 2d 262, 102 S. Ct. 172 (1981); *Addington* v. *Texas,* 441 U.S. 418, 424, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979) (commitment for mental illness); *Woodby* v. *Immigration & Naturalization Serv.,* 385 U.S. 276, 285, 17 L. Ed. 2d 362, 87 S. Ct. 483 (1966) (deportation); *Chaunt* v. *United States,* 364 U.S. 350, 353, 5 L. Ed. 2d 120, 81 S. Ct. 147 (1960) (denaturalization). The liberties at stake in those cases are easily and clearly distinguishable from this case, where the issue is whether an injury was incurred by a veteran in the line of duty.
>
> It is true that Congress has established specific, heightened evidentiary standards for other determinations in veterans cases in 38 U.S.C. 1111 and 1154(b). In those sections, Congress provided that certain decisions adverse to claimants must meet the heightened thresholds of either ''clear and unmistakable evidence'' or ''clear and convincing evidence.'' Notably, however, Congress did not similarly do so for determinations under § 105(a), supporting the assertion that Congress did not intend for a higher standard to apply here. *See Grogan* v. *Garner,* 498 U.S. 279, 286, 112 L. Ed. 2d 755, 111 S. Ct. 654 (1991) (finding that ''silence is inconsistent with the view that Congress intended to require a special, heightened standard of proof''); *Russello* v. *United States,* 464 U.S. 16, 23, 78 L. Ed. 2d 17, 104 S. Ct. 296 (1983) (finding that where ''Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'') (quoting *United States* v. *Wong Kim Bo,* 472 F.2d 720, 722 (5th Cir. 1972)); *Cook* v. *Principi,* 318 F.3d 1334, 1339 (Fed. Cir. 2002) (''Applying the familiar canon of expressio unius est exclusio alterius, we conclude that Congress did not intend to allow exceptions to the rule of finality in addition to the two that it expressly created.''); *St. Paul Fire & Marine Ins. Co.,* 6 F.3d at 768–69 (Fed. Cir. 1993) (''Given that Congress explicitly imposed a high burden of persuasion on the importer when mounting a pre-importation challenge to a Customs ruling, and given that subsection (b) which contains the ''clear and convincing'' standard follows subsection (a) in the statute, we find no reason in the statute or its legislative history to import the clear and convincing standard from subsection 2639(b) to subsection 2639(a).'').
>
> Accordingly, while Thomas argues that these other statutes support incorporating a ''clear and convincing'' standard into § 105(a), we find the opposite to be correct. Sections 1111 and 1154(b) implicate distinguishable circumstances to justify a heightened evidentiary standard. Specifically, § 1111 relates to wartime disability compensation, creating a presumption of soundness only for veterans found ''to have been in sound condition when examined, accepted, and enrolled for service'' unless there is ''clear and unmistakable evidence'' that the injury existed before service and was not aggravated by wartime service. Similarly, § 1154 relates to injuries sustained by a ''veteran who engaged in combat with the enemy in active service'' unless service connection of such injuries are ''rebutted by clear and convincing evidence.'' We therefore find that the absence of a heightened standard in § 105(a) supports a finding that Congress did not intend for such a standard to apply where the veteran's own willful misconduct or abuse of alcohol was involved. *See Wagner*

v. *Principi,* 370 F.3d 1089, 1094–96 (Fed. Cir. 2004). Thus, we find that preponderance of the evidence is the proper evidentiary standard necessary to rebut a § 105(a) presumption and determine that a peacetime disability was the result of willful misconduct. Accordingly, the Veterans Court properly affirmed the Board's application of a preponderance of the evidence standard to rebut the § 105(a) presumption and the Board's determination that Thomas did not incur his injuries in the line of duty.

Thomas, 423 F.3d at 1282–84 (footnotes omitted).

Although the court was specifically discussing the standard applicable to rebuttal of the presumption in 38 U.S.C. 105(a), the court's analysis clearly applies to the rebuttal of any presumption in those cases where Congress has not provided a specific standard. Therefore, § 5.3(c) would adopt the preponderance standard in such cases.

VA does not consider all evidence of equal weight and does not merely count pieces of evidence for and against an issue. That is, in weighing the evidence, VA is as much or more concerned with the quality of evidence as it is with its quantity. The CAVC stated in *Gilbert* that a determination under 38 U.S.C. 5107(b) (then 3007(b)) is ''* * * more qualitative than quantitative; it is one not capable of measurement with mathematical precision and certitude. Equal weight is not accorded to each piece of material contained in a record; every item of evidence does not have the same probative value.'' Judgments must be made * * *.'' *Gilbert,* 1 Vet. App. at 57. While this remark was made in the context of an exposition of the equipoise standard, we believe it is also applicable to the evaluation of evidence generally, as we propose to provide in § 5.3(d).

We propose not to include the fifth sentence of current § 3.102, which states with regard to reasonable doubt that ''[i]t is not a means of reconciling actual conflict or a contradiction in the evidence.'' The reconciliation of actual conflict between evenly balanced ''positive'' and ''negative'' evidence in a manner that favors the claimant is precisely the function of the equipoise standard. We therefore propose not to include this sentence because retaining it would be misleading.

5.4 Claims Adjudication Policies

The final regulation in this NPRM, proposed § 5.4, includes statements of general policy regarding claims adjudication that are derived from the first sentence of current § 3.102 and from portions of current § 3.103(a).

We propose several changes. We propose to omit from § 5.4 the last sentence of current § 3.103(a), which states that ''[t]he provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.'' Such a statement would be redundant in part 5 because of proposed § 5.0.

In proposed § 5.4(a), we have provided an explanation of the term ''ex parte.'' This explanation notes the nonadversarial relationship between VA and claimants and is not a substantive change from the reference to ''ex parte'' in current § 3.103(a). The second sentence of current § 3.103(a) states, in part, that ''it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim.'' This statement in § 3.103(a) predates the passage of the Veterans Claims Assistance Act of 2000 (VCAA), Public Law 106–475, and VA's amendment to current § 3.159 implementing the provisions of the VCAA. Section 3.159 contains much more detailed information about VA's duty to provide assistance in developing claims than was included in the old § 3.103(a) statement. We have previously proposed to restate the content of § 3.159 in § 5.90. *See* 70 FR 24680, 24683 (May 10, 2005). Therefore we propose to state in § 5.4(a) that ''VA will assist a claimant or beneficiary in developing his or her claim as provided in § 5.90, 'VA assistance in developing claims.' ''

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that ''it is a significant regulatory action because it may raise novel legal or policy issues.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532 that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans' Surviving Spouses and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Approved: December 22, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to further amend 38 CFR part 5 as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart A to read as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart A—General Provisions

Sec.

5.0 Scope of applicability.
5.1 General definitions.
5.2 [Reserved]
5.3 Standards of proof.
5.4 Claims adjudication policies.
5.5–5.19 [Reserved]

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart A—General Provisions

§ 5.0 Scope of applicability.

Except as otherwise provided, this part applies only to benefits governed by this part.

(Authority: 38 U.S.C. 501(a))

§ 5.1 General definitions.

The following definitions apply to this part:

Active military service means active military, naval, or air service, as defined in 38 U.S.C. 101(24) and as described in § 5.21, ''Service VA recognizes as active military service.''

(Authority: 38 U.S.C. 501(a))

Agency of original jurisdiction means the VA activity that is responsible for making the initial determination on an issue affecting a claimant's or beneficiary's right to benefits.

(Authority: 38 U.S.C. 501(a))

Alien means any person not a citizen or national of the United States.

(Authority: 38 U.S.C. 501(a))

Armed Forces means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including their Reserve components.

(Authority: 38 U.S.C. 101(10))

Beneficiary means an individual in receipt of benefits under any of the laws administered by VA. Under certain circumstances, a beneficiary may also meet the definition of claimant (e.g., when seeking an increased compensation rating or contesting a proposed reduction in benefits).

(Authority: 38 U.S.C. 501(a))

Benefit means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by VA pertaining to veterans and their dependents and survivors.

(Authority: 38 U.S.C. 501(a))

Certified statement means a statement made and signed by an individual who affirms that the statement's content is true and accurate to the best of that individual's knowledge and belief.

(Authority: 38 U.S.C. 501(a))

Child born of the marriage and child born before the marriage. A ''child born of the marriage'' means a child of a deceased veteran born on or after the date of a marriage that is the basis of a surviving spouse's entitlement to VA benefits. A child born ''before the marriage'' means a child of a deceased veteran born before the date of a marriage that is the basis of a surviving spouse's entitlement to VA benefits. Neither of these terms includes an adopted child or a stepchild.

(Authority: 38 U.S.C. 103))

Claimant means any individual applying for, or submitting a claim for, any benefit under the laws administered by VA.

(Authority: 38 U.S.C. 5100)

Competent evidence means evidence of one of the following types that meets the standard of competency stated.

(1) *Competent expert evidence.* Expert evidence is a statement or opinion based on scientific, medical, technical, or other specialized knowledge. Examples include, but are not limited to, medical or scientific opinions. Expert evidence also includes statements in treatises and other authoritative writings conveying sound principles, such as statements in medical and scientific articles and research reports. Expert evidence is competent if the person upon whose knowledge the evidence is based is qualified through education, training, or experience to offer the statement or opinion comprising the evidence.

(2) *Competent lay evidence.* Lay evidence is a statement or opinion offered by a lay person. A lay person is a person without relevant specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has personal knowledge of facts or circumstances described in the statement or opinion comprising the evidence and if those facts or circumstances can be observed and described by a lay person.

(Authority: 38 U.S.C. 501(a))

Note to definition of competent evidence: In VA's nonadversarial system, all evidence is admitted into the record. VA does not exclude from the record evidence that is not ''competent'' under this section; however, such evidence may not be probative because it is not competent.

Direct service connection means that the veteran's injury or disease resulting in disability or death was incurred or aggravated in line of duty during active military service, and was established without consideration of presumptions of service connection in subpart E of this part or secondary service connection under § 3.310 of this chapter.

(Authority: 38 U.S.C. 501(a))

Discharged or released from active military service includes, but is not limited to, either of the following:

(1) Retirement from the active military service.

(2) Completion of active military service for the period of time an individual was obligated to serve at the time of entry into that period of service in cases where both of the following are true:

(i) The individual was not discharged or released at the end of that period of time due to an intervening change in military status, as defined in § 5.37, ''Effect of extension of service obligation due to change in military status on eligibility for VA benefits,'' and

(ii) The individual would have been eligible for a discharge or release under conditions other than dishonorable at the end of that period of time except for the intervening change in military status.

(Authority: 38 U.S.C. 101(18))

Final decision means a decision on a claim for VA benefits with respect to which VA provided the claimant with written notice as required by § 5.83, ''Right to notice of decisions and proposed reductions, discontinuances, or other adverse actions,'' and:

(1) The claimant did not file a timely Notice of Disagreement in compliance with § 20.302(a) of this chapter or, with respect to simultaneously contested claims, in compliance with § 20.501(a) of this chapter;

(2) The claimant filed a timely Notice of Disagreement, but did not file a timely Substantive Appeal in compliance with § 20.302(b) of this chapter or, with respect to simultaneously contested claims, in compliance with § 20.501(b) of this chapter; or

(3) In the case of a decision by the Board of Veterans' Appeals, the decision is final under § 20.1100 of this chapter.

(Authority: 38 U.S.C. 5104, 7102(a), 7103(a), 7105)

Former prisoner of war (or former POW) means a person who, while serving in the active military service, was forcibly detained or interned in the line of duty by an entity described in paragraph (1) or (2) of this definition:

(1) An enemy, the agents of an enemy, or a hostile force, during a period of war; or

(2) A foreign government or its agents, or a hostile force, under circumstances comparable to the circumstances under which persons have generally been detained or interned by enemy governments during periods of war. Such circumstances include, but are not limited to, physical hardships or abuse, psychological hardships or abuse, malnutrition, and unsanitary conditions.

(3) ''Hostile force'' means any entity other than an enemy or foreign government or the agents of either whose actions are taken to further or enhance anti-American military, political or economic objectives or views, or to attempt to embarrass the United States.

(Authority: 38 U.S.C. 101(32))

Fraud means any of the following, as applicable:

(1) Except as provided in paragraphs (2) and (3) of this definition, fraud means an act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning gratuitous VA benefits.

(2) As used in §§ 3.55 and 3.207 of this chapter relating to divorces and annulments obtained through fraud, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining, or assisting an individual to obtain, an annulment or divorce, with knowledge that the misrepresentation or failure to disclose may result in the erroneous granting of an annulment or divorce. *See* [regulation that will be published in a future Notice of Proposed Rulemaking] (concerning fraud and marriage).

(3) As used in §§ 3.951(b) and 3.957 of this chapter relating to service connection and disability ratings obtained through fraud, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining or retaining, or assisting an individual to obtain or retain, eligibility for VA benefits, with knowledge that the misrepresentation or failure to disclose may result in the erroneous award or retention of such benefits.

(Authority: 38 U.S.C. 103, 110, 1159, 6103(a))

In the waters adjacent to Mexico means, with regard to service during the Mexican border period, the waters (including the islands therein) that are within 750 nautical miles (863 statute miles) of the coast of the mainland of Mexico.

(Authority: 38 U.S.C. 101(30))

Insanity, as a defense to commission of an act, means a person was laboring under such a defect of reason resulting from injury, disease, or mental deficiency as not to know or understand the nature or consequence of the act, or that what he or she was doing was wrong. Behavior that is attributable to a personality disorder does not satisfy the definition of insanity.

(Authority: 38 U.S.C. 501(a))

Notice means written notice sent to a claimant or beneficiary at his or her latest address of record, and to his or her designated representative and fiduciary, if any.

(Authority: 38 U.S.C. 501(a))

Nursing home means any of the following:

(1) Any extended care facility that is licensed by a State to provide skilled or intermediate-level nursing care;

(2) A nursing home care unit in a State veterans' home which is approved for payment under 38 U.S.C. 1742, ''Inspections of such homes; restrictions on beneficiaries;'' or

(3) A VA Nursing Home Care Unit.

(Authority: 38 U.S.C. 101(28))

On the borders of Mexico means, with regard to service during the Mexican border period, the States of Arizona, California, New Mexico, and Texas, and the nations of Guatemala and Belize (formerly British Honduras).

(Authority: 38 U.S.C. 101(30))

Political subdivision of the United States means a State, as defined in this section, and the counties (or parishes), cities or municipalities of a State.

(Authority: 38 U.S.C. 501(a))

Reserve, or *reservist,* means a member of a reserve component.

(Authority: 38 U.S.C. 101(26))

Reserve component means the reserves of one of the Armed Forces and the Army National Guard and Air National Guard of the United States.

(Authority: 38 U.S.C. 101(27))

Secretary concerned means any of the following, as applicable:

(1) The Secretary of the Army, with respect to matters concerning the Army;

(2) The Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(3) The Secretary of the Air Force, with respect to matters concerning the Air Force;

(4) The Secretary of Homeland Security, with respect to matters concerning the Coast Guard;

(5) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(6) The Secretary of Commerce, with respect to matters concerning the Coast and Geodetic Survey, the Environmental Science Services Administration, and the National Oceanic and Atmospheric Administration.

(Authority: 38 U.S.C. 101(25))

Service medical records means records of medical treatment or medical examination that was provided by the Armed Forces to either an applicant for membership into, or a member of, the Armed Forces. Such records include records of medical examination and treatment of such persons by a civilian health care provider at Armed Forces' expense.

(Authority: 38 U.S.C. 501(a))

State means each of the several States, Territories, and possessions of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(Authority: 38 U.S.C. 101(20))

Uniformed services means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency.

(Authority: 38 U.S.C. 501(a))

Veteran means any of the following, as applicable:

(1) A person who had active military service and who was discharged or released under conditions other than dishonorable.

(Authority: 38 U.S.C. 101(2))

(2) A person who died in active military service and whose death was not due to willful misconduct. *See* [regulation that will be published in a future Notice of Proposed Rulemaking] (defining willful misconduct).

(Authority: 38 U.S.C. 1101(1), 1301)

(3) In addition, for death pension purposes, a person who died in active military service under conditions that prevent payment of service-connected death benefits. The person must have completed at least two years of honorable military service, as certified by the Secretary concerned. *See* subpart F of this part, ''Nonservice-Connected Disability Pensions and Death Pensions,'' for eligibility information.

(Authority: 38 U.S.C. 1541(h))

§ 5.2 [Reserved]

§ 5.3 Standards of proof.

(a) *Applicability.* This section states the general standards of proof for proving facts and for rebutting presumptions. These standards of proof apply unless specifically provided otherwise by statute or a section of this part.

(b) *Proving a fact or issue.*—(1) *Equipoise.* ''Equipoise'' means that there is an approximate balance between the weight of the evidence in support of and the weight of the evidence against a particular finding of fact, such that it is as likely as not that the fact is true.

(2) *Benefit of the doubt rule.* When the evidence is in equipoise and a fact or issue would support a claim, VA will give the benefit of the doubt to the claimant and the matter will be considered proven. However, if the evidence is in equipoise and a fact or issue would tend to disprove a claim, the matter will not be considered proven. A fact or issue that would tend to disprove a claim must be established by a preponderance of the evidence. The benefit of the doubt applies even in the absence of official records. For example, in applying the standard, VA will consider that no official records may have been kept in cases where an alleged incident arose under combat or similarly strenuous conditions if the incident is consistent with the probable results of such known hardships.

(3) *Preponderance of evidence.* A fact or issue is established by a preponderance of evidence when the weight of the evidence in support of that fact or issue is greater than the evidence in opposition to it.

(4) *Weighing the evidence.* In determining whether the evidence is in equipoise, VA will consider whether evidence favoring the existence, or nonexistence, of a relevant fact is supported or contradicted by the evidence as a whole and by known facts. Objectively unsupported personal speculation, suspicion, or doubt on the part of persons adjudicating claims is not a sufficient basis for concluding that equipoise does not exist.

(5) *Application to reopening claims.* In determining whether to reopen a claim based on new and material evidence, the evidence need not be in equipoise. VA will reopen a claim when the new and material evidence merely raises a reasonable possibility of substantiating the claim. *See* § 3.156(a) of this chapter. However, the standards of proof otherwise provided in this section apply after the claim is successfully reopened.

(c) *Rebuttal of a presumption.* A presumption is rebutted if the preponderance of evidence is contrary to the presumed fact.

(d) *Quality of evidence to be considered.* VA does not simply count the pieces of evidence for or against the existence, or nonexistence, of a relevant fact when it is determining whether the applicable standard of proof has been met. VA will assess the credibility and probative value of individual pieces of evidence and then weigh all the relevant evidence for and against the issue. Not all pieces of evidence will carry equal weight.

(Authority: 38 U.S.C. 501(a), 5107(b))

§ 5.4 Claims adjudication policies.

(a) *Ex parte proceedings and assistance.* VA conducts its proceedings *ex parte,* which means that VA is not an adversary of the claimant. VA will assist a claimant or beneficiary in developing his or her claim as provided in § 5.90, ''VA assistance in developing claims.''

(b) *VA decision-making.* It is the defined and consistently applied policy of VA to administer the law under a broad interpretation, consistent with the facts shown in every case. VA will make decisions that grant every benefit that the law supports while at the same time protecting the interests of the Government.

(Authority: 38 U.S.C. 501(a))

§§ 5.5—5.19 [Reserved]

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Rolls-Royce plc; comments due by 4-10-06; published 2-9-06 [FR 06-01145]

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Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

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Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1287/P.L. 109–184
To designate the facility of the United States Postal Service located at 312 East North Avenue in Flora, Illinois, as the ''Robert T. Ferguson Post Office Building''. (Mar. 20, 2006; 120 Stat. 292)

H.R. 2113/P.L. 109–185
To designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the ''John F. Whiteside Joliet Post Office Building''. (Mar. 20, 2006; 120 Stat. 293)

H.R. 2346/P.L. 109–186
To designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the ''John J. Hainkel, Jr. Post Office Building''. (Mar. 20, 2006; 120 Stat. 294)

H.R. 2413/P.L. 109–187
To designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the ''Lillian McKay Post Office Building''. (Mar. 20, 2006; 120 Stat. 295)

H.R. 2630/P.L. 109–188
To redesignate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the ''J.M. Dietrich Northeast Annex''. (Mar. 20, 2006; 120 Stat. 296)

H.R. 2894/P.L. 109–189
To designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the ''Abraham Lincoln Birthplace Post Office Building''. (Mar. 20, 2006; 120 Stat. 297)

H.R. 3256/P.L. 109–190
To designate the facility of the United States Postal Service located at 3038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the ''Congressman James Grove Fulton Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 298)

H.R. 3368/P.L. 109–191
To designate the facility of the United States Postal Service located at 6483 Lincoln Street in Gagetown, Michigan, as the ''Gagetown Veterans Memorial Post Office''. (Mar. 20, 2006; 120 Stat. 299)

H.R. 3439/P.L. 109–192
To designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the ''Ava Gardner Post Office''. (Mar. 20, 2006; 120 Stat. 300)

H.R. 3548/P.L. 109–193
To designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the ''Heinz Ahlmeyer, Jr. Post Office Building''. (Mar. 20, 2006; 120 Stat. 301)

H.R. 3703/P.L. 109–194
To designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the ''Staff Sergeant Michael Schafer Post Office Building''. (Mar. 20, 2006; 120 Stat. 302)

H.R. 3770/P.L. 109–195
To designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the ''Grant W. Green Post Office Building''. (Mar. 20, 2006; 120 Stat. 303)

H.R. 3825/P.L. 109–196
To designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, as the ''Clayton J. Smith Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 304)

H.R. 3830/P.L. 109–197
To designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida, as the ''U.S. Cleveland Post Office Building''. (Mar. 20, 2006; 120 Stat. 305)

H.R. 3989/P.L. 109–198
To designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the ''Albert H. Quie Post Office''. (Mar. 20, 2006; 120 Stat. 306)

H.R. 4053/P.L. 109–199
To designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California, as the ''Lillian Kinkella Keil Post Office''. (Mar. 20, 2006; 120 Stat. 307)

H.R. 4107/P.L. 109–200
To designate the facility of the United States Postal Service located at 1826 Pennsylvania Avenue in Baltimore, Maryland, as the ''Maryland State Delegate Lena K. Lee Post Office Building''. (Mar. 20, 2006; 120 Stat. 308)

H.R. 4152/P.L. 109–201
To designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''. (Mar. 20, 2006; 120 Stat. 309)

H.R. 4295/P.L. 109–202
To designate the facility of the United States Postal Service located at 12760 South Park Avenue in Riverton, Utah, as the ''Mont and Mark Stephensen Veterans Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 310)

S. 2089/P.L. 109–203
To designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu, Hawaii, as the ''Hiram L. Fong Post Office Building''. (Mar. 20, 2006; 120 Stat. 311)

S. 2320/P.L. 109–204
To make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes. (Mar. 20, 2006; 120 Stat. 312)

H.R. 1053/P.L. 109–205
To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine. (Mar. 23, 2006; 120 Stat. 313)

H.R. 1691/P.L. 109–206
To designate the Department of Veterans Affairs outpatient clinic in Appleton, Wisconsin, as the ''John H. Bradley Department of Veterans Affairs Outpatient Clinic''. (Mar. 23, 2006; 120 Stat. 315)

S. 2064/P.L. 109–207
To designate the facility of the United States Postal Service located at 122 South Bill Street in Francesville, Indiana, as the Malcolm Melville ''Mac'' Lawrence Post Office. (Mar. 23, 2006; 120 Stat. 316)

S. 2275/P.L. 109–208
National Flood Insurance Program Enhanced Borrowing Authority Act of 2006 (Mar. 23, 2006; 120 Stat. 317)

H.R. 4826/P.L. 109–209
To extend through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. (Mar. 24, 2006; 120 Stat. 318)

S. 1184/P.L. 109–210
To waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member. (Mar. 24, 2006; 120 Stat. 319)

S. 2363/P.L. 109–211
To extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999. (Mar. 24, 2006; 120 Stat. 320)

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