Federal Register

4–10–06 Monday
Vol. 71 No. 68 Apr. 10, 2006

Pages 17967–18160

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Rules and Regulations

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1216

Testimony by MSPB Employees and Production of Official Records in Legal Proceedings

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: This final rule amends the Merit Systems Protection Board's (MSPB or ''the Board'') rules by setting out procedures that requesters have to follow when making demands on or requests to an MSPB employee to produce official records or provide testimony relating to official information in connection with a legal proceeding in which the MSPB is not a party. The final rule establishes procedures to respond to such demands and requests in an orderly and consistent manner. The final rule promotes uniformity in decisions, protects confidential information, provides guidance to requesters, and reduces the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

DATES: This final rule is effective April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb&mspb.gov.*

SUPPLEMENTARY INFORMATION: On December 16, 2005, the Board published a proposed rule with request for comments that proposed to amend 5 CFR, chapter II. (70 FR 74714). The Board received no comments during the 60 days allowed for public comment and this final rule makes no changes to the previously published proposed rule. See 70 FR 74714 for additional information concerning this amendment of 5 CFR, chapter II.

List of Subjects in 5 CFR Part 1216

Administrative practice and procedure.

■ For the reasons stated in the preamble, the Merit Systems Protection Board amends 5 CFR, chapter II by adding parts 1211 through 1216 to read as set forth below:

PART 1211—[RESERVED]

PART 1212—[RESERVED]

PART 1213—[RESERVED]

PART 1214—[RESERVED]

PART 1215—[RESERVED]

PART 1216—TESTIMONY BY MSPB EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

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Subpart C—Schedule of Fees

1216.301 Fees.

Subpart D—Penalties.

1216.401 Penalties.

Authority: 5 U.S.C. 1204(h); 31 U.S.C. 9701.

Subpart A—General Provisions

§ 1216.101 Scope and purpose.

(a) This part establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records by MSPB employees, advisors, and consultants; and

(2) The testimony of current and former MSPB employees, advisors, and consultants relating to official information, official duties, or the MSPB's record, in connection with federal or state litigation in which the MSPB is not a party.

(b) The MSPB intends this part to:

(1) Conserve the time of MSPB employees for conducting official business;

(2) Minimize the involvement of MSPB employees in issues unrelated to MSPB's mission;

(3) Maintain the impartiality of MSPB employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the MSPB.

(c) In providing for these requirements, the MSPB does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of MSPB. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 1216.102 Applicability.

This part applies to demands and requests to current and former employees, advisors, and consultants for factual or expert testimony relating to official information or official duties or for production of official records or information, in legal proceedings in which the MSPB is not a named party. This part does not apply to:

(a) Demands upon or requests for an MSPB employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the MSPB;

(b) Demands upon or requests for a former MSPB employee to testify as to matters in which the former employee was not directly or materially involved while at the MSPB;

(c) Requests for the release of records under the Freedom of Information Act,

5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; or

(d) Congressional demands and requests for testimony, records or information.

§ 1216.103 Definitions.

The following definitions apply to this part.

(a) *Demand* means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records or for the appearance and testimony of an MSPB employee in a legal proceeding.

(b) *General Counsel* means the General Counsel of the MSPB or a person to whom the General Counsel has delegated authority under this part.

(c) *Legal Proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

(d) *MSPB* means the Merit Systems Protection Board.

(e) *MSPB employee or employee* means:

(1)(i) Any current or former employee of the MSPB;

(ii) Any other individual hired through contractual agreement by or on behalf of the MSPB or who has performed or is performing services under such an agreement for the MSPB; and

(iii) Any individual who served or is serving in any consulting or advisory capacity to the MSPB, whether formal or informal.

(2) This definition does not include persons who are no longer employed by the MSPB and who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the MSPB.

(f) *Records or official records and information* all information in the custody and control of the MSPB, relating to information in the custody and control of the MSPB, or acquired by an MSPB employee in the performance of his or her official duties or because of his or her official status, while the individual was employee by or on behalf of the MSPB.

(g) *Request* means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court of other competent authority.

(h) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Demands or Requests for Testimony and Production of Documents

§ 1216.201 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 1216.202 Factors the MSPB will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) Allowing such testimony or production of records would assist or hinder the MSPB in performing its statutory duties;

(d) Allowing such testimony or production of records would be in the best interest of the MSPB or the United States;

(e) The records or testimony can be obtained from other sources;

(f) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rule of procedure governing the case or mater in which the demand or request arose;

(g) Disclosure would violate a statute, Executive Order or regulation;

(h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the MSPB appearing to favor one litigant over another;

(k) Whether the request was served before the demand;

(l) A substantial Government interest is implicated;

(m) The demand or request is within the authority of the party making it; and

(n) The demand or request is sufficiently specific to be answered.

§ 12.16.203 Filing requirements for litigants seeking documents or testimony.

A litigant must comply with the following requirements when filing a request for official records and information or testimony under this part. A request should be filed before a demand.

(a) The request must be in writing and must be submitted to the Clerk of the Board who will immediately forward the request to the General Counsel.

(b) The written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on the MSPB to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an MSPB employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require for each MSPB employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The MSPB reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that

records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the MSPB employee's statement free of charge and that the requester will permit the MSPB to have a representative present during the employee's testimony.

§ 1216.204 Service of requests or demands.

Requests or demands for official records or information or testimony under this subpart must be served on the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419–0002 by mail, fax, or e-mail and clearly marked ''Part 1216 Request for Testimony or Official Records in Legal Proceedings.'' The request or demand will be immediately forwarded to the General Counsel for processing.

§ 1216.205 Processing requests or demands.

(a) After receiving service of a request or demand for testimony, the General Counsel will review the request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the MSPB will issue a determination within 30 days from the date the request is received.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of the MSPB or the United States, or for other good cause.

(d) *Certification (authentication) of copies of records.* The MSPB may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the MSPB at least 30 days before the date they will be needed. The request should be sent to the Clerk of the Board.

§ 1216.206 Final determination.

The General Counsel makes the final determination on demands to requests to employees for production of official records and information or testimony in litigation in which the MSPB is not a party. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and, when appropriate, the court of other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an MSPB employee. The General Counsel's decision exhausts administrative remedies for discovery of the information.

§ 1216.207 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of MSPB employees including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The MSPB may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not;

(1) Disclose confidential or privileged information; or

(2) For a current MSPB employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the MSPB unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the MSPB's approval.

§ 1216.208 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the MSPB may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original MSPB records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official MSPB records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

§ 1216.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in § 1216.206, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

§ 1216.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touchy* v. *Ragen,* 340 U.S. 462 (1951).

Subpart C—Schedule of Fees

§ 1216.301 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to the MSPB.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the request, and expenses generated by materials and equipment

used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowances, and benefits). Fees for duplication will be the same as those charged by the MSPB in its Freedom of Information Act regulations at 5 CFR part 1204.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) *Payment of fees.* A requester must pay witness fees for current MSPB employees and any record certification fees by submitting to the Clerk of the Board a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former MSPB employees, the request must pay applicable fees directly to the former MSPB employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

Subpart D—Penalties

§ 1216.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the MSPB, or as ordered by a Federal court after the MSPB has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former MSPB employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current MSPB employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action.

Dated: April 4, 2006.

Bentley M. Roberts, Jr.

Clerk of the Board.

[FR Doc. 06–3373 Filed 4–7–06; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV06–916/917–1 IFR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and pack requirements for fresh shipments of these fruits, beginning with 2006 season shipments. This rule also authorizes continued shipments of ''CA Utility'' quality nectarines and peaches, establishes weight-count standards for Peento type nectarines in volume-filled containers, and eliminates the varietal container marking requirements. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

DATES: Effective April 11, 2006. Comments received by June 9, 2006 will be considered prior to issuance of any final rule.

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

FOR FURTHER INFORMATION CONTACT: Laurel May, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; Telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule: (1) Revises the nectarine and peach grade, size, maturity, and pack requirements to better reflect current industry operating and marketing practices; (2) authorizes continued shipments of ''CA Utility'' quality nectarines and peaches during the 2006 and subsequent seasons to meet buyer needs; (3) establishes weight-count standards for Peento type nectarines packed in volume-filled containers to assure pack uniformity; and (4) eliminates the varietal container marking requirements for nectarines and peaches to provide handlers more marketing flexibility.

Sections 916.52 and 917.41 of the orders provide authority for regulating the handling of fresh California nectarines and peaches. The regulations include grade, size, maturity, quality, pack, and container marking requirements. Such regulations are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, meet prior to and during each season to review the regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

The committees held such meetings on February 3, 2006, and unanimously recommended that the handling requirements be revised for the 2006 season, which expected to begin at the end of March. No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 2006 crop will be slightly larger than the 2005 crop, which totaled approximately 18,678,400 containers of nectarines and 20,098,100 containers of peaches.

Maturity Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is ''mature'' as defined in the standards. For most varieties, ''well-matured'' determinations for nectarines and peaches are made using maturity guides (*e.g.*, color chips, along with other maturity tests as applied by the inspection service). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2006 handling regulations are the same as those that appeared in the 2005 handling regulations with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for ''well-matured'' nectarines are specified in § 916.356 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for seven varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Ruby Fire variety to be regulated at the G maturity guide; for the Burnectten (Spring Flare® 19) variety to be regulated at the H maturity guide, for the Burnecttwelve (Sweet Flare® 21) variety to be regulated at the I maturity guide, for the Burnectseven (Summer Flare® 28) and Zee Fire varieties to be regulated at the J maturity guide, and for the Prima Diamond XIX and Summer Jewel varieties to be regulated at the L maturity guide.

Peaches: Requirements for ''well-matured'' peaches are specified in § 917.459 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for seven peach varieties. Specifically, SPI recommended adding maturity guides for the Flavor Joy variety to be regulated at the H maturity guide; the King Sweet, Lady Lou, and Sugar Time (214LC68) varieties to be regulated at the I maturity guide; the August Dream variety to be regulated at the J maturity guide; and the Burpeachfive (July Flame®) and Burpeachsix (June Flame®) varieties to be regulated at the L maturity guide.

NAC and PCC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for nectarine and peach varieties in production.

Size Requirements

Both orders provide authority (in §§ 916.52 and 917.41) to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific minimum size requirements for nine varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2005 season. This rule also removes the variety-specific minimum size requirements for seven varieties of nectarines whose shipments fell below 5,000 containers during the 2005 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Burnectten (Spring Flare® 19) variety of nectarines, recommended for regulation at a minimum size 96. Studies of the size ranges attained by the Burnectten (Spring Flare® 19) variety revealed that 100 percent of the containers met the minimum size of 96 during the 2004 and 2005 seasons. Sizes ranged from size 40 to size 96, with 0.2 percent of the fruit in the 40 sizes, 4.9 percent of the packages in the 50 sizes, 27.0 percent in the 60 sizes, 35.8 percent in the 70 sizes, 24.4 percent in the 80 sizes, and 7.7 percent in size 96 for the 2005 season.

A review of other varieties with the same harvesting period indicated that the Burnectten (Spring Flare® 19)

variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Burnectten (Spring Flare® 19) variety in the variety-specific minimum size regulation at a minimum size 96 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(3) of § 916.356 is revised to include the Burnectten (Spring Flare® 19) variety; the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Gee Sweet variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to include the Arctic Belle, August Sweet, Autumn Blaze, Giant Pearl, Prima Diamond X, Prince Jim 3, and Summer Jewel nectarine varieties.

This rule also revises the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to remove seven varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2005 season. Specifically, the introductory text of paragraph (a)(3) of § 916.356 is revised to remove the Early Diamond nectarine variety; the introductory text of paragraph (a)(4) of § 916.356 is revised to remove the Arctic Rose, June Glo, May Diamond and Red Delight nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 is revised to remove the Bright Sweet and Emelia nectarine varieties.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific minimum size requirements for eleven peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2005 season. This rule also removes the variety-specific minimum size requirements for seven varieties of peaches whose shipments fell below 5,000 containers during the 2005 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Island Prince variety of peaches, which was recommended for regulation at a minimum size 88. Studies of the size ranges attained by the Island Prince variety revealed that 100 percent of the containers met the minimum size of 88 during the 2004 and 2005 seasons. The sizes ranged from size 30 to size 88, with 3.8 percent of the containers meeting the size 30, 4.0 percent meeting the size 40, 42.1 percent meeting the size 50, 28.1 percent meeting the size 60, 11.8 percent meeting the size 70, 9.9 percent meeting the size 80, and 0.3 percent meeting the size 88 in the 2005 season.

A review of other varieties with the same harvesting period indicated that the Island Prince variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and the harvesting period, as well. Thus, the recommendation to place the Island Prince variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(3) of § 917.459 is revised to include the Island Prince and Snow Peak peach varieties; the introductory text of § (a)(5) of § 917.459 is revised to include the Bright Princess, Burpeachnineteen (Spring Flame® 22), Honey Sweet, Sierra Snow, and Sweet Crest peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to include the Glacier White, Jasper Treasure, Spring Candy, and Valley Sweet peach varieties.

This rule also revises the introductory text of paragraph (a)(6) of § 917.459 to remove the Autumn Ruby, Cherry Red, Early O'Henry, Gypsy Red, Pretty Lady, Supechfour (Amber Crest), and 244LE379 peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2005 season.

Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

NAC and PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders also authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade standard that included a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not considered ''serious damage.''

Since 1996, shipments of nectarines and peaches meeting ''CA Utility'' quality requirements have been permitted each season. ''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements. Nevertheless, the fruit is acceptable in many markets. Use of the ''CA Utility'' quality option has allowed handlers the opportunity to remove marginal fruit from the U.S. No. 1 containers and pack it in ''CA Utility'' containers instead, which results in better quality U.S. No. 1 packs without sacrificing fruit.

The committees have recommended continuation of the authorization to ship ''CA Utility'' quality fruit each year since 1996, and did so again at their meetings on February 3, 2006, for the 2006 and subsequent seasons. This rule

revises paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2006 and subsequent seasons.

Weight-Count Standards

Under the provisions of §§ 916.52 of the order, NAC is authorized to establish weight-count standards for packed containers of nectarines. These standards define a maximum number of nectarines in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers. In §§ 916.350 of the order's rules and regulations, weight-count standards are established for all varieties of nectarines (except the Peento type), in Tables 1 and 2 of paragraph (a)(5)(iv).

According to NAC, Peento varieties of donut nectarines have traditionally been packed in trays because they have been marketed as a premium variety, whose value justified the added packing costs. However, as the volume has increased, the value of the variety has diminished in the marketplace, and some handlers now desire to pack Peento variety nectarines in volume-filled containers to meet market demands. However, weight-count standards for Peento type nectarines have not been established in the order's rules and regulations. Current weight-count standards for nectarines are for round nectarines. Peento type nectarines are shaped like donuts and fit into volume-filled containers differently, so the current weight count standards are inappropriate.

In an effort to standardize the conversion from tray-packing to volume-filling for Peento type nectarines, the committee staff conducted weight-count surveys during the 2005 season to determine optimum weight-counts for the varieties at various fruit sizes. As a result, the staff prepared a new weight-count table applicable to only the Peento varieties. The Tree Fruit Quality Subcommittee reviewed the weight-counts at their November 10, 2005, meeting. At its February 3, 2006, meeting, NAC approved the recommendation that the new weight-counts be implemented for the 2006 and subsequent seasons.

For those reasons, a new Table 3, establishing the weight-counts for Peento type nectarines, will be added to paragraph (a)(5)(iv) of § 916.350, following Tables 1 and 2. In a conforming change, the titles of Tables 1 and 2 will be revised by adding the words ''except Peento type nectarines'' between the words ''nectarines'' and ''packed.'' Conforming changes will also be made by adding the words ''except for Peento type nectarines'' at the end of paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(ii) of § 916.356.

The committee staff will continue to conduct weight-count surveys to ensure that the Peento varieties that are packed in volume-filled containers meet the weight-count standards established for tray-packed nectarines, and to ensure that the weight-counts continue to be appropriate.

Varietal Container Markings

Sections 916.350 and 917.442 of the orders' rules and regulations require that all containers and packages of nectarines and peaches (except for consumer packages in master containers or those mailed directly to consumers) shall be marked with the name of the variety of the fruit if it is known, or with ''Unknown Variety'' if the variety is not known.

Many industry members believe that variety recognition may limit the industry's ability to provide the best quality fruit at any given time during the harvest season. Factors such as weather can contribute to wide variability in harvest dates for individual varieties from year to year, making it difficult to meet customer demands on a timely basis. Eliminating the varietal container marking requirement would ease the transition that occurs when older trees are replaced with newly introduced varieties. New varieties could be substituted for obsolete varieties without risking the loss of market opportunities. Therefore, industry members have suggested that elimination of the varietal container marking requirement would enable them to supply whichever varieties are appropriately mature throughout the season without regard for variety identity.

The Tree Fruit Quality Subcommittee discussed this issue at many of their meetings in 2004 and 2005. They believe that eliminating the requirement that variety names be marked on containers will allow handlers greater flexibility to supply the best possible nectarines and peaches to customers throughout the marketing season without regard to variety. Consumer satisfaction would be raised, which will in turn increase returns to growers and handlers.

Upon recommendation by the Tree Fruit Quality Subcommittee, NAC and PCC voted unanimously at their meetings on February 3, 2006, to recommend elimination of the requirement that fruit variety be marked on containers of nectarines and peaches. Accordingly, paragraphs (a)(2) of §§ 916.350 and 917.442 have been amended by deleting the words, ''and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known, or, when the variety name is not known, the words ''unknown variety.'' A marketing name, trade mark, or brand name may be associated with a variety name, but cannot be substituted for the variety name.''

Additionally, paragraph (a)(11) of § 916.350 and paragraph (a)(12) of § 917.442 will be amended by deleting the words ''the name of the variety, if known, or if the variety is not known, the words *Unknown Variety*.''

This rule reflects the need to revise the handling requirements for California nectarines and peaches, as specified. This rule will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. The changes: (1) Revise the nectarine and peach grade, size, maturity, and pack requirements; (2) authorize continued shipments of ''CA Utility'' quality nectarines and peaches during the 2006 and subsequent seasons; (3) establish weight-count standards for Peento type nectarines packed in volume-filled containers; and (4) eliminate the varietal container marking requirements for nectarines and peaches. This rule will also help the California nectarine and peach industries to provide fruit desired by consumers. This rule was unanimously recommended by the committees at their meetings on February 3, 2006, and is designed to establish and maintain orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of

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

Industry Information

There are approximately 180 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $6,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2005 season, the committees' staff estimated that the average handler price received was $10.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 600,000 containers to have annual receipts of $6,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2005 season, the committees' staff estimates that small handlers represent approximately 86 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 10 percent of the producers in the industry could be defined as other than small entities. For the 2005 season, the committees' estimated the average producer price received was $5.25 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 142,858 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2005 season, the committees' staff estimates that small producers represent more than 90 percent of the producers within the industry.

With an average producer price of $5.25 per container or container equivalent, and a combined packout of nectarines and peaches of approximately 38,776,500 containers, the value of the 2005 packout is estimated to be $203,576,600. Dividing this total estimated grower revenue figure by the estimated number of producers (800) yields an estimated average revenue per producer of about $254,471 from the sales of peaches and nectarines.

Regulatory Revisions

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. NAC and PCC met on February 3, 2006, and unanimously recommended that these handling requirements be revised for the 2006 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Revise varietal size, maturity, and pack requirements to reflect changes in production and marketing practices; (2) authorize continued shipments of ''CA Utility'' quality nectarines and peaches during the 2006 and subsequent seasons; (3) establish weight-count standards for Peento type nectarines packed in volume-filled containers; and (4) eliminate the varietal container marking requirements for nectarines and peaches.

Minimum Maturity and Size Levels—Discussions and Alternatives

Sections 916.356 and 917.459 establish minimum fruit maturity levels. This rule makes adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on measurements suggested by maturity guides (*e.g.*, color chips), as reviewed and recommended by SPI annually to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines and peaches as observed during previous seasons' inspections. Adjustments in the guides utilized ensure acceptable fruit maturity and increased consumer satisfaction while benefiting nectarine and peach producers and handlers.

Sections 916.356 and 917.459 of the orders' rules and regulations also establish minimum sizes for various varieties of nectarines and peaches. This rule makes adjustments to the minimum sizes authorized for certain varieties of each commodity for the 2006 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a significant change in the regulations as they currently exist; would ultimately increase the amount of less acceptable fruit being marketed to consumers; and would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

Grade and Quality Requirements—Discussions and Alternatives

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of ''CA Utility'' quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Although ''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements, it has been accepted in many markets. Between 1996 and 2004, shipments of ''CA Utility'' quality fruit ranged from 1 to 6 percent of total nectarine and peach shipments. In 2005, shipments of ''CA Utility'' quality fruit were 8.6 percent and 7.1 percent of total nectarine and peach shipments, respectively.

This rule authorizes continued shipments of ''CA Utility'' quality nectarines and peaches during the 2006 and subsequent seasons. Not authorizing such shipments would curtail shipments of fruit for which there is an appropriate market. Because ''CA Utility'' is widely accepted, it is no longer necessary to reconsider this authorization on an annual basis.

Weight-Count Standards—Discussions and Alternatives

Section 916.350 also establishes weight-count standards for nectarines packed in volume-filled containers.

These standards define a maximum number of nectarines in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers.

Peento type nectarines were formerly packed exclusively in trays because of their high market value. With increased production and lowered market value, retailers have begun requesting that packers place the donut-shaped fruit in volume-filled containers. Peento type nectarines fit into the boxes differently than spherical nectarines, so it is necessary to assign appropriate weight counts for Peento type nectarines in volume-filled containers.

The committee staff was directed to collect data during the 2005 season from which recommendations for change could be made. Extensive sampling of Peento type nectarines of various sizes provided the information needed for the committee to make recommendations regarding the new weight-count standards. The Tree Fruit Quality subcommittee reviewed these standards at their meeting on November 10, 2005. The standards were then presented to NAC, who unanimously recommended adding the new weight count standards for Peento type nectarines to the regulations at their meeting on February 3, 2006.

Without the appropriate weight-counts, Peento type nectarines cannot be packed in volume-filled containers. NAC believes that the recommended weight-count standards will satisfy the stated needs of retailers, will open additional market opportunities for the industry and will provide for uniformity of sizes between nectarines packed in tray- and volume-filled containers.

Varietal Container Marking Requirements—Discussions and Alternatives

Sections 916.350 and 917.442 of the orders' rules and regulations require that all containers of nectarines and peaches be marked with the fruit's varietal name, if known.

Many industry members believe that variety recognition may limit the industry's ability to provide the best quality fruit at any given time during the harvest season. Factors such as weather can contribute to wide variability in harvest dates for individual varieties from year to year, making it difficult to meet customer demands on a timely basis. Eliminating the varietal container marking requirement would ease the transition that occurs when older trees are replaced with newly introduced varieties. New varieties could be substituted for obsolete varieties without risking the loss of market opportunities. Therefore, industry members have suggested that elimination of the varietal container marking requirement would enable them to supply whichever varieties are appropriately mature throughout the season without regard for variety identity. Consumer satisfaction would be raised, which would in turn increase returns to growers and handlers.

The Tree Fruit Quality Subcommittee discussed the issue at many of their recent meetings. Some members suggested that the requirement be left in place so that marketers and consumers would know what varieties of fruit they purchased and be encouraged to make repeat purchases. But the majority of subcommittee members voted to recommend elimination of the varietal container marking requirement, citing brand and commodity recognition in the market and easier transition to newer varieties as justification for the change. The Tree Fruit Subcommittee made the recommendation to both NAC and PCC, who agreed that varietal markings are no longer necessary or prudent, and in turn recommended at their February 3, 2006, meetings that the varietal container marking requirement be eliminated.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Tree Fruit Quality Subcommittee, the Size Nomenclature Review Group, the Marketing Order Amendment Task Force, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Tree Fruit Quality Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations, or call and/or write in their concerns and comments to the staff for presentation at the meetings. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby increasing the availability of this critical information within the industry.

Each of the recommended handling requirement changes for the 2006 season is expected to generate financial benefits for producers and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule imposes minimal additional reporting and recordkeeping requirements concerning identification of varieties at inspection that is within the currently approved burden by OMB. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually in the fall, winter, and spring. During the February 3, 2006, teleconference meeting all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at public subcommittee meetings held on November 30, 2004, and April 19, September 2, October 5, and November 10, 2005. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*.

Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible, since shipments of California nectarines and peaches are expected to begin in early April; (2) this rule relaxes grade requirements for nectarines and peaches; (3) appropriate subcommittees met and made recommendations to the committees, the committees met and unanimously recommended these changes at public meetings, and interested persons had opportunities to provide input at all those meetings; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 916.350 is amended by:
■ A. Revising paragraph (a)(2);
■ B. Revising the titles of Tables 1 and 2 and adding a new Table 3 in paragraph (a)(5)(iv);
■ C. Revising paragraph (a)(11); and
■ D. Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(1) * * *

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the word ''nectarines.''

* * * * *

(5) * * *

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES (EXCEPT PEENTO TYPE NECTARINES) PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

* * * * *

TABLE 2.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES (EXCEPT PEENTO TYPE NECTARINES) PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

* * * * *

TABLE 3.—WEIGHT-COUNT STANDARDS FOR PEENTO TYPE NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—tray pack size designation	Column B—maximum number of nectarines in a 16-pound sample
80	140
72	128
70	111
64	99
60	93
56	87
54	80
50	77
48	74
44	70
42	68
40	59
36	53
34	50
32	39
30	32

* * * * *

(11) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of nectarines contained in the package and be marked as specified in paragraph (a)(3) of this section.

* * * * *

(d) During the period April 1 through October 31, each container or package when packed with nectarines meeting the ''CA Utility'' quality requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters at least ⅜ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as ''CA Utility,'' along with all other required markings, in letters at least ⅜ inch in height.

■ 3. Section 916.356 is amended by:
■ A. Revising the introductory text of paragraph (a)(1);
■ B. Revising Table 1 of paragraph (a)(1)(iv);
■ C. Revising paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(ii); and
■ D. Revising the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-covered, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-covered, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 1 through October 31, any handler may handle nectarines if such nectarines meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade,

except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

(iv) * * *

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
Alta Red	J
April Glo	H
August Fire	L
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Big Jim	J
Burnectone (Spring Ray®)	L
Burnectseven (Summer Flare® 28).	J
Burnectten (Spring Flare® 19)	H
Burnecttwelve (Sweet Flare® 21).	I
Candy Gold	L
Crimson Baby	G
Diamond Bright	J
Diamond Jewel	L
Diamond Ray	L
Earliglo	I
Early Diamond	J
Early Red Jim	J
Early Sungrand	H
Emelia	J
Fairlane	L
Fantasia	J
Firebrite	H
Fire Sweet	J
Flame Glo	L
Flamekist	L
Flaming Red	K
Flavortop	J
Gee Sweet	L
Grand Candy	J
Grand Diamond	L
Grand Sweet	J
Gran Sun	L
Honey Blaze	J
Honey Dew	B*
Honey Fire	L
Honey Kist	I
Honey Royale	J
July Red	L
June Brite	I
June Candy	K
Juneglo	H
Kay Diamond	L
Kay Glo	J
Kay Sweet	J
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Mango	B*
May Diamond	I
May Fire	H

TABLE 1—Continued

Column A variety	Column B maturity guide
Mayglo	H
May Grand	H
May Kist	H
Mid Glo	L
Moon Grand	L
Niagra Grand	H
P-R Red	L
Prince Jim	L
Prince Jim I	L
Prima Diamond XIII	L
Prima Diamond XIX	L
Red Delight	I
Red Diamond	L
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Jewel	L
Red Jim	L
Red May	J
Red Roy	J
Regal Red	K
Rio Red	L
Rose Diamond	J
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Fire	G
Ruby Grand	J
Ruby Sun	J
Ruby Sweet	J
Scarlet Red	K
September Free	J
September Grand	L
September Red	L
Shay Sweet	J
Sheri Red	J
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Spring Sweet	J
Star Brite	J
Sugar Queen	L
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Jewel	L
Summer Lion	L
Summer Red	L
Sunburst	J
Sun Diamond	I
Sunecteight (Super Star)	G
Sun Grand	G
Sunny Red	J
Tom Grand	L
Zee Fire	J
Zee Glo	J
Zee Grand	I

* * * * *

(2) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(2)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 100 nectarines, except for Peento-type nectarines.

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Burnectten (Spring Flare® 19), Crimson Baby, Earliglo, Red Jewel or Zee Fire variety nectarines unless:

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(3)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines, except for Peento-type nectarines.

(4) Any package or container of Arctic Star, Burnectone (Spring Ray®), Diamond Bright, Diamond Pearl, Gee Sweet, June Pearl, Kay Fire, Kay Glo, Kay Sweet, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Roy, Rose Diamond, Royal Glo, or Zee Grand variety nectarines unless:

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(4)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 84 nectarines, except for Peento-type nectarines.

(5) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines, except for Peento-type nectarines.

(6) Any package or container of Alta Red, Arctic Belle, Arctic Blaze, Arctic Gold, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Fire, August Glo, August Lion, August Pearl, August Red, August Snow, August Sweet, Autumn Blaze, Big Jim, Bright Pearl, Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Candy Gold, Diamond Ray, Early Red Jim, Fire Pearl, Fire Sweet, Flaming Red, Giant Pearl, Grand Pearl, Grand Sweet, Honey Blaze, Honey Dew, Honey Fire, Honey Kist, Honey Royale, July Pearl, July Red, Kay Pearl, La Pinta, Late Red Jim, Mike's Red, P-R Red, Prima Diamond IX, Prima Diamond X, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Prima

Diamond XXVIII, Prince Jim 3, Red Diamond, Red Glen, Red Jim, Red Pearl, Regal Pearl, Regal Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, September Bright (26P–490), September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Sweet, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Valley Sweet, Terra White, or Zee Glo variety nectarines unless:

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 72 nectarines or if the nectarines are ''well matured'' not more than 76 nectarines, except for Peento-type nectarines.

(7) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(7)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines, except for Peento-type nectarines.

(8) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(8)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 84 nectarines, except for Peento-type nectarines.

(9) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 72 nectarines or if the nectarines are ''well matured'' not more than 76 nectarines, except for Peento-type nectarines.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 4. Section 917.442 is amended by:

■ A. Revising paragraphs (a)(2) and (a)(12) and

■ B. Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(1) * * *

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters, the word ''peaches.''

* * * * *

(12) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of peaches contained in the package and be marked as specified in paragraph (a)(3) of this section.

* * * * *

(d) During the period April 1 through November 23, each container or package when packed with peaches meeting ''CA Utility'' quality requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters at least ⅜ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as ''CA Utility,'' along with all other required markings, in letters at least ⅜ inch in height.

* * * * *

■ 5. Section 917.459 is amended by:

■ A. Revising the introductory text of paragraph (a)(1);

■ B. Revising Table 1 of paragraph (a)(1)(iv); and

■ C. Revising the introductory text of paragraphs (a)(3), (a)(5), and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further*, That peaches of the Peento type shall be permitted blossom end cracking that is well healed and does not exceed the aggregate area of a circle 3/8 inch in diameter, and/or does not exceed a depth that exposes the pit: *Provided further*, That during the period April 1 through November 23, any handler may handle peaches if such peaches meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 40 percent of the peaches in any container meet or exceed the requirement of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) * * *

TABLE 1

Column A variety	Column B maturity guide
Angelus	I
August Dream	J
August Lady	L
Autumn Flame	J
Autumn Gem	I
Autumn Lady	H
Autumn Red	J
Autumn Rose	H
Bev's Red	I
Blum's Beauty	G
Brittney Lane	J
Burpeachfive (July Flame®)	L
Burpeachone (Spring Flame® 21).	J
Burpeachsix (June Flame®)	L
Burpeachthree (September Flame®).	I
Burpeachtwo (Henry II®)	J
Cal Red	I
Candy Red	J
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
Country Sweet	J
David Sun	I
Diamond Princess	J
Earlirich	H
Earlitreat	H
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Joy	H
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Princess	L
Honey Red	G
Island Princess	H
Joanna Sweet	J
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
Kaweah	L
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I

TABLE 1—Continued

Column A variety	Column B maturity guide
King Sweet	I
Lacey	I
Lady Lou	I
Lady Sue	L
Late Ito Red	L
Madonna Sun	J
Magenta Queen	J
May Crest	G
May Sun	I
May Sweet	I
Merrill Gem	G
Merrill Gemfree	G
Morning Lord	J
O'Henry	I
Pacifica	G
Pretty Lady	J
Prima Gattie 8	L
Prima Gattie 10	J
Prima Peach IV	J
Prima Peach 23	J
Queencrest	G
Ray Crest	G
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
September Sun	I
Shelly	J
Sierra Gem	J
Sierra Lady	I
Sparkle	I
Sprague Last Chance	L
Springcrest	G
Spring Delight	G
Spring Gem	J
Spring Lady	H
Springtreat (60EF32)	I
Sugar Time (214LC68)	I
Summer Kist	J
Summer Lady	L
Summerset	I
Summer Zee	L
Suncrest	G
Supechfour (Amber Crest)	G
Super Rich	H
Sweet Amber	J
Sweet Dream	J
Sweet Gem	J
Sweet Mick	J
Sweet Scarlet	J
Sweet September	I
Topcrest	H
Tra Zee	J
Vista	J
Willie Red	G
Zee Diamond	J
Zee Lady	L

* * * * *

(3) Any package or container of Island Prince, Snow Kist, Snow Peak or Super Rich variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Bev's Red, Bright Princess, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Burpeachnineteen (Spring Flame® 22), Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Honey Sweet, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sun, May Sweet, Prima Peach IV, Queencrest, Rich May, Scarlet Queen, Sierra Snow, Snow Brite, Snow Prince, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Sunlit Snow (172LE81), Supecheight (012–094), Sweet Scarlet, Sweet Crest or Zee Diamond variety peaches unless:

* * * * *

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Flame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Coral Princess, Country Sweet, Crimson Queen, Diamond Princess, Earlirich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Glacier White, Henry III, Henry IV, Ice Princess, Ivory Princess, Jasper Treasure, Jillie White, Joanna Sweet, John Henry, Jupiter, Kaweah, Klondike, Last Tango, Late Ito Red, Magenta Gold, O'Henry, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Princess Gayle, Red Giant, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Princess, Sprague Last Chance, Spring Candy, Spring Gem, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Kay, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, Zee Lady, or 24–SB variety peaches unless:

* * * * *

Dated: April 5, 2006.

Lloyd C Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–3420 Filed 4–6–06; 9:41 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV06–923–1 IFR]

Sweet Cherries Grown in Designated Counties in Washington; Removal of Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes the container regulations prescribed under the Washington sweet cherry marketing order. Specifically, this rule removes the requirement that dark-colored sweet cherries must be handled in containers having a certain net weight. The marketing order regulates the handling of fresh sweet cherries grown in designated counties in the State of Washington, and is administered locally by the Washington Cherry Marketing Committee (Committee). By eliminating the container requirements, this relaxation will provide handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging. This is expected to enhance industry marketing flexibility and efficiency.

DATES: Effective April 11, 2006. Comments received by June 9, 2006 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204–2807; Telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule removes the container regulations prescribed under the Washington sweet cherry order. Specifically, this rule removes the requirement that dark-colored sweet cherries must be handled in containers having a certain net weight. By eliminating the container requirements, this relaxation provides handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging, thereby enhancing industry marketing flexibility and efficiency.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of sweet cherries grown in the production area. Section 923.52(a)(3) specifically authorizes the establishment of the container regulations found in § 923.322. Section 923.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 923.52.

Authority to regulate the size, capacity, weight, dimension, markings or pack of containers used in the handling of fresh sweet cherries was included in the order when promulgated in 1957. This authority was included in the order to facilitate container standardization and thus help establish orderly marketing conditions and increase producer returns.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of any regulatory requirements for Washington sweet cherries that are issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews the Committee recommendations along with any supportive information submitted by the Committee, as well as information from other available resources, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 28, 2006, meeting, the Committee recommended that the container regulations be entirely removed from the handling regulations. The Committee recommended that this rule be effective as early as May 1, 2006, to ensure that the earliest shipments of sweet cherries benefit from the relaxed regulations, and that container manufacturers have adequate time prior to the beginning of the shipping season to retool if new containers are ordered by the industry.

The container requirements provide the Washington cherry industry with container standardization to help ensure orderly marketing conditions and increased producer returns. Section 923.322(d) provides that: ''No handler shall handle any lot of cherries, except cherries of the Rainier, Royal Anne, and similar varieties commonly referred to as ''light sweet cherries'', unless such cherries are in containers which meet each of the following applicable requirements:

(1) The net weight of loose packed (jumble-filled) cherries in any container shall be 12 pounds or less, or 20 pounds or more. The net weight of face packed cherries in any container shall be 15 pounds, or 12 pounds or less: *Provided*, That containers with a net weight of 12 pounds or less may be packed together with like containers in a master shipping container.

(2) Subject to the provisions of paragraphs (b)(2)(i) and (ii) of this section, shipments of cherries may be handled in such experimental containers as have been approved by the Washington Cherry Marketing Committee.''

Paragraph (2) above refers to the provisions of § 923.322(b)(2)(i) and (ii), which specify that: ''(i) All shipments handled in such containers shall be under the supervision of the committee; and (ii) at least 90 percent, by count, of the cherries in any lot of such containers shall measure not less than 54/64 inch in diameter, and not more than 5 percent, by count, may be less than 52/64 inch in diameter.'' Because the provisions of (b)(2)(i) and (ii) refer to experimental containers exempt under 923.322(d)(2), this rule also removes both paragraphs from the handling regulations.

Comments made at the public meeting indicate that container standardization has contributed to orderly marketing in the past. Due to the changing dynamics in the fresh produce industry, however, buyers—at the wholesale, retail and consumer level—are seeking many more packaging options than have been available in the past. Handlers report that buyers are increasingly interested in non-traditional packaging options designed for better handling and greater consumer acceptance. Handlers also desire greater latitude in choosing the optimum weight for a particular type of pack. Of specific concern to this industry is the ability to pack cherries in containers with net weights of between 12 and 20 pounds—a weight range specifically barred under the container regulation. Packaging options could also include consumer-friendly ''clam shell'' containers of any desired net weight, or other similar containers designed to enhance the appearance of individual pieces of fruit.

Although § 923.322(d)(2) provides for experimental container exemptions, those handlers who have utilized this exemption in the past feel that the process is too cumbersome and time-

consuming, thus failing to provide the optimal flexibility they need under current marketing conditions.

Regardless of the size, capacity, or type containers the industry may eventually use, the Committee believes that the Washington cherry industry desires flexibility in packaging dark-colored sweet cherries. This action will provide the industry with needed flexibility.

This rule not only removes the container regulations in § 923.322(d)), but also makes necessary conforming changes by removing § 923.322(b)(2)(i) and (ii), and removing references to container requirements in § 923.322(f)(1)(ii) and § 923.322(g).

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,500 cherry producers within the regulated production area and approximately 53 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

For the 2005 shipping season, the Washington Agricultural Statistics Service has prepared a preliminary report showing that the total 113,000 ton fresh market sweet cherry utilization sold for an average of $2,830 per ton. Based on the number of producers in the production area, the average producer revenue from the sale of sweet cherries in 2005 is estimated at approximately $213,200 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than $6,000,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

At its February 28, 2006, meeting the Committee recommended that the container regulations in § 923.322(d) be removed from the order's rules and regulations. Section 923.52(a)(3) of the order specifically authorizes the establishment of container regulations. Further, § 923.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 923.52. This relaxation in the regulations provides handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging, thus enhancing industry marketing flexibility and efficiency.

The Committee anticipates that this rule will not negatively impact small businesses. This rule removes the container requirements found under § 923.322(d) of the order's rules and regulations, and, thus, should provide the industry with greater marketing opportunities. The Committee believes that any additional costs this rule may have on the industry would be associated with the development and use of new containers. Such costs would likely be offset by new marketing opportunities.

The Committee discussed alternatives to its recommendation to remove the container regulations. The Committee explored the option of leaving the container regulations intact without change. This option was rejected as being an inadequate response to the demand for greater flexibility in the packaging of fresh cherries. Temporary suspension of the regulations was considered, and then discarded, as also being inadequate for the current marketing situation.

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

AMS 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.

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

The Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 28, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

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

This rule invites comments on removal of the container regulations under the Washington cherry marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulation removed by this action no longer tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule removes the container regulations for Washington sweet cherries for the 2006 shipping season and subsequent seasons; (2) this rule should be in effect by May 15, 2006, the date 2006 season shipments of the Washington sweet cherry crop are expected to begin, and this action should apply to the entire season's shipments; (3) the removal of the container regulations was recommended by the Committee at a public meeting and all interested persons had an opportunity to express their views and provide input; (4) Washington cherry handlers are aware of this recommendation and need no additional time to comply with the relaxed requirements; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 923.322 [Amended]

■ 2. Section 923.322 is amended by:
■ a. Removing paragraphs (b)(2)(i) and (b)(2)(ii);
■ b. Removing and reserving paragraph (d);
■ c. Removing the word ''container'' from paragraph (f)(1)(ii); and
■ d. Removing paragraph designation ''(d)'' in paragraph (g).

Dated: April 5, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–3419 Filed 4–6–06; 9:41 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AH49

Percentages for Direct and Counter-Cyclical Program Advance Payments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the provisions of the Agricultural Reconciliation Act of 2005 regarding percentages used to determine payment amounts for producers electing to receive advance payments through the Direct and Counter-Cyclical Program. Reducing the direct payment advance percentages shifts payments between fiscal years, but will have no impact on total payments.

DATES: *Effective Date:* This rule becomes effective on April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Tracey Smith, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250–0517. Telephone: (202) 720–4365. Electronic mail: *Tracey.Smith@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The Direct and Counter-Cyclical Program (DCP), authorized by Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, May 13, 2002) (''2002 Act''), provides payments to eligible producers on farms enrolled for the 2002 through 2007 crop years. There are two types of DCP payments—direct payments and counter-cyclical payments. These payments provide income support to producers of eligible commodities and are based on historically-based acreage and yields and do not depend on the current production choices of the farmer. DCP replaces the Production Flexibility Contract (PFC) payments made under the Federal Agriculture Improvement and Reform Act of 1996 for the crop years 1996 through 2002. In addition to the commodities that were eligible for PFC payments, the 2002 Act also provides for direct and counter-cyclical payments for peanuts, soybeans, sunflower seed and other oilseeds.

Explanation of Change

This rule implements section 1102 of Title I of Subtitle A of the Deficit Reduction Act of 2005 (Pub. L. 109–171, February 8, 2006). This section provides that DCP advance direct payment percentages will be reduced for fiscal years 2006 and 2007 from 50 percent to 40 percent for the 2006 fiscal year, and to 22 percent for the 2007 program year. This rule amends the direct and counter-cyclical program regulations at 7 CFR 1412.502(b) to reduce the advance direct payment rate percentages accordingly. Producers will continue to have the option to receive advance direct payments during any month from December through September of the applicable fiscal year.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C 7991(c)), provides that the regulations needed to implement Title I of the 2002 Act (7 U.S.C. 7901 *et seq.*), including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 relating to notices of proposed rulemaking and public participating in rulemaking.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be economically significant and was reviewed by the Office of Management and Budget. The economic effects of this rule are summarized below.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of 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 the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is administrative in nature and no extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule will preempt State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (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 the UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act (7 U.S.C. 7991(c)) provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made 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 program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

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 FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are: 10.055—Direct and Counter-cyclical Payments Program (DCP).

Cost Benefit Analysis Summary

Changing the advance direct payment percentage shifts about $0.305 billion of 2006-crop direct payments from FY 2006 to FY 2007 direct payments among FY's and shifts about $1.47 billion of 2007-crop direct payments from FY 2007 to FY 2008. About $90 million of 2007-crop direct payments is expected to shift from calendar year 2006 into calendar year 2007 because of the direct payment percentage change from 50 percent to 22 percent. While no net impact in nominal dollars on income is expected, the postponement of some advance payments does have some time value. The reduction in the real value of payments will be approximately $5 million for the 2006 crop and $22 million for the 2007 crop.

List of Subjects in 7 CFR Part 1412

Agricultural commodities, Feed grains, Grains, Oilseeds, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1412 is amended as follows:

PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAM

■ 1. The authority section for part 1412 continues to read as follows:

Authority: 7 U.S.C. 7911–7918, 7951–7956; 15 U.S.C. 714b and 714c.

■ 2. Section 1412.502 is amended by revising paragraph (b) introductory text to read as follows:

§ 1412.502 Direct payment provisions.

* * * * *

(b) At the option of the producer, direct payments for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established, shall be paid in any month from December through September of the fiscal year of the contract, as requested by the producer as an advance payment based on 50 percent of the direct payment rate for 2003 through 2005 contracts, 40 percent of the direct payment rate for 2006 contracts, and 22 percent of the direct payment rate for 2007 contracts. For any producer to receive an advance direct payment, all producers sharing in the direct payments for the farm must:

* * * * *

Signed in Washington, DC, on April 4, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–3364 Filed 4–7–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20768; Directorate Identifier 2005–CE–16–AD; Amendment 39–14554; AD 2006–08–01]

RIN 2120–AA64

Airworthiness Directives; BURKHART GROB LUFT-UND-RAUMFAHRT GmbH & Co. KG, Model G 103 C Twin III SL Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) that supersedes AD 97–24–09, which applies to certain BURKHART GROB LUFT-UND-RAUMFAHRT GmbH & Co. KG (Grob) Model G 103 C Twin III SL sailplanes. AD 97–24–09 currently requires repetitively inspecting the propeller bearing and upper pulley wheel for increased play and, if increased play is found, modifying the propeller bearing and pulley wheel. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. Consequently, this AD requires you to modify the propeller bearing and upper pulley wheel by installing a new securing plate and tightening the grooved nut to the new torque values. We are issuing this AD to prevent loss of the sailplane propeller caused by increased play in the current design propeller bearing and upper pulley wheel. This could result in loss of control of the sailplane.

DATES: This AD becomes effective on May 9, 2006.

On January 5, 1998 (62 FR 62945, November 26, 1997), the Director of the Federal Register previously approved the incorporation by reference of GROB Luft-und Raumfahrt Service Bulletin No. 869–18, dated March 7, 1996, and GROB Luft-und Raumfahrt Service Bulletin No. 869–18/2, dated July 8, 1996.

As of May 9, 2006, the Director of the Federal Register approved the incorporation by reference of GROB Luft-und Raumfahrt Service Bulletin MSB869–18/3, dated May 24, 2002, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: To get the service information identified in this AD, contact GROB Luft-und, Raumfahrt, Lettenbachstrasse 9, D–86874 tussenhausen-Mattsies, Federal

Republic of Germany; telephone: +49 8268 998139; facsimile: +49 8268 998200.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–20768; Directorate Identifier 2005–CE–16–AD.

FOR FURTHER INFORMATION CONTACT: Gregory A. Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4149.

SUPPLEMENTARY INFORMATION:

Discussion

On June 15, 2005, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Grob Model G 103 C Twin III SL sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 21, 2005 (70 FR 35568). The NPRM proposed to supersede AD 97–24–09 with a new AD that would require you to modify the propeller bearing and upper pulley wheel by installing a new securing plate and tightening the grooved nut to the new torque values.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 8 sailplanes in the U.S. registry.

We estimate the following costs to do the modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
6 workhours × $65 per hour = $390	N/A	$390	$3,120

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 AD.

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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20768; Directorate Identifier 2005–CE–16–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–24–09, Amendment 39–10216 (62 FR 62945, November 26, 1997), and by adding a new AD to read as follows:

2006–08–01 BURKHART GROB LUFT- UND RAUMFAHRT GMBH & CO. KG: Amendment 39–14554; Docket No. FAA–2005–20768; Directorate Identifier 2005–CE–16–AD.

Effective Date

(a) This AD becomes effective on May 9, 2006.

Affected ADs

(b) This AD supersedes AD 97–24–09, Amendment 39–10216.

Applicability

(c) This AD affects the Model G 103 C Twin III SL sailplanes, serial numbers 35002 through 35051, that are certificated in any category.

Unsafe Condition

(d) This AD is the result of increased play of the propeller bearing. The actions specified in this AD are intended to prevent loss of the sailplane propeller caused by increased play in the current design propeller bearing and upper pulley wheel. This could result in loss of control of the sailplane.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
Modify the propeller bearing and upper pulley wheel by installing a new securing plate, part number (P/N) 103SL–6400.12, and tightening the grooved nut, P/N 103SL–W–6400. Use the new torque values as specified in the GROB Luft-und Raumfahrt Service Bulletin MSB869–18/3, dated May 24, 2002.	Within 25 engine operating hours after May 9, 2006 (the effective date of this AD).	Follow GROB Luft-und Raumfahrt Service Bulletin No. 869–18, dated March 7, 1996 (including the reissued page 6 from GROB Luft-und Raumfahrt Service Bulletin No. 869–18/2, dated July 8, 1996, issued as a complement and a correction to GROB Luft-und Raumfahrt Service Bulletin No. 869–18, dated March 7, 1996) and GROB Luft-und Raumfahrt Service Bulletin MSB869–18/3, dated May 24, 2002. Use the new torque values as specified in the GROB Luft-und Raumfahrt Service Bulletin MSB869–18/3, dated May 24, 2002.

Alternative Method of Compliance

(f) The Manager, Standards Office, FAA, ATTN: Gregory A. Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4149, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) LBA Airworthiness Directive 1996–206/3, dated August 22, 2002; GROB Luft-und Raumfahrt Service Bulletin No. 869–18, dated March 7, 1996; GROB Luft-und Raumfahrt Service Bulletin No. 869–18/2, dated July 8, 1996; and GROB Luft-und Raumfahrt Service Bulletin MSB869–18/3, dated May 24, 2002, also address the subject of this AD.

Material Incorporated by Reference?

(h) You must do the actions required by this AD following the instructions in GROB Luft-und Raumfahrt Service Bulletin No. 869–18, dated March 7, 1996; GROB Luft-und Raumfahrt Service Bulletin No. 869–18/2, dated July 8, 1996; and GROB Luft-und Raumfahrt Service Bulletin MSB869–18/3, dated May 24, 2002.

(1) On January 5, 1998 (62 FR 62945, November 26, 1997), the Director of the Federal Register previously approved the incorporation by reference of GROB Luft-und Raumfahrt Service Bulletin No. 869–18, dated March 7, 1996, and GROB Luft-und Raumfahrt Service Bulletin No. 869–18/2, dated July 8, 1996.

(2) As of May 9, 2006, the Director of the Federal Register approved the incorporation by reference of GROB Luft-und Raumfahrt Service Bulletin MSB869–18/3, dated May 24, 2002, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) To get a copy of this service information, contact GROB Luft-und, Raumfahrt, Lettenbachstrasse 9, D86874 tussenhausen Mattsies, Federal Republic of Germany; telephone: +49 8268 998139; facsimile: +49 8268 998200. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA200520768; Directorate Identifier 2005CE16AD.

Issued in Kansas City, Missouri, on April 3, 2006.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3351 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 660 and 665

[Docket No. 060327086–6086–01; I.D. 032306A]

RIN 0648–AU21

NOAA Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers; Fisheries off West Coast States; Fisheries in the Western Pacific

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

ACTION: Final rule.

SUMMARY: NMFS reorganizes existing fishery regulations by creating a new part for western Pacific regulations. This rule organizes the regulations into a logical and cohesive order; it does not make substantive changes to existing fishery regulations. This rule also amends references to the Paperwork Reduction Act (PRA) information collection requirements to reflect the reorganization. The purpose of this rule is to make the regulations better organized and easier for the public to use.

DATES: Effective April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS Pacific Islands Region, 808–944–2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is accessible via the Internet at *http://www.archives.gov/federal-register/publications.*

Background

In 1996, NMFS published a final rule (61 FR 34570, July 2, 1996) that consolidated six parts of the Code of Federal Regulations (CFR) into one new CFR part (50 CFR part 660). Among the actions in that rule was consolidation of regulations that implemented fishery conservation and management measures for fisheries operating in the exclusive economic zone (EEZ) off the west coast and in the western Pacific. The 1996 action reorganized the rules into a more logical and cohesive order, removed duplicative and outdated provisions, and made editorial changes for readability, clarity and uniformity in the regulatory language. The current action makes the regulations even better organized, and easier for the public to use.

Since the 1996 reorganization, there have been significant changes in the fisheries managed under 50 CFR part 660 and in the associated fishery regulations. New subparts have been added that cover west coast highly migratory species fisheries and western Pacific coral reef fisheries. Subparts that apply specifically to fisheries in the western Pacific are currently intermingled with subparts that apply to fisheries off the west coast, and several subparts have been changed substantially.

In 2004, NMFS established a new Pacific Islands Region and Pacific

Islands Regional Office with responsibility for administering NMFS conservation and management programs in the western Pacific. Those responsibilities are no longer in the purview of the NMFS Southwest Region. Thus, the realignment of regulations for fisheries in the western Pacific is consistent with the new regional office that is responsible for their administration.

In addition to the above reasons for regulatory reorganization, the Western Pacific Fishery Management Council is in the process of creating fishery ecosystem plans that will apply ecosystem management principles to fisheries, consistent with the Magnuson-Stevens Fishery Conservation and Management Act. Those plans will shift management from a fishery or species basis (*e.g.*, pelagic species, crustaceans, etc.) to one based on geographical areas (*e.g.*, American Samoa, Hawaii, etc.). The move to ecosystems management will require reorganization of the regulations for western Pacific fisheries into geographic areas; such a reorganization will be facilitated by the current action.

Reorganization of Regulations for the Western Pacific

This action redesignates those regulations in 50 CFR part 660 that cover fisheries in the western Pacific as regulations in a new 50 CFR part 665. Fisheries for pelagic species, crustaceans, bottomfish and seamount groundfish, precious corals and coral reef ecosystems in the western Pacific are managed by these regulations. After the reorganization, the regulations remaining in 50 CFR part 660 will include those fisheries that are managed by NMFS off the west coast. The restructuring allows interested fishermen, managers and the general public to readily access the regulations.

No substantive changes are being made to the regulations, but several administrative titles and telephone numbers are updated. In 50 CFR part 660, subpart A (general provisions) is not redesignated, but is edited to apply solely to west coast fisheries, and a new 50 CFR part 665, subpart A, is created for western Pacific fisheries.

The following table lists the redesignation of the subparts and sections:

Old section	New section
	Subpart A—General
	§ 665.1 Purpose and scope.
	§ 665.2 Relation to other laws.
	§ 665.3 Reporting and recordkeeping.
Subpart B—Western Pacific Fisheries—General	Subpart B—Western Pacific Fisheries—General
§ 660.11 Purpose and scope	§ 665.11 Purpose and scope.
§ 660.12 Definitions	§ 665.12 Definitions.
§ 660.13 Permits and fees	§ 665.13 Permits and fees.
§ 660.14 Reporting and recordkeeping	§ 665.14 Reporting and recordkeeping.
§ 660.15 Prohibitions	§ 665.15 Prohibitions.
§ 660.16 Vessel identification	§ 665.16 Vessel identification.
§ 660.17 Experimental fishing	§ 665.17 Experimental fishing.
§ 660.18 Area restrictions	§ 665.18 Area restrictions.
Subpart C—Western Pacific Pelagic Fisheries	Subpart C—Western Pacific Pelagic Fisheries
§ 660.21 Permits	§ 665.21 Permits.
§ 660.22 Prohibitions	§ 665.22 Prohibitions.
§ 660.23 Notifications	§ 665.23 Notifications.
§ 660.24 Gear identification	§ 665.24 Gear identification.
§ 660.25 Vessel monitoring system	§ 665.25 Vessel monitoring system.
§ 660.26 Longline fishing prohibited area management	§ 665.26 Longline fishing prohibited area management.
§ 660.27 Exemptions for longline fishing prohibited areas; procedures	§ 665.27 Exemptions for longline fishing prohibited areas; procedures.
§ 660.28 Conditions for at-sea observer coverage	§ 665.28 Conditions for at-sea observer coverage.
§ 660.29 Port privileges and transiting for unpermitted U.S. longline vessels.	§ 665.29 Port privileges and transiting for unpermitted U.S. longline vessels.
§ 660.30 Prohibition of drift gillnetting	§ 665.30 Prohibition of drift gillnetting.
§ 660.31 Framework adjustments to management measures	§ 665.31 Framework adjustments to management measures.
§ 660.32 Sea turtle take mitigation measures	§ 665.32 Sea turtle take mitigation measures.
§ 660.33 Western Pacific longline fishing restrictions	§ 665.33 Western Pacific longline fishing restrictions.
§ 660.34 Protected species workshop	§ 665.34 Protected species workshop.
§ 660.35 Pelagic longline seabird mitigation measures	§ 665.35 Pelagic longline seabird mitigation measures.
§ 660.36 American Samoa longline limited entry program	§ 665.36 American Samoa longline limited entry program.
§ 660.37 American Samoa pelagic fishery area management	§ 665.37 American Samoa pelagic fishery area management.
§ 660.38 Exemptions for American Samoa large vessel prohibited areas.	§ 665.38 Exemptions for American Samoa large vessel prohibited areas.
Subpart D—Western Pacific Crustacean Fisheries	Subpart D—Western Pacific Crustacean Fisheries
§ 660.41 Permits	§ 665.41 Permits.
§ 660.42 Prohibitions	§ 665.42 Prohibitions.
§ 660.43 Notifications	§ 665.43 Notifications.
§ 660.44 Lobster size and condition restrictions—Permit Area 2	§ 665.44 Lobster size and condition restrictions—Permit Area 2.
§ 660.45 Closed seasons	§ 665.45 Closed seasons.
§ 660.46 Closed areas	§ 665.46 Closed areas.
§ 660.47 Gear identification	§ 665.47 Gear identification.
§ 660.48 Gear restrictions	§ 665.48 Gear restrictions.
§ 660.49 At-sea observer coverage	§ 665.49 At-sea observer coverage.
§ 660.50 Harvest limitation program	§ 665.50 Harvest limitation program.
§ 660.51 Monk seal protective measures	§ 665.51 Monk seal protective measures.
§ 660.52 Monk seal emergency protective measures	§ 665.52 Monk seal emergency protective measures.
§ 660.53 Framework procedures	§ 665.53 Framework procedures.
§ 660.54 Five-year review	§ 665.54 Five-year review.
Subpart E—Bottomfish and Seamount Groundfish Fisheries	Subpart E—Bottomfish and Seamount Groundfish Fisheries

Old section	New section
§ 660.61 Permits	§ 665.61 Permits.
§ 660.62 Prohibitions	§ 665.62 Prohibitions.
§ 660.63 Notification	§ 665.63 Notification.
§ 660.64 Gear restrictions	§ 665.64 Gear restrictions.
§ 660.65 At-sea observer coverage	§ 665.65 At-sea observer coverage.
§ 660.66 Protected species conservation	§ 665.66 Protected species conservation.
§ 660.67 Framework for regulatory adjustments	§ 665.67 Framework for regulatory adjustments.
§ 660.68 Fishing moratorium on Hancock Seamount	§ 665.68 Fishing moratorium on Hancock Seamount.
§ 660.69 Management subareas	§ 665.69 Management subareas.
Subpart F—Precious Corals Fisheries	Subpart F—Precious Corals Fisheries
§ 660.81 Permits	§ 665.81 Permits.
§ 660.82 Prohibitions	§ 665.82 Prohibitions.
§ 660.83 Seasons	§ 665.83 Seasons.
§ 660.84 Quotas	§ 665.84 Quotas.
§ 660.85 Closures	§ 665.85 Closures.
§ 660.86 Size restrictions	§ 665.86 Size restrictions.
§ 660.87 Area restrictions	§ 665.87 Area restrictions.
§ 660.88 Gear restrictions	§ 665.88 Gear restrictions.
§ 660.89 Framework procedures	§ 665.89 Framework procedures.
Subpart J—Western Pacific Coral Reef Ecosystem Fisheries	Subpart G—Western Pacific Coral Reef Ecosystem Fisheries
§ 660.601 Relation to other laws	§ 665.601 Relation to other laws.
§ 660.602 Permits and fees	§ 665.602 Permits and fees.
§ 660.603 Prohibitions	§ 665.603 Prohibitions.
§ 660.604 Notifications	§ 665.604 Notifications.
§ 660.605 Allowable gear and gear restrictions	§ 665.605 Allowable gear and gear restrictions.
§ 660.606 Gear identification	§ 665.606 Gear identification.
§ 660.607 Framework for regulatory adjustments	§ 665.607 Framework for regulatory adjustments.
§ 660.608 Regulatory area	§ 665.608 Regulatory area.
§ 660.609 Annual reports	§ 665.609 Annual reports.

Revisions to Paperwork Reduction Act (PRA) References

Section 3507 of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection, and 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approvals have been issued. Because this final rule codifies many recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the reorganization.

The following table lists the redesignation of the NOAA PRA approvals for regulatory requirements.

Old section	New section	OMB control No.
§ 660.13 Permits and Fees	§ 665.13 Permits and Fees	0648–0490
§ 660.14 Reporting and recordkeeping	§ 665.14 Reporting and recordkeeping	0648–0214
§ 660.16 Vessel identification	§ 665.16 Vessel identification	0648–0360
§ 660.17 Experimental fishing	§ 665.17 Experimental fishing	0648–0214 and 0648–490
§ 660.21(k) Permits, Hawaii longline limited access permit	§ 665.21(k) Permits, Hawaii longline limited access permit	0648–0490
§ 660.23 Notifications	§ 665.23 Notifications	0648–0214
§ 660.24 Gear identification	§ 665.24 Gear identification	0648–0360
§ 660.25 Vessel monitoring system	§ 665.25 Vessel monitoring system	0648–0441
§ 660.27 Exemptions for longline fishing prohibited areas; procedures.	§ 665.27 Exemptions for longline fishing prohibited areas; procedures.	0648–0490
§ 660.28 Conditions for at-sea observer coverage	§ 665.28 Conditions for at-sea observer coverage	0648–0214
§ 660.35 Pelagic longline seabird mitigation measures	§ 665.35 Pelagic longline seabird mitigation measures	0648–0456
§ 660.41 Permits	§ 665.41 Permits	0648–0490
§ 660.43 Notifications	§ 665.43 Notifications	0648–0214
§ 660.48 Gear restrictions	§ 665.48 Gear restrictions	0648–0360
§ 660.61 Permits	§ 665.61 Permits	0648–0490
§ 660.63 Notification	§ 665.61 Notification	0648–0214
§ 660.65 At-sea observer coverage	§ 665.65 At-sea observer coverage	0648–0214
§ 660.81 Permits	§ 665.81 Permits	0648–0490
§ 660.602 Permits and fees	§ 665.602 Permits and fees	0648–0463
§ 660.604 Notifications	§ 665.604 Notifications	0648–0462
§ 660.606 Gear identification	§ 665.606 Gear identification	0648–0360

Classification

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

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The following collection of information requirements have already

been approved by OMB for U.S. fishing activities:

1. *Approved under 0648–0214.* (1) Pacific Islands Region (PIR) logbook family of forms estimated at 5 minutes (min) per reporting action; and (2) pre-trip and post-landing notifications estimated at 5 min per reporting action; (3) experimental fishing reports estimated at 4 hours (hr) per reporting action; (4) sales and transshipment reports estimated at 5 min per reporting action; (5) report on gear left at sea estimated at 5 min per reporting action; (6) claims for reimbursement for lost fishing time estimated at 4 hr per claim; (7) request for pelagics area closure exemption estimated at 1 hr per request; and (8) observer placement meetings estimated at 1 hr per reporting action (§§ 665.14, 665.17, 665.23, 665.28, 665.43, 665.63, and 665.65).

2. *Approved under 0648–0360.* PIR gear identification estimated at 0.5 hr per reporting action (§§ 665.16, 665.24, 665.48, and 665.606).

3. *Approved under 0648–0441.* PIR vessel monitoring system, (1) installation, estimated at 4 hr per reporting action; (2) repair and maintenance, estimated at 2 hr per reporting action; and (3) hourly automated position reports, estimated at 24 sec per day (§ 665.25).

4. *Approved under 0648–0456.* PIR seabird interaction reporting, (1) at-sea notification, estimated at 1 hr per reporting action; (2) reporting on recovery data form, estimated at 1 hr per reporting action; and (3) specimen tagging, estimated at 0.5 hr per reporting action (§ 665.35).

5. *Approved under 0648–0462.* PIR coral reef logbook reporting, (1) at-sea notification, estimated at 3 min per reporting action; (2) logbook reporting, estimated at 0.5 hr per reporting action; and (3) transshipment reports, estimated at 15 min per reporting action (§ 665.604).

6. *Approved under 0648–0463.* PIR coral reef special permit, (1) application, estimated at 2 hr per application; and (2) special permit appeals, estimated at 3 hr per appeal (§ 665.602).

7. *Approved under 0648–0490.* (1) PIR permit family of forms estimated at 0.5 hr per permit action; (2) experimental fishing permits, estimated at 2 hr per application (§§ 665.13, 665.17, and 665.21(k)); and (3) appeals from permit actions estimated at 2 hr per permit appeal (§§ 665.13, 665.21(k), 665.27, 665.41, 665.61, and 665.81).

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive prior notice and opportunity for public comment, as such notice and comment would be unnecessary. These procedures are unnecessary because no substantive changes are being made pursuant to this final rule. The only action currently being taken is to reorganize the western Pacific regulations into a new part, and to change the cross references to the previous part so as to reflect the reorganization. For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

James W. Balsiger,

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

■ For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2A. The table in ''902.1(b) is amended by removing the entries and corresponding OMB numbers under 50 CFR for §§ 660.13, 660.14, 660.16, 660.17, 660.21(k), 660.23, 660.24, 660.25, 660.27, 660.28, 660.43, and 660.48.

■ B. The table in § 902.1(b) is amended by adding new entries and corresponding OMB numbers under 50 CFR to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

* * * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
§ 665.13	–0490
§ 665.14	–0214
§ 665.16	–0360
§ 665.17	–0214 and –0490
§ 665.21(k)	–0490
§ 665.23	–0214
§ 665.24	–0360
§ 665.25	–0441
§ 665.27	–0490
§ 665.28	–0214
§ 665.35	–0456
§ 665.41	–0490
§ 665.43	–0214
§ 665.48	–0360
§ 665.61	–0490
§ 665.63	–0214
§ 665.65	–0214
§ 665.81	–0490
§ 665.602	–0463
§ 665.604	–0462
§ 665.606	–0360

* * * * *

50 CFR CHAPTER VI

■ 3. Add part 665 to read as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

Subpart A—General

Sec.
665.1 Purpose and scope.
665.2 Relation to other laws.
665.3 Reporting and recordkeeping.

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

Subpart A—General

§ 665.1 Purpose and scope.

(a) The regulations in this part govern fishing for Western Pacific fishery management unit species by vessels of the United States that operate or are based inside the outer boundary of the EEZ off Western Pacific States.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in part 600 of this chapter.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N of this chapter.

§ 665.2 Relation to other laws.

NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, and that is consistent with this part and

the FMPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 665.3 Reporting and recordkeeping.

Except for fisheries subject to subparts D and F of this part, any person who is required to do so by applicable state law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable state law or regulation.

PART 660—FISHERIES OFF WEST COAST STATES

■ 4. The authority citation for 50 CFR part 660 continues to read as follows:

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

■ 5. Revise the part heading for part 660 to read as set out above.

■ 6. Redesignate subpart B, §§ 660.11 through 660.18 as subpart B, §§ 665.11 through 665.18, and redesignate subpart C, §§ 660.21 through 660.38, as subpart C, §§ 665.21 through 665.38, and redesignate subpart D, §§ 660.41 through 660.54, as subpart D, §§ 665.41 through 665.54, and redesignate subpart E, §§ 660.61 through 660.69, as subpart E, §§ 665.61 through 665.69, and redesignate subpart F, §§ 660.81 through 660.89, as subpart F, §§ 665.81 through 665.89, and redesignate subpart J, §§ 660.601 through 660.609, as subpart G, §§ 665.601 through 665.609, as follows:

Old subpart and section	New subpart and section
Subpart B	Subpart B
§ 660.11	§ 665.11
§ 660.12	§ 665.12
§ 660.13	§ 665.13
§ 660.14	§ 665.14
§ 660.15	§ 665.15
§ 660.16	§ 665.16
§ 660.17	§ 665.17
§ 660.18	§ 665.18
Subpart C	Subpart C
§ 660.21	§ 665.21
§ 660.22	§ 665.22
§ 660.23	§ 665.23
§ 660.24	§ 665.24
§ 660.25	§ 665.25
§ 660.26	§ 665.26
§ 660.27	§ 665.27
§ 660.28	§ 665.28
§ 660.29	§ 665.29
§ 660.30	§ 665.30
§ 660.31	§ 665.31
§ 660.32	§ 665.32
§ 660.33	§ 665.33
§ 660.34	§ 665.34
§ 660.35	§ 665.35
§ 660.36	§ 665.36
§ 660.37	§ 665.37
§ 660.38	§ 665.38
Subpart D	Subpart D
§ 660.41	§ 665.41
§ 660.42	§ 665.42
§ 660.43	§ 665.43
§ 660.44	§ 665.44
§ 660.45	§ 665.45
§ 660.46	§ 665.46
§ 660.47	§ 665.47
§ 660.48	§ 665.48
§ 660.49	§ 665.49
§ 660.50	§ 665.50
§ 660.51	§ 665.51
§ 660.52	§ 665.52
§ 660.53	§ 665.53
§ 660.54	§ 665.54
Subpart E	Subpart E
§ 660.61	§ 665.61
§ 660.62	§ 665.62
§ 660.63	§ 665.63
§ 660.64	§ 665.64
§ 660.65	§ 665.65
§ 660.66	§ 665.66
§ 660.67	§ 665.67
§ 660.68	§ 665.68
§ 660.69	§ 665.69
Subpart F	Subpart F
§ 660.81	§ 665.81
§ 660.82	§ 665.82
§ 660.83	§ 665.83
§ 660.84	§ 665.84
§ 660.85	§ 665.85
§ 660.86	§ 665.86
§ 660.87	§ 665.87
§ 660.88	§ 665.88
§ 660.89	§ 665.89
Subpart J	Subpart G
§ 660.601	§ 665.601
§ 660.602	§ 665.602
§ 660.603	§ 665.603
§ 660.604	§ 665.604
§ 660.605	§ 665.605
§ 660.606	§ 665.606
§ 660.607	§ 665.607
§ 660.608	§ 665.608
§ 660.609	§ 665.609

■ 7. Revise § 660.1(a) and 660.3 to read as follows:

* * * * *

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing for West Coast fishery management unit species by vessels of the United States that operate or are based inside the outer boundary of the EEZ off West Coast States.

* * * * *

§ 660.3 Reporting and recordkeeping.

Any person who is required to do so by applicable state law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable state law or regulation.

* * * * *

■ 8. Redesignate Table 1 to part 660 as Table 1 to part 665, and revise the title to read as follows:

Table 1 to Part 665—Quotas for Precious Corals Permit Areas

■ 9. Redesignate Table 3 to part 660 as Table 2 to part 665, and revise the title to read as follows:

Table 2 to Part 665—Currently Harvested Coral Reef Taxa

■ 10. Redesignate Table 4 to part 660 as Table 3 to part 665, and revise the title to read as follows:

Table 3 to Part 665—Potentially Harvested Coral Reef Taxa

■ 11. Redesignate Figure 1 to part 660 as Figure 1 to part 665, and revise the title to read as follows:

Figure 1 to Part 665—Carapace Length of Lobsters

■ 12. Redesignate Figure 2 to part 660 as Figure 2 to part 665, and revise the title to read as follows:

Figure 2 to Part 665—Length of Fishing Vessel

PART 665—[AMENDED]

■ 13. In newly redesignated § 665.11 through 665.89, and in newly redesignated § 665.601 through 665.609, remove ''part 660.'' and add ''part 665.'' wherever it appears.

■ 14. In newly redesignated § 665.11, paragraphs (b) and (c), in § 665.13, paragraphs (a), (c), and (g), and in § 665.14, paragraphs (f) and (g), remove ''J'' and add ''G.''

■ 15. In newly redesignated § 665.12, remove ''subparts B through F and subpart J'' and add ''subparts B through G.''

■ 16. In newly redesignated § 665.13, paragraphs (f) and (i), remove ''PIAO'' and add ''PIRO.''

■ 17. In newly redesignated § 665.41, paragraphs (c) and (e)(2), remove ''Pacific Area Office'' and add ''Pacific Islands Regional Office.''

■ 18. In newly redesignated § 665.41, paragraphs (g)(1), (g)(2)(i), and (g)(2)(ii), remove ''Regional Director'' and add ''Regional Administrator.''

■ 19. In newly redesignated § 665.12, in the definition of ''Pacific Islands Regional Office,'' remove ''(808) 973–2937'' and add ''(808) 944–2200.''

■ 20. In newly redesignated § 665.28, paragraph (i)(2)(ii), remove ''Southwest Region'' and add ''Pacific Islands Region.''

[FR Doc. 06–3325 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–22–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 405

RIN 0960–AG31

Administrative Review Process for Adjudicating Initial Disability Claims; Correction

AGENCY: Social Security Administration.

ACTION: Final rule; correction.

SUMMARY: The Social Security Administration is correcting a final rule that appeared in the **Federal Register** on March 31, 2006 (71 FR 16424). The document 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.

DATES: Effective August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609 for information 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: In FR Doc. 06–3011 appearing on page 16424 in the **Federal Register** of Friday, March 31, 2006, the following correction is made:

§ 405.601 [Corrected]

■ On page 16456, in the third column, in § 405.601, in paragraph (b), ''§§ 404.989(a)(1) and 416.989(a)(1)'' is corrected to read ''§§ 404.989(a)(1) and 416.1489(a)(1)''.

Dated: April 4, 2006.

Gregory Zwitch,

Social Security Regulations Officer.

[FR Doc. 06–3388 Filed 4–7–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9257]

RIN 1545–AY49

Application of Section 338 to Insurance Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that apply to a deemed sale or acquisition of an insurance company's assets pursuant to an election under section 338 of the Internal Revenue Code, to a sale or acquisition of an insurance trade or business subject to section 1060, and to the acquisition of insurance contracts through assumption reinsurance. It also contains final regulations under section 381 concerning the effect of certain corporate liquidations and reorganizations on certain tax attributes of insurance companies. This document also contains temporary regulations under section 197 relating to the determination of adjusted basis of amortizable section 197 intangibles with respect to insurance contracts, section 338 relating to increases in reserves after a deemed asset sale and sections 338 and 846 relating to the effect of a section 338 election on a section 846(e) election. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The final and temporary regulations apply to insurance companies.

DATES: *Effective Date:* The final and temporary regulations are effective on April 10, 2006.

Applicability Dates: For dates of applicability of these regulations, see §§ 1.197–2(g)(5)(iv), 1.338(i)–1(c), and 1.1060–1(a)(2). The applicability of §§ 1.197–2T(g)(5)(ii), 1.338–11T(d), and 1.338–11T(e) will expire on April 7, 2009.

FOR FURTHER INFORMATION CONTACT: Mark Weiss, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in these final regulations was not proposed in the preceding notice of proposed rulemaking. The collection of information has been reviewed in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1990.

The collection of information is in §§ 1.338–11T(e)(2), 1.338(i)–1(c), 1.381(c)(22)–1(c), 1.1060–1(a)(2). This information is required by the IRS to allow an insurance company permission to cease using its historical loss payment pattern and to allow parties to a transaction under section 338, to an applicable asset acquisition under section 1060, or to a distribution or reorganization to which section 381 applies to file a retroactive election to apply these regulations to transactions completed before the effective dates of these regulations. The likely recordkeepers are business or other for-profit institutions.

The estimated burden is as follows:

Estimated total annual reporting and/or recordkeeping burden: 12 hours.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents: 12.

Estimated annual frequency of responses: once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Any such comments should be submitted not later than June 9, 2006.

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 control number assigned by the Office of Management and Budget.

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.

Background and Explanation of Provisions

On March 8, 2002, the IRS and the Department of Treasury published a notice of proposed rulemaking in the **Federal Register** (REG–118861–00, 2002–1 C.B. 651 [67 FR 10640]) (the proposed regulations) that sets forth

rules applying to taxable acquisitions and dispositions of insurance businesses, including those that are deemed to occur when an election under section 338 of the Internal Revenue Code (Code) is made.

The proposed regulations generally treat the transfer of insurance or annuity contracts and the assumption of related reserve liabilities that are deemed to occur when an election under section 338 is made consistently with the treatment of assumption reinsurance transactions entered into in the ordinary course of business under § 1.817–4(d) (and other provisions of subchapter L of chapter 1, subtitle A of the Code and the regulations promulgated thereunder). The proposed regulations provide similar rules for acquisitions of insurance businesses governed by section 1060, whether effected through assumption or indemnity reinsurance. Thus, in the case of both a deemed and an actual transfer of an insurance business, the proposed regulations provide that the ceding company (in the case of a section 338 election, old target) is treated as having income in the amount of the reduction in its reserves and having a deduction for the consideration paid for the reinsurer's assumption of those liabilities, and the reinsurer (in the case of a section 338 election, new target) is treated as receiving premium income for its assumption of reserve liabilities and having a deduction for its increase in reserves (the latter usually offsetting in amount the former). The proposed regulations also provide that the consideration allocated to the value of the insurance contracts acquired in the assumption reinsurance transaction is treated as an amount paid by the reinsurer to purchase intangible assets and as ordinary income to the ceding company.

The proposed regulations depart from the rules governing assumption reinsurance transactions effected in the ordinary course of business in some circumstances to account for differences that occur because the assumption reinsurance transaction occurs as part of a larger acquisitive transaction. In an assumption reinsurance transaction effected in the ordinary course of business, the total consideration paid for the transfer of insurance contracts and assumption of related liabilities is known. Furthermore, the rules in § 1.817–4(d) assume that the only intangible asset transferred in such an assumption reinsurance transaction is the insurance in force which can then be valued using the residual method. Thus, if premiums and ceding commissions are not separately stated, they can be extrapolated from the known elements with a reasonable degree of accuracy. However, when the assumption reinsurance transaction occurs as part of a larger acquisitive transaction, the total consideration paid by the purchaser is not solely for the acquisition of insurance contracts and the liabilities assumed are not solely for the risk on the insurance contracts. In these circumstances, the extrapolated values would not accurately reflect the amount of the items. Accordingly, the proposed regulations modify the general rules for assumption reinsurance transactions to account for these differences.

Written comments were received in response to the proposed regulations, and a public hearing was held on September 18, 2002. Two commentators requested to speak at the hearing. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. In general, the final regulations follow the approach of the proposed regulations with some revisions. The more significant comments and revisions are discussed in the order in which they appear in the regulations. In addition to the revisions discussed, the final regulations revise the language of the proposed regulations in some places to clarify the intent of the IRS and Treasury Department or to make the regulations better conform to the terminology and usage of the general section 338 regulations.

A. Determination of Adjusted Basis of Amortizable Section 197 Intangibles With Respect to Insurance Contracts Under Section 197(f)(5)

Section 197(f)(5) provides that, in the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible is the excess of (A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction over (B) the amount required to be capitalized under section 848 in connection with the transaction. Under section 848, an insurance company is required to capitalize an amount of otherwise deductible expenses equal to a percentage of the net premiums for the taxable year for certain categories of insurance contracts. The capitalized amounts, commonly referred to as deferred acquisition costs, or ''DAC,'' are amortized on a straight-line basis over 120 months.

Section 197(f)(5) is designed to ensure that the DAC amounts attributable to an assumption reinsurance transaction are amortized over the period specified by section 848 rather than the longer period under section 197. To achieve this result, the adjusted basis of the amortizable section 197 intangible resulting from an assumption reinsurance transaction is recognized only to the extent that the amount paid or incurred by the acquirer for the relevant contracts exceeds the DAC taken into account under section 848 as a result of the transaction.

The proposed regulations provide rules to determine the amounts paid or incurred for amortizable section 197 intangibles with respect to contracts acquired as a result of assumption reinsurance transactions occurring as part of transactions governed by section 1060 or section 338. The proposed regulations also provide rules for purposes of determining the DAC amounts for the transactions. See proposed § 1.197–2(g)(5).

Under the proposed regulations, the amount paid or incurred by the acquirer under the assumption reinsurance transaction in a transaction governed by section 338 or 1060 is the amount of adjusted grossed up basis (AGUB) or consideration allocable to the insurance contracts under the residual method. The amount required to be capitalized under section 848 in connection with the assumption reinsurance transaction is determined by multiplying the acquirer's specified policy acquisition expenses for the taxable year by a fraction, the numerator of which is the total tentative positive capitalization amount for the relevant group of acquired insurance contracts and the denominator of which is the total tentative required capitalization amount for the taxable year for all specified insurance contracts. The tentative positive capitalization amount for the relevant group of acquired insurance contracts is the net positive consideration received for the contracts in the assumption reinsurance transaction multiplied by the percentage factor applicable to the contracts under section 848(c).

An insurance company's DAC amount may not exceed the company's general deductions for the taxable year. See section 848(c). The amortization of intangibles under section 197 is a general deduction relevant in computing DAC. However, the amount of amortization under section 197 cannot be calculated until section 197(f)(5) is applied. To avoid complex calculations, for purposes of calculating the basis of amortization, the proposed regulations presume that one-half of the consideration allocated to the insurance contracts is amortizable under section

197. See proposed § 1.197–2(g)(5)(i)(D)(*2*). Comments were requested regarding alternative approaches to calculating the basis for DAC amounts and section 197 amortization.

A number of comments were received relating to the proposed regulations under section 197(f)(5). Commentators requested that the final regulations clarify that section 197(f)(5) applies only to assumption reinsurance transactions, and not to indemnity reinsurance transactions. Commentators asked that the final regulations clarify that the full amount of consideration allocable to the reinsured contracts is currently deductible under section 848(g) when the provisions of section 848 apply to an indemnity reinsurance transaction that occurs as part of a section 1060 acquisition of an insurance business. Commentators also expressed concern that the proposed regulations could cause an acquirer's DAC under section 848 to be subject to the general deductions cap in section 848(c) despite the existence of a substantial ceding commission. Commentators requested that the final regulations clarify that the election under § 1.848–2(g)(8) is available to allow old target and new target in a deemed asset sale governed by section 338(h)(10) to determine the amount of DAC attributable to the transaction without regard to the general deductions limitation.

The temporary and proposed regulations generally follow the proposed rules under section 197(f)(5), subject to several modifications. In particular, the temporary and proposed rules build on the method under § 1.848–2(g) of the existing regulations for determining the amounts capitalized under section 848 for a reinsurance agreement. Under the temporary and proposed rules, the amount of expenses capitalized under section 848 as a result of an assumption reinsurance transaction equals the lesser of (A) the required capitalization amount for the transaction, or (B) the amount of general deductions allocable to the transaction. The temporary and proposed rules also clarify that in the event that the acquirer purchases more than one category of specified insurance contracts, the determination of the amount capitalized under section 848 is made as if each category were transferred in a separate assumption reinsurance transaction.

The temporary and proposed regulations also modify the special rule in the proposed regulations with respect to the interplay between section 197(f)(5) and section 848 as regards the determination of the acquirer's general deductions under section 848(c)(2). Under the temporary and proposed rules, an acquirer will determine its general deductions as if the entire amount paid or incurred for the acquired contracts were allocable to an amortizable section 197 intangible.

If the acquirer has a capitalization shortfall (*i.e.*, the amount of general deductions allocable to the assumption reinsurance transaction is less than the required capitalization amount for the transaction), the temporary and proposed regulations permit the acquirer and the ceding company to elect under § 1.848–2(g)(8) to determine the amount capitalized under section 848 without regard to the general deductions limitation. The additional amounts capitalized by the acquirer as a result of the election are treated as first reducing the adjusted basis of the amortizable section 197 intangible with regard to the insurance contracts acquired in the assumption reinsurance transaction, before reducing the acquirer's otherwise deductible expenses. The temporary and proposed rules generally allow the acquirer to amortize a larger amount over the period specified by section 848 as compared to the proposed regulations.

The temporary and proposed regulations generally apply, on a cut-off basis, to acquisitions and dispositions on or after April 10, 2006. Thus, there is no adjustment under section 481(a). Taxpayers must make the change on their income tax return and should not file a Form 3115, Application for Change in Accounting Method. Taxpayers are permitted, however, to apply the regulations to acquisitions before that date on a transaction-by-transaction basis, with an adjustment under section 481(a). The temporary and proposed regulations provide a procedure for taxpayers to obtain automatic consent of the Commissioner to do so.

B. Recovery of Basis on Dispositions of Acquired Insurance Contracts

Proposed § 1.197–2(g)(5)(ii)(A)(*2*) provides that basis recovery with respect to a section 197(f)(5) intangible transferred through indemnity reinsurance is permitted when sufficient economic rights relating to the insurance contracts that gave rise to the section 197(f)(5) intangible have been transferred. Sufficient economic rights are treated as transferred when the ceding company transfers the right to future income on the contracts. The proposed regulations also provide rules governing the amount of loss recognized on the disposition of a section 197(f)(5) intangible. The proposed regulations requested comments whether additional guidance should address other situations or issues.

Several commentators requested that the final regulations clarify when sufficient economic rights in a section 197(f)(5) intangible are transferred through indemnity reinsurance as well as additional examples to address situations relating to transfers through indemnity reinsurance of less than 100 percent of the insurance contracts that gave rise to the section 197(f)(5) intangible. The IRS and Treasury Department continue to believe that the rules contained in these regulations should refer to general tax principles, and will as needed, address these issues in future published guidance.

C. Reserve Increases by New Target After the Deemed Asset Sale

When a section 338 election is made for an insurance company, § 1.338–11(d) of the proposed regulations provides that new target must capitalize its increases in reserves for any acquired contracts in the deemed asset sale. Similar principles apply for an applicable asset acquisition of an insurance business under section 1060. The proposed regulations generally require capitalization of increases in reserves for the acquired contracts in excess of cumulative annual increases of two percent per year from the acquisition date reserves. However, the proposed regulations do not require capitalization to the extent the increases in reserves reflect the time value of money, to the extent the increases in reserves occur while new target is under state receivership, or to the extent the deduction for the increases in reserves is spread over the 10 succeeding taxable years under section 807(f).

Many commentators objected to the rule requiring capitalization for increases in reserves after the transaction date. They questioned the justification for the rule, stating that the rule was inconsistent with, and overrode, principles established under subchapter L for determining losses incurred. Commentators argued that, under subchapter L principles, reserve liabilities are not treated like contingent liabilities and that it was inappropriate to treat the reserves as contingent liabilities even for the limited purposes of the regulation. Commentators also requested that the application of the rule be restricted to cases of abuse because the ceding company's reserves assumed in the transaction are fair and reasonable estimates under Subchapter L as of the transaction date.

The commentators' objections largely ignore the fact that the proposed regulations blend elements of the asset

purchase model common to most taxpayers that dispose of or acquire assets for consideration that includes the discharge of liabilities and the services model that generally applies to insurance companies. Treating increases in reserves for acquired contracts similarly to contingent liabilities under the asset purchase model is just one aspect of that amalgam.

Under the asset purchase model, assumed contingent liabilities are an element of the consideration for which a buyer acquires assets. Thus, a buyer includes the contingent liability in its cost for the acquired assets. However, a buyer may not include the contingent liability in its cost until the liability is incurred for Federal income tax purposes. The buyer must capitalize the liability in the cost of the acquired assets even if the buyer could have currently deducted the liability had it arisen in the buyer's historic business. Under the asset purchase model, the buyer does not realize any income for the assumption of the contingent liability; the buyer merely has bought assets. See *Commissioner* v. *Oxford Paper,* 194 F.2d 190 (2d Cir. 1951).

Under the services model, the seller (or ceding company) is treated as paying a premium to the buyer (or reinsurer) to assume the risk on its insurance contracts. The reinsurer includes in income the receipt of the premium and has a deduction for its increase in reserves for the additional risks assumed in the transaction. The amount of the premium income is generally equal to the consideration paid by the ceding company, that is, the fair market value of the assets that the ceding company transfers to the reinsurer in the transaction (though it may not be less than the amount of the reinsurer's increase in tax reserves, see § 1.817–4(d)(2)(iii)). Thus, when the fair market value of the assets that the ceding company transfers exceeds the reinsurer's increase in tax reserves for the additional risks assumed in the transaction, the reinsurer has net income. See § 1.817–4(d)(3) *Example 4.* Under the services model, no liabilities are treated as contingent liabilities. The reserve rules effectively treat increases to reserves for new risks as fixed liabilities and increases to reserves for existing risks as period expenses (similar to interest).

The proposed regulations blend the asset purchase model and the services model by—

(1) Using the residual method of sections 338 and 1060 to determine the value of goodwill and going concern value (which assumes that the value of all assets other than goodwill and going concern value is readily determinable) rather than the residual method of § 1.817–4(d) to determine the value of insurance in force (which assumes that the value of all assets other than insurance in force is readily determinable);

(2) Treating the amount of old target's tax reserves as a fixed liability as of the close of the acquisition date that is taken into account in determining the seller's aggregate deemed sales price (ADSP) under § 1.338–4 and the buyer's AGUB under § 1.338–5;

(3) Treating certain of new target's increases in reserves for any insurance contracts acquired in the deemed asset sale as a contingent liability as of the close of the acquisition date that becomes fixed when new target increases its reserves;

(4) Assuming that the amount of reinsurance premium is equal to the amount of old target's tax reserves, even though the ceding company would have to pay the reinsuring company an amount greater than the tax reserves in an arm's length reinsurance transaction. This rule ensures that the acquirer of an insurance business will not have immediate net taxable income merely as a result of the acquisition; and

(5) Not requiring capitalization for new target's increases in reserves due to the time value of money for any insurance contracts acquired in the deemed asset sale.

The proposed regulations generally treat an insurance company's assumption of contingent liabilities related to insurance contracts more favorably than a noninsurance company's assumption of a similar contingent liability. The proposed regulations also treat an insurance company's assumption of contingent liabilities related to insurance contracts more favorably than subchapter L does. As discussed previously, under subchapter L, a reinsurer may have net income when entering into an assumption reinsurance transaction. The amount of the income is the amount of the bargain, that is, the excess of fair market value of the assets the seller transfers over the amount of the consideration the buyer pays at closing (in an assumption reinsurance transaction, the latter measured by the reinsurer's increase in tax reserves for the risks assumed in the transaction). The proposed regulations, unlike subchapter L, require income to be recognized if there is an increase in certain reserves for the acquired insurance contracts.

The IRS and Treasury Department believe that a rule requiring capitalization of increases to reserves is a necessary corollary to the rule in the proposed regulations linking the amount of reinsurance deemed paid to the amount of old target's tax reserves at the time of the assumption reinsurance transaction (with the concomitant result that new target has no income). The logical implication of the commentators' arguments would be that the buyer should have premium income in a bargain purchase. In addition, without requiring capitalization of at least some increases to reserves, there is an incentive for sellers to defer increases in reserves. This incentive results from the fact that while the seller is generally indifferent to an increase in reserves (the immediate deduction to the seller would be offset by a corresponding increase in amount realized of ADSP in the sale), a buyer would be entitled to an immediate deduction rather than increased basis from an increase in the seller's reserves.

In response to comments, the IRS and Treasury Department have decided to issue temporary regulations with these final regulations that continue to require capitalization (and concomitant treatment as premium) of certain reserve increases, but further limit the capitalization rule of the proposed regulations in a manner consistent with the application of subchapter L principles. See § 1.338–11T(d). After the deemed asset sale, the temporary regulations apply subchapter L principles to new target. Under the temporary regulations, capitalization is required only for increases in reserves that clearly reflect a so called ''bargain purchase'' (that is, when the application of the residual method clearly indicates the initial understatement of the reserve). The amount of the bargain purchase is the amount of income the reinsurer would have otherwise recognized under § 1.817–4(d) if the final regulations (and proposed regulations) had not adopted the convention that the reinsurance premium paid by the seller to the buyer is deemed to equal the seller's closing tax reserves, and were it not necessary to employ a residual method to account for the presence of non-insurance intangible assets.

Under the temporary regulations, new target is required to capitalize any increases in reserves for acquired contracts if the AGUB allocated to assets in Class I through Class V is less than the fair market value of the assets in those classes. Any deductions would continue to be capitalized until the basis of the assets in Class I through Class V is equal to their fair market value. This mechanism avoids the problem of

valuing Class VI and Class VII intangibles. The approach of the temporary regulations essentially treats the ceding company as transferring no Class VI or Class VII assets to the reinsurer for the reinsurer's assumption of the liabilities on the acquired contracts. Because the temporary regulations limit the total amount of capitalization for increases in reserves for acquired contracts, the IRS and Treasury Department believe that it is no longer necessary to provide a time limit on when increases in reserves for acquired contracts are to be capitalized or to provide a floor below which increases in reserves are not capitalized. However the temporary regulations retain the other limits on capitalization in the proposed regulations.

D. Allocation of ADSP and AGUB to Specific Insurance Contracts

Proposed § 1.338–11(b)(2) provides a rule that for purposes of allocating AGUB and ADSP, the fair market value of a specific insurance contract or group of insurance contracts is the amount of the ceding commission a willing reinsurer would pay a willing ceding company in an arm's length transaction for the reinsurance of the contracts if the gross reinsurance premium for the contracts were equal to old target's tax reserves for the contracts.

Commentators questioned the reliance of the proposed regulations upon tax reserves as a basis for valuing the contracts and asked that the value of the contracts be based on GAAP or statutory reserves, or an amount upon which the parties agree. The IRS and Treasury Department believe that using tax reserves as a basis for valuing the contracts is consistent with other areas in which tax reserves, not GAAP or statutory reserves, are used to compute taxable income. See, *e.g.*, section 807 (prescribing rules for taking life insurance reserves and certain other reserves into account for purposes of computing life insurance company taxable income); section 846 (prescribing a methodology for discounting unpaid loss reserves for purposes of computing insurance company taxable income); and Rev. Proc. 90–36, (1990–2 C.B. 357) (computing up-front ceding commission paid by a reinsurer as the increase in the reinsurer's tax reserve liabilities resulting from the reinsurance transaction, minus the value of the net assets received, for purposes of capitalizing ceding commissions to comply with the Supreme Court decision in *Colonial American Life Insurance Company* v. *Commissioner,* 491 U.S. 244 (1989), (1989–2 C.B. 110, Ct. D. 2045). Moreover, in the context of a transaction governed by section 338 or 1060, the use of old target's tax reserves as a means of valuing the contracts is consistent with both (i) the treatment of old target's closing tax reserves as a liability in the computation of the seller's ADSP and the buyer's AGUB, and (ii) the general rule of § 1.817–4(d)(2)(iii), which treats the assuming company in an assumption reinsurance transaction as receiving premium income equal to at least the increase in its reserves.

E. Effect of Section 338 Election on Section 846(e) Election by Old Target

The proposed regulations do not provide any special rules under section 846 for new target to apply old target's historical loss payment pattern as a result of a section 846(e) election made by old target because new target is generally treated as a new corporation that may adopt its own accounting methods without regard to the methods used by old target. See § 1.338–1(b).

Commentators believed that this result was inconsistent with the purpose of allowing a company to make a section 846(e) election. Commentators noted that a section 846(e) election is made for all eligible lines of business, determined by reference to the accident years for the line of business shown on the insurance company's annual statement. Additionally, commentators noted that the availability of the election should not depend upon the tax identity of new target after the section 338 election because the historical loss payment pattern is not a tax account, the pattern is determined by reference to nontax factors, and new target continues to operate in the same manner and legal form as old target.

In response to these comments, the temporary regulations contain a new rule that treats new target and old target as the same corporation for purposes of a section 846(e) election to use an insurance company's historical loss payment pattern. See § 1.338–1T(b)(2)(vii). Therefore, if old target has a section 846(e) election in effect, new target will continue to use the historical loss payment pattern of old target to discount unpaid losses, unless new target chooses to revoke the election. If new target revokes old target's section 846(e) election, new target will use the industry-wide factors determined by the Secretary to discount unpaid losses incurred in accident years beginning on or after the acquisition date. See § 1.338–11T(e)(2).

F. Treatment of Shareholders Surplus Accounts, Policyholders Surplus Accounts (PSA), and Other Accounts in Transactions to Which Section 381 Applies

Section 1.381(c)(22)–1(b)(7)(i) of the proposed regulations provides that if one corporation distributes or transfers a substantial portion (50 percent or more) of an insurance business to another corporation in a transaction to which section 381 applies, then the acquiring corporation succeeds to the distributor or transferor corporation's shareholders surplus account, policyholders surplus account, and other accounts. However, under § 1.381(c)(22)–1(b)(7)(ii) of the proposed regulations, if an acquiring corporation in the section 381 transaction acquires less than 50 percent of the distributor or transferor corporation's insurance business, then the acquiring corporation succeeds only to a ratable portion (determined by reference to reserves) of the distributor or transferor corporation's shareholders surplus account, policyholders surplus account, and other accounts.

Commentators questioned whether the IRS and Treasury Department have the authority to relate the carryover of PSA to the percentage of business that was transferred to the acquiring corporation in a section 381 transaction. The IRS and Treasury Department believe that the rule in the proposed regulations is appropriate and that there is sufficient authority for the proposed rule. The legislative history to the 1984 Tax Reform Act indicates that the term *indirect distribution* is to be interpreted broadly to include any use of PSA funds for the indirect benefit of shareholders. H.R. Rep. No. 432, pt. 2, 98th Cong., 2d Sess. at 1410–11; Staff of the Joint Committee on Taxation, 98th Cong., 2d Sess., *General Explanation of the Revenue Provisions of the Tax Reform Act of 1984,* at 594 (1984), as well as *Bankers Life and Casualty Co.* v. *United States,* 79 AFTR2d (RIA) 1726 (N.D. Ill. 1996), aff'd on other grounds, 142 F.3d 973 (7th Cir. 1998), cert denied, 525 U.S. 961 (1998) (section 338(g) transaction results in an indirect distribution of old target's PSA). Accordingly, the final regulations adopt the rule as proposed in §§ 1.338–11(f) and 1.381(c)(22)–1(b)(7).

G. Treatment of DAC in Transactions to Which Section 381 Applies

Section 1.381(c)(22)–1(b)(13) of the proposed regulations provides that any remaining balances of DAC or excess negative DAC carry over to a successor insurance company in a section 381

transaction. One commentator questioned whether a nonlife insurance company may succeed to DAC attributes under § 1.381(c)(22)–1. Another commentator believed positive DAC should not be carried over to a successor corporation in a section 381 transaction.

The IRS and Treasury Department believe that in a section 381 transaction, positive DAC, like negative DAC, is an attribute that is carried over to the acquiring corporation. Thus, the final regulations retain the rule in the proposed regulations that the remaining balances of DAC or excess negative DAC carry over to a successor insurance company in a section 381 transaction. See § 1.381(c)(22)–1(b)(13). However, the IRS and Treasury Department believe that a proportionality rule similar to the one the final regulations adopt at § 1.381(c)(22)–1(b)(7) for policyholder surplus accounts is appropriate because DAC is a tax accounting convention that relates to a line of business. Thus, the final regulations provide that when the acquiring corporation acquires 50 percent or more of the distributor or transferor corporation's insurance business (measured by its reserves for all of its contracts immediately before the earlier of the distribution or transfer or the adoption of the plan of liquidation or reorganization), the acquiring corporation will succeed to the distributor or transferor corporation's entire positive or negative DAC amount. To the extent an acquiring corporation in the section 381 transaction acquires less than 50 percent of the distributor or transferor corporation's insurance business, then only that percentage of positive or negative DAC remains. In addition, because some attributes under section 381(c)(22) and § 1.381(c)(22)–1 are equally relevant for life and nonlife insurance companies, the final regulations clarify that, except as otherwise provided, the rules in § 1.381(c)(22)–1 apply to any insurance company, whether a life or a nonlife company.

H. Effective Date of Regulations

The final and temporary regulations are effective for transactions on or after April 10, 2006. Commentators asked for an election to apply the final regulations to transactions completed before April 10, 2006. The IRS and Treasury Department believe that the elective retroactivity of the final regulations is warranted and administrable. Thus, the final regulations permit new target and old target an election to apply the final regulations, in whole, to qualified stock purchases occurring before April 10, 2006 if all taxable years for which the consequences of the section 338 election affect the computation of tax are open. In the case of a section 338 election for which a section 338(h)(10) election is made (or a section 338 election for a foreign target), new target's ability to elect to retroactively apply the final regulations does not depend upon old target making the election. Similarly, old target's ability to elect to retroactively apply the final regulations does not depend upon new target making the election. However, in the case of a section 338 election for a domestic target for which no section 338(h)(10) election is made, the purchasing corporation generally controls both the filing of new target's returns and old target's final return. Accordingly, when no section 338(h)(10) election is made and the target is a domestic corporation, new target and old target must both elect to retroactively apply the final regulations. If one of new target or old target cannot make the election, the other is not permitted to make the election. See § 1.338(i)–1(c).

Special Analyses

It has been determined that the final regulations issued with respect to section 197 and section 338 are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information requirement in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide guidance about the operation of the tax law in the context of acquisitions of insurance companies and businesses. Moreover, they are expected to apply predominantly to transactions involving larger businesses. In addition, the collection of information requirement merely requires a taxpayer to prepare a written representation that contains minimal information relating to the making of an election. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Under section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments on the regulations.

It has been determined that the temporary regulations issued with respect to sections 197 and 338 are not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. These regulations provide guidance relating to the taxable acquisition and disposition of insurance companies. Additionally, these regulations provide rules by which a party to the transaction may elect to apply these rules to transactions which occur prior to April 10, 2006. Based on these considerations, it is determined that these temporary regulations will provide taxpayers with the necessary guidance and authority to ensure equitable administration of the tax laws. Because of the need for immediate guidance, notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 533(b) and the delayed effective date is not required pursuant to 5 U.S.C. 553(d). For applicability of the Regulatory Flexibility Act to these temporary regulations, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

It has been determined that the final regulations issued with respect to sections 381, 846 and 1060 are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Under section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments on the regulations.

Drafting Information

The principal author of the final regulations is Mark J. Weiss, Office of Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.197–2 also issued under 26 U.S.C. 197.

Section 1.197–2T also issued under 26 U.S.C. 197.* * *

Section 1.338–11 also issued under 26 U.S.C. 338.

Section 1.338–11T also issued under 26 U.S.C. 338.* * *

Section 1.846–2(d) is also issued under 26 U.S.C. 846.* * *

■ **Par. 2.** In § 1.197–0, the entries in the table of contents for § 1.197–2, paragraph (g)(5) are revised and § 1.197–2T is added to read as follows:

§ 1.197–0 Table of contents.

This section lists the headings that appear in §§ 1.197–2 and 1.197–2T.

§ 1.197–2 Amortization of goodwill and certain other intangibles.

* * * * *

(g) * * *

(5) Treatment of certain insurance contracts acquired in an assumption reinsurance transaction.

(i) In general.

(ii) Determination of adjusted basis of amortizable section 197 intangible resulting from an assumption reinsurance transaction.

(iii) Application of loss disallowance rule upon a disposition of an insurance contract acquired in an assumption reinsurance transaction.

(A) Disposition.

(*1*) In general.

(*2*) Treatment of indemnity reinsurance transactions.

(B) Loss.

(C) Examples.

(iv) Effective dates.

(A) In general.

(B) Application to pre-effective date acquisitions and dispositions.

(C) Change in method of accounting.

(*1*) In general.

(*2*) Acquisitions and dispositions on or after effective date.

(*3*) Acquisitions and dispositions before the effective date.

* * * * *

§ 1.197–2T Amortization of goodwill and certain other intangibles (temporary).

(a) through (g)(5)(i) [Reserved].

(ii) Determination of adjusted basis of amortizable section 197 intangible resulting from an assumption reinsurance transaction.

(A) In general.

(B) Amount paid or incurred by acquirer (reinsurer) under the assumption reinsurance transaction.

(C) Amount required to be capitalized under section 848 in connection with the transaction.

(*1*) In general.

(*2*) Required capitalization amount.

(*3*) General deductions allocable to the assumption reinsurance transaction.

(*4*) Treatment of a capitalization shortfall allocable to the reinsurance agreement.

(*i*) In general.

(*ii*) Treatment of additional capitalized amounts as the result of an election under § 1.848–2(g)(8).

(*5*) Cross references and special rules.

(D) Examples.

(E) Effective date.

(g)(5) (iii) through (l) [Reserved].

■ **Par. 3.** Section 1.197–2 is amended by revising paragraph (g)(5) to read as follows:

§ 1.197–2 Amortization of goodwill and certain other intangibles.

* * * * *

(g) * * *

(5) *Treatment of certain insurance contracts acquired in an assumption reinsurance transaction*—(i) *In general.* Section 197 generally applies to insurance and annuity contracts acquired from another person through an assumption reinsurance transaction. *See* § 1.809–5(a)(7)(ii) for the definition of assumption reinsurance. The transfer of insurance or annuity contracts and the assumption of related liabilities deemed to occur by reason of a section 338 election for a target insurance company is treated as an assumption reinsurance transaction. The transfer of a reinsurance contract by a reinsurer (transferor) to another reinsurer (acquirer) is treated as an assumption reinsurance transaction if the transferor's obligations are extinguished as a result of the transaction.

(ii) *Determination of adjusted basis of amortizable section 197 intangible resulting from an assumption reinsurance transaction.* For further guidance, *see* § 1.197–2T(g)(5)(ii).

(iii) *Application of loss disallowance rule upon a disposition of an insurance contract acquired in an assumption reinsurance transaction.* The following rules apply for purposes of applying the loss disallowance rules of section 197(f)(1)(A) to the disposition of a section 197(f)(5) intangible. For this purpose, a section 197(f)(5) intangible is an amortizable section 197 intangible the basis of which is determined under section 197(f)(5).

(A) *Disposition*—(1) *In general.* A disposition of a section 197 intangible is any event as a result of which, absent section 197, recovery of basis is otherwise allowed for Federal income tax purposes.

(*2*) *Treatment of indemnity reinsurance transactions.* The transfer through indemnity reinsurance of the right to the future income from the insurance contracts to which a section 197(f)(5) intangible relates does not preclude the recovery of basis by the ceding company, provided that sufficient economic rights relating to the reinsured contracts are transferred to the reinsurer. However, the ceding company is not permitted to recover basis in an indemnity reinsurance transaction if it has a right to experience refunds reflecting a significant portion of the future profits on the reinsured contracts, or if it retains an option to reacquire a significant portion of the future profits on the reinsured contracts through the exercise of a recapture provision. In addition, the ceding company is not permitted to recover basis in an indemnity reinsurance transaction if the reinsurer assumes only a limited portion of the ceding company's risk relating to the reinsured contracts (excess loss reinsurance).

(B) *Loss.* The loss, if any, recognized by a taxpayer on the disposition of a section 197(f)(5) intangible equals the amount by which the taxpayer's adjusted basis in the section 197(f)(5) intangible immediately before the disposition exceeds the amount, if any, that the taxpayer receives from another person for the future income right from the insurance contracts to which the section 197(f)(5) intangible relates. In determining the amount of the taxpayer's loss on the disposition of a section 197(f)(5) intangible through a reinsurance transaction, any effect of the transaction on the amounts capitalized by the taxpayer as specified policy acquisition expenses under section 848 is disregarded.

(C) *Examples.* The following examples illustrate the principles of this paragraph (g)(5)(iii):

Example 1. (i) *Facts.* In a prior taxable year, as a result of a section 338 election with respect to T, new T was treated as purchasing all of old T's insurance contracts that were

in force on the acquisition date in an assumption reinsurance transaction. Under §§ 1.338–6 and 1.338–11(b)(2), the amount of AGUB allocable to the future income right from the purchased insurance contracts was $15, net of the amounts required to be capitalized under section 848 as a result of the assumption reinsurance transaction. At the beginning of the current taxable year, as a result of amortization deductions allowed by section 197(a), new T's adjusted basis in the section 197(f)(5) intangible resulting from the assumption reinsurance transaction is $12. During the current taxable year, new T enters into an indemnity reinsurance agreement with R, another insurance company, in which R assumes 100 percent of the risk relating to the insurance contracts to which the section 197(f)(5) intangible relates. In the indemnity reinsurance transaction, R agrees to pay new T a ceding commission of $10 in exchange for the future profits on the underlying reinsured policies. Under the indemnity reinsurance agreement, new T continues to administer the reinsured policies, but transfers investment assets equal to the required reserves for the reinsured policies together with all future premiums to R. The indemnity reinsurance agreement does not contain an experience refund provision or a provision allowing new T to terminate the reinsurance agreement at its sole option. New T retains the insurance licenses and other amortizable section 197 intangibles acquired in the deemed asset sale and continues to underwrite and issue new insurance contracts.

(ii) *Analysis.* The indemnity reinsurance agreement constitutes a disposition of the section 197(f)(5) intangible because it involves the transfer of sufficient economic rights attributable to the insurance contracts to which the section 197(f)(5) intangible relates such that recovery of basis is allowed. For purposes of applying the loss disallowance rules of section 197(f)(1) and paragraph (g) of this section, new T's loss is $2 (new T's adjusted basis in the section 197(f)(5) intangible immediately before the disposition ($12) less the ceding commission ($10)). Therefore, new T applies $10 of the adjusted basis in the section 197(f)(5) intangible against the amount received from R for the future income right on the reinsured policies and increases its basis in the amortizable section 197 intangibles that it acquired and retained from the deemed asset sale by $2, the amount of the disallowed loss. The amount of new T's disallowed loss under section 197(f)(1)(A) is determined without regard to the effect of the indemnity reinsurance transaction on the amounts capitalized by new T as specified policy acquisition expenses under section 848.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1,* except that under the indemnity reinsurance agreement R agrees to pay new T a ceding commission of $5 with respect to the underlying reinsured contracts. In addition, under the indemnity reinsurance agreement, new T is entitled to an experience refund equal to any future profits on the reinsured contracts in excess of the ceding commission plus an annual risk charge. New T also has a right to recapture the business at any time after R has recovered an amount equal to the ceding commission.

(ii) *Analysis.* The indemnity reinsurance agreement between new T and R does not represent a disposition because it does not involve the transfer of sufficient economic rights with respect to the future income on the reinsured contracts. Therefore, new T may not recover its basis in the section 197(f)(5) intangible to which the contracts relate and must continue to amortize ratably the adjusted basis of the section 197(f)(5) intangible over the remainder of the 15-year recovery period and cannot apply any portion of this adjusted basis to offset the ceding commission received from R in the indemnity reinsurance transaction.

(iv) *Effective dates*—(A) *In general*—This paragraph (g)(5) applies to acquisitions and dispositions on or after April 10, 2006. For rules applicable to acquisitions and dispositions before that date, see § 1.197–2 in effect before that date (*see* 26 CFR part 1, revised April 1, 2001).

(B) *Application to pre-effective date acquisitions and dispositions.* A taxpayer may choose, on a transaction-by-transaction basis, to apply the provisions of this paragraph (g)(5) to property acquired and disposed of before April 10, 2006.

(C) *Change in method of accounting*—(*1*) *In general*—A change in a taxpayer's treatment of all property acquired and disposed under paragraph (g)(5) is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply.

(*2*) *Acquisitions and dispositions on or after effective date.* A Taxpayer is granted the consent of the Commissioner under section 446(e) to change its method of accounting to comply with this paragraph (g)(5) for acquisitions and dispositions on or after April 10, 2006. The change must be made on a cut-off basis with no section 481(a) adjustment. Notwithstanding § 1.446–1(e)(3), a taxpayer should not file a Form 3115, ''Application for Change in Accounting Method,'' to obtain the consent of the Commissioner to change its method of accounting under this paragraph (g)(5)(iv)(C)(*2*). Instead, a taxpayer must make the change by using the new method on its federal income tax returns.

(*3*) *Acquisitions and dispositions before the effective date.* For the first taxable year ending after April 10, 2006, a taxpayer is granted consent of the Commissioner to change its method of accounting for all property acquired in transactions described in paragraph (g)(5)(iv)(B) to comply with this paragraph (g)(5) unless the proper treatment of any such property is an issue under consideration in an examination, before an Appeals office, or before a Federal Court. (For the definition of when an issue is under consideration, see, Rev. Proc. 97–27 (1997–1 C.B. 680); and, § 601.601(d)(2) of this chapter). A taxpayer changing its method of accounting in accordance with this paragraph (g)(5)(iv)(C)(*3*) must follow the applicable administrative procedures for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, see, for example, Rev. Proc. 2002–9 (2002–1 C.B. 327) as modified and clarified by Announcement 2002–17 (2002–1 C.B. 561), modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), and amplified, clarified and modified by Rev. Proc. 2002–54 (2002–2 C.B. 432); and, § 601.601(d)(2) of this chapter), except, for purposes of this paragraph (g)(5)(iv)(C)(*3*), any limitations in such administrative procedures for obtaining the automatic consent of the Commissioner shall not apply. However, if the taxpayer is under examination, before an appeals office, or before a Federal court, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer, or counsel for the government, as appropriate, at the same time that it files the copy of the application with the National Office. The application must contain the name(s) and telephone number(s) of the examining agent(s), appeals officer, or counsel for the government, as appropriate. For purposes of From 3115, ''Application for Change in Accounting Method,'' the designated number for the automatic accounting method change authorized by this paragraph (g)(5)(iv)(C)(*3*) is ''98.'' A change in method of accounting in accordance with this paragraph (g)(5)(iv)(C)(*3*) requires an adjustment under section 481(a).

* * * * *

■ **Par. 4.** Section 1.197–2T is added to read as follows:

§ 1.197–2T Amortization of goodwill and certain other intangibles (temporary).

(a) through (g)(5)(i) [Reserved]. For further guidance, see § 1.197–2(a) through (g)(5)(i).

(g)(5)(ii) *Determination of adjusted basis of amortizable section 197 intangible resulting from an assumption reinsurance transaction*—(A) *In general.* Section 197(f)(5) determines the basis of an amortizable section 197 intangible for insurance or annuity contracts acquired in an assumption reinsurance transaction. The basis of such intangible is the excess, if any, of—

(*1*) The amount paid or incurred by the acquirer (reinsurer) under the assumption reinsurance transaction; over

(*2*) The amount, if any, required to be capitalized under section 848 in connection with such transaction.

(B) *Amount paid or incurred by acquirer (reinsurer) under the assumption reinsurance transaction.* The amount paid or incurred by the acquirer (reinsurer) under the assumption reinsurance transaction is—

(*1*) In a deemed asset sale resulting from an election under section 338, the amount of the AGUB allocable thereto (see §§ 1.338–6 and 1.338–11(b)(2));

(*2*) In an applicable asset acquisition within the meaning of section 1060, the amount of the consideration allocable thereto (see §§ 1.338–6, 1.338–11(b)(2), and 1.1060–1(c)(5)); and

(*3*) In any other transaction, the excess of the increase in the reinsurer's tax reserves resulting from the transaction (computed in accordance with sections 807, 832(b)(4)(B), and 846) over the value of the net assets received from the ceding company in the transaction.

(C) *Amount required to be capitalized under section 848 in connection with the transaction*—(*1*) *In general.* The amount required to be capitalized under section 848 for specified insurance contracts (as defined in section 848(e)) acquired in an assumption reinsurance transaction is the lesser of—

(*i*) The reinsurer's required capitalization amount for the assumption reinsurance transaction; or

(*ii*) The reinsurer's general deductions (as defined in section 848(c)(2)) allocable to the transaction.

(*2*) *Required capitalization amount.* The reinsurer determines the required capitalization amount for an assumption reinsurance transaction by multiplying the net positive or net negative consideration for the transaction by the applicable percentage set forth in section 848(c)(1) for the category of specified insurance contracts acquired in the transaction. See § 1.848–2(g)(5). If more than one category of specified insurance contracts is acquired in an assumption reinsurance transaction, the required capitalization amount for each category is determined as if the transfer of the contracts in that category were made under a separate assumption reinsurance transaction. See § 1.848–2(f)(7).

(*3*) *General deductions allocable to the assumption reinsurance transaction.* The reinsurer determines the general deductions allocable to the assumption reinsurance transaction in accordance with the procedure set forth in § 1.848–2(g)(6). Accordingly, the reinsurer must allocate its general deductions to the amount required under section 848(c)(1) on specified insurance contracts that the reinsurer has issued directly before determining the general deductions allocable to the assumption reinsurance transaction. For purposes of allocating its general deductions under § 1.848–2(g)(6), the reinsurer includes premiums received on the acquired specified insurance contracts after the assumption reinsurance transaction in determining the amount required under section 848(c)(1) on specified insurance contracts that the reinsurer has issued directly. If the reinsurer has entered into multiple reinsurance agreements during the taxable year, the reinsurer determines the general deductions allocable to each reinsurance agreement (including the assumption reinsurance transaction) by allocating the general deductions allocable to reinsurance agreements under § 1.848–2(g)(6) to each reinsurance agreement with a positive required capitalization amount.

(*4*) *Treatment of a capitalization shortfall allocable to the reinsurance agreement*—(*i*) *In general.* The reinsurer determines any capitalization shortfall allocable to the assumption reinsurance transaction in the manner provided in §§ 1.848–2(g)(4) and 1.848–2(g)(7). If the reinsurer has a capitalization shortfall allocable to the assumption reinsurance transaction, the ceding company must reduce the net negative consideration (as determined under § 1.848–2(f)(2)) for the transaction by the amount described in § 1.848–2(g)(3) unless the parties make the election provided in § 1.848–2(g)(8) to determine the amounts capitalized under section 848 in connection with the transaction without regard to the general deductions limitation of section 848(c)(2).

(*ii*) *Treatment of additional capitalized amounts as the result of an election under § 1.848–2(g)(8).* The additional amounts capitalized by the reinsurer as the result of the election under § 1.848–2(g)(8) reduce the adjusted basis of any amortizable section 197 intangible with respect to specified insurance contracts acquired in the assumption reinsurance transaction. If the additional capitalized amounts exceed the adjusted basis of the amortizable section 197 intangible, the reinsurer must reduce its deductions under section 805 or section 832 by the amount of such excess. The additional capitalized amounts are treated as specified policy acquisition expenses attributable to the premiums and other consideration on the assumption reinsurance transaction and are deducted ratably over a 120-month period as provided under section 848(a)(2).

(*5*) *Cross references and special rules.* In general, for rules applicable to the determination of specified policy acquisition expenses, net premiums, and net consideration, see section 848(c) and (d), and § 1.848–2(a) and (f). However, the following special rules apply for purposes of this paragraph (g)(5)(ii)(C)—

(*i*) The amount required to be capitalized under section 848 in connection with the assumption reinsurance transaction cannot be less than zero;

(*ii*) For purposes of determining the company's general deductions under section 848(c)(2) for the taxable year of the assumption reinsurance transaction, the reinsurer takes into account a tentative amortization deduction under section 197(a) as if the entire amount paid or incurred by the reinsurer for the specified insurance contracts were allocated to an amortizable section 197 intangible with respect to insurance contracts acquired in an assumption reinsurance transaction; and

(*iii*) Any reduction of specified policy acquisition expenses pursuant to an election under § 1.848–2(i)(4) (relating to an assumption reinsurance transaction with an insolvent insurance company) is disregarded.

(D) *Examples.* The following examples illustrate the principles of this paragraph (g)(5)(ii):

Example 1. (i) *Facts.* On January 15, 2006, P acquires all of the stock of T, an insurance company, in a qualified stock purchase and makes a section 338 election for T. T issues individual life insurance contracts which are specified insurance contracts as defined in section 848(e)(1). P and new T are calendar year taxpayers. Under §§ 1.338–6 and 1.338–11(b)(2), the amount of AGUB allocated to old T's individual life insurance contracts is $300,000. On the acquisition date, the tax reserves for old T's individual life insurance contracts are $2,000,000. After the acquisition date, new T receives $1,000,000 of net premiums with respect to new and renewal individual life insurance contracts and incurs $100,000 of general deductions under 848(c)(2) through December 31, 2006. New T engages in no other reinsurance transactions other than the assumption reinsurance transaction treated as occurring by reason of the section 338 election.

(ii) *Analysis.* The transfer of insurance contracts and the assumption of related liabilities deemed to occur by reason of the election under section 338 is treated as an assumption reinsurance transaction. New T determines the adjusted basis under section 197(f)(5) for the life insurance contracts acquired in the assumption reinsurance transaction as follows. The amount paid or incurred for the individual life insurance contracts is $300,000. To determine the amount required to be capitalized under section 848 in connection with the assumption reinsurance transaction, new T compares the required capitalization amount for the assumption reinsurance transaction with the general deductions allocable to the

transaction. The required capitalization amount for the assumption reinsurance transaction is $130,900, which is determining by multiplying the $1,700,000 net positive consideration for the transaction ($2,000,000 reinsurance premium less $300,000 ceding commission) by the applicable percentage under section 848(c)(1) for the acquired individual life insurance contracts (7.7%). To determine its general deductions, new T takes into account a tentative amortization deduction under section 197(a) as if the entire amount paid or incurred for old T's individual life insurance contracts ($300,000) were allocable to an amortizable section 197 intangible with respect to insurance contracts acquired in the assumption reinsurance transaction. Accordingly, for the year of the assumption reinsurance transaction, new T is treated as having general deductions under section 848(c)(2) of $120,000 ($100,000 + $300,000/15). Under § 1.848–2(g)(6), these general deductions are first allocated to the $77,000 capitalization requirement for new T's directly written business ($1,000,000 × .077). Thus, $43,000 ($120,000 − $77,000) of the general deductions are allocable to the assumption reinsurance transaction. Because the general deductions allocable to the assumption reinsurance transaction ($43,000) are less than the required capitalization amount for the transaction ($130,900), new T has a capitalization shortfall of $87,900 ($130,900 − $43,000) with regard to the transaction. Under § 1.848–2(g), this capitalization shortfall would cause old T to reduce the net negative consideration taken into account with respect to the assumption reinsurance transaction by $1,141,558 ($87,900÷.077) unless the parties make the election under § 1.848–2(g)(8) to capitalize specified policy acquisition expenses in connection with the assumption reinsurance transaction without regard to the general deductions limitation. If the parties make the election, the amount capitalized by new T under section 848 in connection with the assumption reinsurance transaction would be $130,900. The $130,900 capitalized by new T under section 848 would reduce new T's adjusted basis of the amortizable section 197 intangible with respect to the specified insurance contracts acquired in the assumption reinsurance transaction. Accordingly, new T would have an adjusted basis under section 197(f)(5) with respect to the individual life insurance contracts acquired from old T of $169,100 ($300,000 − 130,900). New T's actual amortization deduction under section 197(a) with respect to the amortizable section 197 intangible for insurance contracts acquired in the assumption reinsurance transaction would be $11,273 ($169,100÷15).

Example 2. (i) *Facts.* The facts are the same as *Example 1,* except that T only issues accident and health insurance contracts that are qualified long-term care contracts under section 7702B. Under section 7702B(a)(5), T's qualified long-term care insurance contracts are treated as guaranteed renewable accident and health insurance contracts, and, therefore, are considered specified insurance contracts under section 848(e)(1). Under §§ 1.338–6 and 1.338–11(b)(2), the amount of AGUB allocable to T's qualified long-term care insurance contracts is $250,000. The amount of T's tax reserves for the qualified long-term care contracts on the acquisition date is $7,750,000. Following the acquisition, new T's receives net premiums of $500,000 with respect to qualified long-term care contracts and incurs general deductions of $75,000 through December 31, 2006.

(ii) *Analysis.* The transfer of insurance contracts and the assumption of related liabilities deemed to occur by reason of the election under section 338 is treated as an assumption reinsurance transaction. New T determines the adjusted basis under section 197(f)(5) for the insurance contracts acquired in the assumption reinsurance transaction as follows. The amount paid or incurred for the insurance contracts is $250,000. To determine the amount required to be capitalized under section 848 in connection with the assumption reinsurance transaction, new T compares the required capitalization amount for the assumption reinsurance transaction with the general deductions allocable to the transaction. The required capitalization amount for the assumption reinsurance transaction is $577,500, which is determining by multiplying the $7,500,000 net positive consideration for the transaction ($7,750,000 reinsurance premium less $250,000 ceding commission) by the applicable percentage under section 848(c)(1) for the acquired insurance contracts (7.7%). To determine its general deductions, new T takes into account a tentative amortization deduction under section 197(a) as if the entire amount paid or incurred for old T's insurance contracts ($250,000) were allocable to an amortizable section 197 intangible with respect to insurance contracts acquired in the assumption reinsurance transaction. Accordingly, for the year of the assumption reinsurance transaction, new T is treated as having general deductions under section 848(c)(2) of $91,667 ($75,000 + $250,000/15). Under § 1.848–2(g)(6), these general deductions are first allocated to the $38,500 capitalization requirement for new T's directly written business ($500,000 × .077). Thus, $53,167 ($91,667 − $38,500) of general deductions are allocable to the assumption reinsurance transaction. Because the general deductions allocable to the assumption reinsurance transaction ($53,167) are less than the required capitalization amount for the transaction ($577,500), new T has a capitalization shortfall of $524,333 ($577,500 − $53,167) with regard to the transaction. Under § 1.848–2(g), this capitalization shortfall would cause old T to reduce the net negative consideration taken into account with respect to the assumption reinsurance transaction by $6,809,519 ($524,333÷.077) unless the parties make the election under § 1.848–2(g)(8) to capitalize specified policy acquisition expenses in connection with the assumption reinsurance transaction without regard to the general deductions limitation. If the parties make the election, the amount capitalized by new T under section 848 in connection with the assumption reinsurance transaction would increase from $53,167 to $577,500. Pursuant to § 1.197–2(g)(5)(ii)(C)(4), the additional $524,333 ($577,500 − $53,167) capitalized by new T under section 848 would reduce new T's adjusted basis of the amortizable section 197 intangible with respect to the insurance contracts acquired in the assumption reinsurance transaction. Accordingly, new T's adjusted basis of the section 197 intangible with regard to the insurance contracts is reduced from $196,833 ($250,000 − $53,167) to $0. Because the additional $524,333 capitalized pursuant to the § 1.848–2(g)(8) election exceeds the $196,833 adjusted basis of the section 197 intangible before the reduction, new T is required to reduce its deductions under section 805 by the $327,500 ($524,333–196,833).

(E) *Effective date.* This section applies to acquisitions and dispositions of insurance contracts on or after April 10, 2006. The applicability of this section expires on or before April 7, 2009. (g)(5)(iii) through (l) [Reserved]. For further guidance, see § 1.197–2(g)(5)(iii) through (l).

■ **Par. 5.** Section 1.338–0 is amended by adding entries to the outline of topics for § 1.338–11, § 1.338–11T and § 1.338(i)–1 to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–11 Effect of section 338 election on insurance company targets.

(a) In general.

(b) Computation of ADSP and AGUB.

(1) Reserves taken into account as a liability.

(2) Allocation of ADSP and AGUB to specific insurance contracts.

(c) Application of assumption reinsurance principles.

(1) In general.

(2) Reinsurance premium.

(3) Ceding commission.

(4) Examples.

(d) Reserve increases by new target after the deemed asset sale.

(e) Effect of section 338 election on section 846(e) election.

(f) Effect of section 338 election on old target's capitalization amounts under section 848.

(1) Determination of net consideration for specified insurance contracts.

(2) Determination of capitalization amount.

(3) Section 381 transactions.

(g) Effect of section 338 election on policyholders surplus account.

(h) Effect of section 338 election on section 847 special estimated tax payments.

§ 1.338–11T Effect of section 338 election on insurance company targets (temporary).

(a) through (c) [Reserved].

(d) Reserve increases by new target after the deemed asset sale.

(1) In general.

(2) Exceptions.

(3) Amount of additional premium.
(i) In general.
(ii) Increases in unpaid loss reserves.
(iii) Increases in other reserves.
(4) Limitation on additional premium.
(5) Treatment of additional premium under section 848.
(6) Examples.
(7) Effective dates.
(i) In general.
(ii) Application to pre-effective date increases to reserves.
(e) Effect of section 338 election on section 846(e) election.
(1) In general.
(2) Revocation of existing section 846(e) election.
(f) through (h) [Reserved].

§ 1.338(i)–1 Effective dates.

(a) In general.
(b) Section 338(h)(10) elections for S corporation targets.
(c) Section 338 elections for insurance company targets.
(1) In general.
(2) New target election for retroactive election.
(i) Availability of election.
(ii) Time and manner of making the election for new target.
(3) Old target election for retroactive election.
(i) Availability of election.
(ii) Time and manner of making the election for old target.

■ **Par. 6.** Section 1.338–1 is amended by:
■ 1. Revising the last two sentences of paragraph (a)(2).
■ 2. Adding a sentence before the last sentence of paragraph (a)(3).
■ 3. Redesignating existing paragraph (b)(2)(vii) as paragraph (b)(2)(viii) and adding new paragraph (b)(2)(vii).
The revisions read as follows:

§ 1.338–1 General principles; status of old target and new target.

(a) * * *
(2) * * * For example, if the target is an insurance company for which a section 338 election is made, the deemed asset sale results in an assumption reinsurance transaction for the insurance contracts deemed transferred from old target to new target. See, generally, § 1.817–4(d), and for special rules regarding the acquisition of insurance company targets, § 1.338–11.
(3) * * * Section 1.338–11 provides special rules for insurance company targets. * * *
* * * * *
(b) * * *
(2) * * *
(vii) [Reserved]
* * * * *

■ **Par. 7.** Section 1.338–1T is added to read as follows:

§ 1.338–1T General principles; status of old target and new target (temporary).

(a) through (b)(2)(vi) [Reserved]. For further guidance, see § 1.338–1(a) through (b)(2)(vi).
(b)(2)(vii) Section 846(e) (relating to an election to use an insurance company's historical loss payment pattern).

■ **Par. 8.** Section 1.338–11 is added to read as follows:

§ 1.338–11 Effect of section 338 election on insurance company targets.

(a) *In general.* This section provides rules that apply when an election under section 338 is made for a target that is an insurance company. The rules in this section apply in addition to those generally applicable upon the making of an election under section 338. In the case of a conflict between the provisions of this section and other provisions of the Internal Revenue Code or regulations, the rules set forth in this section determine the Federal income tax treatment of the parties and the transaction when a section 338 election is made for an insurance company target.
(b) *Computation of ADSP and AGUB*—(1) *Reserves taken into account as a liability. Old target's tax reserves* are the reserves for Federal income tax purposes for any insurance, annuity, and reinsurance contracts deemed sold by old target to new target in the deemed asset sale. The amount of old target's tax reserves is the amount that is properly taken into account by old target for the contracts at the close of the taxable year that includes the deemed sale tax consequences (before giving effect to the deemed asset sale and assumption reinsurance transaction). Old target's tax reserves are a liability of old target taken into account in determining ADSP under § 1.338–4 and a liability of new target taken into account in determining AGUB under § 1.338–5.
(2) *Allocation of ADSP and AGUB to specific insurance contracts.* For purposes of allocating AGUB and ADSP under §§ 1.338–6 and 1.338–7, the fair market value of a specific insurance, reinsurance or annuity contract or group of insurance, reinsurance or annuity contracts (*insurance contracts*) is the amount of the ceding commission a willing reinsurer would pay a willing ceding company in an arm's length transaction for the reinsurance of the contracts if the gross reinsurance premium for the contracts were equal to old target's tax reserves for the contracts. See § 1.197–2(g)(5) for rules concerning the treatment of the amount allocable to insurance contracts acquired in the deemed asset sale.
(c) *Application of assumption reinsurance principles*—(1) *In general.* If a target is an insurance company, the deemed sale of insurance contracts is treated for Federal income tax purposes as an assumption reinsurance transaction between old target, as the reinsured or ceding company, and new target, as the reinsurer or acquiring company, at the close of the acquisition date. The Federal income tax treatment of the assumption reinsurance transaction is determined under the applicable provisions of subchapter L, chapter 1, subtitle A of the Internal Revenue Code, as modified by the rules set forth in this section.
(2) *Reinsurance premium.* Old target is deemed to pay a gross amount of premium in the assumption reinsurance transaction equal to the amount of old target's tax reserves for the insurance contracts that are acquisition date assets (*acquired contracts*). New target is deemed to receive a reinsurance premium in the amount of old target's tax reserves for the acquired contracts. See paragraph (d) of this section for circumstances in which new target is deemed to receive additional premium. See § 1.817–4(d)(2) for old target's and new target's treatment of the premium.
(3) *Ceding commission.* Old target is deemed to receive a ceding commission in an amount equal to the amount of ADSP allocated to the acquired contracts, as determined under §§ 1.338–6 and 1.338–7 and paragraph (b) of this section. New target is deemed to pay a ceding commission in an amount equal to the amount of AGUB allocated to the acquired contracts, as determined under §§ 1.338–6 and 1.338–7 and paragraph (b) of this section. See § 1.817–4(d)(2) for old target's and new target's treatment of the ceding commission.
(4) *Examples.* The following examples illustrate this paragraph (c):

Example 1. (i) *Facts.* On January 1, 2003, T, an insurance company, has the following assets with the following fair market values: $10 cash, $30 of securities, $10 of equipment, a life insurance contract having a value, under paragraph (b)(2) of this section, of $17, and goodwill and going concern value. T has tax reserves of $50 and no other liabilities. On January 1, 2003, P purchases all of the stock of T for $16 and makes a section 338 election for T. For purposes of the capitalization requirements of section 848, assume new T has $20 of general deductions in its first taxable year ending on December 31, 2003, and earns no other premiums during the year.
(ii) *Analysis.* (A) For Federal income tax purposes, the section 338 election results in a deemed sale of the assets of old T to new

T. Old T's ADSP is $66 ($16 amount realized for the T stock plus $50 liabilities). New T's AGUB also is $66 ($16 basis for the T stock plus $50 liabilities). See paragraph (b)(1) of this section. Each of the AGUB and ADSP is allocated under the residual method of § 1.338–6 to determine the purchase or sale price of each asset transferred. Each of the AGUB and ADSP is allocated as follows: $10 to cash (Class I), $30 to the securities (Class II), $10 to equipment (Class V), $16 to the life insurance contract (Class VI), and $0 to goodwill and going concern value (Class VII).

(B) Under section 1001, old T's amount realized for the securities is $30 and for the equipment is $10. As a result of the deemed asset sale, there is an assumption reinsurance transaction between old T (as ceding company) and new T (as reinsurer) at the close of the acquisition date for the life insurance contract issued by old T. See paragraph (c)(1) of this section. Although the assumption reinsurance transaction results in a $50 decrease in old T's reserves, which is taxable income to old T, the reinsurance premium paid by old T is deductible by old T. Under paragraph (c)(2) of this section, old T is deemed to pay a reinsurance premium equal to the reserve for the life insurance contract immediately before the deemed asset sale ($50) and is deemed to receive a ceding commission from new T. Under paragraph (c)(3) of this section, the portion of the ADSP allocated to the life insurance contract is $16; thus, the ceding commission is $16. Old T, therefore, is deemed to pay new T a reinsurance premium of $34 ($50 − $16 = $34). Old T also has $34 of net negative consideration for purposes of section 848. See paragraph (f) of this section for rules relating to the effect of a section 338 election on the capitalization of amounts under section 848.

(C) New T obtains an initial basis of $30 in the securities and $10 in the equipment. New T is deemed to receive a reinsurance premium from old T in an amount equal to the $50 of reserves for the life insurance contract and to pay old T a $16 ceding commission for the contract. See paragraphs (c)(2) and (3) of this section. Accordingly, new T includes $50 of premium in income and deducts $50 for its increase in reserves. For purposes of section 848, new T has $34 of net positive consideration for the deemed assumption reinsurance transaction. Because the only contract involved in the deemed assumption reinsurance transaction is a life insurance contract, new T must capitalize $2.62 ($34 × 7.7% = $2.62) under section 848. New T will amortize the $2.62 as provided under section 848. New T's adjusted basis in the life insurance contract, which is an amortizable section 197 intangible, is $13.38, the excess of the $16 ceding commission over the $2.62 capitalized under section 848. See section 197 and § 1.197–2(g)(5). New T deducts the $2.62 of the ceding commission that is not amortizable under section 197 because it is reflected in the amount capitalized under section 848 and also deducts the remaining $17.38 of its general deductions.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1,* except the life insurance contract has a value of $0 and the fair market value of T's securities are $60. Thus, to reinsure the contract in an arm's length transaction, T would have to pay the reinsurer a reinsurance premium in excess of T's $50 of tax reserves for the contract.

(ii) *Analysis.* (A) For Federal income tax purposes, the section 338 election results in a deemed sale of the assets of old T to new T. Old T's ADSP is $66 ($16 amount realized for the T stock plus $50 liabilities). New T's AGUB also is $66 ($16 basis for the T stock plus $50 liabilities). See paragraph (b)(1) of this section. Each of the AGUB and ADSP is allocated under the residual method of § 1.338–6 to determine the purchase or sale price of each asset transferred. Each of the AGUB and ADSP is allocated as follows: $10 to cash (Class I), $56 to the securities (Class II), $0 to the equipment (Class V), $0 to the life insurance contract (Class VI), and $0 to goodwill and going concern value (Class VII).

(B) Under section 1001, old T's amount realized for the securities is $56 and for the equipment is $0. As a result of the deemed asset sale, there is an assumption reinsurance transaction between old T (as ceding company) and new T (as reinsurer) at the close of the acquisition date for the life insurance contract issued by old T. See paragraph (c)(1) of this section. Although the assumption reinsurance transaction results in a $50 decrease in old T's reserves, which is taxable income to old T, the reinsurance premium deemed paid by old T to new T is deductible by old T. Under paragraph (c)(2) of this section, old T is deemed to pay a reinsurance premium equal to the reserve for the life insurance contract immediately before the deemed asset sale ($50), and is deemed to receive from new T a ceding commission equal to the amount of AGUB allocated to the life insurance contract ($0), as provided in paragraph (c)(3) of this section. Old T also has $50 of net negative consideration for purposes of section 848. See paragraph (f) of this section for rules relating to the effect of a section 338 election on capitalization amounts under section 848.

(C) New T obtains an initial basis of $56 in the securities (with a fair market value of $60) and $0 in the equipment (with a fair market value of $10). New T is deemed to receive a reinsurance premium from old T in an amount equal to the $50 of reserves for the life insurance contract. Accordingly, new T includes $50 of premium in income and deducts $50 for its increase in reserves. For purposes of section 848, new T has $50 of net positive consideration for the deemed assumption reinsurance transaction. Because the only contract involved in the assumption reinsurance transaction is a life insurance contract, new T must capitalize $3.85 ($50 × 7.7%) under section 848 from the transaction and deducts the remaining $16.15 of its general deductions. Because new T allocates $0 of the AGUB to the insurance contract, no amount is amortizable under section 197 with respect to the insurance contract. See § 1.338–11T(d) for rules on adjustments required if new T increases its reserves for, or reinsures at a loss, the acquired life insurance contract.

(d) *Reserve increases by new target after the deemed asset sale.* For further guidance, see § 1.338–11T(d).

(e) *Effect of section 338 election on section 846(e) election.* For further guidance, see § 1.338–11T(e)

(f) *Effect of section 338 election on old target's capitalization amounts under section 848*—(1) *Determination of net consideration for specified insurance contracts.* For purposes of applying section 848 and § 1.848–2(f) to the deemed assumption reinsurance transaction, old target's net consideration (either positive or negative) for each category of specified insurance contracts is an amount equal to—

(i) The allocable portion of the ceding commission (if any) relating to contracts in that category; less

(ii) The amount by which old target's tax reserves for contracts in that category has been reduced as a result of the deemed assumption reinsurance transaction.

(2) *Determination of capitalization amount.* Except as provided in § 1.381(c)(22)–1(b)(13)—

(i) If, after the deemed asset sale, old target has an amount otherwise required to be capitalized under section 848 for the taxable year or an unamortized balance of specified policy acquisition expenses from prior taxable years, then old target deducts such remaining amount or unamortized balance as an expense incurred in the taxable year that includes the deemed sale tax consequences; and

(ii) If, after the deemed asset sale, the negative capitalization amount resulting from the reinsurance transaction exceeds the amount that old target can deduct under section 848(f)(1), then old target's capitalization amount is treated as zero at the close of the taxable year that includes the deemed sale tax consequences.

(3) *Section 381 transactions.* For transactions described in section 381, see § 1.381(c)(22)–1(b)(13).

(g) *Effect of section 338 election on policyholders surplus account.* Except as specifically provided in § 1.381(c)(22)–1(b)(7), the deemed asset sale effects a distribution of old target's policyholders surplus account to the extent the grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock (as defined in § 1.338–4(c)) exceeds old target's shareholders surplus account under section 815(c).

(h) *Effect of section 338 election on section 847 special estimated tax payments.* If old target had elected to claim an additional deduction under section 847 for the taxable year that includes the deemed sale tax consequences or any earlier years, the

amount remaining in old target's special loss discount account under section 847(3) must be reduced to the extent it relates to contracts transferred to new target and the amount of such reduction must be included in old target's gross income for the taxable year that includes the deemed sale tax consequences. Old target may apply the balance of its special estimated tax account as a credit against any tax resulting from such inclusion in gross income. Any special estimated tax payments remaining after this credit are voided and, therefore, are not available for credit or refund. Under section 847(1), new target is permitted to claim a section 847 deduction for losses incurred before the deemed asset sale, subject to the general requirement that new target makes timely special estimated tax payments equal to the tax benefit resulting from this deduction. See § 1.381(c)(22)–1(c)(14) regarding the carryover of the special loss discount account attributable to contracts transferred in a section 381 transaction.

■ **Par. 9.** Section 1.338–11T is added to read as follows:

§ 1.338–11T Effect of section 338 election on insurance company targets (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.338–11(a) through (c).

(d) *Reserve increases by new target after the deemed asset sale*—(1) *In general.* If in new target's first taxable year or any subsequent year, new target increases its reserves for any acquired contracts, new target is treated as receiving an additional premium, which is computed under paragraph (d)(3), in the assumption reinsurance transaction described in § 1.338–11(c)(1). New target includes the additional premium in gross income for the taxable year in which new target increases its reserves for acquired contracts. New target's increase in reserves for the insurance contracts acquired in the deemed asset sale is a liability of new target not originally taken into account in determining AGUB that is subsequently taken into account. Thus, AGUB is increased by the amount of the additional premium included in new target's gross income. See §§ 1.338–5(b)(2)(ii) and 1.338–7. Old target has no deduction under this paragraph (d) and makes no adjustments under §§ 1.338–4(b)(2)(ii) and 1.338–7.

(2) *Exceptions.* New target is not treated as receiving additional premium under paragraph (d)(1) if—

(i) It is under state receivership as of the close of the taxable year for which the increase in reserves occurs; or

(ii) It is required by section 807(f) to spread the reserve increase over the 10 succeeding taxable years.

(3) *Amount of additional premium*—(i) *In general.* The additional premium taken into account under this paragraph (d) is an amount equal to the sum of the positive amounts described in paragraphs (d)(3)(ii) and (d)(3)(iii). However, the additional premium cannot exceed the limitation described in paragraph (d)(4).

(ii) *Increases in unpaid loss reserves.* The positive amount with respect to unpaid loss reserves is computed using the formula A/B x (C − [D + E]) where—

(*1*) A equals old target's discounted unpaid losses (determined under section 846) included in AGUB under § 1.338–11(b)(1);

(*2*) B equals old target's undiscounted unpaid losses (determined section 846(b)(1) as of the close of the acquisition date;

(*3*) C equals new target's undiscounted unpaid losses (determined under section 846(b)(1) at the end of the taxable year that are attributable to losses incurred by old target on or before the acquisition date; and

(*4*) D (which may be a negative number) equals old target's undiscounted unpaid losses as of the close of the acquisition date, reduced by the cumulative amount of losses, loss adjustment expenses, and reinsurance premiums paid by new target through the end of the taxable year for losses incurred by old target on or before the acquisition date; and

(*5*) E equals the amount obtained by dividing the cumulative amount of reserve increases taken into account under this paragraph (d) in prior taxable years by A/B.

(iii) *Increases in other reserves.* The positive amount with respect to reserves other than discounted unpaid loss reserves is the net increase of those reserves due to changes in estimate, methodology, or other assumptions used to compute the reserves (including the adoption by new target of a methodology or assumptions different from those used by old target).

(4) *Limitation on additional premium.* The additional premium taken into account by new target under paragraph (d)(1) is limited to the excess, if any, of—

(i) The fair market value of old target's assets acquired by new target in the deemed asset sale (other than Class VI and Class VII assets), over

(ii) The AGUB allocated to those assets (including increases in AGUB allocated to those assets as the result of reserve increases by new target in prior taxable years).

(5) *Treatment of additional premium under section 848.* If a portion of the positive amounts described in paragraphs (d)(3)(ii) and (iii) are attributable to an increase in reserves for specified insurance contracts (as defined in section 848(e)), new target takes an allocable portion of the additional premium in determining its specified policy acquisition expenses under section 848(c) for the taxable year of the reserve increase.

(6) *Examples.* The following examples illustrate this paragraph (d):

Example 1. (i) *Facts* On January 1, 2006, P purchases all of the stock of T, a non-life insurance company, for $120 and makes a section 338 election for T. On the acquisition date, old T has total reserve liabilities under state law of $725, consisting of undiscounted unpaid losses of $625 and unearned premiums of $100. Old T's tax reserves on the acquisition date are $580, which consist of discounted unpaid losses (as defined in section 846) of $500 and unearned premiums (as computed under section 832(b)(4)(B)) of $80. Old T has Class I through Class V assets with a fair market value of $800. Old T also has a Class VI asset with a fair market value of $75, consisting of the future profit stream of certain insurance contracts. During 2006, new T makes loss and loss adjustment expense payments of $200 with respect to the unpaid losses incurred by old T before the acquisition date. As of December 31, 2006, new T reports undiscounted unpaid losses of $475 attributable to losses incurred before the acquisition date. The related amount of discounted unpaid losses (as defined in section 846) for those losses is $390.

(ii) *Computation and allocation of AGUB.* Under § 1.338–5 and § 1.338–11(b)(1), as of the acquisition date, AGUB is $700, reflecting the sum of the amount paid for old T's stock ($120) and the tax reserves assumed by new T in the transaction ($580). The fair market value of old T's Class I through V assets is $800, whereas the AGUB available for such assets under § 1.338–6 is $700. There is no AGUB available for old T's Class VI assets, even though such assets have a fair market value of $75 on the acquisition date.

(iii) *Adjustments for increases in reserves for unpaid losses.* Under paragraph (d) of this section, new T must determine whether there are any amounts by which it increased its unpaid loss reserves that will be treated as an additional premium and an increase in AGUB. New T applies the formula of paragraph (d)(3) of this section, where A equals $500, B equals $625, C equals $475, D equals $425 ($625–$200), and E equals $0. Under this formula, new T is treated as having increased its reserves for discounted unpaid losses attributable to losses incurred by old T by $40 ($500/$625 x ($475 − [$425+0]). The limitation under paragraph (d)(5) based on the difference between the fair market value of old T's Class I through Class V assets and the AGUB allocated to such assets is $100. Accordingly, new T includes an additional premium of $40 in

gross income for 2006, and increases the AGUB allocated to old T's Class I through Class V assets to reflect this additional premium.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1.* Further assume that during 2007 new T deducts total loss and loss expense payments of $375 with respect to losses incurred by old T before the acquisition date. On December 31, 2007, new T reports undiscounted unpaid losses of $150 with respect to losses incurred before the acquisition date. The related amount of discounted unpaid losses (as defined in section 846) for those unpaid losses is $125.

(ii) *Analysis.* New T must determine whether any amounts by which it increased its unpaid losses during 2007 will be treated as an additional premium under paragraph (d)(3) of this section. New T applies the formula under paragraph (d)(3) of this section, where A equals $500, B equals $625, C equals $150, D equals $50 ($625–$575), and E equals $50 ($40 divided by .8). Under paragraph (d)(3) of this section, new T is treated as increasing its reserves for discounted unpaid losses by $40 during 2007 with respect to losses incurred by old T ($500/$625 x ($150 − [$50 + $50]). New T determines the limitation of paragraph (d)(5) of this section by comparing the $800 fair market value of the Class I through V assets on the acquisition date to the $740 AGUB allocated to such assets (which includes the $40 addition to AGUB included during 2006). Thus, new T recognizes $40 of additional premium as a result of the increase in reserves during 2007, and adjusts the AGUB allocable to the Class I through V assets acquired from old T to reflect such additional premium.

Example 3. (i) *Facts.* The facts are the same as *Example 2*, except that on January 1, 2008, new T reinsures the outstanding liability with respect to losses incurred by old T before the acquisition date through a portfolio reinsurance transaction with R, another non-life insurance company. R agrees to assume any remaining liability relating to losses incurred by old T before the acquisition date in exchange for a reinsurance premium of $200. Accordingly, as of December 31, 2008, new T reports no undiscounted unpaid losses with respect to losses incurred by old T before the acquisition date.

(ii) *Analysis.* New T must determine whether any amount by which it increased its unpaid loss reserves will be treated as an additional premium under paragraph (d) of this section. New T applies the formula of paragraph (d)(3) of this section, where A equals $500, B equals $625, C equals $0, and D equals-$150 ($625 − ($575 + $200), and E equals $100 ($80 divided by .8). Thus, new T is treated as having increased its discounted unpaid losses by $40 in 2008 with respect to losses incurred by old T before the acquisition date ($500/$625 × (0 − [−$150 + $100]). New T includes this positive amount in gross income, subject to the limitation of paragraph (d)(4). The limitation of paragraph (d)(4) equals $20, which is computed by comparing the $800 fair market value of the Class I through V assets acquired from old T with the $780 AGUB allocated to such assets (which includes the $40 addition to AGUB in 2006 and the $40 addition to AGUB in 2007). Thus, New T includes $20 in additional premium, and increases the AGUB allocated to the Class I through V assets acquired from old T by $20. As a result of these adjustments, the limitation under paragraph (d)(4) is reduced to zero.

(7) *Effective dates*—(i) *In general.* This section applies to increases to reserves made by new target after a deemed asset sale occurring on or after April 10, 2006. The applicability of the section expires on or before April 7, 2009.

(ii) *Application to pre-effective date increases to reserves.* If either new target makes an election under § 1.338(i)–1(c)(2) or old target makes an election under § 1.338(i)–1(c)(3) to apply the rules of § 1.338–11, in whole, to a qualified stock purchase occurring before April 10, 2006 then the rules contained in this section shall apply in whole to the qualified stock purchase.

(e) *Effect of section 338 election on section 846(e) election*—(1) *In general.* New target and old target are treated as the same corporation for purposes of an election by old target to use its historical loss payment pattern under section 846(e). See § 1.338–1T(b)(2)(vii). Therefore, if old target has a section 846(e) election in effect on the acquisition date, new target will continue to use the historical loss payment pattern of old target to discount unpaid losses incurred in accident years covered by the election, unless new target elects to revoke the section 846(e) election. In addition, new target may consider old target's historical loss payment pattern when determining whether to make the section 846(e) election for a determination year that includes or is subsequent to the acquisition date.

(2) *Revocation of existing section 846(e) election.* New target may revoke old target's section 846(e) election to use its historical loss payment pattern to discount unpaid losses. If new target elects to revoke old target's section 846(e) election, new target will use the industry-wide patterns determined by the Secretary to discount unpaid losses incurred in accident years beginning on or after the acquisition date through the subsequent determination year. New target may revoke old target's section 846(e) election by attaching a statement to new target's original tax return for its first taxable year.

(f) through (h) [Reserved]. For further guidance, see § 1.338–11(f) through (h).

■ **Par. 10.** Section 1.338(i)–1 is amended by adding new paragraph (c) to read as follows:

§ 1.338(i)–1 Effective dates.

* * * * *

(c) *Section 338 elections for insurance company targets*—(1) *In general.* The rules of § 1.338–11 apply to qualified stock purchases occurring on or after April 10, 2006.

(2) *New target election for retroactive application*—(i) *Availability of election.* New target may make an irrevocable election to apply the rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 381(c)(22)–1, and 846) in whole, but not in part, to a qualified stock purchase occurring before April 10, 2006 for which a section 338 election is made, provided that new target's first taxable year and all subsequent affected taxable years are years for which an assessment of deficiency or a refund for overpayment is not prevented by any law or rule of law. In the case of a section 338 election for which a section 338(h)(10) election is made (or a section 338 election for a foreign target), new target may make the election to apply the regulations retroactively without regard to whether old target makes the election. In the case of a section 338 election for a domestic target for which no section 338(h)(10) election is made, new target may make the election to apply the regulations retroactively only if old target also makes the election. Paragraph (c)(2)(ii) of this section prescribes the time and manner of the election for new target.

(ii) *Time and manner of making the election for new target.* New target may make an election described in paragraph (c)(2)(i) of this section by attaching a statement to its original or amended income tax return for its first taxable year. The statement must be entitled ''Election to Retroactively Apply the Rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1 and 846) in whole to a transaction completed before April 10, 2006'' and must include the following information—

(A) The name and E.I.N. for new target; and

(b) The following declaration (or a substantially similar declaration): New target has amended its income tax returns for its first taxable year and for all affected subsequent years to reflect the rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 197–2(g)(5), 1.197–2t(g)(5)(ii), 1.381(c)(22)–1 and 846). All other parties whose income tax liabilities are affected by new target's election have amended their income tax returns for all affected years to reflect the rules in §§ 1.338–11 and 1.338–

11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1 and 846).

(3) *Old target election for retroactive application*—(i) *Availability of election.* Old target may make an irrevocable election to apply the rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1 and 846) in whole, but not in part, to a qualified stock purchase occurring before April 10, 2006 for which a section 338 election is made, provided that old target's taxable year that includes the deemed sale tax consequences and all subsequent affected taxable years are years for which an assessment of deficiency or a refund for overpayment is not prevented by any law or rule of law. In the case of a section 338 election for which a section 338(h)(10) election is made (or a section 338 election for a foreign target), old target may make the election to apply the regulations retroactively without regard to whether new target makes the election. In the case of a section 338 election for a domestic target for which no section 338(h)(10) election is made, old target may make the election to apply the regulations retroactively only if new target also makes the election. Paragraph (c)(3)(ii) of this section prescribes the time and manner of the election for old target.

(ii) *Time and manner of making the election for old target.* Old target may make an election described in paragraph (c)(3)(i) of this section by attaching a statement to each affected party's original or amended income tax return for the taxable year that includes the deemed sale tax consequences. The statement must be entitled ''Election to Retroactively Apply the Rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1 and 846) to a transaction completed before April 10, 2006'' and must include the following information—

(A) The name and E.I.N. for old target; and

(B) The following declaration (or a substantially similar declaration): Old target has amended its income tax returns for the taxable year that includes the deemed sale tax consequences and for all affected subsequent years to reflect the rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1 and 846). All other parties whose income tax liabilities are affected by old target's election have amended their income tax returns for all affected years to reflect the rules in §§ 1.338–11 and 1.338–11Td) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1 and 846).

■ **Par. 11.** Section 1.381(c)(22)–1 is amended by:

■ 1. Revising the first sentence of paragraph (a).

■ 2. Adding a sentence to the end of paragraph (b)(7)(i).

■ 3. Redesignating existing (b)(7)(ii) as paragraph (b)(7)(iv) and adding new paragraphs (b)(7)(ii) and (b)(7)(iii).

■ 4. Adding paragraphs (b)(7)(v), (b)(13), (b)(14), and (c).

The revisions read as follows:

§ 1.381(c)(22)-1 Successor insurance company.

(a) *Carryover requirement.* If in a taxable year beginning after December 31, 1957, a distributor or transferor corporation which is an insurance company is acquired by a corporation which is an insurance company in a transaction to which section 381(a) applies, section 381(c)(22) provides that the acquiring corporation shall take into account the appropriate items which the distributor or transferor corporation was required to take into account for purposes of part I, subchapter L, chapter 1 of the Internal Revenue Code. * * *

(b) * * *

(7)(i) * * * However, any amounts attributable to money or other property not permitted to be received without the recognition of gain (*i.e.*, boot) distributed to a person other than the acquiring corporation under section 381(a) shall be treated as a distribution under section 815.

(ii) Notwithstanding paragraph (b)(7)(i) of this section, if the distributor or transferor corporation distributes or transfers less than 50 percent of its insurance business to the acquiring corporation, then the acquiring corporation shall succeed to a ratable portion of the dollar balances in the distributor's or transferor's shareholders surplus account, policyholders surplus account, and other accounts. The percentage of the accounts to which the acquiring corporation succeeds is determined by the ratio of the distributor's or transferor's insurance reserves for the contracts transferred to the acquiring corporation, as maintained under section 816(b), to the distributor's or transferor's reserves for all of its contracts maintained under section 816(b) immediately before the earlier of the distribution or transfer or the adoption of the plan of liquidation or reorganization. For transactions in which the distributor liquidates pursuant to an election under section 338(h)(10), see § 1.338–11(f) for the treatment of its remaining policyholders surplus account. For all other transactions subject to this paragraph, the distributor or transferor must take into account as income its remaining policyholders surplus account to the extent the fair market value of its assets (net of liabilities) distributed or transferred to the acquiring corporation or to the transferor's shareholders pursuant to the plan of liquidation or reorganization exceeds the distributor's or transferor's remaining shareholders surplus account.

(iii) If, pursuant to a plan in existence at the time of the liquidation or reorganization, the acquiring corporation transfers any insurance or annuity contract it received in the liquidation or reorganization to another person, then, for purposes of paragraph (b)(7)(ii) of this section, that contract shall be deemed to have been transferred by the transferor to that other person after the adoption of the plan of liquidation or reorganization. If the transferor is an old target within the meaning of § 1.338(h)(10)-1(d)(2), any transfer by the acquiring corporation to the purchasing corporation (as defined in § 1.338–2(c)(11)) or to any person related to the purchasing corporation within the meaning of section 197(f)(9)(C) within two years of the transfer described in section 381(a) will be presumed to have been pursuant to a plan in existence at the time of the liquidation or reorganization.

* * * * *

(v) The provisions of this paragraph (b)(7) are illustrated by the following examples:

Example 1. P buys the stock of insurance company target, T, from S for $16, and P and S make a section 338(h)(10) election for T. T transfers no insurance contracts to S, or any related party, in connection with the transaction. Further, assume that T had $10 in its policyholders surplus account and no balance in its shareholders surplus account or other accounts. Immediately before the deemed asset sale, old T is required to include as ordinary income the $10 in the policyholders surplus account.

Example 2. Assume the same facts as in *Example 1*, except that T holds a block of life insurance contracts P does not wish to acquire, and, immediately before the sale of T stock, S causes T to distribute the unwanted block of insurance contracts to S. Further, assume that S is an insurance company, that the distribution of contracts is one of series of distributions in complete cancellation or redemption of all of its stock (the others occurring under § 1.338(h)(10)-1(d)(4)(i)) that qualifies as a complete liquidation under section 332, and that old T's tax reserves with respect to the distributed contracts represent one-tenth of old T's tax reserves with respect to all of its life insurance contracts. Because T transfers

less than 50 percent of its life insurance business to S in a transaction to which section 381(a) applies, S succeeds to a ratable portion of old T's policyholders surplus account ($1), and old T includes as ordinary income the remaining $9 of that account.

Example 3. Assume the same facts as in *Example 2*, except that 14 months after the deemed asset sale, S and X, a person related to new T under section 197(f)(9)(C), engage in an indemnity reinsurance transaction involving the contracts transferred to S from old T. Because X is related to the purchasing corporation (P) under section 197(f)(9)(C), and X receives contracts from the acquiring corporation (S) that S acquired from old T within two years of the transfer from old T to S, the contracts are presumed to have been transferred pursuant to a plan in existence at the time of old T's liquidation. If S cannot establish otherwise, old T is treated as having distributed the remainder of its policyholders surplus account. In that case, in the taxable year of the indemnity reinsurance transaction, S takes into account as ordinary income the portion of old T's accounts ($9) that old T or S has not previously taken into account as income.

* * * * *

(13)(i) The transferor's unamortized policy acquisition expenses or positive or negative capitalization requirements on its specified insurance contracts.

(ii) Notwithstanding paragraph (b)(13)(i) of this section, if the distributor or transferor corporation transfers less than 50 percent of its insurance business to the acquiring corporation, then the acquiring corporation shall succeed to a ratable portion of the transferor's unamortized policy acquisition expenses or positive or negative capitalization requirements on its specified insurance contracts. The percentage of such acquisition expenses or positive or negative capitalization requirements to which the acquiring corporation succeeds is determined by the ratio of the distributor's or transferor's insurance reserves for the contracts transferred to the acquiring corporation, as maintained under section 816(b), to the distributor's or transferor's reserves for all of its contracts maintained under section 816(b) immediately before the earlier of the distribution or transfer or the adoption of the plan of liquidation or reorganization. For amounts of the distributor's or transferor's unamortized policy acquisition expenses or positive or negative capitalization requirements on its specified insurance contracts to which the acquirer does not succeed to under this paragraph, and, for transactions in which the transferor liquidates pursuant to an election under section 338(h)(10), see § 1.338–11(f) for the treatment of its capitalized amounts under section 848.

(iii) If, pursuant to a plan in existence at the time of the liquidation or reorganization, the acquiring corporation transfers any insurance or annuity contract it received in the liquidation or reorganization to another person, then, for purposes of paragraph (b)(13)(ii) of this section, that contract shall be deemed to have been transferred by the transferor to that other person after the adoption of the plan of liquidation or reorganization. If the transferor is an old target within the meaning of § 1.338(h)(10)–1(d)(2), any transfer by the acquiring corporation to the purchasing corporation (as defined in § 1.338–2(c)(11)) or to any person related to the purchasing corporation within the meaning of section 197(f)(9)(C) within two years of the transfer described in section 381(a) will be presumed to have been pursuant to a plan in existence at the time of the liquidation or reorganization.

(14) The special loss discount account, provided, however, that the acquiring corporation will succeed to the special loss discount account only to the extent that it is attributable to the portion of the transferor's insurance business acquired by the acquiring corporation in the section 381 transaction.

(c) *Effective dates*—(1) *In general.* This section applies to the acquisition of assets of an insurance company by another insurance company in a transaction to which section 381 applies for taxable years beginning after December 31, 1957.

(2) *Special rules for section 381 transactions.* Paragraphs (a), (b)(7), (b)(13), and (b)(14) of this section apply to the acquisition of assets of an insurance company by another insurance company in a transaction to which section 381 applies on or after April 10, 2006.

(3) *Joint retroactive election.* The distributor or transferor and the acquiring corporation may jointly make an irrevocable election to apply paragraphs (a), (b)(7), (b)(13), and (b)(14) of this section to a transaction to which section 381 applies occurring before April 10, 2006 provided that the taxable year that includes the acquisition and all subsequent affected taxable years of both the distributor or transferor and the acquiring corporation are years for which an assessment of deficiency or a refund for overpayment is not prevented by any law or rule of law.

(4) *Time and manner of making the joint election.* The distributor or transferor and the acquiring corporation may make an election described in paragraph (c)(2) of this section by each attaching a statement to its original or amended income tax return for the taxable year that includes the acquisition of assets in a transaction to which section 381 applies. The statement must be entitled ''Election to retroactively apply the rules of section 1.381(c)(22)–1 to a transaction completed before April 10, 2006'' and must include the following information—

(i) The name and EIN of the distributor or transferor and the acquiring corporation; and

(ii) The following declaration (or a substantially similar declaration): The distributor or transferor and the acquiring corporation have each amended its income tax returns for the taxable year that includes the acquisition of assets in a transaction to which section 381 applies and for all affected subsequent years to reflect the rules in paragraphs (a), (b)(7), (b)(13), and (b)(14) of section 1.381(c)(22)–1.

* * * * *

■ **Par. 12.** Section 1.846–0 is amended by:

■ 1. Adding a new entry in the table of contents for § 1.846–2(d).

■ 2. Revising the entry in the table of contents for § 1.846–4.

■ 3. Adding a new entry in the table of contents for § 1.846–4T.

The revisions and additions read as follows:

§ 1.846–0 Outline of provisions.

* * * * *

§ 1.846–2 Election by taxpayer to use its own historical loss payment pattern.

* * * * *

(d) Effect of section 338 election on section 846(e) election.

§ 1.846–2T Election by taxpayer to use its own historical loss payment pattern (temporary).

(a) through (c) [Reserved].

(d) Effect of section 338 election on section 846(e) election.

* * * * *

§ 1.846–4 Effective dates.

(a) In general.

(b) Section 338 election.

§ 1.846–4T Effective dates (temporary).

(a) [Reserved].

(b) Section 338 election.

* * * * *

■ **Par. 13.** Section 1.846–2 is amended by adding paragraph (d) to read as follows:

§ 1.846–2 Election by taxpayer to use its own historical loss payment pattern.

* * * * *

(d) *Effect of section 338 election on section 846(e) election.* [Reserved]. For further guidance, *see* § 1.846–2T(d).

* * * * *

■ **Par. 14.** Section 1.846–2T is added to read as follows:

§ 1.846–2T Election by taxpayer to use its own historical loss payment pattern (temporary).

(a) through (c) [Reserved]. For further guidance, *see* § 1.846–2(a) through (c).

(d) *Effect of section 338 election on section 846(e) election.* For rules regarding qualified stock purchases occurring on or after April 10, 2006, *see* §§ 1.338–1(b)(2)(vii) and 1.338–11T(e).

* * * * *

■ **Par. 15.** Section 1.846–4 is revised to read as follows:

§ 1.846–4 Effective dates.

(a) *In general.* Sections 1.846–1 through 1.846–3 apply to taxable years beginning after December 31, 1986.

(b) *Section 338 election.* [Reserved]. For further guidance, *see* § 1.846–2T(d).

■ **Par. 16.** Section 1.846–4T is added to read as follows:

§ 1.846–4T Effective dates (temporary).

(a) [Reserved]. For further guidance, *see* § 1.846–2(a).

(b) *Section 338 election.* Section 1.846–2(d) applies to section 846(e) elections made with regard to a qualified stock purchase made on or after April 10, 2006.

* * * * *

■ **Par. 17.** Section 1060–1 is amended by:

■ 1. Revising paragraph (a)(2).

■ 2. Adding new entries in paragraph (a)(3) in the outline of topics for paragraphs (b)(9) and (c)(5).

■ 3. Adding new paragraphs (b)(9) and (c)(5).

The revision and additions read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

(a) * * *

(2) *Effective dates*—(i) *In general.* The provisions of this section apply to any asset acquisition occurring after March 15, 2001. However, paragraphs (b)(9) and (c)(5) of this section apply only to applicable asset acquisitions occurring on or after April 10, 2006. A purchaser or a seller may make an irrevocable election to apply the rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1, 846 and 1060) to an applicable asset acquisition occurring before April 10, 2006. Paragraph (a)(2)(ii) of this section describes the time and manner of the election for the purchaser and paragraph (a)(2)(iii) of this section prescribes the time and manner of the election for the seller. The seller may make the election to apply the regulations retroactively without regard to whether the purchaser also makes the election. For rules applicable to asset acquisitions on or before March 15, 2001, *see* § 1.1060–1T in effect before March 16, 2001 (*see* 26 CFR part 1 revised April 1, 2000).

(ii) *Time and manner of making the election for the purchaser.* The purchaser may make an election described in this paragraph (a)(2) by attaching a statement to its original or amended income tax return for the taxable year that includes the applicable asset sale. The statement must be entitled ''Election to Retroactively Apply the Rules in §§ 1.338–11 and 1.338–11T(d) (Including the Applicable Provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1, 846 and 1060) to an Applicable Asset Acquisition Completed Before April 10, 2006'' and must include the following information—

(A) The name and E.I.N. for the purchaser; and

(B) The following declaration (or a substantially similar declaration): The purchaser has amended its income tax returns for the taxable year that includes the applicable asset acquisition and for all affected subsequent years to reflect the rules in §§ 1.338–11 and 1.338–11T(d) (Including the Applicable Provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1,846 and 1060).

(iii) *Time and manner of making the election for the seller.* The seller may make an election described in this paragraph (a)(2) by attaching a statement to its original or amended income tax return for the taxable year that includes the applicable asset sale. The statement must be entitled ''Election to retroactively apply the rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1, 846 and 1060) to an applicable asset acquisition completed before April 10, 2006'' and must include the following information—

(A) The name and E.I.N. for the seller; and

(B) The following declaration (or a substantially similar declaration): The seller has amended its income tax returns for the taxable year that includes the applicable asset acquisition and for all affected subsequent years to reflect the rules in §§ 1.338–11 and 1.338–11T(d) (including the applicable provisions in §§ 1.197–2(g)(5), 1.197–2T(g)(5)(ii), 1.381(c)(22)–1, 846 and 1060).

(3) * * *

* * * * *

(b) * * *

(9) Insurance Business.

(c) * * *

(5) Insurance Business.

* * * * *

(b) * * *

(9) *Insurance business.* The mere reinsurance of insurance contracts by an insurance company is not an applicable asset acquisition, even if it enables the reinsurer to establish a customer relationship with the owners of the reinsured contracts. However, a transfer of an insurance business is an applicable asset acquisition if the purchaser acquires significant business assets, in addition to insurance contracts, to which goodwill and going concern value could attach. For rules regarding the treatment of an applicable asset acquisition of an insurance business, see paragraph (c)(5) of this section.

(c) * * *

(5) *Insurance business.* If the trade or business transferred is an insurance business, the rules of this paragraph (c) are modified by the principles of § 1.338–11(a) through (d). However, in transactions governed by section 1060, such principles apply even if the transfer of the trade or business is effected in whole or in part through indemnity reinsurance rather than assumption reinsurance, and, for the insurer or reinsurer, an insurance contract (including an annuity or reinsurance contract) is a Class VI asset regardless of whether it is a section 197 intangible. In addition, the principles of § 1.338–11(f) through (h) apply if the transfer occurs in connection with the complete liquidation of the transferor.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

■ **Par. 18.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 19.** In § 602.101, paragraph (b) is amended by revising the entry for ''1.1060–1'' and adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.338–11T	1545–1990

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.338(i)–1	1545–1990
* * * * *	
1.381(c)(22)–1	1545–1990
* * * * *	
1.1060–1	1545–1658 1545–1990
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 7, 2006.

Eric Solomon,

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

[FR Doc. 06–3320 Filed 4–7–06; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2004

RIN 3095–AB34

National Industrial Security Program Directive No. 1

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA), is publishing this Directive pursuant to section 102(b)(1) of Executive Order 12829, as amended, relating to the National Industrial Security Program. This order establishes a National Industrial Security Program (NISP) to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. Redundant, overlapping, or unnecessary requirements impede those interests. Therefore, the NISP serves as the single, integrated, cohesive industrial security program to protect classified information and to preserve our Nation's economic and technological interests. This Directive sets forth guidance to agencies to set uniform standards throughout the NISP that promote these objectives.

DATED: *Effective Date:* May 10, 2006.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Director, ISOO, at 202–357–5250.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the January 27, 2006, **Federal Register** (71 FR 4541) for a 45-day public comment period. NARA received no comments on the proposed rule. The final rule is published without change.

This final rule is being issued pursuant to the provisions of section 102(b)(1) of Executive Order 12829, January 6, 2003 (58 FR 3479), as amended by Executive Order 12885, December 14, 1993, (58 FR 65863). The purpose of this Directive is to assist in implementing the Order; users of the Directive shall refer concurrently to that Order for guidance. As of November 17, 1995, ISOO became a part of NARA. The drafting, coordination, and issuance of this Directive fulfills one of the responsibilities of the implementation delegated to the ISOO Director. ISOO maintains oversight over Executive Order 12958, as amended, and policy oversight over Executive Order 12829, as amended. Nothing in this directive shall be construed to supersede the authority of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), or the authority of the Director of Central Intelligence under the National Security Act of 1947, as amended, or Executive Order No. 12333 of December 8, 1981, or the authority of the Director of National Intelligence under the Intelligence Reform and Terrorism Prevention Act of 2004. Requirements of the latter Act will necessitate additional future changes to Executive Order 12829 and this implementing Directive. The interpretive guidance contained in this rule will assist agencies in implementing Executive Order 12829, as amended.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. The rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies.

List of Subjects in 32 CFR Part 2004

Classified information.

■ 1. For the reasons set forth in the preamble, NARA amends Title 32 of the Code of Federal Regulations to add part 2004 as follows:

PART 2004—NATIONAL INDUSTRIAL SECURITY PROGRAM DIRECTIVE NO. 1

Subpart A—Implementation and Oversight

Sec.
2004.10 Responsibilities of the Director, Information Security Oversight Office (ISOO) [102(b)].
2004.11 Agency Implementing Regulations, Internal Rules, or Guidelines [102(b)(3)].
2004.12 Reviews by ISOO [102(b)(4)].

Subpart B—Operations

2004.20 National Industrial Security Program Operating Manual (NISPOM) [201(a)].
2004.21 Protection of Classified Information [201(e)].
2004.22 Operational Responsibilities [202(a)].
2004.23 Cost Reports [203(d)].
2004.24 Definitions.

Authority: Section 102(b)(1) of Executive Order 12829, January 6, 2003, 58 FR 3479, as amended by Executive Order 12885, December 14, 1993, 58 FR 65863.

Subpart A—Implementation and Oversight

§ 2004.10 Responsibilities of the Director, Information Security Oversight Office (ISOO) [102(b)].[1]

The Director ISOO shall:

(a) Implement EO 12829, as amended.

(b) Ensure that the NISP is operated as a single, integrated program across the Executive Branch of the Federal Government; i.e., that the Executive Branch departments and agencies adhere to NISP principles.

(c) Ensure that each contractor's implementation of the NISP is overseen by a single Cognizant Security Authority (CSA), based on a preponderance of classified contracts per agreement by the CSAs.

(d) Ensure that all Executive Branch departments and agencies that contract for classified work have included the Security Requirements clause, 52.204–2, from the Federal Acquisition Regulation (FAR), or an equivalent clause, in such contract.

(e) Ensure that those Executive Branch departments and agencies for which the Department of Defense (DoD) serves as the CSA have entered into agreements with the DoD that establish the terms of the Secretary's responsibilities on behalf of those agency heads.

§ 2004.11 Agency Implementing Regulations, Internal Rules, or Guidelines [102(b)(3)].

(a) *Reviews and Updates.* All implementing regulations, internal

[1] Bracketed references pertain to related sections of Executive Order 12829, as amended by E.O. 12885.

rules, or guidelines that pertain to the NISP shall be reviewed and updated by the originating agency, as circumstances require. If a change in national policy necessitates a change in agency implementing regulations, internal rules, or guidelines that pertain to the NISP, the agency shall promptly issue revisions.

(b) *Reviews by ISOO.* The Director, ISOO, shall review agency implementing regulations, internal rules, or guidelines, as necessary, to ensure consistency with NISP policies and procedures. Such reviews should normally occur during routine oversight visits, when there is indication of a problem that comes to the attention of the Director, ISOO, or after a change in national policy that impacts such regulations, rules, or guidelines. The Director, ISOO, shall provide findings from such reviews to the responsible department or agency.

§ 2004.12 Reviews by ISOO [102(b)(4)].

The Director, ISOO, shall fulfill his monitoring role based, in part, on information received from NISP Policy Advisory Committee (NISPPAC) members, from on-site reviews that ISOO conducts under the authority of EO 12829, as amended, and from complaints and suggestions from persons within or outside the Government. Findings shall be reported to the responsible department or agency.

Subpart B—Operations

§ 2004.20 National Industrial Security Program Operating Manual (NISPOM) [201(a)].

(a) The NISPOM applies to release of classified information during all phases of the contracting process.

(b) As a general rule, procedures for safeguarding classified information by contractors and recommendations for changes shall be addressed through the NISPOM coordination process that shall be facilitated by the Executive Agent. The Executive Agent shall address NISPOM issues that surface from industry, Executive Branch departments and agencies, or the NISPPAC. When consensus cannot be achieved through the NISPOM coordination process, the issue shall be raised to the NSC for resolution.

§ 2004.21 Protection of Classified Information [201(e)].

Procedures for the safeguarding of classified information by contractors are promulgated in the NISPOM. DoD, as the Executive Agent, shall use standards applicable to agencies as the basis for the requirements, restrictions, and safeguards contained in the NISPOM; however, the NISPOM requirements may be designed to accommodate as necessary the unique circumstances of industry. Any issue pertaining to deviation of industry requirements in the NISPOM from the standards applicable to agencies shall be addressed through the NISPOM coordination process.

§ 2004.22 Operational Responsibilities [202(a)].

(a) *Designation of Cognizant Security Authority (CSA).* The CSA for a contractor shall be determined by the preponderance of classified contract activity per agreement by the CSAs. The responsible CSA shall conduct oversight inspections of contractor security programs and provide other support services to contractors as necessary to ensure compliance with the NISPOM and that contractors are protecting classified information as required. DoD, as Executive Agent, shall serve as the CSA for all Executive Branch departments and agencies that are not a designated CSA. As such, DoD shall:

(1) Provide training to industry to ensure that industry understands the responsibilities associated with protecting classified information.

(2) Validate the need for contractor access to classified information, shall establish a system to request personnel security investigations for contractor personnel, and shall ensure adequate funding for investigations of those contractors under Department of Defense cognizance.

(3) Maintain a system of eligibility and access determinations of contractor personnel.

(b) *General Responsibilities.* Executive Branch departments and agencies that issue contracts requiring industry to have access to classified information and are not a designated CSA shall:

(1) Include the Security Requirements clause, 52.204–2, from the FAR in such contracts;

(2) Incorporate a Contract Security Classification Specification (DD 254) into the contracts in accordance with the FAR subpart 4.4;

(3) Sign agreements with the Department of Defense as the Executive Agent for industrial security services; and,

(4) Ensure applicable department and agency personnel having NISP implementation responsibilities are provided appropriate education and training.

§ 2004.23 Cost Reports [203(d)].

(a) The Executive Branch departments and agencies shall provide information each year to the Director, ISOO, on the costs within the agency associated with implementation of the NISP for the previous year.

(b) The DoD as the Executive Agent shall develop a cost methodology in coordination with industry to collect the costs incurred by contractors of all Executive Branch departments and agencies to implement the NISP, and shall report those costs to the Director, ISOO, on an annual basis.

§ 2004.24 Definitions.

(a) ''Cognizant Security Agencies (CSAs)'' means the Executive Branch departments and agencies authorized in EO 12829, as amended, to establish industrial security programs: The Department of Defense, designated as the Executive Agent; the Department of Energy; the Nuclear Regulatory Commission; and the Central Intelligence Agency.

(b) ''Contractor'' means any industrial, education, commercial, or other entity, to include licensees or grantees that has been granted access to classified information. Contractor does not include individuals engaged under personal services contracts.

Dated: March 31, 2006.

J. William Leonard,

Director, Information Security Oversight Office.

Approved: March 31, 2006.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 06–3383 Filed 4–7–06; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AM31

Board of Veterans' Appeals: Rules of Practice: Public Availability of Board Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the Board of Veterans' Appeals (Board) Rules of Practice as relates to public availability of Board decisions, to set forth the current methods for archiving and retrieving Board decisions for public use. Due to advances in technology, Board decisions issued on or after January 1, 1992, are currently available in redacted form for public inspection and copying on Web sites that are accessible through the Internet. This is an improvement from the past practice

of archiving Board decisions in microfiche form with an accompanying index to facilitate public access to the decisions.

DATES: *Effective Date:* April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–565–5978.

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials by agencies of original jurisdiction of claims for veterans' benefits, as well as occasional cases of original jurisdiction. The Freedom of Information Act (FOIA) requires federal agencies to make available for public inspection and copying final opinions made in the adjudication of cases. 38 U.S.C. 552(a)(2)(A).

The regulation in effect until April 10, 2006 provided a system for indexing Board decisions to facilitate access to the contents of the decisions. The index (BVA Index I–01–1) was published quarterly in microfiche form with an annual cumulation, and was made available to the public for review at VA offices around the country. However, technological advances in information management rendered this system obsolete. In fact, the Board has not indexed Board decisions in microfiche form for many years.

Currently, redacted Board decisions (*i.e.*, decisions in which all personal identifiers except the Board-assigned docket number are removed) issued on or after January 1, 1992, are accessible to the public for inspection and copying on the Internet at *http://www.index.va.gov/search/va/bva.html*, as well as some commercial Web sites. The former indexing system for Board decisions was upgraded and replaced by a comprehensive word-searching system, by which the public may identify particular decisions issued. Redacted Board decisions are also available for public inspection and copying in the Board's Research Center.

In light of these improvements, we are revising Rule 1301(b) (38 CFR 20.1301(b)) of the Board's Rules of Practice to reflect current practice and procedure, and to allow flexibility in implementing future advances in technology and information management when necessary. We are adding a new section, designated as 38 CFR 20.1301(b)(1), which sets forth a general description of how the Board will fulfill its responsibility under FOIA to make available for public inspection and copying final opinions made in the adjudication of cases. Section 20.1301(b)(1) is crafted in general terms to encompass future advances in technology and information management, while setting forth the principles of popular accessibility and availability for public inspection and copying, as required by FOIA.

We are also revising some of the existing language in section 20.1301(b) to clarify that Board decisions issued prior to January 1, 1992, are archived and indexed in microfiche form. This section is designated as 38 CFR 20.1301(b)(2) and sets forth details regarding the indexing methods that are used to retrieve Board decisions issued prior to January 1, 1992. The regulation in effect until April 10, 2006 provided the address of a private company that previously prepared and maintained the BVA Index I–01–1. We removed this name and address and, as an alternative, direct the public to contact the Board's Research Center for further information on obtaining a copy of the index.

Administrative Procedure Act

This final rule concerns agency organization, procedure or practice and, pursuant to 5 U.S.C. 553, is exempt from notice and comment and delayed effective date requirements.

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.

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 affect 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 final rule and has concluded that it is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The Secretary hereby certifies that this final rule 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 final rule 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 rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Veterans.

Approved: March 9, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 20 as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

■ 2. In § 20.1301, revise paragraph (b) to read as follows:

§ 20.1301 Rule 1301. Disclosure of information.

* * * * *

(b) *Public availability of Board decisions.* (1) *Decisions issued on or after January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals on or after January 1, 1992, are electronically available for public inspection and copying on the Internet at *http://www.index.va.gov/search/va/bva.html.* All personal identifiers are redacted from the decisions prior to publication. Specific decisions may be

identified by a word and/or topic search, or by the Board docket number. Board decisions will continue to be provided in a widely-used format as future advances in technology occur.

(2) *Decisions issued prior to January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals prior to January 1, 1992, have been indexed to facilitate access to the contents of the decisions (BVA Index I–01–1). The index, which was published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. Information on obtaining a microfiche copy of the index is also available from the Board's Research Center. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written depends upon the age of the decision. Decisions archived prior to late 1989 have a number such as *82–07–0001.* Decisions archived at a later date have a number such as *BVA–90–12345.* This number must be used when requesting a paper copy of that decision. These requests must be directed to the Research Center (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(**Authority:** 5 U.S.C. 552(a)(2), 38 U.S.C. 501(a))

[FR Doc. 06–3413 Filed 4–7–06; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[EPA–HQ–OAR–2004–0025; FRL–8055–1]

Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the Disposal Regulations: Recertification Decision

AGENCY: Environmental Protection Agency.

ACTION: Final notice.

SUMMARY: With this notice, the Environmental Protection Agency (EPA) recertifies that the U.S. Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP) continues to comply with the ''Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic (TRU) Radioactive Waste.'' EPA initially certified that WIPP met applicable regulatory requirements on May 18, 1998, and the first shipment of waste was received at WIPP on March 26, 1999.

Today's action represents the first instance of EPA's periodic evaluation of WIPP's continued compliance with the disposal regulations and WIPP Compliance Criteria. The compliance criteria implement and interpret the disposal regulations specifically for WIPP. As directed by Congress in the WIPP Land Withdrawal Act (LWA), this ''recertification'' will occur five years after the WIPP's initial receipt of TRU waste (March 26, 1999), and every five years thereafter until the end of the decommissioning phase. For each recertification—including the one being announced with today's action—DOE must submit documentation of the site's continuing compliance with the disposal regulations to EPA for review. In accordance with the WIPP Compliance Criteria, documentation of continued compliance was made available in EPA's dockets, and the public was provided at least a 30-day period in which to submit comments. In addition, all recertification decisions must be announced in the **Federal Register**, as this first recertification is today. According to the WIPP LWA, Section 8(f), these periodic recertification determinations are not subject to rulemaking or judicial review.

Today's action is not a reconsideration of the decision to open WIPP. Rather, recertification is a process that evaluates changes at WIPP to determine if the facility continues to meet all the requirements of EPA's disposal regulations. The recertification process ensures that WIPP's continued compliance is demonstrated using the most accurate, up-to-date information available.

Today's recertification decision is based on a thorough review of information submitted by DOE, independent technical analyses, and public comments. The Agency has determined that DOE continues to meet all applicable requirements of the WIPP Compliance Criteria, and with this notice, recertifies the WIPP facility. This recertification decision does not otherwise amend or affect EPA's radioactive waste disposal regulations or the WIPP Compliance Criteria.

DATES: The effective date for the recertification was March 29, 2006.

FOR FURTHER INFORMATION CONTACT: Ray Lee or Sharon White, Radiation Protection Division, Center for Federal Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *lee.raymond@epa.gov* or *white.sharon@epa.gov.* Copies of the Compliance Application Review Documents (CARDs) supporting today's action and all other recertification-related documentation can be found in the Agency's electronic docket (Docket ID No. EPA–HQ–OAR–2004–0025), hard-copy Air Docket A–98–49, or on its WIPP Web site (*http://www.epa.gov/radiation/wipp*).

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I. General Information

A. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0025; FRL–8053–5. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at

the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in hard-copy form at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m., phone number: 505–885–0731; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester, phone number: 505–277–2003; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m., phone number: 505–476–9700. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

II. What Is WIPP?

The Waste Isolation Pilot Plant (WIPP) is a disposal system for transuranic (TRU) radioactive waste. Developed by the Department of Energy (DOE), WIPP is located near Carlsbad in southeastern New Mexico. At WIPP, radioactive waste is disposed of 2,150 feet underground in an ancient layer of salt which will eventually ''creep'' and encapsulate the waste. WIPP has a total capacity of 6.2 million cubic feet of waste.

Congress authorized the development and construction of WIPP in 1980 ''for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.'' [1] The waste which may be emplaced in the WIPP is limited to TRU radioactive waste generated by defense activities associated with nuclear weapons; no high-level waste or spent nuclear fuel from commercial power plants may be disposed of at the WIPP. TRU waste is defined as materials containing alpha-emitting radioisotopes, with half lives greater than twenty years and atomic numbers above 92, in concentrations greater than 100 nanocuries per gram of waste.[2]

Most TRU waste proposed for disposal at the WIPP consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons (or with the clean-up of weapons production facilities), *e.g.*, rags, equipment, tools, protective gear, and organic or inorganic sludges. Some TRU waste is mixed with hazardous chemicals. Some of the waste proposed for disposal at the WIPP is currently located at Federal facilities across the United States, including locations in Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

The WIPP LWA, passed initially by Congress in 1992 and amended in 1996, is the statute that provides EPA the authority to oversee and regulate the WIPP. (Prior to the passage of the WIPP LWA in 1992, DOE was self-regulating with respect to WIPP; that is, DOE was responsible for determining whether its own facility complied with applicable regulations for radioactive waste disposal.) The WIPP LWA delegated to EPA three main tasks, to be completed sequentially, for reaching an initial compliance certification decision. First, EPA was required to finalize general regulations which apply to all sites—except Yucca Mountain—for the disposal of highly radioactive waste.[3] These disposal regulations, located at Subparts B and C of 40 CFR Part 191, were published in the **Federal Register** in 1985 and 1993.[4]

Second, EPA was to develop criteria, by rulemaking, to implement and interpret the general radioactive waste disposal regulations specifically for the WIPP. In 1996, the Agency issued the WIPP Compliance Criteria, which are found at 40 CFR Part 194.[5]

Third, EPA was to review the information submitted by DOE and publish a certification decision.[6] The Agency issued its certification decision on May 18, 1998, as required by Section 8 of the WIPP LWA (63 FR 27354–27406).

A. 1998 Certification Decision

The WIPP LWA, as amended, required EPA to evaluate whether the WIPP site complied with EPA's standards for the disposal of radioactive waste. On May 18, 1998 (63 FR 27354–27406), EPA determined that the WIPP met the standards for radioactive waste disposal. This decision allowed the emplacement of radioactive waste in the WIPP to begin, provided that all other applicable health and safety standards, and other legal requirements, had been met. The first shipment of TRU waste was received at WIPP on March 26, 1999.

Although EPA determined that DOE met all of the applicable requirements of the WIPP Compliance Criteria in its original certification decision (63 FR 27354–27406; May 18, 1998), EPA also found that it was necessary for DOE to take additional steps to ensure that the measures actually implemented at the WIPP (and thus the circumstances expected to exist there) were consistent with DOE's Compliance Certification Application (CCA) and with the basis for EPA's compliance certification. To address these situations, EPA amended the WIPP Compliance Criteria, 40 CFR Part 194, and appended four explicit conditions to its certification of compliance for the WIPP.

Condition 1 of the certification applies to the panel closure system, which is intended, over the long-term, to block brine flow between waste panels in WIPP. In the CCA, DOE presented four options for the design of the panel closure system, but did not specify which one would be constructed at the WIPP facility. The Agency based its certification decision on DOE's use of the most robust design (referred to in the CCA as ''Option D''). The Agency found the Option D design to be adequate, but also determined that the use of a Salado mass concrete—using brine rather than fresh water—would produce concrete seal permeabilities in the repository more consistent with the values used in DOE's performance assessment. Therefore, Condition 1 of EPA's certification required DOE to implement the Option D panel closure system at WIPP, with Salado mass concrete replacing fresh water concrete.

Conditions 2 and 3 of the final certification decision apply to activities conducted at waste generator sites that produce TRU waste proposed for disposal at WIPP. The WIPP Compliance Criteria (§§ 194.22 and 194.24) require DOE to have, in place, a system of controls to measure and track important waste components, and to apply quality assurance (QA)

[1] Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, Pub. L. 96–164, section 213.

[2] WIPP Land Withdrawal Act, Pub. L. 102–579, section 2(18), as amended by the 1996 WIPP LWA Amendments, Pub. L. 104–201.

[3] WIPP LWA, section 8(b).

[4] 50 FR 38066–38089 (September 19, 1985) and 58 FR 66398–66416 (December 20, 1993).

[5] 61 FR 5224–5245 (February 9, 1996).

[6] WIPP LWA, section 8(d).

programs to waste characterization activities. At the time of EPA's proposed certification decision, the Los Alamos National Laboratory (LANL) was the only site to demonstrate the execution of the required QA programs and the implementation of the required system of controls. Therefore, EPA's certification constituted final approval under the WIPP LWA for DOE to ship waste for disposal at the WIPP only from LANL, and only for retrievably-stored (legacy) debris waste at LANL for which EPA had inspected and approved the applicable system of controls.

Before other waste can be shipped for disposal at WIPP, Conditions 2 and 3 state that EPA must separately approve the QA programs for other generator sites (Condition 2) and the waste characterization system of controls for other waste streams (Condition 3). The approval process includes an opportunity for public comment, and an inspection or audit of the waste generator site by EPA. The Agency's approval of waste characterization systems of controls and QA programs are conveyed by letter from EPA to DOE. In response to public comments on these conditions, the process for EPA approvals for waste generator site programs were incorporated into the body of the WIPP Compliance Criteria, in § 194.8. EPA also recently made changes to the compliance criteria in July 2004 (69 FR 42571–42583). The new provisions provide equivalent or improved oversight and better prioritization of technical issues in EPA inspections to evaluate waste characterization activities at DOE WIPP waste generator sites. The new provisions also offer more direct public input into EPA's decisions about what waste can be disposed of at WIPP. The Agency continues to conduct independent inspections to evaluate a site's waste characterization capabilities, consistent with Conditions 2 and 3.

Condition the certification applies to passive institutional controls (PICs). The WIPP Compliance Criteria require DOE to use both records and physical markers to warn future societies about the location and contents of the disposal system, and thus to deter inadvertent intrusion into the WIPP (§ 194.43). In the CCA, DOE provided a design for a system of PICs, but stated that many aspects of the design would not be finalized for many years (even up to 100) after closure. The PICs actually constructed and placed in the future must be consistent with the basis for EPA's certification decision. Therefore, Condition 4 of the certification requires DOE, prior to the submission of the final recertification application, to submit a revised schedule showing that markers and other measures will be implemented as soon as possible after closure of the WIPP. The Department also must provide additional documentation showing that it is feasible to construct markers and place records in archives as described in the CCA. After WIPP's closure, DOE will not be precluded from implementing additional PICs beyond those described in the application.

The complete record and basis for EPA's 1998 certification decision can be found in Air Docket A–93–02 in each of the dockets (in Washington, DC and the three locations in New Mexico) listed in Section 1.A.1 of this document.

III. With which regulations must WIPP comply?

A. Radioactive Waste Disposal Regulations & Compliance Criteria

WIPP must comply with EPA's radioactive waste disposal regulations, located at Subparts B and C of 40 CFR Part 191. These regulations limit the amount of radioactive material which may escape from a disposal facility, and protect individuals and ground water resources from dangerous levels of radioactive contamination. In addition, the Compliance Recertification Application (CRA) and other information submitted by DOE must meet the requirements of the WIPP Compliance Criteria at 40 CFR Part 194. The WIPP Compliance Criteria implement and interpret the general disposal regulations specifically for WIPP, and clarify the basis on which EPA's certification decision is made.

B. Compliance With Other Environmental Laws and Regulations

The WIPP must also comply with a number of other environmental and safety regulations in addition to EPA's disposal regulations—including, for example, the Solid Waste Disposal Act and EPA's environmental standards for the management and storage of radioactive waste. Various regulatory agencies are responsible for overseeing the enforcement of these Federal laws. For example, enforcement of some parts of the hazardous waste management regulations has been delegated to the State of New Mexico. The State is authorized by EPA to carry out the State's Resource Conservation and Recovery Act (RCRA) programs in lieu of the equivalent Federal programs. New Mexico's Environment Department reviews DOE's permit applications for treatment, storage, and disposal facilities for hazardous waste, under Subtitle C of RCRA. The State's authority for such actions as issuing a hazardous waste operating permit for the WIPP is in no way affected by EPA's recertification decision. It is the responsibility of the Secretary of Energy to report the WIPP's compliance with all applicable Federal laws pertaining to public health and the environment to EPA and the state of New Mexico.[7] Compliance with environmental or public health regulations other than EPA's disposal regulations and WIPP Compliance Criteria is not addressed by today's action.

IV. What has EPA's role been at WIPP since the 1998 Certification Decision?

A. Continuing Compliance

Since EPA's 1998 certification decision, the Agency has been monitoring and evaluating changes to the activities and conditions at WIPP. EPA monitors and ensures continuing compliance with EPA regulations through a variety of activities, including: Review and evaluation of DOE's annual change reports, monitoring of the conditions of compliance, site inspections and technical information exchanges.

At any time, DOE must report any planned or unplanned changes in activities pertaining to the disposal system that differ significantly from the most recent compliance application (§ 194.4(b)(3)). The Department must also report any releases of radioactive material from the disposal system (§ 194.4(b)(3)(iii), (v)). Finally, EPA may request additional information from DOE at any time (§ 194.4(b)(2)). This information allows EPA to monitor the performance of the disposal system and evaluate whether the certification must be modified, suspended, or revoked to prevent or quickly reverse any potential danger to public health and the environment.

B. Annual Change Reports

Under § 194.4(b) DOE was required to submit a report of any changes to the conditions and activities at WIPP within six months of the 1998 certification decision and annually thereafter. DOE met this requirement by submitting the first change report in November 1998 and annually thereafter.

Since 1998, DOE's annual change reports have reflected the progress of quality assurance and waste characterization inspections, minor changes to DOE documents, information on monitoring activities, and any additional EPA approvals for changes in

[7] WIPP LWA, sections 7(b)(3) and 9.

activities and conditions. All correspondence and approvals regarding the annual change reports can be found in EPA's Air Docket A–98–49, Categories II–B2 and II–B3.

C. Monitoring the Conditions of Compliance

As discussed previously, Condition 1 of the WIPP certification requires DOE to implement the Option D panel closure system at WIPP, with Salado mass concrete used in place of fresh water concrete. Since the 1998 certification decision, DOE has indicated that they would like to change the design of the Option D panel closure system selected by EPA (Air Docket A–98–49, Item II–B3–19). At the same time, EPA chose to defer review of a new panel closure design until after we issue the first recertification decision (Air Docket A–98–49, Item II–B3–42).

In November 2002, DOE requested permission to install only the explosion isolation portion of the Option D panel closure design until EPA and NMED can render their respective final decisions on DOE's request to approve a new design for the WIPP panel closure system. In December 2002, EPA approved DOE's request to install only the explosion wall and to extend the panel closure schedule until a new design is approved (Air Docket A–98–49, Item II–B3–44). As of March 2006, DOE has installed the isolation explosion wall for Panels 1 and 2. EPA expects DOE to re-submit a new panel closure design soon after this recertification decision.

Since 1998, the Agency has conducted numerous audits and inspections at waste generator sites in order to implement Conditions 2 and 3 of the compliance certification. Notices announcing EPA inspections or audits to evaluate implementation of QA and waste characterization (WC) requirements at waste generator facilities were published in the **Federal Register** and also announced on EPA's WIPP Web site (*http://www.epa.gov/radiation/wipp*) and WIPP e-mail listserv. The public has had the opportunity to submit written comments on the waste characterization and QA program plans submitted by DOE in the past, and based on the newly-revised WIPP Compliance Criteria, are now able to submit comments on EPA's proposed waste characterization approvals (See 69 FR 42571–42583). As noted above, EPA's decisions on whether to approve waste generator QA program plans and waste characterization systems of controls—and thus, to allow shipment of specific waste streams for disposal at WIPP—are conveyed by a letter from EPA to DOE. The procedures for EPA's approval are incorporated in the amended WIPP Compliance Criteria in § 194.8.

Since 1998, EPA has audited and approved the QA programs at Carlsbad Field Office (CBFO), Washington TRU Solutions (WTS), Sandia National Laboratory (SNL), and at 11 other DOE organizations. Following the initial approval of a QA program, EPA conducts follow-up audits to ensure continued compliance with EPA's QA requirements. EPA's main focus for QA programs has been the demonstration of operational independence, qualification, and authority of the QA program at each location.

EPA has approved waste characterization (WC) activities at eight waste generator sites since 1998, including Idaho National Laboratory, Hanford, Rocky Flats Environmental Technology Site, Savannah River Site, and the Nevada Test Site. EPA inspects waste generator sites to ensure that waste is being characterized and tracked according to EPA requirements. EPA's WC inspections focus on the personnel, procedures and equipment involved in WC. A record of EPA's WC and QA correspondences and approvals can be found in Air Docket A–98–49, Categories II–A1 and II–A4.

EPA will evaluate DOE's compliance with Condition 4 of the certification when DOE submits a revised schedule and additional documentation regarding the implementation of PICs. This documentation must be provided to EPA no later than the final recertification application. Once received, the information will be placed in EPA's public dockets, and the Agency will evaluate the adequacy of the documentation. During the operational period when waste is being emplaced in WIPP (and before the site has been sealed and decommissioned), EPA will verify that specific actions identified by DOE in the CCA, CRA, and supplementary information (and in any additional documentation submitted in accordance with Condition 4) are being taken to test and implement passive institutional controls.

D. Inspections and Technical Exchanges

The WIPP Compliance Criteria provide EPA the authority to conduct inspections of activities at the WIPP and at all off-site facilities which provide information included in certification applications (§ 194.21). Since 1998, the Agency conducted periodic inspections to verify the adequacy of information relevant to certification applications. EPA has conducted annual inspections at the WIPP site to review and ensure that the monitoring program meets the requirements of § 194.42. EPA has also inspected the emplacement and tracking of waste in the repository. The Agency's inspection reports can be found in Air Docket A–98–49, Categories II–A1 and II–A4.

EPA and DOE held numerous technical exchanges since the 1998 certification decision. At these exchanges, EPA and DOE discussed preparations for recertification, activity schedules, changes that may be requested by DOE, and other technical issues. The materials distributed at these meetings can be found in EPA Air Docket A–98–49, Category II–B3.

V. What is EPA's Recertification Decision?

EPA recertifies that DOE's WIPP continues to comply with the requirements of Subparts B and C of 40 CFR Part 191. The following information describes EPA's determination of compliance with each of the WIPP Compliance Criteria specified by 40 CFR Part 194.

A. What information did the Agency examine to make its final decision?

40 CFR part 194 sets out those elements which the Agency requires to be in any complete compliance application. In general, compliance applications must include information relevant to demonstrating compliance with each of the individual sections of 40 CFR Part 194 to determine if the WIPP will comply with the Agency's radioactive waste disposal regulations at 40 CFR Part 191, Subparts B and C. The Agency published the ''Compliance Application Guidance for the Waste Isolation Pilot Plant: A Companion Guide to 40 CFR Part 194'' (CAG) which provided detailed guidance on the submission of a complete compliance application (EPA Pub. No. 402–R–95–014, Air Docket A–93–02, Item II–B2–29).[8]

To make its decision, EPA evaluated basic information about the WIPP site and disposal system design, as well as information which addressed all the provisions of the compliance criteria. As required by § 194.15(a), DOE's recertification application updated the previous compliance application with sufficient information for the Agency to determine whether or not WIPP

[8] Section 194.11 provides that EPA's certification evaluation would not begin until EPA notified DOE of its receipt of a ''complete'' compliance application. This ensures that the full one-year period for EPA's review, as provided by the WIPP LWA, shall be devoted to substantive, meaningful review of the application (61 FR 5226).

continues to be in compliance with the disposal regulations.

The first step in recertification is termed the ''completeness determination.'' ''Completeness'' is a key, administrative step that EPA uses to determine that the CRA addresses all the required regulatory elements and provides sufficient information for EPA to conduct a full, technical review. Following receipt of the CRA on March 26, 2004, EPA began to identify areas of the application where additional information was needed. A May 24, 2004, **Federal Register** notice announced availability of the CRA and opened the official public comment period on the CRA. Over the course of the following 19 months, the Agency submitted six official letters (May 20, 2004; July 12, 2004; September 2, 2004; December 17, 2004; February 3, 2005; and March 4, 2005) to DOE requesting additional information regarding the CRA. The Department responded with a series of 11 letters (July 15, 2004; August 16, 2004; September 7, 2004; September 29, 2004; October 20, 2004; November 1, 2004; December 17, 2004; January 19, 2005; March 21, 2005; May 11, 2005; and September 20, 2005) submitting all of the requested supplemental information to EPA. On September 29, 2005, EPA announced that DOE's recertification application was complete (70 FR 61107–61111).

EPA also relied on materials prepared by the Agency or submitted by DOE in response to EPA requests for specific additional information necessary to address technical sufficiency concerns. For example, EPA directed DOE to conduct a revised performance assessment—referred to as the performance assessment baseline calculation (PABC)—to address technical issues. All requests for additional technical information and the DOE responses are located in EPA's Air Docket A–98–49, Categories II–B2 and II–B3. Though not an official rulemaking, the Agency also considered public comments related to recertification, concerning both completeness and technical issues.

In summary, EPA's recertification decision is based on the entire record available to the Agency, which is located in EPA's Air Docket A–98–49 (FMDS Docket ID No. EPA–HQ–OAR–2004–0025). The record consists of the complete CRA, supplementary information submitted by DOE in response to EPA requests for additional information, technical reports generated by EPA, EPA audit and inspection reports, and public comments submitted on EPA's proposed recertification decision during the public comment period. (Most of these documents can also be found on EPA's WIPP Web site at *http://www.epa.gov/radiation/wipp*).

EPA's technical review evaluated compliance of the CRA with each section of the WIPP Compliance Criteria. The Agency focused its review on areas of change relative to the original certification decision as identified by DOE, in order to ensure that the effects of the changes have been addressed. As with its original certification decision, EPA's evaluation of DOE's demonstration of continuing compliance with the disposal regulations is based on the principle of reasonable expectation. 40 CFR 191.13(b) states, ''proof of the future performance of a disposal system is not to be had in the ordinary sense of the word in situations that deal with much shorter time frames. Instead, what is required is a reasonable expectation, on the basis of the record before the implementing agency, that compliance with § 191.13 (a) will be achieved.'' As discussed in 40 CFR Part 191, and applied to the 1998 certification decision, reasonable expectation is used because of the long time period involved and the nature of the events and processes at radioactive waste disposal facilities. There are inevitable and substantial uncertainties in projecting disposal system performance over long time periods. EPA applies reasonable expectation to the evaluation of both quantitative (*i.e.,* performance assessment) and qualitative (*i.e.,* assurance requirements) aspects of any compliance application.

B. Content of the Compliance Recertification Application (§§ 194.14 and 194.15)

According to § 194.14, any compliance application must include, at a minimum, basic information about the WIPP site and disposal system design. This section focuses on the geology, hydrology, hydrogeology, and geochemistry of the WIPP disposal system. A compliance application must also include information on WIPP materials of construction, standards applied to design and construction, background radiation in air, soil, and water, as well as past and current climatological and meteorological conditions. Section 194.15 states that recertification applications shall update this information to provide sufficient information for EPA to determine whether or not WIPP continues to be in compliance with the disposal regulations.

In Chapter 1 of the CRA, DOE identified changes to the disposal system since the 1998 certification decision. DOE correctly reviewed changes that were approved by EPA between the 1998 certification decision and the submission of the CRA. Changes included facility design changes such as the early closure of Panel 1, moving the repository horizon up 2.4 meters to clay seam G, and reducing the amount of magnesium oxide (MgO). EPA's evaluation and approval of these changes can be obtained from Air Docket A–98–49, Category II–B3.

The CRA also identified several changes to technical information relevant to §§ 194.14 and 194.15. The technical changes initiated by DOE or directed by EPA include: increased drilling rate, updated understanding of Culebra transmissivity and new transmissivity field calculations, new monitoring data including Culebra water levels, modified gas generation rate, updated actinide solubility and actinide solubility uncertainty values, and an increase in the uranium (+VI) solubility. Items related to the waste inventory were also updated: inclusion of supercompacted waste from Idaho National Laboratory (INL), new estimate of radionuclides, and DOE's use of pipe overpacks and ten-drum overpacks storage containers.

Although EPA considers these updates important to the current understanding of the disposal system, EPA determined that the changes, both individually and collectively, do not have a significant impact on the performance of the disposal system. EPA's Compliance Application Review Documents (CARDs) and Technical Support Documents (TSDs) thoroughly document EPA's review of the changes in DOE's compliance application. Today's notice summarizes the most important of these changes.

Culebra Dolomite: The Culebra Dolomite is considered by DOE to be the prime pathway for long-term radionuclide transport in ground water. As part of the required monitoring program, DOE has identified that the water levels in the Culebra have continued to fluctuate and generally increase, for unknown reasons. DOE hypothesizes that human influences, such as potash mining and petroleum production, may be responsible. DOE concluded that these human influences would be short-lived compared to the 10,000-year regulatory time period, and that effects on water levels are captured in the current performance assessment (PA). The CRA used water levels that were measured in 2000. These showed a change in water levels across the site since the CCA. The hydraulic gradient, or driving force across the site, is less

for the CRA than the CCA, increasing estimated radionuclide travel times.

DOE used the Culebra hydrologic data in combination with new geologic information and new modeling software to develop transmissivity fields for the PA modeling. The approach DOE used was based on generally accepted approaches, which EPA considers as adequate. The new CRA geologic information provides better understanding of broad transmissivity changes than in the CCA, but it still lacks prediction power for transmissivity at specific points. EPA's review is discussed more thoroughly in the Performance Assessment Baseline Calculation (PABC) Technical Support Document (TSD) (Air Docket A–98–49, Item II–B1–16).

Chemistry changes: During the completeness review, EPA reviewed PA issues related to chemistry and identified several areas where DOE needed to further update or correct information. First, EPA required DOE to change the solubility of uranium (+VI) to a fixed value of 1×10^{-3} M based on experimental data that has become available since the CCA. Second, EPA required DOE to update the actinide solubility uncertainty range based on the fracture matrix transport (FMT) database and currently available experimental solubility data. Third, EPA required DOE to assume that microbial degradation would occur in 100% of the vectors because of new data on microbial survival in extreme environments. Prior to the PABC, DOE requested to update the gas generation rates used in PA calculations with results from the gas generation experiments which indicated a two-stage rate that was faster initially, but slower after several years. EPA agreed to the change based on new experimental data, which is discussed and documented in its TSDs (Air Docket A–98–49, Items II–B1–3 and II–B1–16).

Inventory changes: DOE updated the CCA inventory with data calls to the waste generator sites, in a process similar to the one used for the CCA. The waste inventory numbers have changed since the CCA because the waste generator sites have an improved understanding of the waste that is in storage. As DOE characterizes more waste, EPA expects the estimates to continue to change. EPA reviewed the information in the inventory, conducted several waste generator site visits, conducted corroborating decay calculations and determined that DOE's process is adequate. DOE's supplemental waste inventory documentation provided this information (Air Docket A–98–49, Category II–B2; *see* also CRA CARD 24).

In conclusion, EPA finds that DOE has adequately characterized and assessed the site characteristics for the purposes of the PA and has demonstrated continued compliance with §§ 194.14 and 194.15.

In addition to the technical changes identified by DOE and EPA, the Agency received comments regarding the geology surrounding the WIPP site. Some stakeholders commented that the recertification application does not properly characterize the shallow geology around WIPP. The stakeholders believe that karst features are prevalent in the vicinity of WIPP. Karst is a type of topography in which there are numerous sinkholes and large voids, such as caves. Karst is caused when soluble rock dissolves. Karst may form when rainwater reacts with carbon dioxide from the air, forms carbonic acid, and seeps through the soil into the subsurface rock. Soluble rock includes limestone and evaporite rocks, such as halite (salt) and gypsum. If substantial and abundant karst features were present at WIPP, they could increase the speed at which releases of radionuclides travel away from the repository through the subsurface to the accessible environment.

In the 1998 certification decision, EPA reviewed existing information to understand the issue of karst around the WIPP site. As a result of that review, EPA concluded that, although it is possible that dissolution has occurred in the vicinity of the WIPP site sometime in the past (*e.g.*, Nash Draw was formed ~500,000 years ago), dissolution is not an ongoing, pervasive process at the WIPP site. Therefore, karst feature development would not impact the containment capabilities of the WIPP for at least the 10,000-year regulatory period (Air Docket A–93–02, Item III–B–2, CCA CARD 14).

Following the 1998 certification decision, several groups challenged EPA's decision in the United States Court of Appeals for the District of Columbia Circuit (No. 98–1322). One of the issues in this lawsuit was EPA's conclusions regarding karst at the WIPP site. The petitioners argued that EPA denied and ignored evidence of karst features at WIPP, and failed to address public comments regarding karst. On June 28, 1999, the U.S. Court of Appeals upheld all aspects of EPA's 1998 certification decision, including EPA's conclusion that karst is not a feature that will likely impact the containment capabilities of the WIPP.

In comments to EPA on the CRA, some stakeholders continue to assert that the geologic characterization of the subsurface surrounding the WIPP repository does not adequately identify the presence of karst. As a result of these concerns, EPA agreed to evaluate any new information on the potential of karst at WIPP and the possible impacts of the long-term containment of waste for WIPP recertification.

For recertification, EPA conducted a thorough review of the geologic and hydrologic information related to karst. Most of the information was reviewed prior to the 1998 certification decision. In addition, DOE had collected and analyzed additional data since the submission of the CCA. Certain stakeholders also identified additional documentation (*e.g.*, the ''Hill report''—Air Docket A–98–49, Item II–B3–95) that they wanted EPA to review and consider.

As part of this effort, EPA made a site visit to re-examine the evidence of karst around the WIPP site. During the site visit, EPA searched for karst indicators such as sinkholes, evidence of large-scale water exchange underground, or springs in the vicinity of WIPP. EPA found no evidence of these features at the WIPP site.

EPA prepared a technical support document (TSD) that discusses EPA's in-depth review of the karst issue for recertification (Air Docket A–98–49, Item II–B1–15). Our review again concludes as follows: The WIPP site does not exhibit evidence of karst; it is highly unlikely that reactive water could reach and dissolve the Rustler dolomites; and the hydrologic regime at WIPP is adequately modeled without modeling karst features. EPA is convinced that its 1998 conclusion is still valid after this CRA review.

The Agency also requested that DOE/SNL conduct a separate analysis of the potential for karst and address some general and specific issues raised by stakeholders. The major issues reviewed in the SNL report were: Insoluble residues, negative gravity anomalies, specific well results, water in the exhaust shaft, and recharge and discharge issues. DOE's report reaffirmed the previous analysis demonstrating that pervasive karst processes have been active outside the WIPP site but not directly at WIPP. Additional information on this topic is also found in EPA's CRA Compliance Application Review Document (CARD) 15. (CARDs contain the detailed technical rationale for EPA's recertification decision and are found in Air Docket A–98–49, Item V–B2–1).

C. Performance Assessment: Modeling and Containment Requirements (§§ 194.14, 194.15, 194.23, 194.31 Through 194.34)

The disposal regulations at 40 CFR Part 191 include requirements for containment of radionuclides. The containment requirements at 40 CFR 191.13 specify that releases of radionuclides to the accessible environment must be unlikely to exceed specific limits for 10,000 years after disposal. At WIPP, the specific release limits are based on the amount of waste in the repository at the time of closure (§ 194.31). Assessment of the likelihood that WIPP will meet these release limits is conducted through the use of a process known as performance assessment, or PA.

The WIPP PA process culminates in a series of computer simulations that attempts to describe the physical attributes of the disposal system (site characteristics, waste forms and quantities, engineered features) in a manner that captures the behaviors and interactions among its various components. The computer simulations require the use of conceptual models that represent physical attributes of the repository based on features, events, and processes that may impact the disposal system. The conceptual models are then expressed as mathematical relationships, which are solved with iterative numerical models, which are then translated into computer codes. (§ 194.23) The results of the simulations are intended to show estimated releases of radioactive materials from the disposal system to the accessible environment over the 10,000-year regulatory time frame.

The PA process must consider both natural and man-made processes and events which have an effect on the disposal system (§§ 194.32 and 194.33). The PA must consider all reasonably probable release mechanisms from the disposal system and must be structured and conducted in a way that demonstrates an adequate understanding of the physical conditions in the disposal system. The PA must evaluate potential releases from both human-initiated activities (*e.g.*, via drilling intrusions) and natural processes (*e.g.*, dissolution) that may occur independently of human activities. DOE must justify the omission of events and processes that could occur but are not included in the final PA calculations.

The results of the PA are used to demonstrate compliance with the containment requirements in 40 CFR 191.13. The containment requirements are expressed in terms of ''normalized releases.'' The results of the PA are assembled into complementary cumulative distribution functions (CCDFs) which indicate the probability of exceeding various levels of normalized releases. (§ 194.34)

To demonstrate continued compliance with the disposal regulations, DOE submitted a new PA as part of the recertification application. The new PA incorporated changes to a few conceptual models and some parameter values. DOE made modifications to the PA computer codes and parameter values after the original CCA. EPA monitored and reviewed these changes, as summarized below.

DOE modified four conceptual models after the original CCA: Disposal System Geometry, Repository Fluid Flow, Disturbed Rock Zone, and the Spallings conceptual model. The first three conceptual models were changed to incorporate the EPA mandated Option D panel closure system (CCA Condition 1). The new Spallings conceptual model was developed to account for certain deficiencies identified by the CCA peer review panel.

DOE updated its analysis of features, events and processes (FEPs) that could impact WIPP. This update of FEPs did not result in any changes to the scenarios used in the CRA PA. The CRA PA included calculations of the same scenarios as the original CCA PA: (1) The undisturbed scenario, where the repository is not impacted by human activities, and three drilling scenarios, (2) the E1 Scenario, where one or more boreholes penetrate a Castile brine reservoir and also intersect a repository waste panel, (3) the E2 Scenario, where one or more boreholes intersect a repository waste panel but not the brine reservoir, and (4) the E1E2 Scenario, where there are multiple penetrations of waste panels by boreholes of the E1 or E2 type, at many possible combinations of intrusions times, locations, and E1 or E2 drilling events.

For the CRA PA, DOE changed, updated, or corrected several parameter values that were used in the CCA PA (see CRA CARD 23 for details). Some of the changed parameters included: Waste inventory estimates, chemistry related parameters, actinide solubility values, disturbed rock zone values, retardation coefficient values, and drilling rate.

During EPA's review of the CRA PA, both EPA and DOE independently identified several technical changes and corrections that were necessary. These changes included using more complete and up-to-date waste inventory projections and correcting the implementation of calculational requirements that ensure appropriate statistical confidence in the PA results. In a March 2005 letter to DOE, EPA informed DOE that a new PA was required to demonstrate continued compliance for recertification (Air Docket A–98–49, Item II–B3–80). In the letter, EPA notified DOE that the new PA must be comprised of three full replicates (*i.e.*, 300 iterations of the models) according to the requirements of § 194.34(f). EPA also provided direction for changes and updates to other aspects of the PA, such as: Uranium (+VI) solubility, solubility uncertainty ranges, actinide solubilities, the probability of microbial degradation, revised gas generation rates, modification of the methanogenesis assumption, inclusion of waste packaging materials in the calculation of amounts cellulosic, plastic, and rubber materials, and corrections to the Culebra transmissivity fields.

In response to EPA's direction to conduct a new performance assessment for recertification, DOE produced the Performance Assessment Baseline Calculations (PABC). The Agency's review of the PABC found that DOE made all the changes required by EPA, and that the PABC demonstrates compliance with the containment requirements specified in 40 CFR Part 191. Although the results of the PABC indicate more potential releases from a human intrusion event, the releases remain well within the limits established by 40 CFR Part 191. EPA considers the PABC to be a sufficiently conservative and current representation of the knowledge of the WIPP and how it will interact with the surrounding environment. EPA also finds that DOE is in continued compliance with our 40 CFR 194.23 and 194.31 through 194.34 requirements. EPA found that DOE calculated the release limits properly (§ 194.31), adequately defined the scope of the PA (§ 194.32), included drilling scenarios as in the original CCA (§ 194.33), and calculated and presented the results of the CRA PA and PABC properly (§ 194.34). EPA analysis of compliance with the performance assessment related requirements of 40 CFR 194 may be found in its aforementioned TSD (Air Docket A–98–49, Item II–B1–16). Additional information on these issues can also be found in CRA CARDs 23 and 31–34.

EPA received public comments related to the CRA performance assessment. Commenters questioned the appropriateness of the drilling rate used in the PA, which is described below. They also raised concerns about the accuracy of WIPP waste inventory

parameters, which is discussed further in Section VI.B.4 of this document.

Public comments expressed concern that the drilling rate was underestimated in the CRA's performance assessment calculations given the amount of drilling that is currently taking place throughout the Delaware Basin. Commenters suggested that the drilling rate be doubled to demonstrate compliance. Although EPA determined that DOE appropriately calculated and implemented a drilling rate of 52.2 boreholes/km^2/year in compliance with § 194.33(b) for recertification, EPA requested that DOE evaluate the impacts of doubling the current drilling rate to respond to public concerns.

DOE performed the calculations for this analysis by assuming the drilling rate was increased to 105 boreholes per square kilometer per year for 10,000 years. The results of computer modeling showed that doubling the drilling rate would increase releases from the repository. However, this increase was relatively small and still well below EPA's regulatory release limits. (See CRA CARD 23)

DOE monitors natural resource related issues in the Delaware Basin annually. Through this monitoring, DOE identified that the drilling rate in the surrounding area increased from 46.8 to 52.2 boreholes per km^2 per 10,000 years since the original certification. EPA reviewed the documentation provided by DOE and has conducted annual inspections of DOE's information collection process and determined that DOE has done due diligence in keeping abreast of all drilling information. DOE also identified that the fluid injection rate per well is the same as that used for the original CCA. EPA finds that DOE adequately characterized drilling related issues.

D. General Requirements

1. Approval Process for Waste Shipment From Waste Generator Sites for Disposal at WIPP (§ 194.8)

EPA codified the requirements of § 194.8 at the time of the 1998 certification decision. Under these requirements, EPA evaluates site specific waste characterization and QA plans to determine that DOE can adequately characterize and track waste for disposal at WIPP.

Since 1998, EPA has conducted numerous inspections and approvals pursuant to § 194.8. For more information on activities related to § 194.8, please refer to CRA CARD 8.

2. Inspections (§ 194.21)

Section 194.21 provides EPA with the right to inspect all activities at WIPP and all activities located off-site which provide information in any compliance application. EPA did not exercise its authority under this section prior to the 1998 certification decision.

Since 1998, EPA has inspected WIPP site activities, waste generator sites, monitoring programs, and other activities. For all inspections, DOE provided EPA with access to facilities and records, and supported our inspection activities. Additional information on EPA's 194.21 inspection activities can be found in CRA CARD 21.

3. Quality Assurance (§ 194.22)

Section 194.22 establishes QA requirements for WIPP. QA is a process for enhancing the reliability of technical data and analyses underlying compliance applications. Section 194.22 requires DOE to demonstrate that a Nuclear Quality Assurance (NQA) program has been established and executed/implemented for items and activities that are important to the long-term isolation of transuranic waste. In the CRA, DOE extensively revised Chapter 5, Quality Assurance, to better match the structure of the NQA standards and to update information since the CCA.

EPA determined that the CRA provides adequate information to demonstrate the establishment of each of the applicable elements of the NQA standards. EPA also verified the continued proper implementation of the NQA Program during its CRA review and during previous audits conducted in accordance with § 194.22(e).

EPA's determination of compliance with § 194.22 can be found in CRA CARD 22.

4. Waste Characterization (§ 194.24)

Section 194.24, waste characterization, generally requires DOE to identify, quantify, and track the chemical, radiological and physical components of the waste destined for disposal at WIPP. In order to compile the waste inventory for recertification, DOE required data reporting and collection from the waste generator sites. Based on the WIPP LWA's timeline for recertification, DOE's cut-off date for including waste in the WIPP recertification inventory was September 30, 2002.

Descriptions of the chemical, radiological, and physical components of the waste were thoroughly documented in the CRA and supporting documents. This information was collected using similar methods as during the 1998 certification decision. DOE classified the wastes as emplaced, stored or projected (to-be-generated). DOE used the data from the WIPP Waste Information System (WWIS) to identify the characteristics of the waste that has been emplaced at WIPP since 1999. DOE listed the projected wastes in waste profile tables in the CRA (Appendix DATA, Attachment F). The projected wastes were categorized similarly to existing waste (*e.g.*, heterogeneous debris, filter material, soil).

Although DOE's recertification waste inventory was largely the same as the inventory evaluated for the 1998 certification decision, there were some changes. As of September 30, 2002, 7.7 $\times 10^3$ m^3 of contact-handled (CH) waste had been emplaced at WIPP. This volume was used in the PABC. DOE estimated the combination of emplaced, stored, and projected waste to be 145,000 m^3 versus the 112,000 m^3 estimated for the CCA. Although EPA approved DOE's general framework for the characterization of remote-handled (RH) waste on March 26, 2004 (Air Docket A–98–49, Item II–B2–21), RH has not yet been approved for disposal at WIPP. (The current projected volume of remote-handled waste at WIPP is greater than the 7,080 m^3 in the consent agreement with the State of New Mexico.) Despite the changes in the volume of CH and RH waste, the total number of curies projected for a full repository was reduced from 3.44 million curies in the CCA to 2.32 million curies in the CRA.

Some commenters noted that the recertification waste inventory clearly contains amounts of CH and RH waste that exceed the WIPP capacity. The Agency agrees that the inventory of RH does exceed the capacity of WIPP as it did in the CCA inventory; however, EPA does not consider this a problem in demonstrating compliance with the disposal regulations. EPA recognizes that the WIPP waste inventory is a dynamic projection of the waste that may or may not be disposed of at WIPP. The Agency's acceptance of a waste inventory is not an authorization to dispose of a particular waste at WIPP. Before any waste is disposed at WIPP, EPA seeks to ensure that the waste meets the waste acceptance criteria for WIPP and that DOE can characterize and track the waste. To demonstrate continuing compliance, the performance assessment reflects a repository that meets the capacity requirements for CH and RH wastes, as limited by the LWA and the consent agreement with the State of New Mexico.

During EPA's evaluation of the completeness of the CRA, EPA identified updates and additional information needs for the waste chemistry and waste inventory. For waste chemistry, EPA evaluated issues such as: The modified gas generation rate, actinide solubility and associated uncertainty values, and uranium (+VI) solubility. For more information on EPA's review of the waste chemistry, please refer to CRA CARDs 15, 23 and 24 and applicable TSDs (Air Docket A–98–49, Category II–B1).

As previously mentioned, EPA directed DOE to conduct a new performance assessment for recertification in March 2005 (Air Docket A–98–49, Item II–B3–80)—the PABC. For the PABC, EPA required DOE to update information on the waste inventory. In the PABC, DOE modified the CRA inventory to correct errors identified in the inventory, including modifying a CH waste stream from LANL that had RH characteristics, and correcting the amounts of a Hanford waste stream. DOE also included buried waste from INL.

EPA reviewed the CRA and supplemental information provided by DOE to determine whether they provided a sufficiently complete description of the chemical, radiological and physical composition of the emplaced, stored and projected wastes proposed for disposal in WIPP. The Agency also reviewed DOE's description of the approximate quantities of waste components (for both existing and projected wastes). EPA considered whether DOE's waste descriptions were of sufficient detail to enable EPA to conclude that DOE did not overlook any component that is present in TRU waste and has significant potential to influence releases of radionuclides.

The CRA did not identify any significant changes to DOE's waste characterization program in terms of measurement techniques, or quantification and tracking of waste components. Since the 1998 certification decision, EPA has conducted numerous inspections and approvals of generator site waste characterization programs to ensure compliance with §§ 194.22, 194.24, and 194.8. For a summary of EPA's waste characterization approvals, please refer to CRA CARD 8.

Public comments identified some wastes in the WIPP recertification inventory from the Hanford site in Washington State as high-level waste (HLW) and spent nuclear fuel (SNF), which are prohibited by the LWA from disposal at WIPP. The public commented that these wastes are not transuranic and should not be allowed in the WIPP waste inventory. According to public comments, EPA should not recertify WIPP or should exclude these wastes from the WIPP waste inventory. In a December 2005 letter to DOE, EPA requested additional information from DOE on the basis for considering these wastes as TRU waste instead of high-level waste.

DOE provided additional information on the Hanford Tank wastes that indicate that the Hanford Tank wastes will be treated and will eventually be able to meet the WIPP waste acceptance criteria (Air Docket A–98–49, Items II–B2–47 and II–B2–50). DOE stated that the tank wastes that may eventually be disposed of at WIPP are TRU waste or would be TRU waste. DOE also stated that the tank wastes have not been designated as HLW but have been managed as HLW, in accordance with their radioactive waste management procedures. DOE has committed to removing these wastes from the tanks and treating them, if needed, to meet the WIPP waste acceptance criteria. DOE also stated that the HLW fission products, precipitated salts and other solids will be removed, to the extent practicable, from the Hanford K-basin sludges. DOE stated that this waste would then be RH TRU waste and would meet the WIPP waste acceptance criteria.

DOE has provided information stating that the waste in question will be processed so that high-level waste will be removed, to the extent practical, in its preparation to meet the WIPP waste acceptance criteria. DOE may be able to show that this waste will have a TRU designation in the future. Thus, EPA allowed these wastes to be included in the performance assessment inventory for recertification. By doing so, DOE is demonstrating that with or without the Hanford Tank wastes, WIPP continues to comply with EPA's disposal regulations. The Agency believes that this is a conservative approach to the performance assessment of the WIPP repository because a broad inventory of waste is being considered. Inclusion in the performance assessment of the facility *does not* imply or otherwise provide for EPA's approval of such waste for disposal at WIPP.

EPA will not allow high-level waste or spent nuclear fuel to be shipped to WIPP. All wastes must meet the WIPP waste acceptance criteria and all requirements of EPA's waste characterization program, and EPA must officially notify DOE before they are allowed to ship waste to WIPP.

Public commenters stated that EPA must conduct a rulemaking regarding how the Agency will make determinations about what waste is high-level waste. EPA does not make waste determinations. DOE is responsible for making waste determinations, classifications, or reclassifications. In recognition of the public's concern about the possible future designation of the Hanford Tank wastes as TRU waste, DOE has proposed a process for developing or changing determinations for wastes such as the Hanford Tank wastes. In a February 2006 letter to EPA, DOE proposed a process (Air Docket A–98–49, Item II–B2–57) for the evaluation of tank waste that includes multiple opportunities for public input prior to the request to EPA for disposal at WIPP. The Agency considers it appropriate for DOE to conduct a public process that will determine the designation or classification of waste prior to requesting EPA's approval for disposal at WIPP.

The Agency currently has a process in place to ensure that waste disposed of at WIPP is TRU waste, as outlined in the requirements listed at 40 CFR 194.8, 194.22, and 194.24. The first step in this process is DOE's official request to dispose of TRU waste at WIPP from one of the waste generator sites. Once EPA receives all required information and documentation, the Agency then inspects waste characterization activities at a waste generator site to ensure that the site has the technical ability to adequately characterize and track TRU waste. Confirmation of waste designation is then completed through the waste characterization process at the site. EPA believes that it currently has an adequate process in place for evaluating any DOE requests for approval of waste for disposal at WIPP. The Agency does not believe that it is necessary to conduct a rulemaking for certain waste streams.

Waste that is not designated as TRU waste will not be considered for disposal at WIPP by EPA. The Agency agrees with commenters that the LWA does not provide for waste determinations to be made during recertification. Prior to disposal at WIPP, EPA will ensure that all wastes meet the legal and technical requirements for disposal. It is important to remember that just because waste is included in the WIPP waste inventory, it does not mean that DOE will necessarily seek to ship it to WIPP or that EPA will approve it for disposal at WIPP. Before any waste is approved to be shipped or disposed of at WIPP, EPA ensures that the waste meets the waste acceptance criteria for WIPP and that DOE can characterize and track the

waste. For more information on tank wastes and EPA's determination of compliance with § 194.24, please refer to CRA CARD 24.

5. Future State Assumptions (§ 194.25)

Section 194.25 stipulates that performance assessments and compliance assessments ''shall assume that characteristics of the future remain what they are at the time the compliance application is prepared, provided that such characteristics are not related to hydrogeologic, geologic or climatic conditions.'' Section 194.25 also requires DOE to provide documentation of the effects of potential changes of hydrogeologic, geological, and climatic conditions on the disposal system over the regulatory time frame. Section 194.25 focuses the PA and compliance assessments on the more predictable significant features of disposal system performance, instead of allowing unbounded speculation on all developments over the 10,000-year regulatory time frame.

For the CRA, DOE updated its assessment of the features, events and processes (FEPs) and subsequent scenarios that are used in performance and compliance assessments. As a result of this assessment, DOE eliminated sixteen FEPs using the Future State assumption (40 CFR 194.25 (a)), which assumes that these activities will not change in the future.

EPA assessed whether all FEPs and appropriate future state assumptions were identified and developed by DOE. EPA evaluated DOE's criteria to eliminate (screen out) inapplicable or irrelevant FEPs and associated assumptions. EPA also analyzed whether there were potential variations in DOE's assumed characteristics and determined whether the future state assumptions were in compliance with § 194.25(a).

EPA concludes that DOE adequately addressed the impacts of potential hydrogeologic, geologic and climate changes to the disposal system. The CRA includes all relevant elements of the performance assessment and compliance assessments and is consistent with the requirements of § 194.25. For more information regarding EPA's evaluation of compliance with this section, see CRA CARDs 25 and 32, and the corresponding TSD for FEPs (Air Docket A–98–49, Item II–B1–11).

6. Expert Judgement (§ 194.26)

The requirements of § 194.26 apply to expert judgment elicitation, which is a process for obtaining data directly from experts in response to a technical problem. Expert judgment may be used to support a compliance application, provided that it does not substitute for information that could reasonably be obtained through data collection or experimentation. EPA prohibits expert judgment from being used in place of experimental data, unless DOE can justify why the necessary experiments cannot be conducted. The 2004 CRA did not identify any expert judgement activities that were conducted since the 1998 certification decision. Therefore, EPA determines that DOE remains in compliance with the requirements of § 194.26. (For more information regarding EPA's evaluation of compliance with § 194.26, see CRA CARD 26.)

7. Peer Review (§ 194.27)

Section 194.27 of the WIPP Compliance Criteria requires DOE to conduct peer review evaluations related to conceptual models, waste characterization analyses, and a comparative study of engineered barriers. A peer review involves an independent group of experts who are convened to determine whether technical work was performed appropriately and in keeping with the intended purpose. The required peer reviews must be performed in accordance with the Nuclear Regulatory Commission's NUREG–1297, ''Peer Review for High-Level Nuclear Waste Repositories,'' which establishes guidelines for the conduct of a peer review exercise. DOE performed two conceptual model peer reviews between the submission of the CCA and CRA: the Salado Flow Conceptual Model Peer Review in March 2003 (see CRA Chapter 9, Section 9.3.1.3.4) and the Spalling Model Peer Review in September 2003 (see CRA Chapter 9, Section 9.3.1.3.5). EPA reviewed each of the conceptual model peer reviews as they were performed and all documents related to each peer review. EPA's review verified that the process DOE used to perform these peer reviews was compatible with NUREG–1297 requirements. Therefore, EPA determines that DOE remains in compliance with the requirements of § 194.27. (For more information regarding EPA's evaluation of compliance with § 194.27, see CRA CARD 27.)

E. Assurance Requirements (§§ 194.41–194.46)

The assurance requirements were included in the disposal regulations to compensate in a qualitative manner for the inherent uncertainties in projecting the behavior of natural and engineered components of the repository for many thousands of years (50 FR 38072). The assurance requirements included in the WIPP Compliance Criteria are active institutional controls (§ 194.41), monitoring (§ 194.42), passive institutional controls (§ 194.43), engineered barriers (§ 194.44), presence of resources (§ 194.45), and removal of waste (§ 194.46).

The CRA did not reflect any significant changes to demonstrating compliance with the assurance requirements. DOE appropriately updated the information for the assurance requirements in Chapter 7 of the CRA and accurately reflected EPA decisions since the 1998 certification decision, such as reduction in the safety factor for the magnesium oxide engineered barrier (194.44). EPA's specific evaluation of compliance with the assurance requirements can be found in CRA CARDs 41–46.

F. Individual and Groundwater Protection Requirements (§§ 194.51 Through 194.55)

Sections 194.51 through 194.55 of the compliance criteria implement the individual protection requirements of 40 CFR 191.15 and the ground-water protection requirements of Subpart C of 40 CFR Part 191 at WIPP. Assessment of the likelihood that the WIPP will meet the individual dose limits and radionuclide concentration limits for ground water is conducted through a process known as compliance assessment. Compliance assessment uses methods similar to those of the PA (for the containment requirements) but is required to address only undisturbed performance of the disposal system. That is, compliance assessment does not include human intrusion scenarios (*i.e.*, drilling or mining for resources). Compliance assessment can be considered a ''subset'' of performance assessment, since it considers only natural (undisturbed) conditions and past or near-future human activities (such as existing boreholes), but does not include the long-term future human activities that are addressed in the PA.

Sections 194.51 through 194.55 describe specific requirements for compliance with 40 CFR 191 requirements at WIPP. Section 194.51 states that the protected individual must be located at the location expected to receive the highest dose from any radioactive release. All potential exposure pathways are to be considered and compliance assessments (CAs) must assume that individuals consume 2 liters of water per day according to 40 CFR 194.52. 40 CFR 194.53 requires that all underground sources of drinking water be considered and that

connections to surface water be factored in any CA. In 40 CFR 194.54 potential processes and events are to be considered and selected in any CA and that existing boreholes or other drilling activities be considered. 40 CFR 194.55 also requires that the impact of uncertainty on any CA analysis and that committed effective dose to individuals be calculated. Radionuclide concentrations in underground sources of drinking water (USDWs) and dose equivalent received from USDWs must also be calculated.

In the CRA, DOE reevaluated each of the individual and ground water requirements. DOE updated parameters related to the individual and groundwater requirements for the undisturbed scenario, for example, changes in population and water use (water use increased from 282 gallons per person per day in the CCA to 305 in the CRA). In addition to updating information for the compliance assessment, as a result of water wells that have been drilled since the original CCA, DOE was able to confirm original water source assumptions (CRA Chapter 8.2). DOE did not conduct new detailed bounding dose calculations for the CRA because the releases predicted by the CRA performance assessment for the undisturbed scenario were lower than those used in the original CCA (CRA Chapter 8.0).

EPA reviewed DOE's CRA approach to compliance with 40 CFR 194.51 to 40 CFR 194.55. EPA verified that DOE's approach to addressing the individual and groundwater requirements was the same as the original CCA (CRA CARDs 51/52, 53, 54, 55 for details). EPA agrees with DOE's conclusion that the CRA PA results are lower than the original CCA and that the recalculation of doses was not necessary for the CRA (CRA Chapter 8.1.2.2). Because DOE was required to correct, update, and rerun the CRA PA, called the PABC, EPA reevaluated the impact of these new results on compliance with 40 CFR 194.51 to 40 CFR 194.55. EPA found the results of the PABC to be much like the CRA PA results—showing fewer releases for the undisturbed scenario than the original CCA. EPA finds DOE in continued compliance with 40 CFR 194.51–194.55 requirements.

VI. How has the public been involved in EPA's WIPP recertification activities?

A. Public Information

Since the 1998 certification decision, EPA has kept the public informed of our continuing compliance activities at WIPP and our preparations for recertification. EPA's main focus has been on distributing information via the EPA Web site, and WIPP–NEWS e-mail messages. In addition, EPA has published periodic WIPP Bulletins and kept the WIPP Information line up-to-date.

Throughout the recertification process, the Agency posted any new information or updates on its Web page. Many of our recertification documents (including DOE-submitted recertification materials, correspondence, **Federal Register** notices, outreach materials, hearings transcripts, as well as technical support documents) are available for review or download (in Adobe .pdf format) from the EPA Web site at *http://www.epa.gov/radiation/wipp.*

Since February 2004, EPA has sent out numerous announcements regarding the recertification schedule, availability of documents on the EPA WIPP Web site, and upcoming inspections at waste generator sites, as well as details for the Agency's July 2004 and June 2005 stakeholder meetings in New Mexico.

B. Stakeholder Meetings

As discussed in the WIPP LWA, the recertification process is not a rulemaking, therefore public hearings were not required. However, EPA held a series of public meetings in New Mexico in both July 2004 and June 2005 to provide information about the recertification process. In an effort to make these meetings as informative as possible to all attending parties, EPA listened to stakeholder input and concerns and tailored the meetings around the public as much as possible.

The first meetings were held from July 26–29, 2004, in Carlsbad, Albuquerque, and Santa Fe, New Mexico. The main purpose of these meetings was to discuss EPA's recertification process and timeline, as well as DOE's application and important changes at WIPP since its opening. The meetings featured presentations and poster sessions on specific WIPP technical issues and facilitated discussions. In response to stakeholder suggestions, DOE staff was also on hand to provide information and answer any stakeholder questions. Participants were encouraged to provide comments to EPA for our consideration during review of DOE's WIPP application.

The second public session was held on June 7, 2005, in Albuquerque, New Mexico. The main purpose of this meeting was to update the public on EPA's recertification schedule and provide more in-depth, technical information related to stakeholder questions and comments raised at the first series of meetings.

Summaries of EPA's stakeholder meetings are posted on the EPA Web site and in the dockets. Many of the issues raised by the public are identified in the meeting summaries and have been addressed by EPA in the Compliance Application Review Documents (CARDs) under the relevant section.

C. Public Comments on Recertification

EPA posted the recertification application on its Web site immediately following receipt. EPA announced receipt of the recertification application in the **Federal Register** on May 24, 2004. The notice also officially opened the public comment period on the recertification application.

For recertification, EPA sought public comments and input related to the changes in DOE's application that may have a potential impact on WIPP's ability to remain in compliance with EPA's disposal regulations.

The comment period on the recertification application closed 560 days after it opened, on December 5, 2005. This was 45 days after EPA's announcement in the **Federal Register** that the recertification application was complete.

EPA received four sets of written public comments during the public comment period. EPA considered significant comments from the written submissions and the stakeholder meetings in its evaluation of continuing compliance. EPA addresses these comments in CARDs that are relevant to each topic.

In addition to comments on specific sections of 40 CFR Part 194, EPA received comments on general issues. Some people commented on the content of the CRA throughout the recertification process. With EPA submitting numerous requests for additional information to DOE, commenters believed that the CRA was ''grossly flawed and incomplete,'' and thus, there was not adequate information for the public to review for comment in the allotted timeframe. Certain commenters also suggested that EPA and DOE should discuss the initial recertification process to ensure that the next application would be more timely and adequate.

EPA provided guidance to DOE on its expectations for the first recertification application (see correspondence in Air Docket A–98–49, Category II–B3). Upon submission of the CRA by DOE, the Agency found it necessary to request a considerable amount of supplemental information. Following receipt of the additional information, EPA promptly made the completeness determination.

Once the recertification application was deemed complete, EPA conducted its technical evaluation and issued the recertification decision within the six-month timeframe specified by the WIPP LWA.

EPA believes that future recertification processes should not be as lengthy. The Agency intends to meet with DOE to discuss and work on improving future recertification applications and processes.

VII. Where can I get more information about EPA's WIPP-related activities?

A. Supporting Documents for Recertification

The Compliance Application Review Documents, or CARDs, contain the detailed technical rationale for EPA's recertification decision. The CARDs discuss DOE's compliance with each of the individual requirements of the WIPP Compliance Criteria. The document discusses background information related to each section of the compliance criteria, restates the specific requirement, reviews the original 1998 certification decision, summarizes changes in the CRA, and describes EPA's compliance review and decision—most notably, any changes that have occurred since the original certification. The CARDs also list additional EPA technical support documents and any other references used by EPA in rendering its decision on compliance. All technical support documents and references are available in Air Docket A–98–49, with the exception of generally available references and those documents already maintained by DOE or its contractors in locations accessible to the public. For more detailed information on EPA's recertification decision, there are a number of technical support documents available. These are found in Air Docket A–98–49, Category II–B1.

B. WIPP Web Site, Listserv, Information Line, and Mailing List

For more general information and updates on EPA's WIPP activities, please visit our WIPP Internet homepage at *http://www.epa.gov/radiation/wipp.* A number of documents (including DOE-submitted recertification materials, letters, **Federal Register** notices, outreach materials, hearings transcripts, as well as technical support documents) are available for review or download (in Adobe .pdf format). The Agency's WIPP–NEWS service, which automatically e-mails subscribers with up-to-date WIPP announcements and information, is also available online. Any individuals wishing to subscribe to the listserv can join by visiting *https://lists.epa.gov/read/all_forums/subscribe?name=wipp-news* or by following the instructions listed on our WIPP Web site. Interested citizens may also contact EPA's toll-free WIPP Information Line at 1–800–331–WIPP. The information line offers a recorded message regarding current EPA WIPP activities, upcoming meetings, and publications. Callers are also offered the option of joining EPA's WIPP mailing list. Periodic mailings, including a WIPP Bulletin and fact sheets related to specific EPA activities, are sent to members of the mailing list (currently over 2,000 members).

C. Dockets

In accordance with 40 CFR 194.67, EPA maintains public dockets (FDMS Docket ID No. EPA–HQ–OAR–2004–0025 and Air Docket A–98–49) that contain all the information used to support the Agency's decision on recertification. The Agency established and maintains the formal rulemaking docket in Washington, DC, as well as informational dockets in three locations in the State of New Mexico (Carlsbad, Albuquerque, and Santa Fe). The docket consists of all relevant, significant information received to date from outside parties and all significant information considered by EPA in reaching a recertification decision regarding whether the WIPP facility continues to comply with the disposal regulations. EPA placed copies of the CRA in Category II–B2 of Air Docket A–98–49. The Agency placed supplementary information received from DOE in response to EPA requests in Category II–B2.

As part of the eRulemaking Initiative under the President's Management Agenda, the Federal Docket Management System (FDMS) was established in November 2005. FDMS was created to better serve the public by providing a single point of access to all federal rulemaking activities.

The final recertification decision and supporting documentation can be found in hard-copy form primarily in the following categories of Docket A–98–49: Category II–B1 (technical support documents, reports, etc.), Category II–B2 (DOE submissions and responses to EPA requests), Category II–B3 (EPA correspondence to DOE, public comments) and Category II–B4 (final recertification **Federal Register** notice, CARDs). Interested parties may also search online in FDMS Docket ID No. EPA–HQ–OAR–2004–0025 for any of these documents by title or key word(s). For more information related to EPA's public dockets (including locations and hours of operation), please refer to Section 1.A.1 of this document.

VIII. What happens next for WIPP? What is EPA's role in future WIPP activities?

EPA's regulatory role at WIPP does not end with its first recertification decision. The Agency's future WIPP activities will include additional recertifications every five years, review of DOE reports on conditions and activities at WIPP, assessment of waste characterization and QA programs at waste generator sites, announced and unannounced inspections of WIPP and other facilities, and if necessary, modification, revocation, or suspension of the certification.

Although not required by the Administrative Procedures Act (APA), the WIPP LWA, or the WIPP Compliance Criteria, EPA intends to continue docketing all inspection or audit reports and annual reports by DOE on conditions and activities at the WIPP.

Future recertification processes will be similar to the process completed by EPA for this first recertification, as described in today's action. For example, EPA will publish a **Federal Register** notice announcing its receipt of the next compliance application and our intent to conduct such an evaluation. The application for recertification will be placed in the docket, and at least a 30-day period will be provided for submission of public comments. Following the completeness determination, EPA's decision on whether to recertify the WIPP facility will again be announced in a **Federal Register** notice (§ 194.64).

Dated: March 29, 2006.

Elizabeth Cotsworth,

Director, Office of Radiation and Indoor Air.

[FR Doc. 06–3404 Filed 4–7–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 040406B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-Pelagic Trawl Gear in the Red King Crab Savings Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 red king crab prohibited species catch (PSC) limit that is specified for the RKCSS of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 5, 2006, through 2400 hrs, A.l.t., December 31, 2006.

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

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

The 2006 red king crab PSC limit specified for the RKCSS is 42,495 animals as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2006 red king crab PSC limit specified for the RKCSS has been caught. Consequently, NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the RKCSS to directed fishing for groundfish with non-pelagic trawl gear. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 4, 2006.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 4, 2006.

James P. Burgess,

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

[FR Doc. 06–3409 Filed 4–5–06; 3:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 68
Monday, April 10, 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.

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB03

''Appliance Labeling Rule''; Energy Labeling; Public Workshop

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice announcing public workshop; public comment and participation request.

SUMMARY: The FTC is planning to host a public workshop to discuss current energy labeling requirements for consumer products. This workshop is part of a rulemaking that the Commission initiated on November 2, 2005 (70 FR 66307). The workshop is open to the public, and there is no fee for attendance. For admittance to the conference center, all attendees will be required to show a valid photo identification, such as a driver's license.

DATES: The workshop will be held on Wednesday, May 3, 2006 from 9 a.m. to 4 p.m. at the Federal Trade Commission's Satellite Building Conference Center located at 601 New Jersey Avenue, NW., Washington, DC. Requests to participate as a panelist must be received by April 21, 2006. Any written comments related to the workshop must be received on or before May 17, 2006, two weeks after the conference takes place.

ADDRESSES: Registration information can be found in Section III of this Notice. Comments and requests to participate as a panelist should respectively refer to ''Energy Labeling Workshop—Comment, Project No. P064201'' or ''Energy Labeling Workshop—Request to Participate, Project No. P064201'', to facilitate the organization of comments and requests to participate. A comment or request to participate as a panelist filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex O), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because U.S. mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments and requests to participate as a panelist containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

Comments filed in electronic form should be submitted by clicking on: *https://secure.commentworks.com/ftc-energylabelingworkshop* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-energylabelingworkshop.* Requests to participate filed in electronic form should be submitted by e-mail to *labelingworkshop@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, 202–326–2889, Division of Enforcement, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

[1] The comment or request to participate as a panelist must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment or request to participate as a panelist to be withheld from the public record. The request for confidential treatment will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

I. Background

Section 137 of the Energy Policy Act of 2005 (Pub. L. No. 109–58) amends the Energy Policy and Conservation Act of 1975 (EPCA) (42 U.S.C. 6291 *et seq.*) to require that the Commission initiate a rulemaking considering ''the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.'' As part of this effort, the Act directs the Commission to consider ''changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.'' The Act gives the FTC two years to complete the rulemaking. To initiate this effort, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) on November 2, 2005 (70 FR 66307). That Notice sought comments on a series of questions about the effectiveness of the current label, possible alternatives, and other potential changes to the FTC's Appliance Labeling Rule (16 CFR part 305). The Commission received 27 comments in response to the ANPR. The comments can be viewed on the FTC Web site at *http://www.ftc.gov/os/comments/energylabeling/index.htm.*

The Commission has scheduled a public workshop to allow interested parties to discuss the comments and to provide information on additional questions generated by the comments.

II. Issues for Discussion at the Workshop

The workshop will address issues related to the Commission's November 2005 ANPR on the effectiveness of the current energy labeling program. The Commission has identified four specific issues for discussion at the workshop. We request that participants review these issues so that they can provide their views during the workshop or in submitted comments. After completion of the discussion of the specific issues described in this Notice, there will be time available to discuss any other issues raised in the ANPR. The four specific issues involve label design, refrigerator categories, heating and cooling equipment labels, and television labels.

A. Label Design

The ANPR sought comments on whether the Commission should change

the current design and format of the EnergyGuide label, which is required on most major household appliances. Many of the comments addressed this issue, focusing on whether label information should be presented in the form of a ''continuous'' bar graph similar to the current label (see Figure 1)[2] or in the form of discrete categories such as stars (*i.e.*, a ''categorical'' label) (see Figure 2). Some commenters favored the current continuous-style label while others urged the FTC to adopt a categorical label. The workshop will allow participants to discuss issues related to these two designs as well as a third possible approach discussed below.

1. Continuous Label

The bar graph on the current continuous label depicts the energy use (or efficiency) of the product as it relates to other products on the market and provides a range of energy use or efficiency ratings based on market data. One end of the scale depicts the energy use of the most efficient model on the market while the other end identifies the least efficient model. For example, the bar graph on a label for a typical refrigerator category may have 539 kWh/yr (kilowatt-hours per year) on one end and 698 kWh/yr on the other end. A key feature of the current label is that this range or scale is based on data for models available on the market.

2. Categorical Label

The ratings on a categorical label (*e.g.*, stars or letters) generally depict the model's energy efficiency rating as compared to the minimum government efficiency standards (*i.e.*, the lowest allowable efficiency levels) set by the Department of Energy (DOE). For example, a five-star dishwasher would have an efficiency rating that exceeded the minimum government standard by a certain percentage (*e.g.*, 20%). This approach is fundamentally different from that used for the continuous label designs based on market data because the range does not depict directly the energy use or efficiency of other products on the market. Instead, the categories (*e.g.*, stars) correspond to thresholds defined by the agency administering the labeling program.

3. Third Label Approach

A third approach to the EnergyGuide label would combine the graphical design of a continuous label with the energy efficiency comparison underlying the categorical label. Such a label would include a continuous style bar graph that depicts the energy use or efficiency of a product in comparison to the DOE minimum efficiency (or conservation) standards (see Figure 3). The label would identify the percentage by which a model exceeds DOE's minimum efficiency standard. The range used on such a label would be roughly proportional to the efficiency of models on the market. For example, if the most efficient refrigerator exceeds the DOE standards by 35%, then the scale for those products would range from 0% to approximately 40%. This label design would provide a uniform system of conveying energy information in a continuous-style label format. As part of the overall label design discussion, the FTC will be seeking comment at the public workshop on whether it should consider such a label in addition to the other label design approaches discussed in the ANPR and submitted comments.

B. Refrigerator Categories

The current labeling requirements designate separate comparability ranges for various refrigerator sub-categories (or styles) such as side-by-side door configurations or models with top-mounted freezers. The current range information on the label allows consumers to compare the energy use of similarly configured refrigerators but not the energy use of models across sub-categories (*e.g.*, a side-by-side model to a top-mounted freezer model). This framework is consistent with the style categories used by the DOE efficiency standards program and Energy Star.

Nevertheless, some refrigerator configurations are generally less efficient than others. For example, top-mounted freezer models generally use less electricity than comparably sized side-by-side models. As a result, the range information on a particular side-by-side refrigerator label may compare favorably to other side-by-sides but fail to show that the model uses significantly more energy than an average refrigerator with a top-mounted freezer.[3] Given this concern, Consumers Union recommended that refrigerator labels compare the energy used by the appliance to the maximum energy consumption allowed by law for any refrigerator of comparable internal volumes—independent of style.[4]

Consumers Union suggested that the Commission change its requirements to allow consumers to use range information to compare all styles of refrigerator-freezers. To accomplish this, the FTC could amend the rule so that labels for all refrigerator-freezers feature the same range of comparability, regardless of style. Alternatively, if the labels were reconfigured to convey efficiency comparisons to the DOE efficiency standards (such as in Figures 2 and 3), the range could depict the model's energy use as compared to the maximum energy use allowed for any refrigerator, regardless of style.[5] The FTC will be seeking comment at the public workshop on whether the FTC should make Rule changes to address these concerns, and, if so, what changes would be appropriate.

C. Labels for Heating and Cooling Equipment

The Appliance Labeling Rule requires EnergyGuide labels on central air conditioners, heat pumps, furnaces, boilers, and water heaters (16 CFR 305.11).[6] Both the Gas Appliance Manufacturers Association (GAMA) and the Air Conditioning and Refrigeration Institute (ARI), trade associations representing heating and cooling equipment manufacturers, suggested that labels for heating and cooling equipment do not aid consumers because these products are not sold through showrooms or by other means that allow consumers to examine the label before purchase.[7] GAMA urged that the FTC eliminate the labeling requirement for furnaces, boilers, and water heaters,[8] and ARI made the same suggestion for central air conditioners and heat pumps. Both organizations urged reliance on existing online databases (such as those available on the GAMA and ARI Web sites) to provide consumers with energy information about their products in lieu of labeling. In addition to GAMA and ARI comments, Natural Resources Canada described its voluntary program for heating and cooling products, which does not use labeling but instead urges

[2] Figure 1 is a modified version of the current EnergyGuide label.

[3] The energy use and operating costs required on the label would allow such cross-category comparisons, but the range itself does not.

[4] Consumers Union Comments in FTC Matter No. R511994 (Jan. 13, 2006).

[5] DOE allows a higher energy use for side-by-side/ice service models that it does for other full-size refrigerators. Thus, the Rule could set the energy use allowed for such models as the benchmark on ranges for all full-size refrigerators.

[6] In 1979, the Commission required labeling for furnaces and water heaters. 44 FR 66466, 66470 (Nov. 19, 1979). The Commission required labels for central air conditioners and heat pumps in 1987 (52 FR 46888 (Dec. 10, 1987)).

[7] GAMA Comments in FTC Matter No. R511994 (Jan. 13, 2006); and ARI Comments on FTC Matter No. R511994 (Jan. 13, 2006).

[8] GAMA explained that consumers sometimes purchase replacement residential water heater from retail outlets, but, as often as not, they obtain them through contractors. GAMA also argued the recent DOE standards have significantly reduced the differences in energy use or efficiency or storage water heaters on the market.

manufacturers to print efficiency ratings for their products on brochures.[9]

In contrast, the American Council for an Energy-Efficient Economy (ACEEE) raised some concerns about eliminating the EnergyGuide label from heating and cooling equipment.[10] It suggested that the labels provide useful information on installed equipment even though most consumers do not see the EnergyGuide at the time of purchase for these products. According to ACEEE, research indicates that the label provides useful verification of the product's efficiency upon installation. ACEEE also suggested that the label is also used by energy auditors and by consumers purchasing an existing home to determine the energy efficiency of equipment installed by previous owners. ACEEE suggested that the FTC investigate additional means for providing label information to consumers so it can better impact their purchase decisions.

Under EPCA, the Commission may exclude central air conditioners, heat pumps, and furnaces from the labeling requirements if it determines that labeling is not technically or economically feasible or, alternatively, that labels are not likely to assist consumers in making purchasing decisions. (42 U.S.C. 6294(a)(2)). For water heaters, the statute directs the FTC to require labels unless the Commission determines that labeling is not technologically or economically feasible. (42 U.S.C. 6294(a)(1)). Section 6294(c) gives the Commission authority to require disclosures, in printed material displayed or distributed at the point of sale, of energy information that may be required on a label. In addition, the Commission may direct manufacturers to provide additional energy-related disclosures in information shipped with the product including instructions for the maintenance, use, or repair of the covered product. At the public workshop, the Commission seeks further comment on whether the Commission should retain labeling requirements for heating and cooling equipment and whether the Commission should require an alternative means of disclosure, consistent with its authority under the statute.

D. Television Labeling

Section 324(a) of EPCA requires labels for these products unless the Commission determines that labeling is not technologically or economically feasible. (42 U.S.C. 6294(a)). The test procedures used for labeling televisions must be those prescribed by DOE pursuant to section 323 of EPCA. (See 42 U.S.C. 6294(c)). In 1979, the Commission determined that labeling for televisions was not economically feasible. The FTC found that there was little variation in the annual energy costs of competing television models and that this cost was a small fraction of the purchase price. The Commission believed it was unlikely that labels for televisions would promote industry efforts to increase energy efficiency, or provide benefits to consumers. (44 FR 66466, 66468 (Nov. 19, 1979)).

According to comments filed by the Natural Resources Defense Council (NRDC),[11] there are now many big screen digital televisions on the market that use 500 or more kilowatt-hours per year, which is as much energy as many new refrigerators. NRDC estimates that, in some cases, consumers will pay several hundred dollars in electricity costs for their televisions over the lifetime of the product. NRDC is concerned that reliable, model-specific, energy use information is virtually non-existent for new televisions. The Consortium for Energy Efficiency also urged the Commission to consider labeling for televisions stating that ''new technologies and larger sizes of televisions that are currently offered on the market argue for their inclusion within the scope of the Appliance Labeling Rule.'' [12]

The FTC is seeking additional information about this issue at the public workshop. In particular, we request that participants address whether the Commission should revisit its decision to exclude televisions from the labeling requirements and whether the existing DOE test procedures are an appropriate basis for labeling.

III. Public Participation Information

A. Registration Information

The public workshop will be conducted in a roundtable format. A court reporter will be present to record the proceedings so that a transcription can be made for the public record. The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please e-mail your name and affiliation to *labelingworkshop@ftc.gov.* When you pre-register, we will collect your name, affiliation, and your e-mail address. This information will be used to estimate how many people will attend and better understand the likely audience for the workshop. We may use your e-mail address to contact you with information about the workshop. Under the Freedom of Information Act (FOIA) or other laws, we may be required to disclose the information you provide to outside organizations. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at *http://www.ftc.gov/ftc/privacy.htm.* The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

B. Requests to Participate as a Panelist

This workshop will be conducted in a roundtable format with participation by panelists selected by the FTC staff. Other attendees will also have an opportunity to comment and ask questions. Requests to participate as a panelist must be received by April 21, 2006. Persons will be notified on or before April 26, 2006 if they have been selected.

Requests to participate as a panelist should be submitted electronically as part of the participants' pre-registration by e-mail to *labelingworkshop@ftc.gov* or, if mailed, should be submitted in the manner detailed in the **ADDRESSES** section of this Notice, and should be captioned ''Energy Labeling Workshop—Request to Participate, Project No. P064201.'' Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the workshop will focus as well as their contact information, including a telephone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. For requests filed in paper form, an original and two copies of each document should be submitted. The staff will select panelists for the workshop using the following criteria: (1) The party has expertise in or knowledge of the issues that are the focus of the workshop, (2) the party's participation would promote a balance of interests being represented at the workshop, and (3) the party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares interests with the designator(s).

C. Written and Electronic Comments

The submission of comments is not required for participation in the

[9] Natural Resources Canada Comments in FTC Matter No. R511994 (Jan. 13, 2006).

[10] ACEEE Comments in FTC Matter No. R511994 (Jan. 13, 2006).

[11] Natural Resources Defense Council Comments in FTC Matter No. R511994 (Jan. 13, 2006).

[12] Consortium for Energy Efficiency Comments in FTC Matter No. R511994 (Jan. 13, 2006).

workshop. If a person wishes to submit written or electronic comments about the topics to be discussed at the workshop, such comments must be received on or before May 17, 2006. For further instructions on submitting comments, please see the **ADDRESSES** section above. To read our policy on how we handle the information you submit, please visit *http://www.ftc.gov/ftc/privacy.htm.*

BILLING CODE 6750–01–P

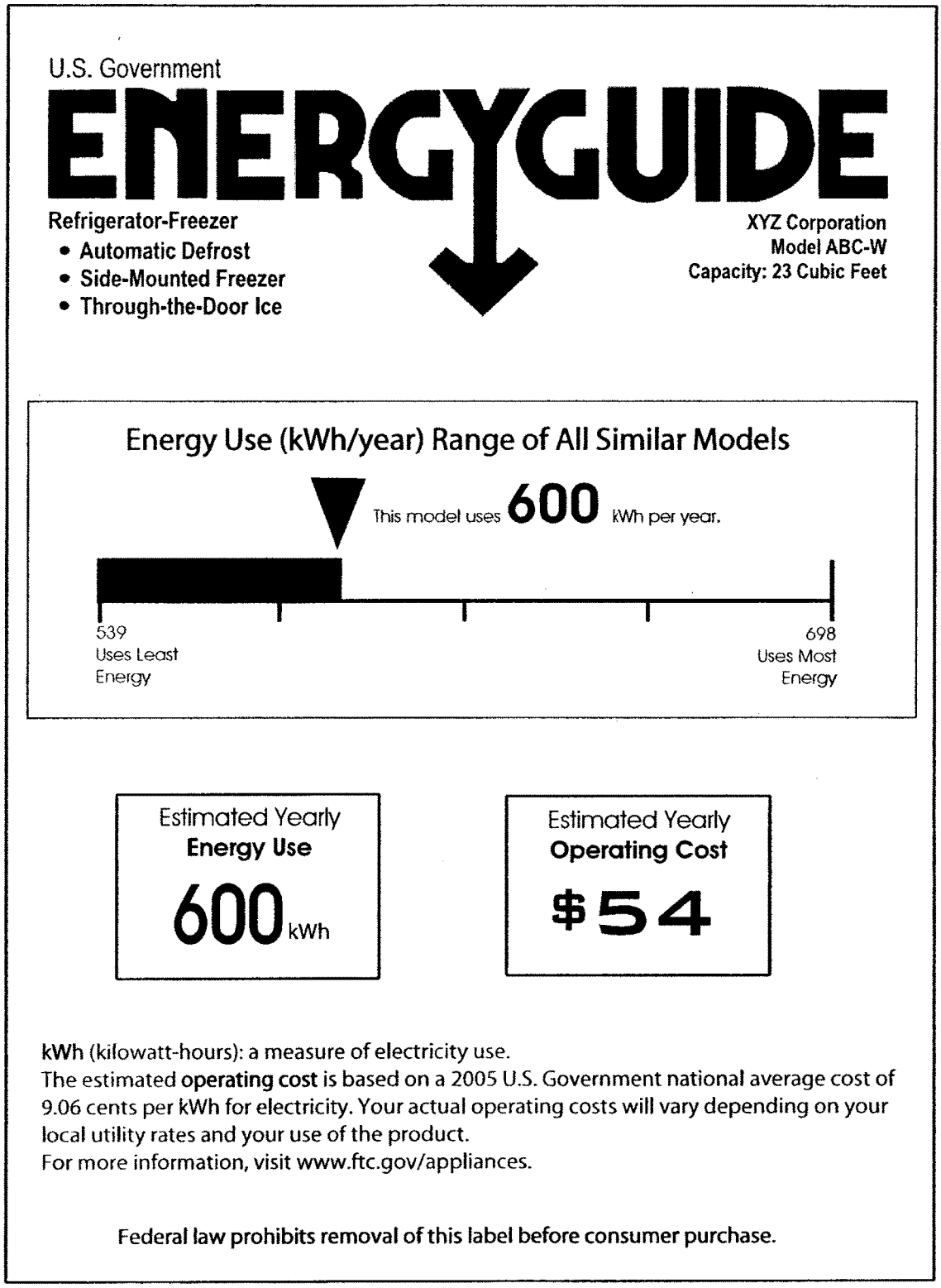

U.S. Government
ENERGYGUIDE
Refrigerator-Freezer
• Automatic Defrost
• Side-Mounted Freezer
• Through-the-Door Ice
XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet
Energy Use (kWh/year) Range of All Similar Models
This model uses 600 kWh per year.
539
Uses Least Energy
698
Uses Most Energy
Estimated Yearly
Energy Use
600 kWh
Estimated Yearly
Operating Cost
$54
kWh (kilowatt-hours): a measure of electricity use.
The estimated operating cost is based on a 2005 U.S. Government national average cost of 9.06 cents per kWh for electricity. Your actual operating costs will vary depending on your local utility rates and your use of the product.
For more information, visit www.ftc.gov/appliances.
Federal law prohibits removal of this label before consumer purchase.

Figure 1

U.S. Government

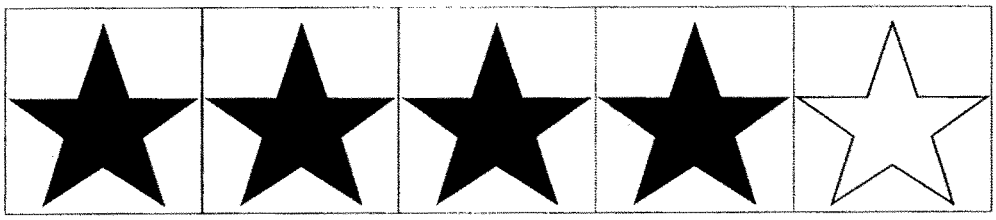
ENERGYGUIDE

Refrigerator-Freezer

- **Automatic Defrost**
- **Side-Mounted Freezer**
- **Through-the-Door Ice**

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

The More Stars the More Energy Efficient



Based on a comparison of similar models.

Estimated Yearly
Energy Use
600 kWh

Estimated Yearly
Operating Cost
$54

kWh (kilowatt-hours): a measure of electricity use.
The estimated **operating cost** is based on a 2005 U.S. Government national average cost of 9.06 cents per kWh for electricity. Your actual operating costs will vary depending on your local utility rates and your use of the product.
For more information, visit www.ftc.gov/appliances.

Federal law prohibits removal of this label before consumer purchase.

Figure 2

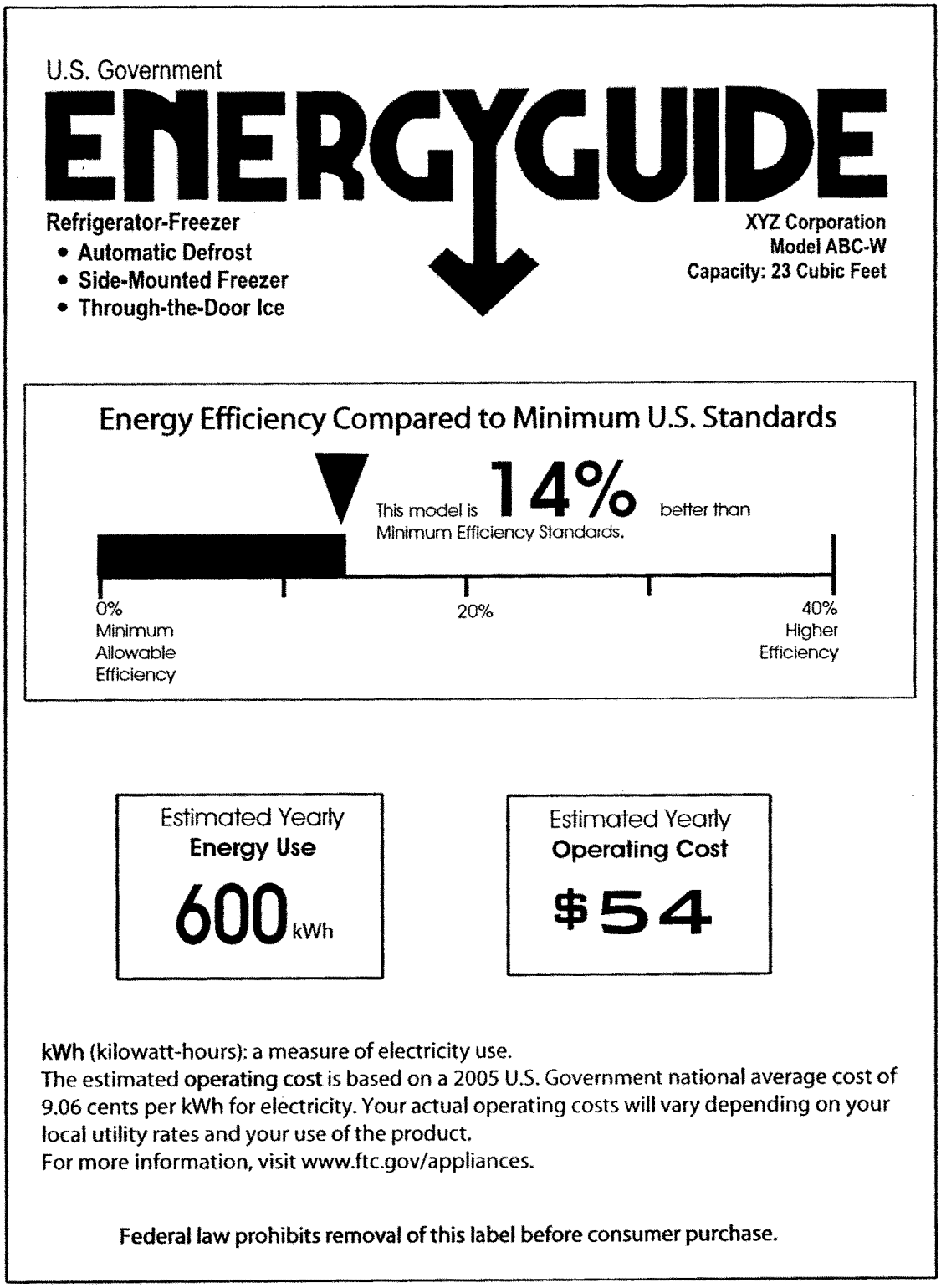

U.S. Government
ENERGYGUIDE
Refrigerator-Freezer
• Automatic Defrost
• Side-Mounted Freezer
• Through-the-Door Ice
XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet
Energy Efficiency Compared to Minimum U.S. Standards
This model is 14% better than Minimum Efficiency Standards.
0% Minimum Allowable Efficiency
20%
40% Higher Efficiency
Estimated Yearly Energy Use
600 kWh
Estimated Yearly Operating Cost
$54
kWh (kilowatt-hours): a measure of electricity use.
The estimated operating cost is based on a 2005 U.S. Government national average cost of 9.06 cents per kWh for electricity. Your actual operating costs will vary depending on your local utility rates and your use of the product.
For more information, visit www.ftc.gov/appliances.
Federal law prohibits removal of this label before consumer purchase.

Figure 3

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–3452 Filed 4–7–06; 8:45 am]

BILLING CODE 6750–01–C

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1214

Cigarette Lighters; Extension of Time To Issue Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time to issue proposed rule.

SUMMARY: On April 11, 2005, the Consumer Product Safety Commission (CPSC or Commission) issued an advance notice of proposed rulemaking (ANPR) under the Consumer Product Safety Act (CPSA) that began a rulemaking proceeding addressing a possible unreasonable risk of injury and death associated with the mechanical malfunction of cigarette lighters. The CPSA provides that a proposed standard under that act must be issued within 12 months of publication of the ANPR, unless the 12-month period is extended by the Commission for good cause. In this notice, the Commission extends the period for issuing any proposed CPSA rule until December 31, 2007.

ADDRESSES: Mail requests for documents concerning this rulemaking should be e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*. Requests may also be sent by facsimile to (301) 504–0127, by telephone at (301) 504–7923, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Rohit Khanna, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone 301–504–7546 or e-mail: *rkhanna@cpsc.gov*.

SUPPLEMENTARY INFORMATION: Under section 9(c) of the CPSA, 15 U.S.C. 2058(c), the Commission must issue a proposed consumer product safety rule within 12 months of the publication of an ANPR, unless the Commission extends that period for good cause. Since the ANPR for cigarette lighters was published in the **Federal Register** on April 11, 2005, 70 FR 18339, the 12-month period for proposal of any CPSA rule in that proceeding expires on April 10, 2006.

After publication of the ANPR, the public was given until June 10, 2005, to file written comments with the CPSC. In addition to evaluating the comments, before determining whether to proceed with a rule for cigarette lighters, the Commission needs additional information about the number of lighters currently conforming to the lighter voluntary standard (ASTM F–400, Standard Consumer Safety Specification for Lighters). Since the publication of the ANPR, the staff has collected lighters from across the country in order to obtain a representative sample for conformance testing. In September 2005, the Commission issued a contract for the testing of a representative sample of lighters sold in the United States to the requirements of the voluntary standard. The period of performance for the contract is about eight months. The lighter testing is currently underway and when completed will be used by staff to determine the conformance of lighters currently sold in the U.S. market. Following completion of this work, the staff plans to send a briefing package to the Commission in August 2006. The Commission will then evaluate the need for continuing the rulemaking proceeding. If the Commission does decide to go forward with the rulemaking, a notice of proposed rulemaking (NPR) could be issued in late 2007. If an NPR is published, a final rule could be issued during Fiscal Year 2008. Accordingly, the Commission extends the date for publishing a notice of proposed rulemaking for cigarette lighters to December 31, 2007.

Dated: April 5, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–5212 Filed 4–7–06; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038 AB86

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–53560; File No. S7–07–06]

RIN 3235–AJ54

Joint Proposed Rules: Application of the Definition of Narrow-Based Security Index to Debt Securities Indexes and Security Futures on Debt Securities

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (together, the ''Commissions'') are proposing to adopt a new rule and to amend an existing rule under the Commodity Exchange Act (''CEA'') and to adopt two new rules under the Securities Exchange Act of 1934 (''Exchange Act''). These proposed rules and rule amendments would exclude from the definition of ''narrow-based security index'' debt securities indexes that satisfy specified criteria. A future on a debt securities index that is excluded from the definition of ''narrow-based security index'' would not be a security future and could trade subject to the exclusive jurisdiction of the CFTC. In addition, the proposed rules would expand the statutory listing standards requirements to permit security futures to be based on debt securities, including narrow-based security indexes composed of debt securities.

DATES: Comments must be received on or before May 10, 2006.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: Comments may be submitted, identified by RIN 3038 AB86, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include ''Application of the Definition of Narrow-Based Security Index to Debt Securities Indexes'' in the subject line of the message.

• *Fax:* 202/418–5521.

• *Mail:* Send to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• *Courier:* Same as Mail above.

All comments received will be posted without change to *http://www.cftc.gov,* including any personal information provided.

SEC: Comments may be submitted by any of the following methods:

Electronic Comments

• Use the SEC's Internet comment form *http://www.sec.gov/rules/proposed.shtml*; or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–07–06 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–07–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's Internet Web site (*http://www.sec.gov/rules/proposed.shtml).* Comments will also be available for public inspection and copying in the SEC's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: *CFTC:* Elizabeth L. Ritter, Deputy General Counsel, at 202/418–5052, or Julian E. Hammar, Counsel, at 202/418–5118, Office of General Counsel; or Thomas M. Leahy, Jr., Associate Director, Product Review, at 202/418–5278, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SEC: Yvonne Fraticelli, Special Counsel, at 202/551–5654; or Leah Mesfin, Special Counsel, at 202/551–5655, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commissions are proposing to add Rule 41.15 and to amend 41.21 under the CEA,[1] and to add Rule 3a55–4 and Rule 6h–2 under the Exchange Act.[2]

I. Introduction

Futures contracts on single securities and on narrow-based security indexes (collectively, ''security futures'') are jointly regulated by the CFTC and the SEC.[3] The definition of ''narrow-based security index'' under both the CEA and the Exchange Act sets forth the criteria for such joint regulatory jurisdiction. Futures on indexes that are not narrow-based security indexes are subject to the exclusive jurisdiction of the CFTC. Under the CEA and the Exchange Act, an index is a ''narrow-based security index'' if it meets any one of four characteristics.[4] Further, the CEA and Exchange Act provide that, notwithstanding the statutory criteria, an index is not a narrow-based security index if a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order of the Commissions.[5]

The statutory definition of ''narrow-based security index'' was designed primarily for indexes composed of equity securities, not debt securities. For example, while three criteria in the narrow-based security index definition evaluate the composition and weighting of the securities in the index, another criterion evaluates the liquidity of an index's component securities. The liquidity criterion in the statutory definition of narrow-based security index, which is important for indexes composed of common stock, may not be an appropriate criterion for indexes composed of debt securities.[6] Debt securities generally do not trade in the same manner as equity securities. Accordingly, most indexes comprised of debt securities, regardless of the number or amount of underlying component securities in the index, fall within the definition of narrow-based security index because few debt securities meet the ADTV criterion in the definition of narrow-based security index.

The Commissions believe that it is appropriate to exclude certain debt securities indexes from the definition of ''narrow-based security index'' using criteria that differ in certain respects from the criteria applicable to equity securities to evaluate whether debt securities indexes are narrow-based indexes. The Commissions believe that using such modified criteria for debt securities indexes are necessary or appropriate in the public interest and consistent with the protection of investors because the criteria recognize the differences between equity and debt and permit security futures to be based on debt securities indexes.[7] In particular, the Commissions believe that the modified criteria addressing diversification and public information about, and market familiarity with, the issuer of the securities underlying a debt securities index would reduce the likelihood that a future on such an index would be readily susceptible to manipulation and thus are more appropriate criteria for debt securities indexes.

For this reason, the Commissions are proposing rules and rule amendments to exclude from the definition of narrow-based security index a debt securities index that meets certain criteria, as described below. A futures contract on such an index would not be a security future and thus would be subject to the exclusive jurisdiction of the CFTC. In addition, the proposed rules and rule amendments would expand the statutory listing standards to permit the trading of security futures based on debt securities. The proposed rules and rule amendments would permit the trading of security futures on single debt securities and on narrow-based security indexes composed of debt securities, subject to the Commissions' joint jurisdiction. Futures on debt securities indexes that satisfy the criteria of the proposed exclusion would be subject to the exclusive jurisdiction of the CFTC. Although broad-based debt securities indexes that meet the criteria in the

[1] All references to the CEA are to 7 U.S.C. 1 *et seq.*

[2] All references to the Exchange Act are to 15 U.S.C. 78a *et seq.*

[3] *See* Section 1a(31) of the CEA, 7 U.S.C. 1a(31); Section 3(a)(55)(A) of the Exchange Act, 15 U.S.C. 78c(a)(55)(A).

[4] The four characteristics are as follows: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) any group of five of its component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume (''ADTV'') of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). *See* section 1a(25)(A)(i)–(iv) of the CEA, 7 U.S.C. 1a(25)(A)(i)–(iv); section 3(a)(55)(B)(i)–(iv) of the Exchange Act, 15 U.S.C. 78c(a)(55)(B)(i)–(iv).

[5] *See* Section 1a(25)(B)(vi) of the CEA, 7 U.S.C. 1a(25)(B)(vi); Section 3(a)(55)(C)(vi) of the Exchange Act, 15 U.S.C. 78c(a)(55)(C)(vi).

[6] Debt securities include notes, bonds, debentures, or evidences of indebtedness.

[7] *See* 15 U.S.C. 78mm(a)(1).

proposed rules should have a reduced likelihood of being readily susceptible to manipulation, such indexes must also be determined to be not readily susceptible to manipulation in accordance with Section 2(a)(1)(C)(ii)(II) of the CEA.

II. Proposed Rules Excluding Certain Debt Securities Indexes From the Definition of Narrow-Based Security Index

The Commissions are proposing that a debt securities index that satisfies the specified criteria would not be considered a narrow-based security index for purposes of Section 3(a)(55) of the Exchange Act and Section 1a(25) of the CEA.

The proposed criteria specify:

- The type of security that may be in the index;
- The maximum weighting and concentration of securities of any issuer in the index;
- Eligibility conditions regarding the issuer of any security in the index that is not an exempted security under the Exchange Act; and
- The minimum remaining outstanding principal amount of the security in the index.

The exclusion also would provide a *de minimis* exception from certain of the criteria regarding the issuer eligibility and minimum outstanding remaining principal amount conditions if a predominant percentage of the securities comprising the index's weighting satisfied all the applicable criteria.

The proposed rules also contain a definition of ''control'' solely to assess affiliation among issuers for purposes of determining satisfaction of the criteria.

Under proposed Rule 41.15 under the CEA and proposed Rule 3a55–4 under the Exchange Act, an index would not be a narrow-based security index if the index satisfied the criteria described below.

A. Index Composed Solely of Debt Securities

Accordingly, the Commissions' proposed exclusion from the definition of ''narrow-based security index'' would require that each component security of the index be a security [8] that is a note, bond, debenture, or evidence of indebtedness.[9] Further, none of the securities of an issuer included in the index could be an equity security, as defined in Section 3(a)(11) of the Exchange Act and the rules adopted thereunder.[10] Thus, any security index that includes an equity security would not qualify for the proposed exclusion for indexes composed of debt securities.[11] The Commissions request comment on the proposed types of securities that could be included in a debt securities index under this exclusion. The proposed rule and rule amendments are intended to establish criteria for determining the circumstances in which a debt securities index is not a narrow-based security index.

B. Number and Weighting of Index Components

The proposed exclusion also would include conditions relating to the minimum number of securities of non-affiliated issuers that must be included in an index and the maximum permissible weighting of securities in the index for the index to qualify for the exclusion from the definition of ''narrow-based security index.'' Specifically, the debt securities index would have to satisfy each of the following conditions regarding the number and weighting of its component securities:

- The index must be comprised of more than nine securities issued by more than nine non-affiliated issuers; [12]
- The securities of any issuer cannot comprise more than 30% of the index's weighting; [13] and
- The securities of any five non-affiliated issuers cannot comprise more than 60% of the index's weighting.[14]

The foregoing proposed conditions are virtually identical to the criteria contained in the Exchange Act and the CEA that apply in determining if a security index would not be a narrow-based security index.[15] In addition, the proposed rules would provide that the term ''issuer'' includes a single issuer or group of affiliated issuers. An issuer would be affiliated with another issuer for purposes of the proposed exclusion if it controls, is controlled by, or is under common control with, that other issuer. The proposed rules would define control solely for purposes of the exclusion to mean ownership of 20% or more of an issuer's equity or the ability to direct the voting of 20% or more of an issuer's voting equity. While the definition of affiliate under the Federal securities laws is generally a facts and circumstances determination based on the definition of affiliate contained in such laws,[16] certain rules under the Exchange Act contain a 20% threshold for purposes of determining a relationship between two or more entities.[17] The definition of control would apply solely to the proposed rules and is designed to provide a clear standard for determining control and affiliation for purposes of the proposed exclusion. The proposed rules make clear that for purposes of weighting, all the debt securities of all affiliated issuers included in the index would be aggregated so that the index is not concentrated in securities of a small number of issuers and their affiliates.

The number and weighting criteria would require that an index meet minimum diversification conditions with regard to both issuers and the underlying securities and, therefore, the Commissions believe that these criteria would reduce the likelihood that a future on such a debt securities index would be too dependent on the price behavior of a component single security, small group of securities or issuers or their affiliates. The Commissions request comment on the above proposed criteria. In particular, the Commissions request comment on whether the proposed number and weighting criteria that are essentially the same as for equity security indexes would provide for sufficient diversification of the index with respect to both the securities and the issuers. The Commissions request comment on whether different number or weighting criteria would be appropriate, and request analysis and empirical data regarding the debt market

[8] The term ''security'' is defined in Section 2(a)(1) of the Securities Act of 1933, 15 U.S.C. 77b(a)(1) (the ''Securities Act''), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10).

[9] *See* proposed Rule 3a55–4(a)(1) under the Exchange Act and proposed Rule 41.15(a)(1) under the CEA. The federal securities laws do not contain a single definition of debt security. The Commissions, therefore, are using the terms found in the Trust Indenture Act of 1939 [15 U.S.C. 77aaa–bbb] (which governs debt securities of all types) to define the debt securities for purposes of the proposed rule and rule amendments.

[10] 15 U.S.C. 78c(a)(11). *See* proposed Rule 3a55–4(a)(2) under the Exchange Act and proposed Rule 41.15(a)(2) under the CEA. A security convertible into an equity security is an equity security under the Exchange Act and the Securities Act.

[11] Indexes that include both an equity and debt security or securities would be subject to the criteria for narrow-based security indexes enumerated in Section 1a(25) of the CEA and Section 3(a)(55) of the Exchange Act.

[12] *See* proposed Rule 3a55–4(a)(3) under the Exchange Act and proposed Rule 41.15(a)(3) under the CEA.

[13] *See* proposed Rule 3a55–4(a)(4) under the Exchange Act and proposed Rule 41.15(a)(4) under the CEA.

[14] *See* proposed Rule 3a55–4(a)(5) under the Exchange Act and proposed Rule 41.15(a)(5) under the CEA.

[15] *See supra* note 4.

[16] *See, e.g.*, Rule 405 under the Securities Act [17 CFR 230.405] and Rule 12b–2 under the Exchange Act [17 CFR 240.12b–2].

[17] *See, e.g.*, Rule 13d–1(c) under the Exchange Act [17 CFR 240.13d–1(c)] and Securities Exchange Act Release No. 39538 (Jan. 12, 1998), 63 FR 2854 (Jan. 16, 1998). *See also* Rule 3–05 under Regulation S–X [17 CFR 210.3–05].

as compared to the equity market to support any suggested modification to the number or weighting criteria. The Commissions also request comment on whether owning 20% of an issuer's equity or the ability to direct the voting of 20% or more of an issuer's voting equity is an appropriate threshold for determining whether there is control of an issuer and therefore affiliation for purposes of the proposed exclusion.

C. Issuer or Security Eligibility Criteria

The proposed criteria would require that for securities that are not exempted securities under the Exchange Act and rules thereunder, such as municipal securities or securities issued by the United States government, the issuer of the component security must satisfy one of the following:

- The issuer must be required to file reports pursuant to section 13 or 15(d) of the Exchange Act; [18]
- The issuer must have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;
- The issuer must have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion; or
- The issuer of the security must be a government of a foreign country or a political subdivision of a foreign country.

The proposed issuer eligibility criteria are aimed at conditioning the exclusion for a debt securities index from the definition of narrow-based security index on the public availability of information about the issuers of the securities included in the index. For example, an issuer that is required to file reports pursuant to section 13 or 15(d) of the Exchange Act [19] makes regular and public disclosure through its Exchange Act filings. For issuers that are not required to file reports with the SEC under the Exchange Act, the Commissions similarly believe that issuers that have either worldwide equity market capitalization of $700 million or $1 billion in outstanding debt are likely to have public information available about them.[20] Accordingly, the issuer eligibility criteria should help ensure that, other than with respect to exempted securities in the index, the debt securities index includes debt securities of issuers for which public information is available, thereby reducing the likelihood that an index qualifying for the exclusion would be readily susceptible to manipulation.

The issuer eligibility criteria would not apply if the component security in the index is an exempted security, as defined in the Exchange Act; [21] or if the issuer of the security is a government of a foreign country or a political subdivision of a foreign country. The Commissions believe that it is appropriate to allow indexes qualifying for the exclusion to include exempted securities and the debt obligations of foreign countries and their political subdivisions. Current law permits futures on individual exempted debt securities, other than municipal securities, and on certain foreign sovereign debt obligations.[22] Because a future may be based on one of these exempted debt securities, the Commissions believe that it is reasonable and consistent with the purposes of the CEA and the Exchange Act to allow futures to be based on indexes comprised of such debt securities. The Commissions request comment on the proposed issuer eligibility criteria. If commenters disagree with these criteria, the Commissions request views as to what different or additional criteria would be appropriate that would continue to satisfy the purpose of including securities of issuers for which there is publicly available information. The Commissions also request comment on the exception to the specific issuer eligibility conditions for exempted debt securities, as defined in the Exchange Act, and the debt securities issued by a foreign government or political subdivision of a foreign country that may be included in the debt securities index.

D. Minimum Principal Amount Outstanding

The proposed rules would require that each index component have a total remaining principal amount of at least $250,000,000. Although trading in most debt securities is limited, trading volume generally increases for debt securities with $250,000,000 or more in total remaining principal amount outstanding. The proposed criteria do not require that the securities included in the index have an investment grade rating. Nor do the criteria require particular trading volume, due to the generally lower trading activity in the debt markets compared to the equity markets. Instead, the Commissions are proposing a minimum principal amount criterion which is intended, together with the other proposed criteria geared to the debt securities market, to provide a substitute criterion for trading volume.[23] Accordingly, the Commissions believe that adopting a minimum remaining principal amount criterion, together with the other proposed criteria, would decrease the likelihood that a future on such an index would be readily susceptible to manipulation. The Commissions request comment on the proposed $250,000,000 minimum principal amount requirement for each security included in an index. Is $250,000,000 too high or too low for purposes of the proposal? If so, what figure would be more appropriate in light of the intent of the proposals? Commenters should provide empirical facts, data, and analysis supporting any different minimum principal amount.

E. De Minimis Exception

The proposed exclusion from the definition of narrow-based security index would except an issuer included in a debt securities index from the proposed issuer eligibility and minimum outstanding principal balance criteria for securities of an issuer if:

- All securities of such issuer included in the index represent less than 5% of the index's weighting; [24] and
- Securities comprising at least 80% of the index's weighting satisfy the

[18] 15 U.S.C. 78m and 78*o*(d).

[19] 15 U.S.C. 78m and 78*o*.

[20] These thresholds are similar to ones the SEC recently adopted in its Securities Offering Reform rules. *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (Aug. 3, 2005).

[21] *See* 15 U.S.C. 78c(a)(12). While issuers of exempt securities are not subject to the same issuer eligibility conditions, other existing rules and regulatory regimes applicable to most of such issuers provide for ongoing public information about such issuers. See for example, Rule 15c2–12 under the Exchange Act, 17 CFR 240.15c2–12.

[22] In this regard, Section 2(a)(1)(C)(iv) of the CEA, 7 U.S.C. 2(a)(1)(C)(iv), prohibits any person from entering into a futures contract on any security except an exempted security under Section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12), other than a municipal security as defined in Section 3(a)(29) of the Exchange Act, 15 U.S.C. 78c(a)(29). In addition, Rule 3a12–8 under the Exchange Act, 17 CFR 240.3a12–8, deems the debt obligations of specified foreign governments to be exempted securities for the purpose of permitting the offer, sale, and confirmation of futures contracts on those debt obligations in the United States.

[23] Based on data obtained from the Trade Reporting and Compliance Engine (TRACE) database supplied by the National Association of Securities Dealers, Inc., in the debt securities market, trading activity in a debt security generally increases as the principal amount of the debt security increases. It is important to note, however, that generally non-investment-grade debt securities trade more frequently than investment-grade debt securities. Consequently, the Commissions believe that trading volume would not be an appropriate determinant of whether a debt securities index is narrow-based.

[24] In determining whether the five percent threshold is met, all securities of an issuer and it affiliates would be aggregated because of the potential for concentrated risk of the index in a limited group of issuers.

issuer eligibility and minimum outstanding principal balance criteria.[25]

The Commissions preliminarily believe that an index that included a very small proportion of securities and issuers that do not satisfy certain of the above criteria should nevertheless be excluded from the definition of narrow-based security index. To satisfy the exclusion, both the five percent weighting threshold and the 80 percent weighting threshold must be met at the time of the assessment. The five percent weighting threshold would ensure that issuers and securities not satisfying certain of the proposed criteria would comprise only a very small portion of the index. The 80 percent weighting threshold would ensure that a predominant percentage of the securities and the issuers in the debt securities index satisfied the proposed criteria. The Commissions believe that the *de minimis* exception should allow debt securities indexes that include debt securities of a small number of issuers and securities that do not satisfy certain of the proposed criteria to qualify for the proposed exclusion. The Commissions believe that this *de minimis* exception would provide certain flexibility in constructing an index or determining whether a debt securities index satisfied the proposed exclusion.

The Commissions preliminarily believe that the proposed *de minimis* exception would be appropriate for indexes that are predominantly comprised of securities that satisfy the specified criteria, would be consistent with the protection of investors, and would reduce the likelihood that the index would be readily susceptible to manipulation. The Commissions request comment on the proposed five percent threshold for when the securities of an issuer and its affiliates represent a *de minimis* proportion of an index. The Commissions also request comment on whether 80 percent represents an appropriate proportion of a debt securities index for purposes of the exclusion. If other thresholds are suggested, please provide empirical data and analysis supporting such other thresholds.

III. Tolerance Period

Section 1a(25)(B)(iii) of the CEA[26] and Section 3(a)(55)(C)(iii) of the Exchange Act[27] provide that, under certain conditions, a future on a security index may continue to trade as a broad-based index future, even when the index temporarily assumes characteristics that would render it a narrow-based security index under the statutory definition. An index qualifies for this tolerance and therefore is not a narrow-based security index if: (1) A future on the index traded for at least 30 days as an instrument that was not a security future before the index assumed the characteristics of a narrow-based security index; and (2) the index does not retain the characteristics of a narrow-based security index for more than 45 business days over three consecutive calendar months.[28]

In addition, Rules 41.12 under the CEA and 3a55–2 under the Exchange Act address the circumstance when a broad-based security index underlying a future becomes narrow-based during the first 30 days of trading. In such case, the future does not meet the requirement of having traded for at least 30 days to qualify for the tolerance period granted by Section 1a(25)(B)(iii) of the CEA[29] and Section 3(a)(55)(C)(iii) of the Exchange Act.[30] These rules, however, provide that the index will nevertheless be excluded from the definition of narrow-based security index throughout that first 30 days, if the index would not have been a narrow-based security index had it been in existence for an uninterrupted period of six months prior to the first day of trading.

IV. Modification of the Statutory Listing Standards Requirements for Security Futures Products

The Commodity Futures Modernization Act of 2000[31] amended the Exchange Act and the CEA by, among other things, establishing the criteria and requirements for listing standards regarding the category of securities on which security futures products can be based. The Exchange Act[32] provides that it is unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to Sections 6(a) or 15A(a), respectively, of the Exchange Act.[33] The Exchange Act[34] further provides that such exchange or association is permitted to trade only security futures products that conform with listing standards filed with the SEC and that meet the criteria specified in Section 2(a)(1)(D)(i) of the CEA.[35] The CEA states[36] that no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility (''DTEF'') for, any contracts of sale for future delivery of a security futures product unless the board of trade and the applicable contract meet the criteria specified in that section. Similarly, the Exchange Act[37] requires that the listing standards filed with the SEC by an exchange or association meet specified requirements.

In particular, the Exchange Act[38] and the CEA[39] require that, except as otherwise provided in a rule, regulation, or order, a security future must be based upon common stock and such other equity securities as the Commissions jointly determine appropriate. A security future on a debt security or a debt securities index currently would not satisfy this requirement.

The Exchange Act and the CEA, however, provide the Commissions with the authority to jointly modify this requirement to the extent that the modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.[40]

Pursuant to this authority, the Commissions propose to amend CEA Rule 41.21 and to add Exchange Act Rule 6h-2 to modify the listing standards for security futures to permit the trading of security futures based on debt securities that are notes, bonds, debentures, or evidences of indebtedness and indexes composed of such debt securities. The Commissions note that the Exchange Act[41] requires

[25] The 80 percent calculation would be based on the entire index's weighting without subtracting issuers who are not required to satisfy the issuer eligibility criteria and minimum outstanding principal amount criteria. This is important to ensure that a predominant percentage of the index satisfies the proposed criteria.

[26] 7 U.S.C. 1a(25)(B)(iii).

[27] 15 U.S.C. 78c(a)(55)(C)(iii).

[28] If the index becomes narrow-based for *more* than 45 days over three consecutive calendar months, the statute then provides an additional grace period of three months during which the index is excluded from the definition of narrow-based security index. *See* Section 1a(25)(D) of the CEA, 7 U.S.C. 1a(25)(D), and Section 3(a)(55)(E) of the Exchange Act, 15 U.S.C. 78c(a)(55)(E).

[29] 7 U.S.C. 1a(25)(B)(iii).

[30] 15 U.S.C. 78c(a)(55)(C)(iii).

[31] Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[32] Section 6(h)(1) of the Exchange Act, 15 U.S.C. 78f(h)(1).

[33] 15 U.S.C. 78f(a) and 78*o*–3(a).

[34] Section 6(h)(2) of the Exchange Act, 15 U.S.C. 78f(h)(2).

[35] 7 U.S.C. 2(a)(1)(D)(i).

[36] Section 2(a)(1)(D)(i) of the CEA, 7 U.S.C. 2(a)(1)(D)(i).

[37] Section 6(h)(3) of the Exchange Act, 15 U.S.C. 78f(h)(3).

[38] Section 6(h)(3)(D) of the Exchange Act, 15 U.S.C. 78f(h)(3)(D).

[39] Section 2(a)(1)(D)(i)(III) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(III).

[40] Section 6(h)(4)(A) of the Exchange Act, 15 U.S.C. 78f(h)(4)(A); Section 2(a)(1)(D)(v)(I) of the CEA, 7 U.S.C. 2(a)(1)(D)(v)(I).

[41] Section 6(h)(3)(C) of the Exchange Act, 15 U.S.C. 78f(h)(3)(C).

that the listing standards for security futures products be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association. In addition, the CEA and the Exchange Act [42] provide that the listing standards for a security futures product must require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of an underlying security, option on such security, or option on a group or index including such securities. The Commissions preliminarily believe that the proposed modification to permit the listing of security futures on debt securities and indexes composed of such debt securities would allow the listing and trading of new and potentially useful financial products, while providing the necessary safeguards to ensure that such products are not readily susceptible to manipulation. Therefore, the Commissions believe that the proposed modification would foster the development of fair and orderly markets in security futures products, would be appropriate in the public interest, and would be consistent with the protection of investors. In the absence of this modification, security futures on debt securities and indexes composed of such debt securities would continue to be prohibited, thus preventing the development of potentially useful financial products.

V. Request for Comments

The Commissions solicit comments on all aspects of proposed Rule 41.15 and amendments to Rule 41.21 under the CEA and proposed Rule 3a55–4 and Rule 6h-2 under the Exchange Act. Specifically, the Commissions seek comment on whether the proposed rules establish appropriate criteria for identifying debt securities indexes that are not narrow-based and, if not, what other or additional criteria would be appropriate, providing empirical data and analysis supporting any suggestions. Further, the Commissions solicit comment on whether any of the proposed criteria is inappropriate and/or should not be included, also providing detailed analysis and empirical support. In addition, the Commissions seek comment on whether modifying the statutory listing standards to permit security futures based on debt securities and debt securities indexes that are narrow-based would foster the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors. Commenters are also welcome to offer their views on any other matters raised by the proposed rules. Commenters should provide empirical data and analysis to support their suggestions.

VI. Paperwork Reduction Act

CFTC: The Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the CFTC) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed rule and rule amendments do not require a new collection of information on the part of any entities.

Accordingly, for purposes of the PRA, the CFTC certifies that the proposed rule and rule amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

SEC: Proposed Rules 3a55–4 and 6h-2 would not impose a new ''collection of information'' within the meaning of the PRA.

VII. Costs and Benefits of the Proposed Rules

CFTC: Section 15(a) of the CEA requires the CFTC to consider the costs and benefits of its actions before issuing new regulations under the CEA. By its terms, Section 15(a) does not require the CFTC to quantify the costs and benefits of new regulations or to determine whether the benefits of the proposed regulations outweigh their costs. Rather, Section 15(a) requires the CFTC to ''consider the cost and benefits'' of the subject rules.

Section 15(a) further specifies that the costs and benefits of the proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rule and rule amendments should foster the protection of market participants and the public by establishing criteria for futures on broad-based debt securities indexes that should reduce the likelihood that these products would be readily susceptible to manipulation. The statutory listing standards for security futures provide for similar protection of market participants with regard to security futures on narrow-based debt securities indexes and individual debt securities that would be made available for listing and trading pursuant to the proposed rules.

In addition, the proposed rule and rule amendments should encourage the efficiency and competitiveness of futures markets by permitting the listing for trading of new and potentially useful products on debt securities and security indexes. In the absence of the proposed rule and rule amendments, futures on debt securities indexes that meet the proposed criteria for non-narrow-based security index treatment, as well as security futures on narrow-based debt securities indexes and individual debt securities, would be prohibited. Efficiencies should also be achieved because the proposed rules, in establishing criteria for broad-based debt securities indexes, take into consideration the characteristics of such indexes and the issuers of the underlying debt securities that would render joint SEC and CFTC regulation unnecessary. By not subjecting futures on debt securities indexes that meet the proposed criteria to joint SEC and CFTC regulation, the costs for listing such products should be minimized.

The proposed rule and rule amendments should have no material impact from the standpoint of imposing costs or creating benefits, on price discovery, sound risk management practices, or any other public interest considerations.

Although exchanges may incur costs in order to determine whether a debt securities index meets the criteria to be considered broad-based established by the proposed rules, the CFTC believes that these costs are outweighed in light of the factors and benefits discussed above. Accordingly, the CFTC has determined to propose the addition and amendment to Part 41 as set forth below. The CFTC specifically invites public comment on its application of the criteria contained in section 15(a) of the CEA for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rule and rule amendments with their comment letters.

[42] Section 2(a)(1)(D)(i)(VII) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VII); Section 6(h)(3)(H) of the Exchange Act, 15 U.S.C. 78f(h)(3)(H).

SEC: Proposed Rule 6h–2 under the Exchange Act would permit a national securities exchange, subject to certain conditions, to list and trade security futures based on single debt securities and on narrow-based indexes composed of debt securities. Proposed Rule 3a55–4 would exclude from the definition of a narrow-based security index debt securities indexes that satisfy specified criteria. The SEC has preliminarily identified certain costs and benefits relating to proposed Rules 3a55–4 and 6h–2. The SEC requests comments on all aspects of this cost-benefit analysis, including the identification of any additional costs and/or benefits of the proposed rules. The SEC encourages commenters to identify and supply any relevant data, analysis, and estimates concerning the costs and/or benefits of the proposed rules.

A. Benefits

The benefits of proposed Rules 3a55–4 and 6h–2 generally would accrue from expanding the range of securities on which security futures and other index futures may be based. Currently, security futures cannot be based on debt securities or debt securities indexes. The proposed rules and rule amendments would eliminate this prohibition. As a result, the proposed rules and rule amendments would permit a greater variety of financial products to be listed and traded that potentially could facilitate price discovery and the ability to hedge. Investors generally would benefit by having a wider choice of financial products to buy and sell. The measure of this benefit would likely be correlated to the volume of trading in these new instruments. Because security futures based on debt securities would be new products, however, the SEC is unable to quantify these benefits and therefore requests comments, data, and estimates on these benefits.

Proposed Rule 3a55–4 provides criteria that would exclude from the jurisdiction of the SEC futures contracts on certain debt securities indexes. Futures contracts on debt securities indexes that do not meet the criteria in proposed Rule 3a55–4 would be subject to the joint jurisdiction of the SEC and CFTC, while debt securities indexes that meet the criteria for the proposed exclusion would be subject to the exclusive jurisdiction of the CFTC. The SEC requests comments, data, and estimates regarding the benefits associated with allowing the listing and trading of futures on debt securities and narrow-based debt securities indexes under proposed Rule 6h–2 and with the exclusion proposed in Rule 3a55–4.

B. Costs

In complying with proposed Rule 3a55–4, a national securities exchange, national securities association, designated contract market, registered DTEF, or foreign board of trade (each a ''listing market'') that wishes to list and trade futures contracts based on debt securities indexes would incur certain costs. A listing market that wishes to list and trade such futures contracts would be required to ascertain whether a particular debt securities index was or was not a narrow-based security index, according to the criteria set forth in proposed Rule 3a55–4, and thus whether a futures contract based on that security index were subject to the joint jurisdiction of the SEC and CFTC or to the exclusive jurisdiction of the CFTC. The SEC notes, however, that any such costs replace the current cost of doing the same analysis under the statutory definition of narrow-based security index. Market participants that elect to create debt securities indexes would also incur costs associated with constructing these products. Such costs would be the existing costs of doing business. The SEC requests comment as to the costs that such determinations would impose on listing markets or other market participants. Commenters are encouraged to submit empirical data to support these estimates and to identify any other costs associated with the proposal that have not been considered herein, and what the extent of those costs would be.

VIII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

SEC: Section 3(f) of the Exchange Act [43] requires the SEC, when engaged in a rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [44] requires the SEC, in adopting rules under the Exchange Act, to consider the impact any rule would have on competition. In particular, Section 23(a)(2) of the Exchange Act prohibits the SEC from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The SEC preliminarily believes that proposed Rule 3a55–4 would promote efficiency by setting forth clear methods and guidelines for a listing market to distinguish futures contracts on debt securities indexes that are subject to joint jurisdiction of the SEC and CFTC from futures contracts on debt securities indexes that are subject to the sole jurisdiction of the CFTC.

Proposed Rules 3a55–4 and 6h–2 would lift the ban on the listing and trading of security futures based on debt securities and narrow-based debt securities indexes. Thus, the SEC preliminarily believes that the proposed rules would not have an adverse effect on capital formation.

The SEC preliminarily believes that the proposed rules would not impose any significant burdens on competition. The SEC instead believes that, by allowing listing markets to list and trade new financial products, proposed Rule 6h–2 would promote competition by creating opportunities for listing markets to compete in the market for such products and perhaps for some of these new products to compete against existing products.

The SEC requests comments on the potential benefits, as well as adverse consequences, that may result with respect to efficiency, competition, and capital formation if the proposed rules are adopted.

IX. Regulatory Flexibility Act Certifications

CFTC: The Regulatory Flexibility Act (''RFA'') [45] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets and registered DTEFs. The CFTC previously established certain definitions of ''small entities'' to be used by the CFTC in evaluating the impact of its rules on small entities in accordance with the RFA.[46] In its previous determinations, the CFTC has concluded that contract markets and DTEFs are not small entities for the purpose of the RFA.[47]

Accordingly, the CFTC does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the CFTC, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial

[43] 15 U.S.C. 78c(f).

[44] 15. U.S.C. 78w(a)(2).

[45] 5 U.S.C. 601 *et seq.*

[46] 47 FR 18618–21 (Apr. 20, 1982).

[47] 47 FR 18618, 18619 (Apr. 20, 1982) (discussing contract markets); 66 FR 42256, 42268 (Aug. 10, 2001) (discussing DTEFs).

number of small entities. The CFTC invites the public to comment on this finding and on its proposed determination that the trading facilities covered by these rules would not be small entities for purposes of the RFA.

SEC: Section 603(a) [48] of the Administrative Procedure Act (''APA''),[49] as amended by the RFA, generally requires the SEC to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [50] Section 605(b) of the RFA specifically exempts from this requirement any proposed rule, or proposed rule amendment, which if adopted, would not ''have a significant economic impact on a substantial number of small entities.'' Proposed Rules 3a55–4 and 6h–2 would permit the listing and trading of security futures based on debt securities and establish criteria for excluding certain debt securities indexes from the definition of narrow-based security index. Only markets that are registered with the SEC as national securities exchanges and designated as contract markets or derivatives transaction execution facilities with the CFTC would be making determinations as to the status of the debt securities indexes on which futures contracts are trading. The national securities exchanges [51] and contract markets [52] that would be subject to the proposed rules are not ''small entities'' for purposes of the Regulatory Flexibility Act. Therefore, the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

For the above reasons, the SEC certifies that proposed Rules 3a55–4 and 6h–2 would not have a significant economic impact on a substantial number of small entities. The SEC invites commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The SEC requests that commenters provide empirical data to support the extent of such impact.

X. Consideration of Impact on the Economy

CFTC and SEC: For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[53] the SEC and the CFTC must advise the Office of Management and Budget as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. The SEC requests comment on the potential impact of the proposed rules on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

XI. Statutory Authority

Pursuant to the CEA and the Exchange Act, and, particularly, Sections 1a(25)(B)(vi) and 2(a)(1)(D) of the CEA [54] and Sections 3(a)(55)(C)(vi), 3(b), 6(h), 23(a), and 36 of the Exchange Act,[55] the Commissions are proposing Rule 41.15 and amendments to Rule 41.21 under the CEA,[56] and Rules 3a55–4 and 6h–2 under the Exchange Act.[57]

XII. Text of Proposed Rules

List of Subjects

17 CFR Part 41

Security futures products.

17 CFR Part 240

Securities.

Commodity Futures Trading Commission

In accordance with the foregoing, Title 17, chapter I, part 41 of the Code of Federal Regulations is proposed to be amended as follows:

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

Subpart B—Narrow-Based Security Indexes

2. Add Section 41.15 to read as follows:

§ 41.15 Exclusion from Definition of Narrow-Based Security Index for Indexes Composed of Debt Securities.

(a) An index is not a narrow-based security index if:

(1) Each of the securities of an issuer included in the index is a security, as defined in section 2(a)(1) of the Securities Act of 1933 and section 3(a)(10) of the Securities Exchange Act of 1934 and the respective rules promulgated thereunder, that is a note, bond, debenture, or evidence of indebtedness;

(2) None of the securities of an issuer included in the index is an equity security, as defined in section 3(a)(11) of the Securities Exchange Act of 1934 and the rules promulgated thereunder;

(3) The index is comprised of more than nine securities that are issued by more than nine non-affiliated issuers;

(4) The securities of any issuer included in the index do not comprise more than 30 percent of the index's weighting;

(5) The securities of any five non-affiliated issuers included in the index do not comprise more than 60 percent of the index's weighting;

(6) Except as provided in paragraph (8) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(i) The issuer of the security is required to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

(ii) The issuer of the security has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;

(iii) The issuer of the security has outstanding securities that are notes, bonds, debentures, or evidences of

[48] 5 U.S.C. 603(a).

[49] 5 U.S.C. 551 *et seq.*

[50] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The SEC has adopted definitions for the term small entity for the purposes of SEC rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

[51] *See* 17 CFR 240.0–10(e). Paragraph (e) of Exchange Act Rule 0–10 provides that the term ''small entity,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of 17 CFR 240.11Aa3–1 and is not affiliated with any person that is not a small entity. Under this standard, none of the exchanges affected by the proposed rule is a small entity.

[52] The CFTC has previously established certain definitions of ''small entities'' to be used in evaluating the impact of its rules on small entities in accordance with the RFA. See 47 FR 18618–21 (Apr. 30, 1982). In its previous determinations, the CFTC has concluded that contract markets are not small entities for the purpose of the RFA. *See id.* at 18619 (discussing contract markets).

[53] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

[54] 7 U.S.C. 1a(25)(B)(vi) and 2(a)(1)(D).

[55] 15 U.S.C. 78c(a)(55)(C)(vi), 78c(b), 78f(h), 78w(a), and 78mm.

[56] 17 CFR 41.15 and 41.21.

[57] 17 CFR 240.3a55–4.

indebtedness having a total remaining principal amount of at least $1 billion;

(iv) The security is an exempted security as defined in the Securities Exchange Act of 1934 and the rules promulgated thereunder; or

(v) The issuer of the security is a government of a foreign country or a political subdivision of a foreign country; and

(7) Except as provided in paragraph (8) of this section, each security of an issuer included in the index has a total remaining principal amount of at least $250,000,000 except as provided in paragraph (8) of this section.

(8) Paragraphs (a)(6) and (a)(7) of this section will not apply to securities of an issuer included in the index if:

(i) All securities of such issuer included in the index represent less than five percent of the index's weighting; and

(ii) Securities comprising at least 80 percent of the index's weighting satisfy the provisions of paragraphs (a)(6) and (a)(7) of this section.

(b) For purposes of this section:

(1) An issuer is affiliated with another issuer if it controls, is controlled by, or is under common control with, that issuer.

(2) Control means ownership of 20 percent or more of an issuer's equity, or the ability to direct the voting of 20 percent or more of the issuer's voting equity.

(3) The term issuer includes a single issuer or group of affiliated issuers.

Subpart C—Requirements and Standards for Listing Security Futures Products

3. Amend Section 41.21 by:

a. Removing ''or'' at the end of paragraph (a)(2)(i);

b. Removing ''; and,'' at the end of paragraph (a)(2)(ii) and adding '', or'' in its place;

c. Adding paragraph (a)(2)(iii);

d. Removing ''or'' at the end of paragraph (b)(3)(i)

e. Removing ''; and,'' at the end of paragraph (b)(3)(ii) and adding '', or'' in its place; and

f. Adding paragraph (b)(3)(iii).

The additions read as follows:

§ 41.21 Requirements for underlying securities.

(a) * * *

(2) * * *

(iii) a note, bond, debenture, or evidence of indebtedness; and,

* * * * *

(b) * * *

(3) * * *

(iii) A note, bond, debenture, or evidence of indebtedness; and,

* * * * *

Securities and Exchange Commission

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.3a55–4 is added to read as follows:

§ 240.3a55–4 Exclusion from definition of narrow-based security index for indexes composed of debt securities.

(a) An index is not a narrow-based security index if:

(1) Each of the securities of an issuer included in the index is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)) and the respective rules promulgated thereunder, that is a note, bond, debenture, or evidence of indebtedness;

(2) None of the securities of an issuer included in the index is an equity security, as defined in section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and the rules promulgated thereunder;

(3) The index is comprised of more than nine securities that are issued by more than nine non-affiliated issuers;

(4) The securities of any issuer included in the index do not comprise more than 30 percent of the index's weighting;

(5) The securities of any five non-affiliated issuers included in the index do not comprise more than 60 percent of the index's weighting;

(6) Except as provided in paragraph (a)(8) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(i) The issuer of the security is required to file reports pursuant to section 13 or section 15(d) of the Act (15 U.S.C. 78m and 78*o*(d));

(ii) The issuer of the security has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;

(iii) The issuer of the security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion;

(iv) The security is an exempted security as defined in the Act and the rules promulgated thereunder; or

(v) The issuer of the security is a government of a foreign country or a political subdivision of a foreign country;

(7) Except as provided in paragraph (a)(8) of this section, each security of an issuer included in the index has a total remaining principal amount of at least $250,000,000 except as provided in paragraph (a)(8) of this section; and

(8) Paragraphs (a)(6) and (a)(7) of this section will not apply to securities of an issuer included in the index if:

(i) All securities of such issuer included in the index represent less than five percent of the index's weighting; and

(ii) Securities comprising at least 80 percent of the index's weighting satisfy the provisions of paragraphs (a)(6) and (a)(7) of this section.

(b) For purposes of this section:

(1) An issuer is affiliated with another issuer if it controls, is controlled by, or is under common control with, that issuer.

(2) Control means ownership of 20 percent or more of an issuer's equity, or the ability to direct the voting of 20 percent or more of the issuer's voting equity.

(3) The term issuer includes a single issuer or group of affiliated issuers.

3. Section 240.6h–2 is added to read as follows:

§ 240.6h–2 Security future based on note, bond, debenture, or evidence of indebtedness.

A security future may be based upon a security that is a note, bond, debenture, or evidence of indebtedness or a narrow-based security index composed of such securities.

Dated: March 29, 2006.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary.

By the Securities and Exchange Commission.

Dated: March 29, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–3188 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P; 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 211

[Docket No. 2005N–0437]

Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its current good manufacturing practice (CGMP) regulations to include new requirements for the label, color, dedication, and design of medical gas containers and closures. These requirements are intended to do the following: Make the contents of medical gas containers more readily identifiable, reduce the likelihood that containers of industrial or other gases would be inappropriately connected to medical oxygen supply systems, and reduce the risk of contamination of medical gases. FDA is also proposing to include medical air, oxygen, and nitrogen among, and exclude cyclopropane and ethylene from, those gases intended for drug use that are exempt from certain labeling requirements.

DATES: Submit written or electronic comments by July 10, 2006. Submit written comments on the information collection requirements by May 10, 2006. See section VII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0437, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Duane Sylvia, Center for Drug Evaluation and Research (HFD–326), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–9040, e-mail: *Duane.Sylvia@FDA.HHS.GOV*.

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I. Background

A. Need for Revised Regulations

FDA is proposing to add requirements to its CGMP regulations to address repeated incidents of medical gasmixups (e.g., the inappropriate administration of an industrial gas to a patient intended to receive a medical gas) and medical gas contamination that have resulted in serious patient injuries and even deaths. As explained in this document, FDA believes that the number of such incidents will be reduced by implementation of the medical gas label, color, design, and dedication requirements proposed in section II.B of this document.

Between 1996 and April 2004, FDA received several reports of medical gas mixups that resulted in at least 8 patient deaths and 16 serious patient injuries. Because nursing homes and hospitals are not required to report adverse events associated with medical gas mixups to FDA, it is likely that the actual number of these events exceeds the number reported. The reports FDA has received involve two major types of containers in which medical gases are currently stored, portable cryogenic containers and high-pressure medical gas cylinders.

1. Incidents Involving Portable Cryogenic Containers

Portable cryogenic containers are used to store gases in liquid form at extremely low temperatures and pressures. These containers are made of stainless steel and are double-walled and vacuum-insulated to minimize the evaporation and venting of their contents. FDA is aware of at least 7 deaths and 12 serious injuries that occurred between 1996 and April 2004

in connection with mixups of gases stored in portable cryogenic containers. Each of these incidents involved the improper connection of a portable cryogenic container holding an industrial gas to a health care facility's oxygen supply system.

Portable cryogenic gas containers have gas-specific use outlet connections that are used to connect the containers to supply systems. Oxygen supply systems are compatible only with gas use outlet connections designed for portable cryogenic containers holding oxygen. In each of the incidents of which FDA is aware, described in more detail in the following paragraphs, the person making the faulty connection to the health care facility's oxygen supply system: (1) Did not check the label on the portable cryogenic container that was inappropriately connected or was not otherwise able to verify the container's contents and (2) was able to readily remove the oxygen-specific gas use outlet connection from an empty medical oxygen container and use it to inappropriately connect the industrial gas container to the supply system.

On December 7, 2000, four patients in a Bellbrook, Ohio, nursing home died and six were injured after being administered industrial nitrogen instead of oxygen. The nursing home had received a shipment of four portable cryogenic medical gas containers. Each was labeled medical oxygen, but one of the containers also bore an industrial nitrogen label that partially obscured the medical oxygen label and was filled with industrial nitrogen instead. When asked to select a new oxygen container, a nursing home employee mistakenly selected the nitrogen container. The employee was initially unable to connect the container to the oxygen supply system because the container's nitrogen-specific gas use outlet connection was incompatible with the connector on the oxygen supply system. However, the employee ultimately made the fatal connection by removing an oxygen-specific gas use outlet connection from an empty portable cryogenic medical oxygen container and by substituting it for the nitrogen-specific connection on the industrial nitrogen container.

On April 22, 1998, a portable cryogenic container of industrial nitrogen was improperly connected to the oxygen supply system for the operating rooms, labor and delivery rooms, and emergency room in an Idaho hospital. The connection was enabled when the supplier's truck driver used a wrench to disconnect the container's existing nitrogen gas use outlet connection, which was incompatible with the hospital's oxygen supply system, and replaced it with a compatible oxygen gas use outlet connection. Two patients died after receiving nitrogen through this misconnection.

On October 14, 1997, a hospital in Nebraska received a shipment of medical oxygen in portable cryogenic containers. The shipment included one portable cryogenic container of industrial argon. The hospital was running low on oxygen and sent a maintenance employee to connect an oxygen container to the oxygen supply system. Although it was properly labeled, the employee selected the argon container without examining its label. When he was unable to connect the container to the oxygen supply system, the employee removed an oxygen gas use outlet connection from an empty portable cryogenic medical gas container, installed it in place of the argon gas use outlet connection on the industrial argon container, and connected the argon container to the oxygen supply system. Argon was administered to a patient undergoing minor surgery who died as a result of this mixup.

On December 2, 1996, nine patients in a children's home in New York experienced adverse reactions after inhaling carbon dioxide in a medical gas mixup. Two of the patients were injured critically and four patients experienced varying stages of respiratory distress following this mixup. The mixup resulted when an employee of the home mistakenly attached a carbon dioxide container to the home's oxygen supply system.After noting that the gas use outlet connection on the carbon dioxide container was not compatible with the connector on the oxygen supply system, the employee removed a gas use outlet connection from an empty medical oxygen container, installed it on the carbon dioxide container, and attached the carbon dioxide container to the home's oxygen supply system.

In addition to the deaths and serious injuries described earlier in this preamble, FDA is aware of other serious cases of medical gas mixups involving portable cryogenic containers. For example, on December 19, 2000, a mixup occurred in a hospital in Arizona. A ventilator alarm sounded during a surgical procedure, and the anesthesiologist quickly removed the ventilator after noticing that the patient's oxygen saturation level was decreasing. An investigation revealed that a portable cryogenic container of industrial nitrogen had been mistakenly connected to the hospital's oxygen supply system. To make the connection, the nitrogen tank's original gas use outlet connection was removed and replaced with an oxygen-specific gas use outlet connection. Although the anesthesiologist's quick response avoided patient injury in this instance, the mixup was caused by events that have resulted in death and serious injury in other cases, such as the ones previously discussed.

FDA anticipates that mixups like those described earlier in this document will be largely averted if: (1) Users can more readily identify portable cryogenic containers that contain medical gases and (2) the gas use outlet connections on these containers cannot be readily removed by persons other than the manufacturers responsible for filling them. As detailed in section II.B of this document, FDA is proposing requirements to achieve these effects. As further discussed in section I.B of this document, the proposed requirements are intended to supplement existing CGMP requirements and related agency guidance and industry recommendations regarding the safe use of medical gases. Existing agency requirements and guidance already address appropriate education and training for persons responsible for connecting portable cryogenic containers to medical gas systems (e.g., training such persons to check the containers' labels and to understand that the containers' gas-specific use outlet connections are safeguards against mixups and that they are not to be removed.)[1]

2. Incidents Involving High-Pressure Medical Gas Cylinders

High-pressure medical gas containers are used to store gases at relatively high pressures and ambient temperatures. These containers are tubular in design and are constructed of steel or aluminum. Between 1996 and April 2004, FDA received several reports of serious injury attributable to high-pressure medical gas cylinders that were contaminated with residue of industrial cleaning solvents, most likely as a result of improper cleaning during the cylinders' conversion from industrial to

[1] See 21 CFR 211.25(a). The agency's draft guidance for industry on ''Current Good Manufacturing Practice for Medical Gases'' (66 FR 24005, May 6, 2003) and its ''Guidance for Hospitals, Nursing Homes, and Other Health Care Facilities—FDA Public Health Advisory'' (66 FR 18257, April 6, 2001), both discussed in section I.B. of this document, contain specific recommendations for, among other things, the appropriate education and training of health care facilities' and medical gas manufacturers' employees who are involved in handling medical gases and their containers. These guidances are available on the Internet at *http://www.fda.gov/cder/guidance/index.htm*.

medical use. There have also been incidents in which industrial gases in high-pressure cylinders have been mistakenly identified for medical use and their contents inappropriately administered to patients, resulting in injury and death. Examples of incidents involving high-pressure medical gas cylinders are described in the following paragraphs.

On July 12, 1999, a hospital in California reported the death of a patient after carbon dioxide was mistakenly administered instead of oxygen. Although it had an appropriate carbon dioxide gas use outlet connection and label, the shoulder of the high-pressure cylinder containing the carbon dioxide was improperly color-marked in green. According to voluntary color standards adopted by the Compressed Gas Association (CGA) and largely followed by industry, green is the standard color used to indicate a high-pressure medical oxygen cylinder.

On March 20, 1998, a surgery center in South Dakota reported that a strong chlorine-like odor emanated from a patient's high-pressure medical oxygen cylinder during surgery.An analysis of the cylinder revealed that it contained traces of freon. It is likely that the root cause of the contamination was inadequate cleaning during the cylinder's conversion from industrial to medical use. In this case, the patient experienced burning eyes and respiratory problems.

On March 27, 1996, a surgical center in Florida detected a chlorine/bleach-like odor emanating from its oxygen supply system, which was comprised of several high-pressure medical gas cylinders. An analysis of the high-pressure cylinders revealed contaminating traces of benzene and xylene that were likely attributable to improper cleaning of the cylinders during their conversion from industrial to medical use. Several patients experienced minor respiratory problems as a result of the contamination.

FDA anticipates that incidents like those described in this subsection can be avoided if, as proposed in this document, all high-pressure medical gas cylinders are painted in the standard colors for identifying gases adopted by the CGA and if, as also proposed, high-pressure cylinders used to hold industrial gases are not converted to medical use. As discussed in section II.B of this document, FDA does not intend to prohibit the continued medical use of high-pressure gas cylinders that have been appropriately converted from industrial to medical use before the date that the requirements proposed in section II.B are finalized and take effect, as long as such cylinders remain dedicated solely to medical use on and after that date.

B. Current Regulatory Requirements and Recommendations for Medical Gas Containers and Closures

As detailed in this subsection, medical gas containers and closures are currently addressed by many regulations, guidances, voluntary standards, and recommendations that promote the safe and effective use of medical gases. The proposals in section II.B of this document are intended to supplement, rather than supercede, existing regulations and guidance by adding requirements, based largely on current industry practices, to minimize the incidence of adverse events like those previously described.

All medical gases,[2] including those produced by the air liquefaction process[3] or processed, purified, or refined from a raw material, are prescription drugs under sections 201(g)(1)and 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(g)(1) and 353(b)(1)). As such, medical gases are subject to regulation under, among others, section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)) and parts 210 and 211 (21 CFR parts 210 and 211).

Medical gas containers and closures, such as portable cryogenic containers and high-pressure cylinders, are integral parts of the drug product. These containers and closures play a critical role in ensuring that the drug product provided to a patient has the appropriate identity, strength, quality, and purity. Under parts 210 and 211, medical gas manufacturers and distributors must comply with specific CGMP requirements applicable to medical gas containers and closures. Medical gas manufacturers include any individual or firm that fills high-pressure medical gas cylinders or cryogenic medical gas containers by any of the following methods: Liquid to liquid, liquid to gas, or gas to gas. This term includes any third-party company (not the original manufacturer or end user) that acquires liquid medical gas and delivers or fills it into a storage tank. In industry vernacular, a manufacturer is more commonly referred to as a filler, a repackager, or a transfiller. Medical gas distributors include any individual or firm that receives and holds, but does not manipulate, compressed or liquid medical gas in labeled high-pressure cylinders or cryogenic containers.

FDA CGMP regulations that currently address the safety of medical gas containers and closures are extensive and include the following:

- Section 211.80(a), which requires manufacturers of medical gases to establish and follow written procedures for the testing and approval or rejection of containers and closures;
- Section 211.82(a), which requires that medical gas containers and closures be inspected visually for appropriate labeling content, container damage or broken seals, and contamination;
- Section 211.84(a), which requires that medical gas containers and closures be withheld from use until they are examined and released by the quality control unit;
- Section 211.84(d)(3), which requires that medical gas containers and closures be tested for conformance with all written procedures; and
- Section 211.94(b), which requires that medical gas container and closure systems provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of a stored drug product.

Additionally, under § 211.100(a) and (b), manufacturers of medical gases must establish and follow written procedures for production and process control to ensure that medical gases meet applicable specifications for identity, strength, quality, and purity. Also, medical gases are subject to the labeling requirements in §§ 211.122 through 211.137 to ensure that they are correctly labeled with respect to their identity and bear appropriate lot numbers and expiration dating. Further, under § 211.42(b), buildings used by manufacturers and distributors of medical gases must have adequate space for the orderly placement of medical gas containers to prevent mixups or contamination. Under § 211.42(c), operations must be performed within specifically defined areas of adequate size to avoid mixups or contamination of gases during manufacturing, packaging, and labeling operations, as well as during the storage of medical gases after release.

As mandated by § 211.25, individuals involved in the manufacture, processing, packing, or holding of medical gases must have the appropriate combination of education, training, and experience to perform their job functions. Further, before release for

[2] Medical gases include: oxygen, Unites States Pharmacopeia (USP), nitrogen, National Formulary, nitric oxide, nitrous oxide USP, carbon dioxide USP, helium USP, medical air USP, and any mixture of these gases or other gas products approved under a new drug application (NDA).

[3] This process involves extracting atmospheric air and separating it into constituent gases (i.e., nitrogen, oxygen, and argon).

distribution, finished product testing must be conducted on medical gases in accordance with § 211.165 to ensure that they conform to final specifications. Medical gas manufacturers are also subject to several recordkeeping and reporting requirements in §§ 211.180 through § 211.198. As earlier noted, the requirements in this subsection will be supplemented by the additional safety measures FDA is proposing for codification in section II.B of this document.

FDA can take several courses of action in response to identified CGMP violations, including the following:

- Issuing a written warning or notice;
- Seizing affected products, including storage tanks, high-pressure medical gas cylinders, portable cryogenic medical gas containers, cryogenic medical gas containers for home use[4] on the company's premises, cryogenic medical gas containers mounted to trucks and vehicles, as well as tankers;
- Seeking an injunction against the manufacturer and/or distributor; and
- Initiating prosecution.

FDA has issued numerous warning letters and initiated numerous seizure actions, injunctions, prosecutions and civil contempt actions to enforce the CGMP regulations as they apply to medical gases and will continue to take such actions where appropriate.

To supplement existing regulations, FDA has issued guidances and other recommendations for the safe use of medical gases. As further discussed in section II.B of this document, several of the provisions FDA is currently proposing would codify as requirements current recommendations to ensure that they are adopted. In the **Federal Register** of May 6, 2003 (68 FR 24005), FDA announced the availability of a draft guidance for industry entitled ''Current Good Manufacturing Practice for Medical Gases'' (May 6, 2003, draft guidance). This draft guidance provides recommendations for CGMP compliance in the manufacture of compressed and cryogenic medical gases. When finalized, it is expected to help manufacturers and distributors comply with CGMP requirements to ensure the identity, strength, quality, and purity of medical gases. Among other things, the draft guidance includes recommendations that are intended to prevent medical gas mixups and are proposed for codification in section II.B of this document (e.g., using standard colors to identify medical gas cylinders and 360° wraparound labels to identify medical gases in portable cryogenic containers). When these proposals are finalized, the guidance will be amended to reflect their codification.

The May 6, 2003, draft guidance referenced in the previous paragraph follows FDA's February 1989 ''Compressed Medical Gases Guideline,'' which addresses the use of medical gases in the home care setting, including the delivery of oxygen to patients at home, as well as FDA's ''Guidance for Hospitals, Nursing Homes, and Other Health Care Facilities—FDA Public Health Advisory'' (66 FR 18257, April 6, 2001). This public health advisory describes incidents of medical gas mixups and provides recommendations for avoiding these types of incidents, including training facility employees to check the labels of medical gases and to avoid removing the gas-specific fittings (i.e., gas use outlet connections) on portable cryogenic medical gas containers. In July 2001, FDA issued a public health advisory that also discusses medical gas mixups and actions recommended to avoid them.[5] This advisory reiterates the importance of checking labels and not changing the fittings or connectors on cryogenic medical gas containers.

In addition to agency efforts, the medical gas industry and other bodies have taken steps to help prevent medical gas mixups and ensure the safe use of medical gases. For example, since 1973, the CGA has issued a color-marking pamphlet recommending that certain standard colors be used to identify the contents of medical gas containers. The current (fourth) edition of this standard, entitled ''CGA C–9--2004 Standard Color Marking of Compressed Gas Containers Intended for Medical Use,'' was issued on March 10, 2004. Most medical gas manufacturers presently use the colors recommended in the CGA standard to mark high-pressure medical gas cylinders so that their contents can be readily identified. Although the stainless steel composition of portable cryogenic containers renders paint more difficult to apply and maintain, manufacturers that fill these containers have also sought to ease the identification of gases held within them by other methods. As further discussed in sections II.B and IV.B of this document, in recent years, a large majority of these manufacturers have used 360° wraparound labels to identify the contents of portable cryogenic containers used for medical gases. The CGA recommended the use of these labels in a safety bulletin issued in 2001.[6]

Manufacturers have also voluntarily designed the gas use outlet connections on portable cryogenic medical gas containers using varying thread dimensions so that these outlet connections are specific to a particular type of gas and compatible only with connectors to supply systems used to deliver the particular gas. For these reasons, gas-specific use outlet connections on portable cryogenic medical gas containers provide a barrier against the misuse of these gases, provided they are not removed and replaced with, or substituted for, outlet connections specific to a different type of gas. To help ensure that gas use outlet connections on portable cryogenic medical gas containers will not be removed, the CGA has issued a safety bulletin that recommends that these connections be silver brazed or attached by another method to the valve body in a manner that prevents removal or that would render the connection or valve body outlet unusable if removal were attempted or accomplished.[7]

Furthering the safety initiatives discussed in the previous paragraphs, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has encouraged industry's adherence to recommendations provided in FDA's March 2001 ''Guidance for Hospitals, Nursing Homes, and Other Health Care Facilities--FDA Public Health Advisory'' regarding the training of health care employees who handle medical gas containers and the proper storage and handling of these containers.[8] As previously explained, this guidance recommends, among other things, that employees who handle medical gases be trained to carefully check container labels and to avoid changing the gas use outlet connections on cryogenic medical gas containers. In 2002 the JCAHO also added to its Comprehensive Accreditation Manual for Hospitals a description of a hospital medical gas management and training program that emphasized several of the safety measures recommended in FDA's March 2001 guidance. The JCAHO cited this program as an example of how its accreditation standard for utilities

[4] Containers designed to hold liquid oxygen at a patient's home under low pressure and at a very low temperature.

[5] See ''FDA Public Health Advisory: Potential for Injury from Medical Gas Misconnections of Cryogenic Vessels'' (July 20, 2001). This advisory may be accessed on the Internet at *http://www.fda.gov/cdrh/safety/medical-gas-misconnect.html*. Additional information on this subject may be accessed on the Internet at *http://www.fda.gov/cder/consumerinfo/medgas.htm*.

[6] See CGA Safety Bulletin SB-26, 2d edition (November 26, 2001).

[7] See *id*.

[8] See JCAHO Sentinel Event Alert, issue 21 (July 2001).

management (EC.1.7), which addresses in part the reduction of nosocomial (or hospital-related) illnesses and injuries, may be implemented.

Additionally, the National Fire Protection Association (NFPA) recently revised its Standard for Health Care Facilities to include various measures to prevent medical gas mixups.[9] Many State and local governments require health care facilities to comply with NFPA standards. Certain measures adopted by the NFPA, such as wraparound labeling for cryogenic liquid cylinders and the use of gas-specific use outlet connections on such cylinders that are difficult to remove, are similar to requirements that FDA is proposing in section II.B of this document. When followed, existing regulations, guidances, and standards have helped to enhance the safe use of medical gases. However, as previously noted, despite these requirements and recommendations, instances of death and serious injury attributable to medical gas mixups and contamination have continued to occur. The requirements proposed in section II.B of this document will supplement existing requirements and increase the adoption of certain presently voluntary recommendations that help enhance medical gas safety.

II. Description of Proposed Requirements

A. Revisions to Labeling Exemptions

Section 201.100 (21 CFR 201.100) lists various conditions, which if all are met, exempt prescription drug products from the act's requirement that their labeling bear adequate directions for use. Among others, these conditions include the following:

- The label of the drug bears its recommended or usual dosage (§ 201.100(b)(2)),
- For a drug not intended for oral use, the label bears the drug's route of administration (§ 201.100(b)(3)),
- Labeling on or within the drug's packaging bears adequate information for its use and any relevant hazards, contraindications, side effects, and precautions under which licensed practitioners can use the drug safely and for the purposes for which it is intended (§ 201.100(c)(1)).

Current § 201.161(a) (21 CFR 201.161(a)) states that carbon dioxide, cyclopropane, ethylene, helium, and nitrous oxide gases intended for drug use are exempted from the requirements of § 201.100(b)(2), (b)(3), and (c)(1), provided that their labeling bears, in addition to any other information required by the act: (1) The specific warning set forth in § 201.161(a)(1) regarding use of these gases by experienced and licensed practitioners only, (2) any needed directions concerning the gases' conditions of storage, and (3) warnings against dangers inherent in their handling. FDA is proposing that medical air, oxygen, and nitrogen be added to § 201.161(a)'s list of exempted gases. These drugs were, for various reasons, excluded when § 201.161(a) was originally issued in 1970. However, based on its years of regulatory experience with medical air, oxygen, and nitrogen, FDA believes that compliance with the requirements of § 201.100(b)(2), (b)(3), and (c)(1) is unnecessary for these gases if the warning and direction requirements in § 201.161(a), as well as the labeling and coloring requirements proposed in § 211.94(e)(4) and described in the following paragraphs, are met. In addition, FDA proposes to delete cyclopropane and ethylene from § 201.161(a). These gases are no longer used in medical procedures because they are flammable and pose a risk of explosion or fire.

B. Revised Requirements for Medical Gas Containers and Closures

The proposed rule would add a new paragraph (e) under § 211.94 to provide requirements for medical gas containers and closures. The following proposed requirements would enhance the safe use of medical gases by: (1) Diminishing the likelihood that cryogenic containers or high-pressure cylinders used to store medical gases will be tainted with industrial contaminants, (2) decreasing the likelihood of medical gas mixups attributable to the removal and replacement of gas-specific use outlet connections on portable cryogenic containers, and (3) increasing the likelihood that the contents of high-pressure cylinders and portable cryogenic containers will be easily and accurately identified by persons selecting medical gases for administration to patients. The elements of proposed § 211.94(e) are explained in the following paragraphs.

1. Prohibition on Conversion of Cryogenic Containers and High-Pressure Cylinders From Industrial to Medical Use

Proposed § 211.94(e)(1) would prohibit cryogenic containers and high-pressure cylinders that are used to hold industrial gases from being converted to medical use after the final rule becomes effective. The proposed rule would not prohibit the continued medical use of cryogenic containers or high-pressure cylinders previously used to hold industrial gases if such containers have been appropriately converted to medical use (according to standard industry practice) by the time the final rule takes effect and are used solely for medical purposes thereafter. See proposed § 211.94(e)(2). When finalized, proposed § 211.94(e) would supersede and codify an existing recommendation in FDA's draft guidance for industry on ''Current Good Manufacturing Practice for Medical Gases,'' (68 FR 24005) which recommends, among other things, that high-pressure cylinders and cryogenic containers used for medical gases be dedicated to medical use only.

FDA believes that proposed § 211.94(e)(1) is necessary to minimize the risk of contamination of medical gases by industrial contaminants (e.g., chlorine, hydrocarbons, arsenic compounds, industrial cleaning solvents, or foreign gas residue) and to ensure the safety, quality, and purity of medical gases. After the effective date of the final rule, by prohibiting the conversion of high-pressure cylinders or portable cryogenic containers from industrial to medical use, proposed § 211.94(e)(1) would eliminate any potential uncertainty that might otherwise exist as to whether such a container, if converted to medical use, would have been properly cleaned and purged of industrial gas and contaminants.

2. Requirements for Secure Gas Use Outlet Connections on Portable Cryogenic Medical Gas Containers

Proposed § 211.94(e)(3) would require portable cryogenic medical gas containers that are not manufactured with permanent gas use outlet connections to have gas-specific use outlet connections that are attached to the valve body in such a way that they cannot be readily removed or replaced except by the medical gas manufacturer. This proposed requirement would not apply to high-pressure medical gas cylinders because FDA is not aware of any incidents of gas use outlet connection replacement or removal involving such cylinders or of a likelihood of such incidents.

Proposed § 211.94(e)(3) is designed to prevent the types of incidents (described in section I.B of this document) that have occurred when gas-specific use outlet connections on portable cryogenic containers have been removed and replaced with other outlet connections that permit containers of inappropriate gases to be connected to oxygen supply systems. It has been possible for gas use outlet connections

[9] See NFPA 99; *Standard for Health Care Facilities* (2005 edition).

to be readily removed in cases where the connection is attached by a pipe thread outlet and tape. The proposed rule would require that gas use outlet connections on portable cryogenic medical gas containers be permanently attached to the valve body (e.g., by silver brazing) or otherwise attached to the valve body using a locking mechanism or other appropriate device that precludes the easy removal of the connections by parties other than the manufacturer. As earlier noted in section I.B of this document, the CGA has recommended in part that gas use outlet connections be permanently attached to cryogenic medical gas containers by silver brazing or another method that would prevent the connections' removal. Moreover, as discussed in section IV.B of this document, FDA estimates that approximately 90 percent of the containers that would be subject to this requirement already comply with its terms. Thus, this proposed requirement is consistent with current industry recommendations and practice.

For the purposes of proposed § 211.94(e)(3) and (e)(4) (discussed in the following paragraphs), portable cryogenic medical gas containers include all cryogenic medical gas containers that are both capable of being transported and intended to be attached to a medical gas supply system within a hospital, health care entity, nursing home, other facility, or home health care setting, except small cryogenic containers for use by individual patients in their homes and portable liquid oxygen units that are intended to be distributed empty (i.e., unfilled), as described by § 868.5655 (21 CFR 868.5655). The agency is primarily concerned with situations in which medical gas mixups have most often occurred (i.e., where a portable cryogenic container holding a gas other than oxygen is delivered, and an employee of the gas manufacturer or the receiving facility misidentifies the container and is able (by substituting a gas-specific use outlet connection removed from an oxygen container) to connect the inappropriate container to an oxygen supply system for medical use). Proposed § 211.94(e)(3) and (e)(4) would not apply to cryogenic containers that are too large (e.g., a tank truck or trailer) to be connected to a medical gas supply system.

The proposed rule does not apply to containers of industrial gases because these products are not drugs, and thus would not require manufacturers of such gases to outfit portable cryogenic containers intended for industrial use with gas use outlet connections that are difficult to remove. However, as previously discussed, mixups may result if the gas use outlet connection on a portable cryogenic container holding a particular industrial gas is removed and replaced with a use outlet connection that is specific to a different gas and compatible with a medical gas supply system. Therefore, FDA strongly encourages medical gas manufacturers that handle portable cryogenic containers holding industrial gases, as well as portable cryogenic containers holding medical gases, to make the gas use outlet connections difficult to remove on both their industrial and medical containers. FDA believes that most manufacturers already comply with this recommendation. As noted in the previous paragraphs, the CGA's safety bulletin SB–26 advises, in part, that outlet connections on cryogenic medical gas containers be affixed using silver brazing or another method that prevents their removal. Among other things, this bulletin also advises that outlet connections on cryogenic industrial gas containers be used with a device that deters the connections' removal and provides indication in the case that removal is attempted.[10]

The agency also notes that the delivery, after receipt in interstate commerce, of industrial gas to a medical account in a cryogenic container that is mislabeled as medical gas would be a prohibited act under section 301 of the act (21 U.S.C. 331). Section 201(g)(1)(B) of the act defines drugs as all ''articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.'' In the circumstances described in this paragraph, the industrial gas delivered to a medical account (such as a hospital or nursing home) and labeled as medical gas would be intended for such a medical use and thus would be a drug. Moreover, because the industrial gas would be unsuitable and improperly labeled for medical use, it would be adulterated and misbranded under sections 501 and 502 of the act (21 U.S.C. 352), respectively. Accordingly, its delivery and sale to a medical facility would violate section 301 of the act. In addition, the responsible individuals from the gas manufacturer and/or distributor could be held liable under the act for the illegal delivery. (See section 303 of the act (21 U.S.C. 333).)

[10] See CGA Safety Bulletin SB–26, 2d edition (November 26, 2001).

3. Requirement for 360° Wraparound Label for Portable Cryogenic Medical Gas Containers

Proposed § 211.94(e)(4)(i) would require each portable cryogenic medical gas container to be conspicuously marked with a 360° wraparound label identifying its contents. (As explained in section II.B.2 of this document, portable cryogenic medical gas containers subject to this requirement would not include small cryogenic containers for use by individual patients in their homes or portable liquid oxygen units intended to be distributed empty, as described in § 868.5655.) This proposed label requirement is intended to make the contents of these containers more readily known to persons responsible for handling and connecting them to medical gas supply systems in hospitals or other health care facilities and thereby reduce the likelihood of medical gas mixups. Unlike high-pressure medical gas cylinders, which, as earlier noted, manufacturers usually voluntarily paint in standard colors to identify their contents, portable cryogenic medical gas containers are rarely colored. Therefore, it is difficult for users to distinguish these containers from portable cryogenic containers holding industrial gases without reading the containers' labels.

As discussed in section I.B of this document, because of their stainless steel construction, it is difficult to apply and maintain paint on portable cryogenic containers. As also noted in section I.B, in recent years most manufacturers have voluntarily identified medical gases stored in these containers using 360° wraparound labels. These labels are currently readily available from several large label manufacturing firms with the specific colors and wording that we are proposing to require. To ensure that all manufacturers use this method to correctly identify medical gas containers, FDA is proposing to require that portable cryogenic medical gas containers be identified using a 360° wraparound label.

Proposed § 211.94(e)(4)(i)(A) would require that each 360° wraparound label bear an FDA-designated standard name for the contained medical gas. Proposed § 211.94(e)(4)(i)(B) would require that the lettering for the standard name appear in either an FDA-designated standard color against a white background, or in white against an FDA-designated color background. Proposed standard names and colors, which are based on those already widely used by industry, are listed in proposed § 211.94(e)(5). All the standard names

proposed in this provision include the word ''medical'' to distinguish containers labeled with these names from those holding industrial gases.

Additionally, because portable cryogenic medical gas containers tend to be fairly large, the agency is proposing in § 211.94(e)(4)(i) (C) that the lettering for the names of medical gases held in these containers be at least 2 3/4 inches high so they can be easily seen. This proposal is based on discussions with industry, which revealed that 2 3/4-inch lettering is the standard size already commonly used by the medical gas industry. FDA is further proposing in § 211.94(e)(4)(i)(D) that the names of the gases be printed continuously on the wraparound label and be capable of being read around the entire container. FDA believes that this proposal, too, reflects existing widespread industry practice. Additionally, proposed § 211.94(e)(4)(i)(E) would require that the label be located on the sidewall near the top of the container but below the top weld seam. FDA understands that placing the label in this location increases its durability and is already common practice. Proposed § 211.94(e)(4)(i)(F) would require that the label be affixed to the container in a manner that ensures that it cannot be easily detached or worn, and that it does not interfere with other labeling.

Although FDA is not proposing to require that portable cryogenic medical gas containers be colored, the agency is aware that, on rare occasions, manufacturers may voluntarily color the shoulders of these containers. To avoid confusion in these cases, manufacturers would be required by proposed § 211.94(e)(4)(i)(G) to use the standard colors designated in proposed § 211.94(e)(5) to identify the gases stored in the containers. If manufacturers choose to color portable cryogenic medical gas containers, the requirement to use the colors designated in proposed § 211.94(e)(5) would be in addition to, and not instead of, the requirement to use the 360° wraparound label in proposed § 211.94(e)(4)(i).

Current § 211.125(c) requires manufacturers to follow procedures to reconcile the quantities of labeling issued, used, and returned, and to evaluate discrepancies found between the quantity of drug product finished and the quantity of labeling issued when such discrepancies are outside narrow, preset limits based on historical operating data. In light of the unique nature of the 360° wraparound labels FDA is proposing for portable cryogenic medical gas containers, the agency has determined that compliance with the reconciliation requirements of § 211.125(c) is not practical for these labels. Compliance would be impractical because the labels are not discrete but, rather, are supplied on a large reel or spool as a continuous string of repeated medical gas names that can be cut into an unfixed number of labels of varying sizes.

4. Requirement to Color High-Pressure Medical Gas Cylinders

Proposed § 211.94(e)(4)(ii) would require that high-pressure medical gas cylinders be identified with a standard color as provided in proposed § 211.94(e)(5). Nonaluminum high-pressure medical gas cylinders would be required to be colored in whole in the applicable standard color. Aluminum high-pressure medical gas cylinders would be required to be colored only on the shoulder portion of the cylinder because the bodies of these cylinders are coated with a thermal indicator that turns a different color when the cylinders have been exposed to fire.

The agency recognizes that hospitals, nursing homes, and other firms or individuals may occasionally purchase high-pressure medical gas cylinders from manufacturers for their own private use. Under proposed § 211.94(e)(4)(ii), manufacturers would be required to color these cylinders in the applicable standard color designated in § 211.94 (e)(5) prior to their sale for private use. FDA understands that private owners may wish to distinguish high-pressure medical gas cylinders they own from those owned by manufacturers and that, in the past, private owners have sometimes distinguished their cylinders by painting them a different color than those owned by manufacturers. To avoid confusion with cylinders painted in the standard colors proposed in § 211.94(e)(5), the agency encourages private owners who wish to distinguish their high-pressure medical gas cylinders to mark those cylinders using a possession sticker or to stencil their name vertically on the body of the cylinders.

The proposed container coloring requirements described in the preceding paragraphs are consistent with present industry practice and should not represent a significant burden for most medical gas manufacturers. Currently, the vast majority of high-pressure medical gas cylinders are voluntarily colored in accordance with the standard colors in proposed § 211.94(e)(5). As discussed in section I.A.2 of this document, at least one death is known to have resulted from an inappropriately colored high-pressure medical gas cylinder. The agency emphasizes that employees responsible for handling medical gases are required to have the training and education necessary to identify a medical gas by reading the container label. However, as past events have demonstrated, individuals responsible for handling medical gases do not always read the labels on these gases carefully. The agency believes that coloring high-pressure medical gas cylinders in standard colors provides an important additional safeguard against the improper use of these cylinders and can be accomplished with minimal burden on industry.

As noted earlier in this document, proposed § 211.94(e)(5) specifies the colors that would be required to be used on the exterior surfaces of high-pressure medical gas cylinders under proposed § 211.94(e)(4)(ii). The colors proposed in § 211.94(e)(5) are the same as those currently recommended by the CGA and voluntarily used by most of the U.S. medical gas industry to identify medical gases. Under proposed § 211.94(e)(4)(ii)(D), high-pressure cylinders holding a mixture or blend of medical gases would be required to be colored with the standard colors representing each component. All colors would be required to be visible when viewed from the top of the cylinder. The portion of the cylinder painted in each color must correspond roughly to the proportion of each gas in the mixture. For example, a mixture of oxygen (95 percent) and carbon dioxide (5 percent) must be represented by a cylinder (or cylinder shoulder, if the cylinder is aluminum) that is predominantly green with a gray band or shoulder.

To ensure that the colors painted on high-pressure medical gas cylinders will endure, under proposed § 211.94(e)(4)(ii)(C), the materials used for coloring would be required to be reasonably resistant to fading and durable when exposed to atmospheric conditions. This provision would further require that the materials not be readily soluble in water after they have been applied and properly dried or cured. The agency declines to specify an exact shade of color or a color specification that must be used under proposed § 211.94(e)(5). However, to avoid confusion, the color shade selected should be such that its hue and intensity, when viewed in normal indoor light, cannot be mistaken for another color by persons having normal color perception.

III. Legal Authority

As discussed in section I.B of this document, all medical gases are prescription drugs under sections 201(g)(1) and 503(b)(1) of the act, and

are subject to regulation under section 501(a)(2)(B) of the act and parts 210 and 211. Under sections 701(a) (21 U.S.C. 371(a)) and 501(a)(2)(B) of the act, FDA has the authority to create and modify CGMP regulations to ensure that drugs are safe and have the identity, strength, quality, and purity they are purported or represented to possess. Medical gas containers and closures are integral parts of medical gas drug products and play a critical role in ensuring that these products are safe and have the appropriate identity, strength, quality, and purity. As discussed in section I.B of this document, incidents involving misuse and contamination of medical gases have caused death and serious injury to patients. As also previously discussed, these incidents have occurred despite current regulations and guidances addressing the safe handling of medical gases.

FDA is therefore invoking the authority granted by sections 701(a) and 501(a)(2)(B) of the act to propose CGMP regulations that are designed to prevent the misuse and contamination of medical gases. The specific requirements in these proposed regulations would be an integral part of the manufacturing, processing, packing, and holding of medical gases and help to ensure the safety of these products. These requirements constitute current good manufacturing practice under section 501(a)(2)(B) of the act. In addition to this CGMP statutory authority, the labeling requirements in the proposed regulations (i.e., the use of wraparound labels and standard colors and names) are also authorized under section 502 of the act.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, 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 proposed rule is not an economically significant regulatory action as defined by 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, as explained in the following sections of this document, FDA estimates that the proposed rule would result in an annualized cost to small businesses equivalent to 0.1 percent of their revenues or less, the agency believes that the rule is unlikely to have a significant economic impact on a substantial number of small entities. However, since we cannot exclude the possibility of a significant economic impact because of the large number of small businesses that could be affected and the limited amount of data on which the estimate in the previous sentence is based, a regulatory flexibility analysis is included.

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 proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

FDA is proposing to amend § 211.94 to require the use of certain safeguards in the production, storage, and use of medical gases. These changes to the CGMP regulations would include new requirements for the label, color, dedication, and design of medical gas containers and closures. Specifically, the amended regulations would require the following: (1) Gas use outlet connections on portable cryogenic medical gas containers be permanently attached or otherwise locked to the valve body so they cannot be readily removed except by the manufacturer, (2) a 360° wraparound label clearly identifying the container's contents be affixed near the top of portable cryogenic medical gas containers, and (3) high-pressure medical gas cylinders be painted an FDA-designated standard color. Additionally, the proposal would prohibit the medical use of high-pressure cylinders or cryogenic containers that have previously been used to hold industrial gases if such containers have not been appropriately converted to medical use by the final rule's effective date and are not solely dedicated to medical use on and after this date.

A. Benefits

This proposal is expected to reduce the risk of accidents involving the improper handling of medical gases and therefore the number of accidental injuries and deaths from these accidents.

As discussed in section I.A of this document, FDA has received reports from nursing homes and hospitals of accidents involving the improper handling of portable cryogenic containers and high-pressure medical gas cylinders that resulted in 8 deaths and 16 injuries between 1996 and April 2004. Because there is no requirement that nursing homes and hospitals report such incidents to us, we assume that these figures underestimate the number of deaths and injuries over this time period. On average, this equates to approximately one death and two injuries per year. As noted earlier in this document, these deaths and injuries have been associated with portable cryogenic containers and high-pressure cylinders that were misidentified or contaminated, or whose gas-specific use outlet connections were inappropriately removed and replaced. FDA believes that this proposal, when finalized, will drastically reduce, if not completely eliminate, the foregoing errors and the human deaths and injuries that might otherwise occur. We estimate that this proposed rule could eliminate, on average, one death per year.

There are different methodologies for valuing the avoidance of mortalities because of regulatory action. One approach is based on society's willingness-to-pay to avoid incremental risks of a statistical death. A widely cited study calculates this value based on occupational wage premiums necessary to accept increased work-place fatality risks.[11] This study implies a societal value of about $5 million per statistical death avoided. A more recent study by Viscusi that compares worldwide estimates of the value of a statistical life (VSL) concludes that a more appropriate VSL estimate for the United States is about $7 million.[12] Because we estimate that this proposed rule could prevent, on average, one death per year, we estimate the benefit of the rule in the first year alone at about $7 million. The avoidance of the increased medical costs, lost productivity, and investigation or

[11] See Viscusi, W.K., *Fatal Tradeoffs, Public and Private Responsibilities for Risk*, Oxford University Press, 1992.

[12] See Viscusi, W.K., and J.E. Aldy, ''The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World,'' *The Journal of Risk and Uncertainty*, volume 27, no. 1, p. 63, 2003.

litigation costs associated with up to two additional medical gas-related injuries per year, although positive, would not be expected to add substantially to this total. Because of the small number of medical gas-related incidents that occur on average each year, there is some uncertainty surrounding the benefit of this proposed rule in any individual year.

B. Costs

Depending on their current level of compliance, medical gas manufacturers would be expected to incur compliance costs for the following:

- Silver brazing or locking gas use outlet connections on portable cryogenic medical gas containers,
- Purchasing and attaching 360° wraparound labels on portable cryogenic medical gas containers,
- Painting high-pressure medical gas cylinders in the appropriate FDA-designated color(s), and
- Forgoing the use of portable cryogenic containers and high-pressure cylinders for both industrial and medical use. Additionally, manufacturers may be expected to incur a very slight increase in record maintenance costs for container closures subject to this proposed rule.

The agency used the best available data from industry contacts and FDA personnel to generate cost estimates for this proposal, and we are inviting public comment and additional data on the methods used to make these estimates.

1. Brazing or Locking of Gas Use Outlet Connections on Portable Cryogenic Medical Gas Containers

Under proposed § 211.94(e)(3), portable cryogenic containers that hold medical gases would be required to have gas use outlet connections that are either permanently attached to the valve body or attached to the valve body in a manner that does not permit them to be readily removed except by the manufacturer. There are at least two methods of compliance: (1) Silver brazing the gas use outlet connection to permanently attach it to the valve body or (2) using any of several locking devices to lock the outlet connection to the valve body. Currently manufactured cryogenic containers incorporate brazed gas use outlet connections or locking devices, but some older containers that are still in use may not.

Although FDA does not presently have a broader sample of company data to draw upon, data from several of the large industrial gas producers show that they have, on average, about 4,375 portable cryogenic medical gas containers each. Further, contacts at these firms suggested that industrial gas producers (seven in total) supply about 10 percent of all portable cryogenic containers in medical use. Based on this information, FDA estimates that approximately 306,000 portable cryogenic medical gas containers would be subject to this proposed rule (4,375 x 7 x 10 = 306,250). FDA anticipates that cryogenic medical gas containers used by home care firms would not be subject to the proposed brazing or locking requirement. To the agency's knowledge, the only cryogenic medical gas containers such firms would fill would be small cryogenic containers for use at home by individual patients. These containers would be exempt from proposed § 211.94(e)(3).

The cost of materials and labor for the silver brazing process is expected to range from $50 to $150 per cryogenic container.[13] This range reflects estimated costs for companies that are capable of performing brazing operations in-house, as well as for those that would need to contract this work to an outside company. An informal industry estimate of current compliance with silver brazing is between 90 percent and 100 percent for larger distributors.[14] Very few small firms, which may have lower compliance rates, are expected to operate portable cryogenic container facilities that would be subject to this proposed rule. FDA conservatively estimates, therefore, that about 90 percent of all portable cryogenic medical gas containers (approximately 276,000 containers [306,250 x .9 = 275,625]) currently comply with proposed § 211.94(e)(3). The compliance cost of silver brazing all other cryogenic containers that would be subject to this provision is estimated to range from approximately $1,531,000 (30,625 x $50) to approximately $4,594,000 (30,625 x $150).

An alternative to silver brazing that would also comply with the proposed requirement would be locking gas use outlet connections on portable cryogenic medical gas containers to the valve bodies on such containers using any of several locking valves or devices. These locking valves or devices are priced at about $10 to $15 each. FDA estimates that, at most, another $2 to $3 would be required in labor costs to attach each locking valve or device. Accordingly, FDA estimates that the total cost of complying with proposed § 211.94(e)(3) through the use of locking valves or devices would range from $12 to $18 per cryogenic container. Again assuming a current compliance rate with the proposed provision of 90 percent (275,625 containers), the total cost of this option for industry would be expected to be no more than approximately $551,000 ([306,250–275,625] x $18).

Because locking valves or devices are less costly than silver brazing and have become more widely used by industry, FDA expects that firms that do not currently comply with proposed § 211.94(e)(3) will choose to use these devices to achieve compliance with the proposed requirement. Accordingly, the cost estimate for the proposed rule includes the locking device option and excludes the silver brazing option.

2. 360° Wraparound Label for Portable Cryogenic Medical Gas Containers

Proposed § 211.94(e)(4)(i) would require that portable cryogenic containers used to hold medical gases be identified with a 360° wraparound label specifying their contents. FDA received a cost estimate of the wraparound label from only one manufacturer. Although the manufacturer reported this cost at about $1 per label, the size of the shipment ordered may affect the average price for all manufacturers. Taking this into account, as well as the lack of estimates from other manufacturers that could result in a higher estimate, FDA assumes that the average cost is $1.50 per label for this analysis. FDA estimates that an additional labor cost of about $3 would be required to attach each label to a portable cryogenic container. As noted previously in this document, FDA estimates that approximately 306,000 cryogenic containers would be subject to this proposed rule when finalized. The current compliance rate for proposed § 211.94(e)(4)(i) is not known with certainty but is conservatively estimated at 90 percent (approximately 276,000 containers).[15] Based on this estimate, total industry compliance costs for proposed § 211.94(e)(4)(i) would amount to approximately $135,000 ([306,000 - 276,000] x $4.50).

3. Painting of High-Pressure Medical Gas Cylinders

Proposed § 211.94(e)(4)(ii) would require that high-pressure cylinders holding medical gases identified in proposed § 211.94(e)(5) be painted in the standard colors also identified in § 211.94(e)(5). As discussed previously

[13] Lower estimate made by medical gas manufacturer during a site visit by FDA on June 28, 2001. Upper estimate projected by FDA.

[14] Estimate provided to FDA by a major consulting firm for medical gas companies.

[15] Estimate provided to FDA by a major consulting firm for medical gas companies.

in this document, the coloring standards identified in proposed § 211.94(e)(5) have been widely used throughout the industry for many years. Consequently, the current compliance rate with this proposed provision is expected to be extremely high, and only a very small percentage of customer-owned cylinders are expected to be out of compliance. Although the current compliance rate cannot be predicted with certainty, FDA believes that it is at least 99 percent.[16] The compliance costs for proposed § 211.94(e)(4)(ii) have been calculated based on an estimated compliance rate of 99.5 percent.

FDA does not have a complete set of data upon which to confidently estimate the number of high-pressure cylinders used for medical gases. Data from several industrial gas producers that also supply medical gases show that the number of cylinders per establishment varies greatly, even among this subset of medical gas suppliers.[17] Using this data, FDA estimates that the average industrial gas establishment has about 3,000 high-pressure cylinders for use with medical gases. There are 3,400 establishments that are known to supply medical gases. The total number of high-pressure medical gas cylinders that would be subject to proposed § 211.94(e)(4)(ii) is therefore estimated at about 10.3 million (3,000 x 3,400). This estimate likely exceeds the actual number of high-pressure cylinders that would be affected by this proposed rule because certain firms that supply medical gases in these cylinders are not expected to operate establishments as large as those of industrial gas manufacturers and, consequently, are not expected to have as many high-pressure medical gas cylinders. As noted earlier in this document, FDA estimates that 99.5 percent of the high-pressure medical gas cylinders that would be subject to this proposed rule are currently in compliance with the proposed coloring requirements (approximately 10,249,000 cylinders [10,300,000 x .995]). Thus, even if each affected establishment handled the estimated average of 3,000 high-pressure medical gas cylinders, only approximately 51,000 such cylinders (10,300,000–10,249,000) would need to be colored to come into compliance with proposed § 211.94(e)(5). Painting costs for these cylinders are estimated to range from $5 to $10 each, including both labor and materials. The total cost of this provision is therefore estimated at between $255,000 (51,000 x 5) and $510,000 (51,000 x 10).

4. Prohibition of Container Use for Both Industrial and Medical Purposes

Proposed § 211.94(e)(1) and (e)(2) would prohibit high-pressure cylinders and portable cryogenic containers from being used to store medical gases if they were previously used to hold liquid or compressed industrial gases and were not converted to medical use by the effective date of the final rule. FDA has anecdotal information that the practice of converting these containers back and forth from industrial to medical use is very rare, although it does occur. To the extent that such conversion occurs, FDA expects this provision to cause a small percentage of firms to purchase additional high-pressure cylinders or portable cryogenic containers to maintain their current supplies of these products for both medical and industrial uses. The agency does not have enough data or information to predict the number of additional containers that the average firm would purchase. The number should be very low, however, and the majority of firms should not be affected by this provision. Additionally, some off-setting savings would be expected if proposed § 211.94(e)(1) and (e)(2) are implemented because certain costs associated with converting high-pressure cylinders or portable cryogenic containers from industrial to medical use would be eliminated, including the costs of cleaning, purging, relabeling, and changing the gas use outlet connections on containers being converted. FDA invites public comment and data on the prevalence and public health risk of container conversion across the medical gas industry and estimated costs of compliance with proposed § 211.94(e)(1).

5. Records Maintenance

As mentioned previously in this document, proposed § 211.94(e)(3) would require that gas use outlet connections on portable cryogenic medical gas containers be permanently attached to the valve body or otherwise attached so that they cannot be readily removed, except by the manufacturer. As explained earlier in this document, FDA is aware of at least two methods by which industry could comply with this proposed requirement: (1) Silver brazing the gas use outlet connection to the valve body so that the outlet connection is permanently attached, or (2) using a locking valve or device to secure the gas use outlet connection to the valve body. Locking valves and devices would be considered part of a medical gas' container closure.

Under existing § 211.184, manufacturers are required to maintain certain records for medical gas container closures because they are considered part of the finished drug product. Specifically, under § 211.184(a), the following information must be maintained:

- Records regarding the identity and quantity of each shipment of container closures;
- The name of the supplier;
- The supplier's lot number or numbers, if known;
- The receiving code; and
- The date of receipt.

Under § 211.184(b), records of the results of any test or examination conducted on a container closure under § 211.182(a) must be maintained. Under § 211.184(c), an individual inventory record must be maintained for each container closure. Under § 211.184(e), records of the disposition of any rejected container closure must be maintained.

In light of the requirements described in this subsection of the rule, proposed § 211.94(e)(3) could result in a slight increase in the medical gas industry's record maintenance activities if, after this provision is finalized, industry chooses to use locking valves or devices on portable cryogenic medical gas containers that do not already comply with the proposed provision. As noted earlier in this document, such valves or devices would be considered part of the medical gas' container closure. FDA would not, however, expect the costs of establishing and keeping the records required by § 211.184 for locking valves or devices to be substantial. Additionally, FDA anticipates that, in the vast majority of cases, records for locking valves or devices would not be required to be updated after the valves or devices have been inspected upon their receipt by medical gas manufacturers, or would only very rarely be required to be updated, under § 211.184.

To account for the records maintenance costs potentially associated with proposed § 211.94(e)(3), including the possibility that some small percentage of maintenance records for locking valves or devices could require periodic updating, FDA estimates that manufacturers would be required to expend approximately 2 minutes (mins.) on record maintenance activities per locking device per year. This estimate includes time that would be associated with the initial inspection of the locking valve or device by the manufacturer. As previously discussed

[16] Based on experience of The Center for Drug Evaluation and Research personnel involved in medical gas issues.

[17] Based on phone contacts between FDA personnel and medical gas suppliers in June 2002.

in section IV.B.1 of this document, FDA estimates that 306,250 portable cryogenic medical gas containers are currently in use and that about 90 percent of these (approximately 275,625 containers) already comply with proposed § 211.94(e)(3). FDA expects that, with respect to the remaining estimated 30,625 containers, industry would opt to comply with proposed § 211.94(e)(3), when finalized, through the use of locking valves or devices, which are less costly than silver brazing. As explained earlier in this document, records maintenance costs would be associated with these valves and devices and, thus, would be costs of compliance associated with proposed § 211.94(e)(3). At an industrial manager's wage rate of approximately $53 per hour (including a 35 percent increase for benefits), FDA estimates that this proposed provision would result in a records maintenance compliance cost of approximately $54,000 per year for the entire industry (30,625 x 2 mins. x [$53/60 mins.]).

6. Total Costs

Individual cost elements of this proposed rule as well as total costs are shown in table 1 of this document.

TABLE 1.—PROPOSED RULE COSTS

Cost Component	One-Time Cost	Annualized Cost[1]
Brazing/locking of gas use outlet connections for portable cryogenic medical gas containers	$551,000	$78,000
360° Wraparound labels for portable cryogenic medical gas containers	$138,000	$20,000
Painting high-pressure medical gas cylinders the standard industry color	$255,000 to $510,000	$36,000 to $73,000
Records maintenance	N/A	$54,000
Total costs	$944,000 to $1,199,000	$188,000 to $225,000

[1]Over 10 years at 7 percent discount rate.

C. Comparison of Costs and Benefits

The estimated benefits of this proposed rule compare favorably to the estimated costs. The medical gas accident data noted earlier in this analysis show that these accidents have been claiming more than one life and two additional injuries per year. On average, the benefit of avoiding one statistical death per year is estimated at about $7 million. The one-time costs of this proposed rule are expected to total from about $950,000 to $1.2 million. These costs (not including the records maintenance costs), when annualized over a 10-year period at 7 percent, are estimated to range from about $134,000 to $171,000 per year. With the addition of annual records maintenance costs of approximately $54,000, the total annualized cost is estimated to be between $188,000 and $225,000. Average one-time establishment and firm costs would be expected to range from about $300 to $400 and $900 to $1,200, respectively. Even at an effectiveness rate of only about 10 percent (or one death avoided every 10 years), the benefits of the proposed rule would still compare favorably with its costs.

D. Regulatory Flexibility Analysis

The following analysis, along with other sections of this preamble, constitutes the regulatory flexibility analysis as required under the Regulatory Flexibility Act.

1. Need for and Objectives of the Rule

The agency is proposing this rule to help prevent deaths and injuries from the improper use of medical gases. The rule is intended to dramatically lower the incidence of the types of potentially fatal medical gas mixups that have occurred in the past.

2. Description and Estimate of Small Entities

This proposed rule would affect manufacturers and distributors of medical gases. The Small Business Administration (SBA) sets size limits for small businesses according to the North American Industrial Classification System (NAICS) business categories. Medical gas suppliers fall into the following categories:

- Small industrial gas manufacturers (NAICS code 325120) are those with less than 1,000 employees,
- Small home health care service companies (NAICS code 621610) are those with less than $11.5 million in revenue,
- Small chemical and allied product wholesalers (NAICS code 422690) are those with less than 100 employees, and
- Small home health equipment rental companies are those with less than $6 million in revenue.

It can be difficult to assign a company to a single or primary NAICS code because of the similarities between NAICS categories and because companies often have product sales or service sales in more than one category. For example, home health care service firms and home health equipment rental firms are very similar and often have sales that fall into both categories. For purposes of this rulemaking, they have been assigned to one category, a combined home health care service and equipment rental companies category, with a small business limit of $11.5 million. This limit reflects the higher of the two applicable limits under the NAICS for home health care service firms and home health equipment rental firms, respectively.

The 3,400 establishments on FDA's list of medical gas suppliers are operated by about 1,020 individual companies. A sample of the establishments run by these companies was taken to generate data to estimate the economic impacts on small businesses that would be imposed by this proposed rule. This sampling of the firms and their corresponding establishments shows the following: (1) Approximately 80 percent of the firms (about 800) and 32 percent of the establishments (about 1,100) would be in the home health care service and equipment rental industry, (2) approximately 13 percent of the firms (about 130) and 67 percent of the establishments (about 2,300) would be in the industrial gas industry, and (3) approximately 6 percent of the firms (about 70) and 2 percent of the establishments (about 70) would be in

the chemical and allied products wholesale industry. Because of the small sample size, the true size of these categories may vary. In particular, the last category, which would include welding supply companies, may be substantially larger than the 6 percent of firms reported. A separate counting of welding firms in the database shows that they may represent over 15 percent of all registered medical gas firms.

The 1997 Economic Census (the Census) (the last census for which detailed data are available) reports 118 industrial gas manufacturers with 643 establishments. About 10 of these manufacturers are reported to have more than 1,000 employees. Therefore, FDA estimates that about 108 industrial gas manufacturers are small businesses according to the SBA criteria. For the chemical and allied products wholesale industry, the 1997 data show that the average establishment has less than 15 employees. The data also show that none of these companies has more than 100 employees. FDA assumes, therefore, that all the companies in this category are small businesses according to the SBA criteria. The Census data show that only about 4 percent of the combined home health care equipment rental companies and home health care service companies would exceed the NAICS revenue criteria for small business inclusion. Therefore, FDA estimates that about 768 firms (800 firms x 96 percent) in this category are small businesses. In total, FDA estimates that about 950 of the 1,020 companies in the medical gas supply industry are small businesses according to the SBA criteria. If welding supply companies in fact do represent a significantly higher percentage of all firms than shown by our sample, FDA would expect that more than 950 of the 1,020 medical gas distributors would be small businesses. In either case, over 93 percent of the firms providing medical gases would be considered small businesses according to the SBA criteria.

3. Reporting, Recordkeeping, and Compliance Requirements

The size of the compliance burden, as described previously in this document, would probably be smaller on a per establishment basis for those firms that are not categorized as industrial gas manufacturers or welding supply companies. Home health care service and equipment rental companies do not fill or distribute portable cryogenic medical gas containers to hospitals or nursing homes. To the agency's knowledge, the only cryogenic medical gas containers these firms would fill would be small cryogenic containers for use at home by individual patients. As discussed earlier in this document, these containers would not be subject to the requirements proposed for portable cryogenic medical gas containers in this rule. These proposed requirements comprise the majority of the estimated total compliance cost burden. While most industrial gas manufacturers were classified as small according to the SBA criteria, it is believed that all, or almost all, of these manufacturers would provide cryogenic gas filling services and would therefore incur a larger share of the compliance burden.

The one-time compliance costs for all firms were previously reported to range, on average, from about $900 to $1,200 per firm. Average firm costs for small businesses would be expected to be slightly less than this average. However, even at the level described here, one-time compliance costs would represent the following: (1) Less than 0.01 percent of revenues for the average small industrial gas manufacturer, (2) about 0.03 percent of revenues for the average small chemical and allied product wholesaler, and (3) about 0.1 percent of revenues for the average small home health care service and equipment rental company. It is not likely that these amounts would create a significant impact on these small businesses. However, because we estimated average impacts across fewer than 1,000 small businesses, we cannot state with confidence that a substantial number of affected firms would not have impacts significantly higher than the average costs estimated. We request public comment and data on the industry sectors and impacts as discussed in this analysis.

4. Other Federal Rules

FDA is not aware of any other Federal rules that overlap, duplicate, or conflict with the proposed rule.

5. Alternative Policies

Alternative policies were considered during the development of this proposed rule. One alternative would have been to require that all high-pressure medical gas cylinders and portable cryogenic medical gas containers be physically separated on delivery trucks according to the specific medical gas each contained. The purpose of this requirement would have been to further reduce the risk of accidental mixups between containers containing different industrial and medical gases. This alternative would, however, be expected to greatly reduce delivery truck capacity and productivity. To promote efficiency, medical gas cylinders and containers are currently loaded onto delivery trucks in the order they are received from customers along the trucks' delivery routes, without regard to the type of gas being loaded. Further, requiring the physical separation of gas containers on delivery trucks would necessitate additional container handling by personnel during the delivery process, thereby potentially increasing the risk of human handling errors, such as errors in medical gas identification. FDA believes that, on the whole, this alternative would impose greater annual compliance costs without significantly reducing the risk of accidents beyond those reductions provided by the provisions of the proposed rule. Therefore, it was not included in this proposal.

Another option would have been to delete the general warning statement that is currently required to appear on the labeling of certain medical gases under § 201.161(a)(1)[18] and require instead that each such gas be labeled with a gas-specific statement of warnings. However, the agency could not identify any accidents or other problems that could be directly traced to a misunderstanding of the general warning statement currently in effect. Additionally, the current warning statement has the advantage of being familiar and well-established. Allowing manufacturers to create differing warning statements specific to each medical gas could cause identical gases from different manufacturers to have different warnings and result in unnecessary confusion for medical gas users. For both of these reasons, this option was not included in the proposed rule.

A third option would have been to require that the shoulders of portable cryogenic medical gas containers be painted the appropriate standard color designated in proposed § 211.94(e)(5). This alternative was not adopted because the proposed alternative of requiring a 360° wraparound label was deemed appropriate to ensure the easy identification of medical gases stored in portable cryogenic containers. Further, as discussed earlier in this document, these containers are currently rarely painted. Rather, most of industry has been identifying medical gases stored in these containers using 360° wraparound

[18] This warning statement reads: ''Warning—Administration of (name of gas) may be hazardous or contraindicated. For use only by or under the supervision of a licensed practitioner who is experienced in the use and administration of (name of gas) and is familiar with the indications, effects, dosages, methods, and frequency and duration of administration, and with the hazards, contraindications, and side effects and the precautions to be taken.''

labels instead. Accordingly, compliance costs would be expected to be relatively greater if FDA pursued the alternative of requiring that portable cryogenic medical gas containers be colored.

The final alternative would have been to exempt small businesses from this proposed rule. However, this option would present greater risks to the public health and nullify most of the rule's expected effects. As noted previously in this document, using the SBA criteria for identifying small businesses in the relevant industry categories, FDA estimates that about 950 of the 1,020 firms that would be subject to this rule, or about 93 percent, would be considered small businesses. Accordingly, if small businesses were exempted from the rule, it would be too limited in scope to effectively reduce the risk of medical gas mixups. Moreover, FDA believes that the expected costs of compliance with the proposed rule, discussed earlier in this document, are low and not sufficient to warrant a small business exemption. Therefore, no such exemption was adopted as part of the proposed rule.

V. Paperwork Reduction Act of 1995

This proposed rule contains collection of information requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to the agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The information collection requirements included in this proposed rule are described in this section of the preamble with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden created by the 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.

Title: Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements.

Description: FDA is proposing requirements for medical gases to help prevent deaths and serious injuries that can result from the improper use of such products. The proposed rule would revise FDA's CGMP regulations and other regulations to include new requirements for the label, color, dedication, and design of medical gas containers and closures. Among other proposed requirements, § 211.94(e)(4)(i) would require that portable cryogenic containers used to hold medical gases be conspicuously marked with a 360° wraparound label. Additionally, proposed § 211.94(e)(3) would require that portable cryogenic medical gas containers that are not manufactured with permanent gas use outlet connections be equipped with connections that are secured to the container using a locking device or other method that ensures that the connection cannot be readily removed or replaced except by the manufacturer.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

Burden Estimates: The total annual reporting and recordkeeping burden is estimated to be 4,070 hours. Table 2 of this document provides estimates of the annual reporting burden under the proposed rule. Table 3 of this document provides estimates of the annual recordkeeping burden.

Proposed § 211.94(e)(4)(i) would require that each portable cryogenic container used to hold medical gases be marked with a 360° wraparound label identifying the container's contents. FDA's database of establishments that manufacture medical gases includes about 3,400 such establishments. As discussed in section IV.B.1 of this document, we estimate that there are approximately 306,000 portable cryogenic containers in distribution that would be subject to the proposed 360° wraparound label requirement. FDA estimates that approximately 90 percent of these containers have already been marked with such a label. Thus, on average, each manufacturer would need to put labels on approximately nine containers ([306,000 ÷ 3,400] - [.9 x (306,000 ÷ 3,400]). FDA estimates that approximately 6 minutes would be required to attach a label to each container. Thus, the total burden hours associated with proposed § 211.94(e)(4)(i) would be approximately 3,060 hours (3,400 x 9 x .10 hours).

Under proposed § 211.94(e)(3), medical gas manufacturers that use portable cryogenic medical gas containers that are not manufactured with permanent gas use outlet connections would be required to use a locking device or other method to ensure that the gas use outlet connection on the container cannot be readily removed or replaced except by the manufacturer. As noted earlier in this document, the locking device or other method used would be considered part of the container closure, and manufacturers would be required to maintain records in accordance with § 211.184 for such articles. This would result in a slight increase in the recordkeeping burden under § 211.184 for medical gas manufacturers.

The burdens for maintaining records under § 211.184 have previously been estimated by FDA, and this collection of information was approved by OMB until August 31, 2005, under OMB control number 0910–0139. FDA is not re-estimating approved burdens in this rulemaking. Only the additional recordkeeping burdens on medical gas manufacturers under § 211.184 that are associated with proposed § 211.94(e)(3) are estimated in table 3 of this document.

As discussed in section IV.B.1 of this document, FDA estimates that 90 percent of the roughly 306,000 portable cryogenic medical gas containers that would be subject to proposed § 211.94(e)(3) (.9 x 306,000 = 275,400) already comply with this proposed provision. The agency therefore expects that approximately 30,600 portable cryogenic containers (306,000–275,400) would need to be brought into compliance with the provision when it is finalized. As explained earlier in this document, with respect to these 30,600 containers, FDA expects that manufacturers will elect to use locking devices or other articles that would be considered drug product container closures to achieve compliance with proposed § 211.94(e)(3). Accordingly, these 30,600 portable cryogenic medical gas containers would be subject to additional records maintenance requirements under § 211.184. As discussed previously in this document, FDA estimates additional time of approximately 2 minutes (2 mins. ÷ 60 mins. per hour = .033 hours) per container per year will be needed to maintain records under § 211.184 for portable cryogenic medical gas containers as a result of proposed § 211.94(e)(3). Therefore, the total additional recordkeeping burden resulting from proposed § 211.94(e)(3) would be approximately 1,010 hours

(30,600 containers x .033 hours) per year.

FDA estimates the burden for the collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
211.94(e) (4)(i)(labeling--third party disclosure)	3,400	9	30,600	.10	3,060
Total					3,060

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours Per Record	Total Hours
211.184	3,400	9	30,600	.033	1,010
Total					1,010

[1]Capital, operating, and/or maintenance costs associated with this proposed rulemaking are estimated in section IV of this document.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, OMB.

The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the proposed information collection requirements are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

VI. 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.

VII. Effective Date

FDA proposes that any final rule based on this proposal become effective 60 days after publication in the **Federal Register**. Because the proposed requirements have largely already been adopted as standard industry practice, the agency believes that it would be reasonable to implement the final rule as rapidly as possible.

VIII. Federalism

FDA has analyzed this proposed 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.

IX Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit written comments regarding information collection to OMB (see **ADDRESSES**). 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR parts 201 and 211 as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.161 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 201.161 Medical gases.

(a) Medical air, oxygen, nitrogen, carbon dioxide, helium, and nitrous oxide gases intended for drug use are exempted from the requirements of § 201.100(b)(2), (b)(3), and (c)(1), provided that, where applicable, the requirements of § 211.94(e)(4) of this chapter are met and the labeling bears, in addition to any other information required by the Federal Food, Drug, and Cosmetic Act, the following:

* * * * *

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

3. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374 42 U.S.C. 216, 262, 263a, 264.

4. Section 211.94 is amended by adding paragraph (e) to read as follows:

§ 211.94 Drug product containers and closures.

* * * * *

(e) Medical gas containers and closures must meet the following requirements:

(1) Except as provided in paragraph (e)(2) of this section, cryogenic containers or high-pressure cylinders used at any time to hold a liquid or compressed industrial gas may not be subsequently used to hold any type of liquid or compressed medical gas.

(2) The prohibition in paragraph (e)(1) of this section does not apply to any cryogenic container or high-pressure cylinder that was once used to hold a liquid or compressed industrial gas if the container or cylinder:

(i) Was converted to use for holding a liquid or compressed medical gas in accordance with standard industry practice before [effective date of final regulation]; and

(ii) Is used solely to hold a liquid or compressed medical gas on and after [effective date of final regulation] and is in compliance with all other applicable requirements.

(3) Portable cryogenic medical gas containers that are not manufactured with permanent gas use outlet connections (e.g., those that have been silver-brazed) must have gas-specific use outlet connections that are attached to the valve body so that they cannot be readily removed or replaced (without making the valve inoperable and preventing the containers' use) except by the manufacturer. For the purposes of this paragraph, the term ''manufacturer'' includes any individual or firm that fills high-pressure medical gas cylinders or cryogenic medical gas containers by any of the following methods: Liquid to liquid, liquid to gas, or gas to gas. For the purposes of paragraphs (e)(3) and (e)(4) of this section, a ''portable cryogenic medical gas container'' is one that is capable of being transported and is intended to be attached to a medical gas supply system within a hospital, health care entity, nursing home, other facility, or home health care setting. The term does not include small cryogenic gas containers for use by individual patients or portable liquid oxygen units when distributed empty, as defined at § 868.5655 of this chapter.

(4) *Label and color requirements.* (i) Each portable cryogenic medical gas container must be conspicuously marked with a 360° wraparound label identifying its contents.

(A) The label must identify the medical gas held in the container by the gas' standard name, as designated in paragraph (e)(5) of this section.

(B) The standard name must be printed on the label in one of the following ways:

(*1*) Using lettering that appears in the standard color designated for the gas in paragraph (e)(5) of this section and that is printed against a white background, or

(*2*) Using lettering that appears in white against a background that is painted in the standard color for the gas as designated in paragraph (e)(5) of this section.

(C) The lettering for the name of the gas on the label must be at least 2 3/4 inches high.

(D) The name of the gas must be printed continuously around the label and be capable of being read around the entire container.

(E) The label must be on the sidewall of the container, as close to the top of the container as possible but below the top weld seam.

(F) The label must be affixed to the container so that it cannot be easily detached or worn, and in a manner that does not interfere with other labeling.

(G) If the shoulder portion of a portable cryogenic medical gas container is colored, the color used must be that designated in paragraph (e)(5) of this section for the gas held within the container.

(ii) High-pressure medical gas cylinders must be identified with FDA-designated standard colors according to the following:

(A) Non-aluminum high-pressure medical gas cylinders must be colored in whole in the standard color designated in paragraph (e)(5) of this section for the gas contained in the cylinder.

(B) Aluminum high-pressure medical gas cylinders must be colored on the shoulder portion of the cylinder in the standard color designated in paragraph (e)(5) of this section for the gas contained in the cylinder.

(C) The materials used for coloring must be reasonably resistant to fading, durable when exposed to atmospheric conditions, and not readily soluble in water after they have been applied and properly dried or cured.

(D) High-pressure medical gas cylinders containing a blend or combination of medical gases must be colored with the standard colors of each component gas, as designated in paragraph (e)(5) of this section. Each such color must be visible when viewed from the top of the cylinder and must appear in rough proportion to the fraction of the gas it represents in the combination or mixture.

(5) The standard names and colors required to identify medical gases under paragraph (e)(4) of this section are:

Standard Name	Standard Color
Medical Air	Yellow
Medical Carbon Dioxide	Gray
Medical Helium	Brown
Medical Nitrogen	Black
Medical Nitrous Oxide	Blue
Medical Oxygen	Green
Mixture or Blend of Medical Gases	Standard colors for each component

5. Section 211.125 is amended by adding a sentence to the end of paragraph (c) to read as follows:

§ 211.125 Labeling issuance.

* * * * *

(c) * * * Labeling reconciliation is also waived for 360° wraparound labels on portable cryogenic medical gas containers.

Dated: November 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–3370 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–146384–05]

RIN 1545–BF02

Application of Section 338 to Insurance Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance under section 197 that apply to the treatment of certain insurance contracts assumed in an assumption reinsurance transaction and section 338 that apply to a deemed sale or acquisition of an insurance company's assets pursuant to an election under section 338 of the Internal Revenue Code, to a sale or acquisition of an insurance trade or

business subject to section 1060, and to the acquisition of insurance contracts through assumption reinsurance. The text of those regulations also serve as the text of these proposed regulations.

DATES: Written or electronic comments, and a request for a public hearing, must be received by July 10, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138879–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138879–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–146384–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Mark J. Weiss, (202) 622–7790, concerning submissions of comments, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary Regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 338. The temporary regulations add §§ 1.197–2T(g)(5)(ii), 1.338–11T(d), and 1.338–11T(e). The texts of those regulations also serve as the text of these proposed regulations. The preamble to the temporary regulations explain the amendments included in these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide guidance about the operation of the tax law in the context of acquisitions of insurance companies and businesses. Moreover, they are expected to apply predominantly to transactions involving larger businesses. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov.* The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Mark J. Weiss of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Section 1.197–2 also issued under 26 U.S.C. 197. * * *

Section 1.338–11 also issued under 26 U.S.C. 338. * * *

Par. 2. Section 1.197–2 is amended by revising paragraph (g)(5)(ii) to read as follows:

§ 1.197–2T Amortization of goodwill and certain other intangibles (temporary).

* * * * *

(g) * * *

(5)(ii) [The text of the proposed § 1.197–2(g)(5) is the same as the text for § 1.197–2T(g)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 1.338–1 is amended by redesignating existing paragraph (b)(2)(vii) as paragraph (b)(2)(viii) and adding new paragraph (b)(2)(vii) to read as follows:

§ 1.338–1 General principles; status of old target and new target.

* * * * *

(b) * * *

(2) * * *

(vii) [The text of the proposed § 1.338–1(b)(2)(vii) is the same as the text for § 1.338–1T(b)(2)(vii) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 4. Section 1.338–11 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.338–11 Effect of section 338 election on insurance company targets.

* * * * *

(d) *Reserve increases by new target after the deemed asset sale.*

[The text of the proposed § 1.338–11(d) is the same as the text for § 1.338–11T(d) published elsewhere in this issue of the **Federal Register**].

(e) *Effect of section 338 election on section 846(e) election.*

[The text of the proposed § 1.338–11(e) is the same as the text for § 1.338–11T(e) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 5. Section 1.846–2 as amended by adding new paragraph (d) to read is follows:

§ 1.846–2 Election by taxpayer to use its own historical loss payment pattern.

* * * * *

(d) *Effect of section 338 election on section 846(e) election.*

[The text of the proposed § 1.846–2(d) is the same as the text for § 1.846–2T(d) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 6. Section 1.846–4 is amended by:

1. The section heading is revised.
2. Redesignating the existing text as paragraph (a).
3. Adding new paragraph (b).

The revision and addition read as follows:

§ 1.846–4 Effective dates.

* * * * *

(b) *Section 338 election.*

[The text of the proposed § 1.846–4(b) is the same as the text for § 1.846–4T(b)

published elsewhere in this issue of the **Federal Register**].

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 06–3321 Filed 4–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–024]

RIN 1625–AA08

Special Local Regulations for Marine Events; Rappahannock River, Essex County, Westmoreland County, Layton, VA; Correction

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of April 3, 2006, regarding a temporary special local regulation for ''2006 Rappahannock River Boaters Association Spring and Fall Radar Shootout'', power boat races to be held on the waters of the Rappahannock River near Layton, VA. This correction changes the date by which comments and related material must reach the Coast Guard, from June 2, 2006 to May 3, 2006. The change is necessary because the June 2 date does not allow adequate time to issue a final rule before June 3, 2006, the date of the first event affected by the proposed rule.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Marine Events Coordinator, Fifth Coast Guard District, at (757) 398–6204.

Correction

In proposed rule FR Doc. E6–4788, beginning on page 16525 in the issue of April 3, 2006, make the following correction in the **DATES** section. On page 16525 in the second column, change ''June 2, 2006'' to ''May 3, 2006.''

Dated: April 4, 2006.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

[FR Doc. E6–5208 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2005–0015; FRL–7779–7]

RIN 2070–AJ18

Perfluoroalkyl Sulfonates; Proposed Significant New Use Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the public comment period established for the Proposed Significant New Use Rule for Perfluoroalkyl Sulfonates in the **Federal Register** issued on March 10, 2006 (71 FR 12311) (FRL–7740–6). In that proposed rule, EPA proposed to amend a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) to include certain perfluoroalkyl sulfonates (PFAS) substances. EPA proposed to amend the PFAS SNUR at 40 CFR 721.9582 by adding a new Table 3 containing the remaining PFAS chemicals on the TSCA Inventory that are not already regulated by the SNUR. EPA believes that action is necessary because these chemical substances may be hazardous to human health and the environment. The required notice will provide EPA the opportunity to evaluate intended significant new uses and associated activities before they occur and, if necessary, to prohibit or limit those uses or activities.

DATES: Comments must be received on or before May 10, 2006.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of March 10, 2006 (71 FR 12311).

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Amy Breedlove, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9823; e-mail address: *breedlove.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

The Agency included in the proposed rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA taking?

This document extends the public comment period established in the **Federal Register** issued on March 10, 2006 (71 FR 12311). In that document, EPA proposed to amend a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) to include certain perfluoroalkyl sulfonates (PFAS) substances. EPA proposed to amend the PFAS SNUR at 40 CFR 721.9582 by adding a new Table 3 containing the remaining PFAS chemicals on the TSCA Inventory that are not already regulated by the SNUR. EPA is hereby extending the comment period, which was set to end on April 10, 2006, to May 10, 2006.

III. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by promulgating a rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). These factors include the projected production volume of a chemical substance; the extent to which a use changes or increases the type, form, magnitude, or duration of exposure to the substance; and the reasonably anticipated manner of producing, processing, distributing, or disposing of the substance. EPA construes the statute to allow consideration of any other relevant factors, in addition to those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, and promulgates a SNUR, section 5(a)(1)(B) of TSCA requires persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use.

IV. Do Any Statutory and Executive Order Reviews Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments on a proposed rule must be submitted to EPA on a proposed rule that previously published

in the **Federal Register** of March 10, 2006 (71 FR 12311). For information about the applicability of the statutory and executive order reviews to the proposed rule, please refer to the discussion in Unit XII. of that document (71 FR 12311).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 4, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 06–3400 Filed 4–5–06; 1:17 pm]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final notice forming a negotiated rulemaking advisory committee.

SUMMARY: Pursuant to the direction contained in the Joint Explanatory Statement of the Committee of Conference, for section 3023(d), ''Condition on Charter Bus Transportation Service'' of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) of 2005, FTA is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding the prohibition of FTA grant recipients from providing charter bus service. The committee will consist of persons who represent the interests affected by the proposed rule, i.e., charter bus companies, public transportation operators, and other interested parties. This document lists the committee members, issues to be addressed by the committee, and proposed meeting dates, time, and location.

DATES: *Effective Date:* April 10, 2006.

FOR FURTHER INFORMATION CONTACT: For questions regarding accessibility, directions, or administrative procedures, please contact Elizabeth Martineau at (202) 366–1966 or Linda Lasley at (202) 366–4063.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 3023 of SAFETEA–LU amends 49 U.S.C. 5323(d) to state that ''the Secretary shall bar a recipient or an operator from receiving federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the [charter bus] agreement.'' Congressional conference report language on Section 3023 requests that FTA ''initiate a negotiated rulemaking seeking public comment on the regulations implementing section 5323(d)'' and to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicted to the public, including use of internet technology?
3. How can the enforcement of violations of the charter bus regulations be improved?
4. How can the charter complaint and administrative appeals process be improved?

II. Negotiated Rulemaking

As requested by conference report language on Section 3023 of SAFETEA–LU, FTA will conduct the negotiated rulemaking. The Negotiated Rulemaking Act of 1990, Pub. L. 101–648 (5 U.S.C. 561, *et seq.*) (NRA) establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the rulemaking process. FTA will form an advisory committee consisting of representatives of the affected interests for the purpose of reaching consensus, if possible, on a proposed rulemaking.

A. The Concept of Negotiated Rulemaking

Usually FTA develops a rulemaking proposal using its own staff and consultant resources. The concerns of affected parties are made known through means such as various informal contacts and advance notices of proposed rulemaking published in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues in the proposed rule. All comments from affected parties are directed to the Department's docket (*http://dms.dot.gov*) for the rulemaking. In general, there is limited communication among parties representing different interests. As Congress noted in the RA, such regulatory development procedures may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interest to assume conflicting and antagonistic positions * * *'' (Sec. 2(2) of *Pub. L. 101–648*). Congress also stated ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (Sec. 2(3) of *Pub. L. 101–648*).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process by which a proposed rule is developed by a committee composed of representatives of those interests that will be significantly affected by the rule. Decisions are made by some form of consensus, which generally requires a measure of concurrence among the interests represented.[1] An agency desiring to initiate the process does so by carefully identifying all interests potentially affected by the rulemaking under consideration. To help in this identification process, the agency publishes a notice, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. The committee is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) (FACA). Representation on the committee may be ''direct'', that is, each member represents a specific interest, or may be ''indirect,'' that is, through coalitions of parties formed for this purpose. The establishing agency has a member of the committee representing the Federal Government's own set of interests. A facilitator or mediator can assist the negotiated rulemaking advisory committee by

[1] The negotiated Rulemaking Act defines ''consensus'' as ''unanimous concurrence among the interests represented on a negotiated rulemaking committee * * * unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition.'' 5 U.S.C. 562(2).

facilitating the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the agency consistent with its legal obligations, uses this consensus as the basis of its proposed rule and published it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and allows for a public comment period. Under the APA, the public retains the right to comment. FTA anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all major issues prior to publication of a proposed rulemaking.

B. The Federal Transit Administration's Commitment

In initiating this regulatory negotiation process, FTA plans to provide adequate resources to ensure timely and successful completion of the process. This includes making the process a priority activity for all representatives, components, officials, and personnel of FTA who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. FTA will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has adequate resources to complete its work in a timely fashion in each case as reasonably determined by FTA. These may include the provision or procurement of such support services as properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the services of a facilitator; and additional research and other technical assistance. FTA hired Susan Podziba & Associates, a public policy mediation and consensus building company, to act as the facilitator for this negotiated rulemaking.

C. Committee Members

As discussed above, the negotiated rulemaking process is fundamentally different from the usual process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation process involves the mutual education of the parties by each other on the practical concerns about the impact of various approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it exclusively to the agency to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus, as defined by the committee. Thus, no one interest or group of interests shall control the process. Under the NRA as noted above, ''consensus'' usually means the unanimous concurrence among interests represented on a negotiated rulemaking committee, though a different definition may be employed in some cases. In addition, experience has demonstrated that using a professional mediator to facilitate this process will assist all potential parties, including helping to identify their interests in the rule and enabling them to reevaluate previously stated positions on issues involved in the rulemaking effort.

D. Key Issues for Negotiation

The Conference Committee report on SAFETEA–LU requested that FTA and the negotiated rulemaking committee consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

3. How can the enforcement of violations of the charter bus regulations be improved?

4. How can the charter complaint and administrative appeals process be improved?

In addition to those issues posed in the Conference Committee Report, FTA identified the following issues for consideration by the committee:

1. A potential new exception for emergency services such as evacuation and training for emergencies, including homeland security, natural disasters, and other emergencies.

2. A new process for determining if there a private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

3. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

4. Clarify the definitions of regulatory terms.

FTA invited comment on all of these issues.

III. Comments Received

We received 20 comments on the proposed issues for consideration by the advisory committee; see document published 71 FR 5037, Jan. 31, 2006. We heard from large and small public transportation providers, rural transportation providers, large, medium, and small bus companies, transit associations, charter associations, and several state Departments of Transportation (state DOT). While we have summarized the comments received, we do not feel it is appropriate at this time to respond to the comments received. As a member of the advisory committee, FTA is eager to engage in discussions and deliberations with the other members of the committee regarding the issues identified in the Conference Committee Report and the issues we identified. Responding to comments now could give the impression that we have settled on a particular approach or resolution.

Conference Committee Report Issues

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

Private charter operators took exception to the inclusion of the term ''cost-effective'' in this issue because there has been no demonstrated ''unmet need'' by public transportation providers. One commenter noted that cost-effectiveness cannot be equated with price. Providing incidental charter service will cost private carriers and public transit systems roughly the same. Public transit systems, however, often price their service at or below their costs for providing the service. According to this commenter that argument ''goes to very heart of 'unfair government competition.' '' Another private charter operator noted that while they do not believe there is an unmet charter service need, if public transportation providers could demonstrate ''that a valid need exists to create further exceptions to the charter rule, we would only consider supporting such exceptions if they were clearly defined and significantly limited; if there were more accountability, reporting and

publication requirements built into the process; and if we could be assured of more consistent and aggressive enforcement of the charter rules.''

Several comments from public transportation providers asked FTA to revise the charter rules to make them more flexible for FTA funded providers in rural areas. One commenter summarized this issues as: ''Charter bus operators seldom base equipment in rural areas and thus face high mobilization costs if they are to move vehicle to small communities to provide services for limited periods of time. Since private charter companies are often unable to provide the service at a price the group can afford, the service need goes unmet.'' Another commenter noted that public officials who already have limited budgets feel they should be able to use the vehicles for community-based events such as transporting juries to crime locations or transporting potential new business owners who may be interested in locating in the area.

A few comments from public transportation providers supported an exception from charter regulations for those transit systems that contract out their day-to-day operations to a private for-profit transit provider. Those commenters assert that these contracts already support private charter operations, and, thus, the regulations should not apply to their systems. One of these commenters requested that the regulations require the public transit agency, instead of the customer, contact the private charter company. This commenter believes that such a requirement would lessen the frustration of those seeking charter services.

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

All comments received agreed that FTA could more effectively use the internet to inform the public and transportation providers regarding requests for charter service. One commenter suggested that all transit agencies provide their chartering policies on their websites. Another commenter states that ''those companies willing and able to provide charter service should have to submit information on service area and ability to provider charters to [FTA] and to the [state DOTs] so that the information will be readily available to public transit providers in their service areas.'' This commenter also states that following this method would provide a record of notification and responses, or non-responses. One commenter encouraged the use of the Internet but warned that many rural operators still do not have access to the Internet.

A state DOT would like to see FTA develop a brochure—paper and on the Internet—that would inform state and local officials as to when a transit agency cannot provide service even though providing such service would appear to be consistent with the transit agency's mission. This commenter also believes that FTA should adopt methods for removing private charter companies from the list of willing and able companies when that private charter company, in fact, never provides the services.

A private operator also suggested a Web-based clearinghouse and recommended that the Web site be arranged to send alerts to private operators that there is a request for charter service. In addition, this commenter noted that FTA could more regularly and effectively communicate the rules to public transit grantees through ''Dear Colleague'' letters, publications, audits, congressional testimony, trade association presentations and other means. This commenter also encouraged FTA publish complaints and enforcement actions on the Internet.

3. How can the enforcement of violations of the charter bus regulations be improved?

One commenter suggested that the committee consider definitions (or a requirement for formal FTA written guidance) to make it clear under what conditions the FTA, or a state DOT for rural operators, may require a transit agency to cancel pending prohibited charter service, when doing so would require the transit agency to nullify a contract commitment. Additionally, this commenter suggested the committee might consider requiring FTA to develop standard methods that can be used by FTA and state DOTs to evaluate a complaint and, in particular, confirm that a transit agency did not provide prohibited charter service.

A state DOT suggested letting non-charter systems know up-front the ramifications of performing charter service. Another state DOT commented that state-level bus associations and the national associations should receive copies of all complaints, and FTA's regional offices should have appropriate levels of dedicated personnel in order to participate in any complaint and enforcement activities.

A public transportation provider stated that FTA can improve its enforcement of violations of charter prohibitions by issuing a written warning to the transit agency for the first offense. The warning serves to inform the agency that their action is deemed inappropriate. If there are subsequent offenses, then the transit agency should lose its Federal funding in the amount of the Federal share of the cost of the vehicle(s) it used to provide the charter service in question.

A private charter operator commented that the Secretary should clearly and repeatedly inform all transit assistance recipients of the regulations governing use of equipment purchased with Federal funds and FTA should offer tools to transit agencies to aid in this compliance including: Greater consistency in enforcement decisions; publication of enforcement decisions; clear guidance on permissible and impermissible actions and appropriate training for agency employees assigned the responsibility for enforcing the charter rules. This comment also suggested the Secretary could promote greater compliance among public agencies by requiring them to notify FTA of charter service provided and audits of the charter service provided should be conducted to ensure compliance.

Another private operator suggested two enforcement options: (1) A financial penalty (developed on a predetermined, progressive scale) or (2) a total prohibition to provide charter service for an extended period of time.

4. How can the charter complaint and administrative appeals process be improved?

One state DOT suggested the committee consider allowing FTA to make a determination that a complaint is substantially incomplete, such that the complainant can be requested to provide additional information or documentation before FTA will accept or act on the complaint.

A private charter operator stated if FTA offered a more open, flexible and timely process, the appeals process could indeed become truly fair for all parties. FTA should consider the average length of time an appeal takes from the initiation to resolution; the ability of a Regional decision to be overturned; and the fairness of this process to both the complainer and the complainant. Another private operator suggested each grantee or sub-grantee should provide FTA with an annual report of the actual dates and total compensation of charter services it provided. This type of report could be generated and reported with only a minimal amount of effort by the grantees. The data would serve as a basis for evaluating the extent of these

services, and should FTA receive a charter complaint, there would be a record of such activity. The information would expedite the FTA's administrative compliance review of these provisions, and in turn, the timeliness on any determination of any complaint and appeal process will certainly be reduced. This commenter also suggested that FTA should also impose a penalty for grantees' failure to report charter service dates and their associated revenue.

FTA Issues

1. A potential new exception for emergency services such as evacuation and training for emergencies, including homeland security, natural disasters, and other emergencies

Several public transportation providers supported an exception from charter service regulations for emergency services. One comment summarized their support for such an exception ''because in times of crisis, brownouts, natural catastrophic events, or by order of the Governor or his designated emergency response agency, public systems should be able to provide non-scheduled service on an immediate basis, e.g., evacuations, particularly for local government and non-profit personnel but also more broadly.'' In addition, this commenter noted ''we believe that providing charter transportation to assist government officials with training is consistent with the broader exception for serving government officials raised in the first question posed by Congress and therefore supports a new exception for training as raised in this question.''

Private operators expressed concern about this potential exception. One commented that it is premature to create such an exception at this time and discussion by the committee on these additional issues, such as an emergency services exception, should occur only after consensus is reached on the core issues. Another private operator stated that issues one and three on FTA's list of issues are totally new issues beyond the scope of the conference committee report and this commenter recommended that the regulatory negotiation advisory committee only consider these items if there are limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators. Another private operator stated that a potential emergency service exemption does not fit within topic one on the Conference Committee Report list, and this topic should not be lumped into a rulemaking that relates to government competition with the private sector. Discussions relating to national security and emergency services training, by necessity, will require a different group of interested parties than those identified for this rulemaking.

2. A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours

All comments received agreed with utilizing an electronic notification and response system. A private charter operator commented that FTA should modernize the charter rules through a Web-based approach with electronic notification. Once a notice is issued, all users would have the same amount of time in which to respond. All users would receive the information the same way, and, thus, be in the same position to respond. A state DOT also agreed with the notion of utilizing an electronic or internet notification system in lieu of the current system because it would be cost effective, timely way of doing business. Another state DOT stated an electronic system would potentially let publicly funded transit systems know that charter service is not available to a group of passengers and would allow the publicly funded system to perform that service.

3. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works

Private charter operators object to this potential exception because ''any exemption applied to providing service to government employees will have a severe negative effect on many private operators most of which are small businesses.'' In addition, any exemption that would allow transit agencies to undercut the private sector and provide similar fixed-contract services to any government agency, is not within the scope of Conference Committee Report's issues and was not the intent of Congress. An association stated that school districts should be excluded from any new exception for local government entities.

Public transportation providers generally supported this exception. One noted that it supports an exemption for the transportation of government officials or other similar individuals ''who are participating in a tour of transit facilities or are en route to a transit agency-sponsored event.'' Another public transportation provider commented that ''if the funding sources see a duplication of spending and that dollars could be saved, then this will be a good idea.'' This commenter also noted that it is very difficult for an operator of a public transit system to tell elected officials that they can not provide a service even though that governmental entity owns and operates the vehicle. One also commented that ''the committee should be clear on what constitutes 'public work.' ''

4. Clarify the definitions of regulatory terms

Comments received generally agree that there should be a clarification of the terms used in the charter bus regulations. One noted that the committee should be sure all definitions in the rule, and FTA guidance materials that result from the rule, are applicable to demand response services. Another commented that consensus on the definitions of regulatory terms is absolutely essential to the success of any changes to the charter rule. An association provided a list terms that should be clarified: ''Charter,'' ''regular and continuing service,'' ''closed door service,'' and ''pattern of violations.''

Finally, we received three comments suggesting new issues for consideration by the advisory committee. Two commenters suggested that the negotiated rulemaking advisory committee consider consolidating all charter service requirements into one regulation. These commenters note that while there are slightly different approaches in each of the program areas (charter, school, and complementary paratransit service), in the interest of simplicity and consistency, FTA should create one set of regulations to ensure that ''private purveyors'' are not adversely affected by the existence of Federally subsidized assets. The third comment suggested the committee address FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events. The advisory committee will determine whether to consider these two additional issues.

IV. Interests Likely To Be Affected; Representation of Those Interests

The advisory committee will include a representative from FTA and from the interests and organizations listed below. The FTA representative is the Designated Federal Official (DFO) and will participate in the deliberations and

activities of the committee. The DFO will be authorized to fully represent FTA in the discussions and negotiations of the committee.

The DFO for the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) will be David B. Horner, Chief Counsel of FTA. As the DFO, Mr. Horner will serve as the Chairperson for the CBNRAC and is primarily responsible for ensuring the proper administration of the CBNRAC. The Chairperson's responsibilities are set out in the Charter for the CBNRAC, which is included in the docket for this rulemaking.

The CBNRAC will include the following individuals:

1. Community Transportation Association of America (CTAA; represented by Dale Marsico).
2. Northwest Motorcoach Association/ Starline Luxury Coaches (represented by Gladys Gillis).
3. American Association of State Highway and Transportation Officials (AASHTO; represented by David Spacek from IL DOT).
4. National School Transportation Association (NSTA; represented by John Corr from Transgroup).
5. Trailways (represented by Jack Burkett).
6. Lancaster Trailways of the Carolinas (represented by Mary Presley).
7. American Public Transportation Association (APTA; represented by Dan Duff).
8. Kansas City Area Transportation Authority (KCATA; represented by Mark Huffer).
9. New York Metropolitan Transportation Authority (NYMTA; represented by Christopher Boylan).
10. Los Angeles County Municipal Operators Association (LACMOA; represented by Stephanie Negriff of Santa Monica's Big Blue Bus).
11. Amalgamated Transit Union (ATU; represented by Karen Head).
12. Oklahoma State University, The Bus Community Transit System (represented by Hugh Kierig).
13. Monterey-Salinas (MST; represented by Carl Sedoryk).
14. Taxicab, Limousine & Paratransit Association (TLPA; represented by Harold Morgan).
15. South Dakota Department of Transportation (represented by Ron Baumgart).
16. American Bus Association (ABA; represented by Clyde Hart).
17. United Motorcoach Association (UMA; represented by Victor Parra).
18. FTA.

We asked for comment on our proposed list of committee members and received comments primarily requesting representation of certain individuals on the CBNRAC. Others requested representation of specific interests. We believe our list of committee members for the CBNRAC is responsive to the concerns expressed by commenters. What follows is a summary of the comments received regarding our list of proposed interests. We do not include, however, a summary of specific individuals who applied for membership or were nominated for membership on the committee. Those names can be obtained by reviewing the docket for this matter.

One comment asked that we include an employee representative on the negotiated rulemaking advisory committee. This would ensure that the revised regulations on charter service protect the interests of the workers in both the private bus industry and the public transit agencies.

FTA agrees with this comment, and, therefore, we have included employee representation by selecting the Amalgamated Transit Union to participate on the CBNRAC.

A state DOT emphasized the importance of having small rural transit providers represented as well as non-profit agencies, senior centers and other human service agencies who are users of public transportation services. This commenter also noted that the list of individuals proposed to be named to the committee does not appear to include an officer of a state DOT. This is a significant omission and the committee should not be convened until one or more state DOT officials are made part of the committee.

FTA agrees with this comment, and, in response, we have included the South Dakota Department of Transportation and a member from the American Association of State Highway and Transportation Officials.

A private charter association advised that the inclusion of [elderly, disabled, and other consumers groups] will only serve to detract from the fundamental discussion of whether there are limited conditions whereby public transit operators might provide community-based charter services directly to local governments and private non-profit agencies. The commenter went on to note these additional interests, while representative of parts of the community, are not representative of the key elements to this discussion. Another private charter operator stated the number of the interest groups FTA identified—consumer with disabilities, elderly consumers, for-profit consumers, convention bureaus and representatives of large sporting events—would have the effect of skewing the discussions and shift the balance of the negotiation advisory committee membership in favor of the pro charter views espoused by transit agencies. Adding representatives from these groups to the negotiation advisory committee goes beyond the scope of the negotiated rulemaking as set by the conference committee report. An association for private charter operators echoed this comment by stating: ''These parties may believe they have legitimate interests in the negotiations; however, they are in no way referenced under the issues identified as subjects for the rulemaking in the SAFETEA–LU Conference Report.''

FTA disagrees that with these comments to the extent that they suggest FTA cannot include interests that were not identified in SAFETEA–LU. Convening a negotiated rulemaking advisory committee is not mandated by SAFETEA–LU and SAFETEA–LU did not identify nor limit interests that might participate in the negotiations. Therefore, FTA has exercised its discretion to select a balanced panel of groups and interests to deliberate the revisions to the charter bus regulations.

One comment asked for private sector school bus contractor representation on the committee because those individuals are an important player in the charter community and to the success of the overall negotiated rulemaking process on this issue. This type of service represents a significant amount of business for school bus contractors and is the area where we find that violations of the charter bus rules often occur.

FTA agrees with this comment and has included the National School Transportation Association on the CBNRAC.

A. Meeting Location and Dates

All meetings of the CBNRAC will be held in Washington, DC at 400 Seventh Street, SW., in room 6248. The first meetings will be held on May 8th and 9th from 9 a.m. until 4:30 p.m. Subsequent meetings dates will be discussed during the first meeting and a **Federal Register** notice will be issued announcing those meeting dates and time. Each of the individuals selected will receive a letter confirming their participation on the CBNRAC.

B. Persons Not Selected for Committee Membership

We believe that each potentially affected group does not need to participate directly in the negotiations. What is important is that each affected interest be adequately represented. It is very important to recognize that

interested parties who are not selected for membership on the committee can make valuable contributions to this negotiated rulemaking effort in several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations;
- The person or organization could assist in the work of a workgroup that might be established by the committee; or
- The person or organization may participate by telephone. FTA will establish a call-in number for that purpose. Members of the public who wish to participate by phone may request the call-in number by writing to the Chairperson, David B. Horner, Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. At the Chairperson's discretion, the number of individuals participating may be limited.

Informal workgroups are usually established by an advisory committee to assist it in ''staffing'' various technical matters (e.g., researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

C. Notice of Proposed Rulemaking

The CBNRAC's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking (NPRM). This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the CBNRAC cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the ''ground rules'' the CBNRAC has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. FTA will use the information and recommendations from the CBNRAC report to draft a notice of proposed rulemaking and, as appropriate, supporting documents. CBNRAC recommendations and other documents produced by it will be placed in the rulemaking docket.

In the event that FTA's NPRM differs from the CBNRAC's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decision to depart from the CBNRAC's recommendations.

Following the issuance of NPRM and comment period, FTA will prepare and provide to the CBNRAC a comment summary. The CBNRAC will then be asked to determine whether it should reconvene to discuss changes to the NPRM based on the comments.

D. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the CBNRAC will establish detailed procedures for the meetings. The meetings of the CBNRAC will be open to the public. Any person attending the meetings may address the CBNRAC if time permits or may file statements with the committee.

E. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare summaries of all CBNRAC meetings. These summaries will be placed in the public docket for this rulemaking.

Issued this 3rd day of April 2006.

Sandra K. Bushue,

Deputy Administrator, Federal Transit Administration.

[FR Doc. 06–3411 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–57–M

Notices

Federal Register

Vol. 71, No. 68

Monday, April 10, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 4, 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.

Rural Housing Service

Title: 7 CFR 1944–B, Housing Applications Packaging Grants.

OMB Control Number: 0575–0157.

Summary of Collection: Section 509 of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to make grants to private and public nonprofit organizations and State and local governments to package housing applications for section 502, 504, 514/515 and 533 to colonias and designated counties. Eligible organizations aid very low and low-income individuals and families in obtaining benefits from RHS housing programs. Various forms are used to confirm income verification for loan applicants, as a checklist to obtain a loan, and to check credit information about the applicants.

Need and Use of the Information: RHS field personnel will use this information to verify program eligibility requirements, to secure grant assistance, and for approval of housing application-packaging grants. The information will ensure that the program is administered in a manner consistent with legislative and administrative requirements. Without this information, RHS would be unable to determine if a grantee qualifies for grant assistance.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; and State, Local, or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,500.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–5157 Filed 4–7–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Red Creek Purchase Unit, Stone County, MS

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On March 20, 2006, the Under Secretary of Natural Resources and Environment created the Red Creek Purchase Unit. This purchase unit comprises 1,025 acres, more or less, within Stone County, Mississippi. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

DATES: *Effective Date:* Establishment of this purchase unit was effective March 20, 2006.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director, Lands Staff, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect the map are encouraged to call ahead to (202) 205–1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Gregory C. Smith, Director, Lands Staff, Forest Service, USDA, 1400 Independence Ave., SW., Mailstop 1124, Washington, DC 20250–0003, telephone: (202) 205–1248.

Dated: April 3, 2006.

Gloria Manning,

Associate Deputy Chief, National Forest System.

Red Creek Purchase Unit

Stone County, Mississippi

The following described lands lying adjacent or proximate to the De Soto National Forest are determined to be suitable for the protection of the watersheds of navigable streams and for other purposes in accordance with section 6 of the Weeks Act of 1911 (16 U.S.C. 515). Therefore, in furtherance of the authority of the Secretary of Agriculture pursuant to the Weeks Act of 1911, as amended, including section 17 of the National Forest Management Act of 1976 (Pub. L. 94–588; 90 Stat. 2961), these lands are hereby designated and established as the Red Creek Purchase Unit.

Lands lying in Township 3 South, Range 10 West, Stone County, St. Stephens Principal Meridian, Mississippi, and more particularly described as:

Section 27: All that part of the W¾ and the NE¼ of NE¼, both lying South

of Red Creek; SE¼ of NE¼; NE¼ of SE¼.

Section 28: All that part of the S½ lying South of Red Creek.

Section 29: All that part of the SE¼ lying South and East of Red Creek; S½ of SW¼.

Section 30: S½ of SE¼.

Containing 1,025 acres, more or less.

Executed in Washington, DC, this 20th day of March, 2006.

David P. Tenny,

Acting, Under Secretary, Natural Resources and Environment.

[FR Doc. 06–3429 Filed 4–7–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lost River Watershed, Hardy County, WV

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare a supplemental Environmental Impact Statement for the Lost River Subwatershed of the Potomac River Watershed Hardy County, West Virginia.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service (NRCS), U. S. Department of Agriculture, is giving notice that a Supplemental Environmental Impact Statement (SEIS) is being prepared for the Lost River Subwatershed of the Potomac River Watershed, Hardy County, West Virginia. The SEIS will evaluate potential impacts to the natural, physical, and human environment as a result of the flood damage reduction and water supply storage measures proposed for the Lost River Subwatershed, Hardy County, West Virginia. The NRCS is soliciting public concerns/issues to be evaluated during the study process.

FOR FURTHER INFORMATION CONTACT: Ronald L. Hilliard, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 284–7545.

SUPPLEMENTARY INFORMATION: The Lost River Work Plan and Final Environmental Impact Statement (FEIS) was prepared in October 1974 and approved for operations on February 11, 1975 under authority of the Flood Control Act, Public Law 534. The approved work plan included provisions for land treatment measures covering 94,750 acres, four single-purpose floodwater retarding impoundments, and one multiple-purpose floodwater retarding and recreation impoundment. Two of the single-purpose floodwater retarding impoundments (Site 4, Kimsey Run and Site 27, Upper Cove Run) have been installed. In March 2001, the watershed plan was amended to add 400 acre-feet of rural water supply storage as a purpose for Site 10 (Camp Branch). The impoundment at Site 10 has also been installed. Planning is underway for the fourth impoundment (Site 16, Lower Cove Run) that was originally planned as a multiple purpose floodwater retarding and recreation structure. At the request of the local sponsoring organizations, the recreation component of Site 16 has been eliminated (other than incidental recreational uses) and the purpose of rural water supply has been added for this impoundment. The final impoundment (Site 23, Culler Run) has been determined not feasible due to engineering and geological concerns and will be eliminated as a component of the Lost River Watershed Project. Other alternatives originally considered to achieve the project purposes in the 1974 Plan-FEIS included land treatment, flood proofing, flood insurance, floodplain purchase, stream channel modification, diking, and various combinations thereof. Also considered was the ''no project'' alternative.

Alternatives to be addressed in the Draft Supplemental Environmental Impact Statement (DSEIS) include the 1974 baseline conditions, the No-further Action Alternative, and Alternative 1. Alternative 1 includes constructing Site 16 for floodwater retention and rural water supply, and deleting Site 23 (Cullers Run) from the Plan.

The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronald L. Hilliard, State Conservationist, has determined that the preparation and review of a SEIS is needed for this project. Since impounded water may inundate a small portion of National Forest System Land, the U. S. Forest Service is a cooperating agency.

A DSEIS will be prepared and circulated for review by agencies and the public. The NRCS invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the DSEIS. Meetings may be scheduled upon the request of agencies or individuals to discuss the proposed action. Further information on the proposed action may be obtained from Ronald L. Hilliard, State Conservationist, at the above address, or telephone (304–284–7545).

Dated: March 30, 2006.

Ronald L. Hilliard,

State Conservationist.

[FR Doc. E6–5187 Filed 4–7–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2007 Census of Governments Prelist Survey of Special Districts.

Form Number(s): G–24.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 750 hours.

Number of Respondents: 1,500.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau requests Office of Management and Budget approval of data collection Form G–24. This form will be used to update the universe list of special district governments for the 2007 Census of Governments. The information requested on this form is identical to that requested in the prelist phase of the 2002 Census of Governments. The G–24 survey form will be imprinted with a list of known special districts within the areas of each of the 1,500 counties, consolidated city-county governments, and independent cities designated to receive the form. Respondents will use the G–24 form to update the listing by correcting the imprinted special district list and by reporting any additional districts. The mail canvass is supplemented by calls to the major nonrespondents. The expected response rate is 90 percent based on the response rate achieved during the 2002 Prelist Survey of Special Districts. Procedures, with the exception of using more advanced computer technology to generate the form imprinted with the list of known special districts, are the same as used for the 2002 Prelist Survey.

This form will be used to verify the existence of special districts for the

2007 Census of Governments, to obtain current addresses and to identify new districts. The quinquennial Census of Governments enumerates five types of local governments: County governments, municipal governments, township governments, school district governments, and special district governments. Lists of county, municipal and township governments are kept up-to-date through the Boundary and Annexation Survey conducted annually by the Geography Division of the Census Bureau. However, there is no national source of information on special district governments. We, therefore, enlist the help of county clerks, and similar county officials to provide information on changes in special districts, including the creation of new districts, disincorporation of existing districts, and address changes. An updated list is necessary for the subsequent phases of the Census of Governments to ensure complete coverage and minimize the number of postmaster returns and remailings caused by inaccurate addresses.

Affected Public: State, local or Tribal government.

Frequency: Every 5 years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 161.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202)482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: April 4, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–5158 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency (MBDA).

Title: Online Databases: Performance, Phoenix, and Opportunity.

Form Number(s): None.

OMB Approval Number: 0640–0002.

Type of Request: Regular submission.

Burden Hours: 5,297.

Number of Respondents: 6,732.

Average Hours Per Response: 30 minutes.

Needs and Uses: A primary mission of MBDA's is to increase the opportunity for minority and socially disadvantaged minorities to participate in our national economy through the formation and development of competitive minority-owned firms. To this end, MBDA awards competitive agreements for the delivery of management and technical assistance services directly to minority entrepreneurs. The purpose of the Performance, Phoenix and Opportunity Databases are to provide an electronic system for (1) entering the accomplishments of MBDA's funded organizations (Performance), (2) entering minority-owned businesses doing business in the United States (Phoenix), and (3) matchmaking contract opportunities with eligible minority companies listed in the Phoenix database (Opportunity).

Affected Public: Business or other for-profit organizations, not-for-profits, and State, Local or Tribal governments.

Frequency: On occasion, quarterly, and biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7258 or via the Internet at *David_Rostker @omb.eop.gov.*

Dated: April 4, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–5159 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Plant Capacity Utilization

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before June 9, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20233 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julius Smith Jr., U.S. Census Bureau, Room 2135 FOB–4, Washington, DC 20233, (301) 763–4683 (or via the Internet at *julius.smith.jr@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to revise the current OMB clearance to add a quarterly version of the Survey of Plant Capacity Utilization (SPCU). The SPCU is currently conducted annually, collecting data for fourth quarter operations. The annual survey collects, from manufacturing plants and publishers, the value of actual production and the value of production that could have been achieved if operating at ''full production'' and ''emergency production'' levels. The survey also collects data on work patterns by shift. These data include hours in operation, production workers, and plant hours worked. This annual survey will not change, it will continue to collect fourth quarter data.

The quarterly SPCU, form MQ–C2 will collect a subset of the annual survey for the first, second and third quarters. These data include actual and full production estimates as well as work pattern data for days of the week in operation, hours per week in operation, weeks in operation during

the quarter and production workers. The primary user of these data will be the Federal Reserve Board (FRB). The FRB has already expressed an interest in these data and will use them in several ways. First, the capital workweek data will be used as an indicator of capital use in the estimation of monthly output (industrial production). Second, the workweek data will also be used to improve the projections of labor productivity that are used to align industrial production (IP) with comprehensive benchmark information in the Economic Census covering the Manufacturing sector and Annual Survey of Manufactures. Third, the utilization rate data will assist in the assessment of recent changes in IP, as most of the high-frequency movement in utilization rates reflect production changes rather than capacity changes.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. For the quarterly survey, we will also offer an electronic version of the form that the respondents can respond to via the Internet. Companies will be asked to respond within 30 days of the initial mailing. This due date will be imprinted at the top of the form. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0175.

Form Number: MQ–C1 and MQ–C2.

Type of Review: Regular.

Affected Public: Manufacturing and publishing plants.

Estimated Number of Respondents: For the MQ–C2 (quarters one through three), the number of respondents will be approximately 6,000. For the MQ–C1 (the fourth quarter), the number of respondents will remain at 17,000.

Estimated Time Per Response: The estimated time per response is 1.5 hours for form MQ–C2 and 2.25 hours for form MQ–C1.

Estimated Total Annual Burden Hours: Total annual burden hours for form MQ–C2 is 27,000, and for form MQ–C1, it remains 38,250. The total burden is 62,250.

Estimated Total Annual Cost: $1,202,558.

Respondents Obligation: Response to the quarterly form, MQ–C2 will be voluntary and response to the annual form, MQ–C1 will remain mandatory.

Legal Authority: These surveys are conducted under the authority of Title 13 U.S. Code, sections 182, 224 and 225.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 4, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–5155 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Advance Monthly Retail Trade Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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 the 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)).

DATES: Written comments must be submitted on or before June 9, 2006.

ADDRESSES: Direct all written comment to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *Dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Scott Scheleur, U.S. Census Bureau, Room 2626–FOB 3, Washington, DC 20233–6500, (301) 763–2713.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Advance Monthly Retail Trade Survey (MARTS) provides an early indication of monthly retail sales at the United States level. MARTS also provides estimates of monthly sales of food service establishments and drinking places. The Bureau of Economic Analysis (BEA) uses the data as critical inputs to the calculation of Gross Domestic Product (GDP). Policymakers such as the Federal Reserve Board need to have the timeliest estimates in order to anticipate economic trends and act accordingly. The Council of Economic Advisors (CEA) and other government agencies and businesses use the data to formulate economic policy and make decisions. These estimates have a high BEA priority because of their timeliness. There would be approximately a one-month delay in the availability of these data if the survey were not conducted. Data are collected monthly from small-size, medium-size, and large-size businesses which are selected using a stratified random sampling procedure. The MARTS sample is re-selected periodically, generally at two to three year intervals. Small-size and medium-size retailers are requested to participate for those two or three years, after which they are replaced with new panel respondents. Smaller firms have less of a chance for selection due to our sampling procedure. Firms canvassed in this survey are not required to maintain additional records and carefully prepared estimates are acceptable if book figures are not available. There is no change in response burden.

II. Method of Collection

We will collect this information by mail, FAX, and telephone follow-up.

III. Data

OMB Number: 0607–0104.

Form Number: SM–44(00)A, SM–44(00)AE, SM–44(00)AS, and SM–72(00)A.

Type of Review: Regular Submission.

Affected Public: Retail and Food Services firms in the United States.

Estimated Number of Respondents: 4,500.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 4,500.

Estimated Total Annual Cost: The cost to the respondents for the fiscal year 2006 is estimated to be $111,015 based on the median hourly salary of

$24.67 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics November 2004 National Occupational Employment and Wage Estimates, $24.67 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors SOC code 13–2011). *http://www.bls.gov/oes/current/oes132011.htm.*

Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Editorial Note: This document was received by the Office of the Federal Register April 4, 2006.

Dated: April 4, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–5156 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order of honey from Argentina for the period December 1, 2004 to November 30, 2005, with respect to 12 companies. This rescission, in part, is based on the timely withdrawal of the request for review by the respective interested party that requested the review. A complete list of the companies for which the administrative review is being rescinded is provided in the background section below.

EFFECTIVE DATE: April 10, 2006.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–0408 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

On December 1, 2004, the Department published in the **Federal Register** its notice of an opportunity to request a review of the antidumping duty order on honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). In response, on December 30, 2005, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2004, through November 30, 2005. The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by 42 Argentine producers/exporters. In addition, the Department received requests for review from four Argentine exporters included in the petitioners' request. On January 6, 2006, petitioners withdrew their request with respect to 23 companies listed in its original request.

On February 1, 2006, the Department initiated a review on the remaining 19 companies for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

On March 10, 2006, petitioners submitted timely withdrawal of requests for review of the following companies: Agroin Las Piedras Ltda., Algodonera Avellaneda S.A., Alimentos Naturales–Natural Foods, Apisur S.A., Baires Logistics SRL, Campos Silvestres S.A., J.L. S.A., Naiman S.A., Nutrin S.A., Pueblanueva S.A.-Miel Emilia, Radix S.r.L., and Ultramar Argentina S.A.. *See* Letter from petitioners to the Department, Honey From Argentina, (March 10, 2006), on file in the Central Records Unit (CRU), room B–099 of the main Department building.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under the scope of the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under this order is dispositive.

Rescission in Part, of Administrative Review:

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review in whole or in part. The petitioners made a timely withdrawal of their requests for an administrative review within the 90-day deadline, for the following companies: Agroin Las Piedras Ltda., Algodonera Avellaneda S.A., Alimentos Naturales–Natural Foods, Apisur S.A., Baires Logistics SRL, Campos Silvestres S.A., J.L. S.A., Naiman S.A., Nutrin S.A., Pueblanueva S.A.-Miel Emilia, Radix S.r.L., and Ultramar Argentina S.A. Because the petitioners were the only party to request the administrative review of these companies, we have accepted the withdrawal requests and we are rescinding this administrative review of the antidumping duty order on honey from Argentina covering the period December 1, 2004, through November 30, 2005 for the aforementioned companies.

The Department will issue appropriate assessment instructions directly to the CBP within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for these companies at the cash deposit rate in effect on the date of entry for entries during the

period December 1, 2004 to November 30, 2005.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 4, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–5192 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–832

Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC'') covering the period May 1, 2004, through April 30, 2005. We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR''), for which the importer–specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Hua Lu or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6478 and (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from the PRC for the period May 1, 2004, through April 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 70 FR 22631. On May 26, 2005, Tianjin Magnesium International, LTD (''TMI'') requested that the Department conduct a new shipper review and an administration review of the antidumping duty order covering pure magnesium from the PRC for entries of subject merchandise produced and exported by TMI. On June 28, 2005, the Department determined that TMI did not meet the requirements under which the Department can initiate a new shipper review. *See* Letter from Wendy Frankel to David A. Riggle (June 28, 2005). On June 30, 2005, the Department published in the **Federal Register** a notice of initiation of the antidumping duty administrative review of pure magnesium from the PRC for the period May 1, 2004, through April 30, 2005, with respect to TMI. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749 (''*Initiation Notice*''). On July 20, 2005, the Department issued its antidumping duty questionnaire to TMI.

In August and September 2005, TMI submitted its questionnaire responses. The Department issued a letter seeking comments on surrogate country selection and surrogate value on August 9, 2005, to which TMI responded on September 28, 2005. On December 7, 2005, the Department selected India as the primary surrogate country. The Department issued a supplemental questionnaire to TMI in November 2005, to which TMI responded in December 2005. On December 19, 2005, TMI submitted additional surrogate value data. The Department issued a second supplemental questionnaire to TMI and received a response in February 2006.

On January 13, 2006, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review from January 31, 2006, until April 3, 2006. *See Pure Magnesium from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 2188 (January 13, 2006).

Period of Review

The POR is May 1, 2004, through April 30, 2005.

Scope of Order

Merchandise covered by this order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off–specification pure'' magnesium).

''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum,

manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by this order are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Surrogate Value Information

On September 28, 2005, US Magnesium LLC (''Petitioner'') and TMI submitted comments on the appropriate surrogate values to be applied to the factors of production (''FOP'') in this review. On October 11, 2005, Petitioner submitted comments rebutting certain factual information concerning valuation of the FOP information submitted by TMI. On December 19, 2005, TMI submitted additional surrogate value data. No other party to the proceeding provided comments on surrogate values during the course of this review.

Nonmarket–Economy-Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOP, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department shall utilize, to the extent possible, the prices or costs of FOP in one or more market–economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values used in this review are discussed under the ''*Normal Value*'' section below and in the memorandum to the file from Hua Lu, Case Analyst, through Robert Bolling, *Preliminary Results of Review of Pure Magnesium from the People's Republic of China: Factors of Production Valuation Memorandum for the Preliminary Results of Review*, dated April 3, 2006 (''*Factor Valuation Memorandum*'').

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen to Robert Bolling: Administrative Review of Pure Magnesium from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated July 15, 2005 (''*Policy Memo*''). Customarily, the Department selects an appropriate surrogate country from the *Policy Memo* based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, the Department found that India is a significant producer of comparable merchandise. *See* Memorandum from Hua Lu through Robert Bolling to Wendy Frankel, *Antidumping Administrative Review of Pure Magnesium from the People's Republic of China: Selection of a Surrogate Country*, dated December 7, 2005 (''*Surrogate Country Memorandum*'').

The Department used India as the primary surrogate country, and, accordingly, has calculated NV using Indian prices to value the PRC producers' FOP, when available and appropriate. *See Surrogate Country Memorandum* and *Factor Valuation Memorandum*. The Department has obtained and relied upon publicly available information to value FOP.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of the preliminary results of review.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

The Department has considered whether each reviewed company based in the PRC is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and the output decision–making process at the individual firm level. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997), and *Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate–rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both de jure and de facto government control over export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's*

Republic of China, 60 FR 22544 (May 8, 1995).

TMI provided company–specific separate–rates information and stated that it met the standards for the assignment of separate rates. Consequently, the Department analyzed whether TMI should receive a separate rate.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991).

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has preliminarily determined that an analysis of *de facto* control is critical in determining whether respondent is, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

C. Analysis

TMI placed on the record statements and documents to demonstrate absence of de jure control. In its questionnaire responses, TMI reported that it operated on market principles and was run independently and separately from the national, provincial, or local governments, including ministries, or offices of those governments. *See* TMI's August 10, 2005, Section A questionnaire response (''TMI AQR'') at 2. TMI submitted a copy of its business license and stated it is renewed upon expiration of the term by filing an application to renew as long as the company maintains its status, as per the initial certificate. TMI reported that the subject merchandise did not appear on any government list regarding export provisions or export licensing, and the subject merchandise is not subject to export quotas or export control licenses imposed by the PRC government. *See* TMI AQR at 5. TMI explained that the license imposed no limitations on the operations of TMI, nor created special entitlements to TMI. Furthermore, TMI stated that the Chamber of Commerce played no role in coordinating the export activities of TMI. *See* TMI AQR at 7. TMI submitted a copy of the Trade Law of the People's Republic of China to demonstrate that it had full rights to import and export. Based upon an examination of TMI's applicable laws and questionnaire responses, and TMI's business license, the Department preliminarily finds that TMI has demonstrated the absence of *de jure* government control over its export activities.

In support of its assertion of an absence of *de facto* government control, TMI reported the following: (1) During the POR, TMI sold the subject merchandise directly to unaffiliated U.S. customers and negotiated prices directly with its customers, and these prices were not subject to review by, or guidance from, any government organization; (2) No organization outside of TMI reviewed, or approved, any aspect of its sales transactions; (3) TMI's owners selected the management, and no government authorities controlled the selection process, or had power to veto selections; and (4) TMI's profits may be retained in the company for further business purposes, or distributed to the shareholders. *See* TMI AQR at 9. Additionally, TMI explained that the owners of TMI decided how profits were used. Furthermore, TMI stated that it is not required to sell foreign currency earned (or some portion of it) to the government and that it may freely control and use the foreign currency it earned on sales of the subject merchandise to the United States by further investing the profit in the business, or distributing it to the owners. *See* TMI AQR at 10. The Department preliminarily finds that TMI has demonstrated the absence of *de facto* government control over its export activities.

The evidence placed on the record of this administrative review by TMI demonstrates the absence of government control, both in law and in fact, with respect to TMI's exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company–specific rate to TMI, the exporter which shipped the subject merchandise to the United States during the POR.

Date of Sale

19 CFR 351.401(i) states that ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001).

After examining the questionnaire responses and the sales documentation that TMI placed on the record, we preliminarily determine that the invoice date is the most appropriate date of sale for TMI. We made this determination based on record evidence which demonstrates that TMI's invoices establish the material terms of sale. Thus, the record evidence does not rebut the presumption that the invoice date is the proper date of sale. *See Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002).

Normal Value Comparisons

To determine whether sales of pure magnesium to the United States by TMI were made at less than NV, we compared Export Price (''EP'') to NV, as described in the ''*Export Price*'' and ''*Normal Value*'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of

importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for TMI's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated.

We compared NV to individual EP transactions, in accordance with section 777A(d)(2) of the Act.

We calculated EP for TMI based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, and where applicable, ocean freight and marine insurance. No other adjustments to EP were reported or claimed. *See* memorandum from Hua Lu, Case Analyst, through Robert Bolling, Program Manager, to the file, *Preliminary Results of Review of the Order on Pure Magnesium from the People's Republic of China: Program Analysis for the Preliminary Results of Review*, dated April 3, 2006.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from a non–market economy country; and (2) the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies.

FOP includes: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used the FOP reported by respondent for materials, energy, labor, by–product, and packing.

With regard to both the Indian import–based surrogate values and the market–economy input values, we have disregarded prices that the Department has reason to believe or suspect may be subsidized. The Department has reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. The Department has found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies; therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd*, 104 Fed. Appx. 183 (Fed. Cir. 2004); *Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Administrative Review*, 61 FR 66255 (December 17, 1996), at Comment 1; and *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004). The Department is also guided by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 (1988) at 590. Rather, Congress instructed the Department to base its decision on information that is available to it at the time it is making its determination. Therefore, the Department has not used prices from these countries in calculating the Indian import–based surrogate values.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP reported by respondent for the POR. To calculate NV, the reported per–unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for TMI, *see Factor Valuation Memorandum*.

The Department valued the following raw material inputs: ferrosilicon, dolomite, flux, fluorite and sulfur using the weighted–average unit import values derived from the World Trade Atlas® online (''Indian Import Statistics''), which are published by the Directorate General of Commercial Intelligence and Statistics (''DGCI&S''), Ministry of Commerce of India, are reported in rupees, and are contemporaneous with the POR. *See Factor Valuation Memorandum*. Where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOP, the Department adjusted the surrogate values using the Indian Wholesale Price Index (''WPI'') as published in the *International Financial Statistics* of the International Monetary Fund.

To value electricity, the Department used values from the International Energy Agency Key World Energy Statistics (2003 edition). Because the value was not contemporaneous with the POR, the Department adjusted the rate for inflation. *See Factor Valuation Memorandum*.

The Department valued steam coal using the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook (''TERI Data''). The Department was able to determine, through its examination of the 2003/2004 TERI Data, that: a) the annual TERI Data publication is complete and comprehensive because it covers all sales of all types of coal made by Coal India Limited and its subsidiaries, and b) the annual TERI Data publication prices are exclusive of duties and taxes. Because the value was not contemporaneous with the POR, the Department adjusted the rate for inflation. *See Factor Valuation Memorandum* at page 5.

The Department used Indian transport information in order to value the inland freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from www.infreight.com. This source provides daily rates from six major points of origin to five destinations in India during the POR. The Department obtained a generally publicly available price quote on the first day of each month of the POR from each point of origin to each destination and averaged the data accordingly. *See Factor Valuation Memorandum* at page 6.

The Department used two sources to calculate a surrogate value for domestic brokerage expenses. The Department averaged December 2003–November 2004 data contained in Essar Steel's February 28, 2005, public version response submitted in the antidumping administrative review of hot–rolled carbon steel flat products from India with February 2004–January 2005 data

contained in Agro Dutch's May 24, 2005, public version response submitted in the antidumping investigation of certain preserved mushrooms from India. The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions is ranged data. The Department first derived an average per–unit amount from the source. Then, the Department averaged the two per–unit amounts to derive an overall average rate for the POR. *See Factor Valuation Memorandum* at page 7.

To value marine insurance, the Department obtained a generally publicly available price quote from http://www.rjgconsultants.com/insurance.html, a market–economy provider of marine insurance. *See Factor Valuation Memorandum* at page 7.

To value international freight, the Department obtained a generally publicly available price quote from http://www.maersksealand.com/HomePage/appmanager/, a market–economy provider of international freight services. *See Factor Valuation Memorandum* at page 7.

For direct labor, indirect labor, selling, general and administrative expenses (''SG&A'') labor, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression–based wage rate as reported on the Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, *http://ia.ita.doc.gov/wages/index.html*. The source of these wage rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2003, ILO, (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1996 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by each respondent.

To value factory overhead, depreciation, SG&A and profit, the Department used the 2004 audited financial statements for an Indian producer of aluminum, Hindalco Industries Limited (''Hindalco''). *See Factor Valuation Memorandum* at page 6 for a full discussion of the calculation of these ratios from Hindalco's financial statements.

TMI reported that it recovered cement clinker from the production of pure magnesium for resale. The Department offset TMI's NV by the amount of cement clinker that TMI sold. *See Factor Valuation Memorandum* at page 6 for a complete discussion of this issue.

Finally, the Department used Indian Import Statistics to value material inputs for packing which, for TMI, are steel bands and plastic bags. The Department used Indian Import Statistics data for the POR for packing materials. *See Factor Valuation Memorandum* at page 6.

Currency Conversion

The Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect as certified by the Federal Reserve Bank on the dates of the U.S. sales.

Weighted–Average Dumping Margins

The weighted–average dumping margin for TMI is as follows:

Exporter/Manufacturer	Weighted–Average Margin (percentage)
TMI	89.05

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication of this notice. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP upon completion of this review. If these preliminary results are adopted in our final results of review, the Department will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR. Additionally, the Department will instruct CBP to assess antidumping duties for rescinded companies at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I).

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed in the final results of review (except where the rate for a particular company is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 108.26 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: April 3, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–5191 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–122–838

Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

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

SUMMARY: In response to a request from Ivis Partners Ltd. (IVIS), the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada.

EFFECTIVE DATE: April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Constance Handley or David Layton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0631or (202) 482–0371, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On May 22, 2002, the Department of Commerce (Department) issued the antidumping duty order on certain softwood lumber products from Canada. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36067 (May 22, 2002). On February 16, 2006, IVIS requested that the Department initiate a changed circumstances review, in accordance with section 351.216 of the Department's regulations, to confirm that IVIS is the successor–in-interest to Ivis Wood. In its request, IVIS stated that it purchased Ivis Wood, including equipment and inventory, and provided supporting documentation.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (see comment 53, item D and comment 57, item B–7) available at www.ia.ita.doc.gov/frn, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

(3) *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) if the importer establishes to the satisfaction of U.S. Customs and Border Protection (CBP) that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*[1], regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams,

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I–joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge–glued wood, properly classified under HTSUS 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language was further clarified to specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

On March 3, 2006 the Department issued a scope ruling that any product entering under HTSUS 4409.10.05 which is continually shaped along its end and/or side edges which otherwise conforms to the written definition of the scope is within the scope of the order.[3]

Initiation

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the *Background* section, we have received information indicating that Ivis Wood has been sold to IVIS. This constitutes changed circumstances warranting a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in IVIS' request.

In making successor–in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Polychloroprene Rubber from Japan: Final Results of Changed Circumstances Review*, 67 FR 58 (January 2, 2002) citing, *Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *Id.* citing, *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash–deposit rate of its predecessor.

In its February 3, 2006, submission (received by the Department on February 16, 2006), Ivis states that it was incorporated in British Columbia on September 5, 2005, and that on September 30, 2005, it purchased Ivis Wood, including its equipment and inventory. According to IVIS, in light of the purchase, it is clear that IVIS is the successor–in-interest to Ivis Wood. To support its claims, IVIS submitted: (1) Copies of Certificate of Incorporation; (2) the Purchase and Sale Agreement between IVIS and Ivis Wood and; (3) a list of both companies' U.S. customers.

IVIS has requested that the Department initiate an expedited review pursuant to section 751(b) of the Act and 19 CFR § 351.221(c)(3)(iii). However, because it is the Department's practice to examine changes in management, supplier relationships, and customers in the home market (as well as the U.S. market), as part of its analysis in such a determination, and IVIS has not addressed these factors, it is necessary to request further information from IVIS prior to issuing preliminary results. Therefore, we are unable to conduct the changed circumstances review on an expedited basis.

After the initiation of the review, the Department will issue a questionnaire requesting additional factual information for the review in accordance with 19 CFR 351.221(b)(2). The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review which will set forth the factual and legal conclusions upon which our

[2] *See* the scope clarification message (ι 3034202), dated February 3, 2003, to CBP, regarding treatment of U.S. origin lumber on file in Room B-099 of the Central Records Unit (CRU) of the Main Commerce Building.

[3] *See* memorandum from Constance Handley, Program Manager to Stephen J. Claeys, Deputy Assistant Secretary regarding: Scope Request by the Petitioner Regarding Entries Made Under HTSUS 4409.10.05, dated March 3, 2006.

preliminary results are based, and a description of any action proposed based on those results in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(i). Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of the review. The Department will issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.221 of the Department's regulations.

Dated: April 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–5201 Filed 4–7–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–834)

Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request by Allegheny Ludlum Corporation, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc., and the United Steelworkers (collectively ''the petitioners''), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from the Republic of Korea (Korea). This review covers five producers/exporters of the subject merchandise to the United States. This is the sixth period of review (POR), covering July 1, 2004, through June 30, 2005.

We have preliminarily determined that the sole company participating in this review, DaiYang Metal Co., Ltd. (DMC), has made sales below normal value (NV). In addition, we preliminarily determine that adverse facts available (AFA) should be applied to the remaining four companies (Boorim Corporation (Boorim), Dae Kyung Corporation (Dae Kyung), Dine Trading Co., Ltd. (Dine), and Dosko Co., Ltd. (Dosko)) for the POR because they declined to participate in this administrative review. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

In addition, we have preliminarily determined to rescind the review with respect to the following companies because these companies had no shipments of subject merchandise during the POR: BNG Steel Co. (BNG), Hyundai Corporation (Hyundai), NIC International Co., Ltd. (NIC), Pohang Iron and Steel Co., Ltd. (POSCO), Samkyung Corporation (Samkyung), Sammi Corporation (Sammi), Samwon Precision Metals Co., Ltd. (Samwon), and Sun Woo Tech Company (Sun Woo).

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Brianne Riker, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department published in the **Federal Register** a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on SSSSC from Korea (70 FR 38099).

In accordance with 19 CFR 351.213(b)(1), on July 29, 2005, the Department received a request from the petitioners to conduct an administrative review for the following 13 producers/exporters of SSSSC: BNG, Boorim, Dae Kyung, Dine, DMC, Dosko, Hyundai, NIC, POSCO, Samkyung, Sammi, Samwon, and Sun Woo.

In August 2005, the Department initiated an administrative review and issued questionnaires to each of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (Aug. 29, 2005).

In August, September, and October 2005, the following companies informed the Department that they had no shipments or entries of subject merchandise during the POR: BNG, Hyundai, NIC, POSCO, Samkyoung, Sammi, Samwon, and Sun Woo. We reviewed CBP data and confirmed that there were no entries of subject merchandise from any of these companies. *See* ''Partial Rescission of Review,'' below, for further discussion. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding our review for BNG, Hyundai, NIC, POSCO, Samkyoung, Sammi, Samwon, and Sun Woo. However, we note that Boorim, Dae Kyung, Dine, and Dokso did not respond to the Department's questionnaire. For further discussion, see the ''Application of Facts Available'' section, below.

In October 2005, we received a response to sections A through C of the questionnaire (*i.e.*, the sections regarding sales to the home market and the United States) and section D of the questionnaire (*i.e.*, the section regarding cost of production (COP) and constructed value (CV)) from DMC.

In December 2005 and January 2006, we issued supplemental questionnaires to DMC. We received responses to these questionnaires in February 2006. In March 2006, we issued an additional supplemental questionnaire to DMC; we received DMC's response to this questionnaire on March 15, 2006.

Scope of the Order

The products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 millimeters in width and less than 4.75 millimeters in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071,

7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: 1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; 2) sheet and strip that is cut to length; 3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 millimeters or more); 4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 millimeters); and 5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold-reduced), in coils, of a width of not more than 23 millimeters and a thickness of 0.266 millimeters or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is also excluded from the scope. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product that is used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 millimeters, and with a mass of 225 kilograms or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of two millimeter depth. The material must exhibit residual stresses of two millimeters maximum deflection, and flatness of 1.6 millimeters over 685 millimeters length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than one percent, manganese of no more than one percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and seven to 10 percent cobalt, with the remainder of iron, in widths 228.6 millimeters or less, and a thickness between 0.127 and 1.270 millimeters. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1,390 degrees Celsius and displays a creep rupture limit of four kilograms per square millimeter at 1,000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and seven to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1,700 Mpa and ultimate tensile strengths as high as 1,750 Mpa after aging, with elongation percentages of 3 percent or less in 50 millimeters. It is generally provided in thicknesses between 0.635 and 0.787 millimeters, and in widths of 25.4 millimeters. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical

[1] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Period of Review

The POR is July 1, 2004, through June 30, 2005.

Partial Rescission of Review

As noted above, BNG, Hyundai, NIC, POSCO, Samkyoung, Sammi, Samwon, and Sun Woo informed the Department that they had no shipments of subject merchandise to the United States during the POR. We have confirmed this with CBP. *See* the November 9, 2005, memorandum to the file from Brianne Riker, entitled ''Placing U.S. Customs and Border Protection Data on the Record of the 2004 - 2005 Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from the Republic of Korea.'' Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to these companies. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731, 64732 (Nov. 8, 2004); and *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127, 53128 (Sept. 9, 2003).

Application of Facts Available

Section 776(a) of the Tariff Act of 1930, as amended (the Act), provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: 1) Withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

As discussed in the ''Background'' section, above, on August 19, 2005, the Department requested that Boorim, Dae Kyung, Dine, and Dosko respond to the Department's antidumping duty questionnaire. The deadline to file a response was September 27, 2005. The Department did not receive a response from Boorim, Dae Kyung, Dine, or Dosko. On November 4, 2005, the Department placed a memorandum on the record with information regarding delivery confirmation of the questionnaires to each company. *See* the November 4, 2005, memorandum to the file from Brianne Riker entitled, ''Placing Information on the Record of the 2004–2005 Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Korea.'' Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is appropriate.

Adverse Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997), and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that Boorim, Dae Kyung, Dine, and Dosko did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's questionnaire. Therefore, an adverse inference is warranted in selecting facts otherwise available. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA, information derived from: 1) The petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998). Additionally, the Department's practice has been to assign the highest margin determined for any party in the less–than-fair–value (LTFV) investigation or in any administrative review of a specific order to respondents who have failed to cooperate with the Department.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5,'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897, 54898 (Sept. 19, 2005).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 58.79 percent, which was the rate alleged in the petition, as adjusted at the initiation of the LTFV investigation. This rate was assigned in a previous segment of this proceeding and is the highest rate determined for any respondent in any segment of this proceeding. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 66 FR 45279 (Aug. 28, 2001) (*Amended LTFV Final Determination*). The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d) and SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive dumping margins. The only source for dumping margins is administrative determinations. In the LTFV investigation in this proceeding, the Department found that the petition rate was reliable. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from South Korea*, 64 FR 137, 146 (Jan. 4, 1999), upheld in the *Amended LTFV Final Determination*.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as AFA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. To do so, we conducted research in an attempt to find data that might help inform the Department's corroboration analysis. We did not find any information that would discredit the selected AFA rate. *See* the April 3, 2006, memorandum to the file from Brianne Riker entitled,

''Research for Corroboration for the Preliminary Results in the 2004 - 2005 Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from the Republic of Korea.'' We did observe, however, that the AFA margin selected fell within the range of transaction–specific margins calculated for DMC. Since we did not find evidence indicating that the margin used as facts available in this proceeding is not appropriate, we have determined that the 58.79 percent margin calculated in the LTFV investigation is appropriate as AFA and are assigning this rate to Boorim, Dae Kyung, Dine, and Dosko. This is consistent with section 776(b) of the Act which states that adverse inferences may include reliance on information derived from the petition.

Comparisons to Normal Value

To determine whether DMC's sales of subject merchandise from Korea to the United States were made at less than NV, we compared the constructed export price (CEP) to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to compare products produced by the same company and sold in the U.S. and home markets that were identical with respect to the following characteristics: grade, hot- or cold–rolled, gauge, surface finish, metallic coating, non–metallic coating, width, temper, and edge. Where there were no home market sales of foreign like product that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. DMC reported that it made all sales of subject merchandise to the United States through its wholly owned subsidiary in the United States, Ocean Metal Corporation (OMC). Consequently, it classified all of its U.S. sales as CEP sales. We based our calculations on CEP, in accordance with sections 772(b)-(d) of the Act.

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight from the port to the warehouse, U.S. inland freight from the warehouse to the unaffiliated customer, and U.S. brokerage and handling. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., imputed credit, commissions, banking expenses, and domestic banking fees) and indirect selling expenses, including inventory carrying costs and other indirect selling expenses. In addition, we increased CEP by an amount equal to the countervailing duty (CVD) rate attributed to export subsidies in the most recently completed segment of the CVD proceeding in which DMC participated (i.e., the investigation), in accordance with section 772(c)(1)(C) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP

profit rate using the expenses incurred by DMC and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales. We recalculated indirect selling expenses incurred in Korea for U.S. sales by deducting certain expenses which DMC incurred only for home market sales. We allocated the remaining expenses over total worldwide sales because we find that DMC incurred these expenses to support its general selling activities without regard to a particular market. For further details regarding these adjustments, see the April 3, 2006, memorandum to the file from Brianne Riker entitled, ''Calculations Performed for DaiYang Metal Co., Ltd. for the Preliminary Results in the 2004–2005 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from the Republic of Korea'' (''DMC Prelim Calc Memo'').

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of DMC's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that DMC had a viable home market during the POR. Consequently, we based NV on home market sales.

B. Affiliated Party Transactions and Arm's–Length Test

DMC made sales of SSSSC to affiliated parties in the home market during the POR. Consequently, we tested these sales to ensure that they were made at ''arm's–length'' prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's–length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all discounts, movement charges, direct selling expenses, and packing expenses. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (Nov. 15, 2002).

C. Cost of Production Analysis

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that DMC had made home market sales at prices below its COP in this review because the Department had disregarded sales that failed the cost test for DMC in the most recently completed segment of this proceeding in which DMC participated (*i.e.*, the 2000–2001 administrative review). *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 6713, 6715 (Feb. 10, 2003). As a result, the Department initiated an investigation to determine whether DMC had made home market sales during the POR at prices below its COP.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of DMC's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. *See* the ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses.

We relied on the COP data submitted by DMC in its questionnaire response, except for the following instances where the information was not appropriately quantified or valued:

1. We disallowed the gain on equity method and miscellaneous gain as offsets to the G&A expense rate calculation.
2. We made an adjustment to the reported G&A expense rate to exclude packing expenses and include scrap by–product revenue offsets in the denominator of this calculation.
3. We made an adjustment to the reported interest expense rate calculation to: 1) disallow the interest income deduction; and 2) exclude packing expenses and include scrap by–product revenue offsets in the denominator of this calculation.

For further details regarding these adjustments, see the April 3, 2006, memorandum from Michael Harrison, Senior Accountant, to Neal M. Halper, Director of Accounting, entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - DaiYang Metal Co. Ltd.''

We have requested additional information from DMC related to the offsets claimed for its G&A and interest calculations. We intend to consider this information for purposes of our final results. In addition, we note that in a submission dated March 20, 2006, the petitioners requested that the Department collect certain data on DMC's purchases from its suppliers of hot–rolled coil in order to examine DMC's relationships with its suppliers. However, the petitioners provided no evidence in this submission that suggests that DMC has reported its data inappropriately. As a result, we have not pursued this matter further.

2. Test of Home Market Sales Prices

We compared the weighted–average COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product–specific basis, we compared the COP to home market prices, less any applicable discounts, movement charges, selling expenses, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: 1) in substantial quantities within an extended period of time; and 2) at prices which permitted the recovery of all costs within a reasonable period of time. *See* sections 773(b)(2)(B)-(D) of the Act.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded these below–cost sales for DMC and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the export price (EP) or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative expenses and profit. For EP, the U.S. LOT is also the LOT of the starting–price sale, which is usually from exporter to importer. For CEP, it is the LOT of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (Nov. 19, 1997).

In implementing these principles in this administrative review, we obtained information from DMC regarding the marketing stages for its reported U.S. and home market sales, including a description of the selling activities performed by DMC for each channel of distribution. In identifying LOTs for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported LOTs are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different for different categories of sales, the functions and activities should be dissimilar.

In both the U.S. and home markets, DMC reported one LOT. DMC stated that it sold through two channels of distribution in the home market: 1) directly to affiliated and unaffiliated manufacturers; and 2) directly to unaffiliated distributors/end users. In the U.S. market, DMC made sales through its U.S. affiliate/subsidiary, OMC, which re–sold the merchandise to unaffiliated U.S. customers. DMC stated that its home market sales are not made at the same LOT as its U.S. sales.

For home market sales, DMC reported the following selling activities: sales forecasting, strategic/economic planning, personnel training/exchange, engineering service, sales promotion, procurement/sourcing service, inventory maintenance, order input/processing, providing direct sales personnel, sales/marketing support, and market research. Because DMC's selling activities did not vary by channels of distribution, we preliminarily determine that there is one LOT in the home market.

Regarding its sales to OMC, DMC reported that it performed the following selling activities: sales forecasting, strategic/economic forecasting, engineering service, order input/processing, providing direct sales personnel, and providing freight and delivery services. Further, we find that, based on DMC's narrative descriptions of its selling practices and functions, DMC performed personnel training/exchange, procurement and sourcing services, and inventory maintenance for its sales to OMC.[7] Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

These selling activities can be generally grouped into four core selling function categories for analysis: 1) Sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these core selling functions, we find that DMC performed sales and marketing and inventory maintenance and warehousing services in both markets, including sales forecasting, strategic/economic planning, personnel training/exchange, procurement and sourcing services, engineering services, order input/processing, provision of direct sales personnel, and inventory maintenance. Additionally, for its sales to OMC, we find that DMC performed freight and delivery services. Finally, we find that warranty and technical support services are not performed in either market.

DMC also provided information to indicate whether each reported selling activity was performed to a low, medium, or high degree. DMC indicated that the selling activities that were performed in the home market only (*i.e.*, sales promotion, sales/marketing support, and market research) were all performed to a low degree. Furthermore, DMC indicated that the only activity performed for sales to OMC and not for domestic sales, freight and delivery services (including inland freight and domestic brokerage and handling), was performed to a high degree.

We evaluated the core selling function categories in the U.S. and home market LOTs and found them to be similar with respect to sales and marketing, inventory maintenance, and warranty and technical support. Although freight services were provided for U.S. sales to OMC and not home market sales, we did not find this to be a material selling function distinction significant enough to warrant a separate LOT. Therefore, after analyzing the selling functions performed in each market, we find that the distinctions in selling functions are not material and thus, that the home market and U.S. LOTs are the same. Accordingly, we determine that no LOT adjustment is warranted or possible for DMC. Regarding the CEP–offset provision, as described above, it is appropriate only if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Because we find that no difference in LOTs exists, we do not find that a CEP offset is warranted for DMC.

E. Calculation of Normal Value

Regarding home market date of sale, DMC reported the tax invoice date. Because this date occurred after the date of shipment in certain cases, we followed our normal practice of using the earlier of the sale invoice date or date of shipment as the date of sale for all home market sales. *See Allied Tube*

[7] DMC states that procurement and sourcing services include purchasing materials, labor, and other cost items for production. We find that because these services relate to the production of all of DMC's merchandise, this function is performed for sales that DMC makes to OMC. Further, DMC states that personnel training and exchanges include providing internal and external training opportunities for employees to enhance their sales skills. Therefore, we also find that this selling activity is performed for DMC's sales to OMC because DMC's sales personnel make export sales as well as domestic sales. Finally, regarding inventory maintenance, DMC stated in the narrative portion of the October 27, 2005, Section A response and the March 15, 2006, supplemental response that when OMC places an order with DMC, DMC personnel check the inventory to determine whether the product is in stock. Therefore, we find that DMC performs inventory maintenance for sales to OMC.

and Conduit Corp. v. United States, 127 F.Supp.2d 207 (CIT 2000); *Allied Tube and Conduit Corp. v. United States*, 132 F.Supp.2d 1087 (CIT 2001); *see also Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 621, 622 (Jan. 6, 2004), unchanged in *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan*, 64 FR 30574, 30587 (June 8, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium*, 64 FR 15476, 15481–82 (Mar. 31, 1999).

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated customers and those affiliated customers which passed the arm's–length test. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

Furthermore, we made deductions from the reported gross unit price for discounts, where applicable. Pursuant to section 773(a)(6)(c)(iii) of the Act, we also made deductions from the starting price for home market credit expenses, where applicable. We disallowed credit expenses for certain home market customers for which DMC reported a credit period well in excess of a year, especially in light of the fact that DMC reported early payment discounts for certain of these customers. We have solicited additional information regarding these credit periods and will consider it for the final results. For further details, see the ''DMC Prelim Calc Memo.'' In accordance with 19 CFR 351.410(e), where applicable, we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, up to the amount of the U.S. commission. We recalculated home market indirect selling expenses by: 1) assigning to the home market certain expenses which DMC had incorrectly allocated to all markets; and 2) allocating the remaining expenses over total worldwide sales, because we find that DMC incurred these expenses to support its general selling activities without regard to a particular market. For further details regarding these adjustments, see the ''DMC Prelim Calc Memo.'' In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415 based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the period July 1, 2004, through June 30, 2005:

Manufacturer/Producer/ Exporter	Margin Percentage
Boorim Corporation	58.79
Dae Kyung Corporation	58.79
DaiYang Metal Co., Ltd.	2.95
Dine Trading Co., Ltd ...	58.79
Dosko Co., Ltd.	58.79

Public Comment

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment

Pursuant to section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer or customer of the subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Upon issuance of the final results of this administrative review, if any importer- or customer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), *see* 19 CFR 351.106(c), the Department will instruct CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States, as well as any companies for which we are rescinding the review based on claims of no shipments. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of SSSSC from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis, i.e.*, less than 0.5 percent); 2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; 3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 2.49 percent, the ''all others'' rate established in the LTFV investigation.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–5202 Filed 4–7–06; 8:45 am]

Billing Code: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Consortium for Astro–Particle Research in Utah et al., Notice of Consolidated Decision on Applications for Duty–Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 05–057. Applicant: Consortium for Astro-particle Research in Utah/University of Utah, Salt Lake City, Utah. Instrument: Fluorescent Telescope Array; with GroundScintillator, Laser Atmosphere Monitor and LAN Network. Manufacturer: Various; Japan, UK. Intended use: See Notice at71 FR 4895, January 30, 2006. Reasons: These instrument systems when deployed in Utah are capable of conducting a joint US–Japan led scientific project to measure the energy, pointing direction and chemical composition of ultra high energy cosmic rays using both the fluorescence technique, which uses large telescopes to observe fluorescent tracks from cosmic ray showers in the atmosphere and the secondary shower charged particle technique, which uses ground–based light sensing photo–tubes and counters to measure the number and timing of particle arrivals. Results obtained by these techniques can be cross correlated, compared and evaluated for developing more precise measurements and to provide information about likely celestial sources of the cosmic rays observed.

Docket Number: 05–059. Applicant: College of Staten Island, Staten Island, NY. Instrument: Plasma System. Manufacturer: Diener Electronic GmBh & Co., KG, Germany. Intended Use: See Notice at 71 FR 10649, March 2, 2006. Reasons: The foreign article is a compatible, (sole source) accessory for existing instrumentation for materials research. It consists of a plasma type microwave generator with a glass chamber for conducting semiconductor processing procedures. It can be used to develop and study:

1. Nanotechnolgy with focused ion beams, including electronic properties of carbon nanowires direct written with nano–scaled ion beams on carbonaceous substrates
2. Micro- and nano–scale light emitting diodes on diamond, with the aim to develop single molecule and single photon electrically driven light sources operating at room temperature
3. High–pressure, high–temperature diamond anvil cells with internally heated anvils for hydrothermal and shear stress experiments.

The instrument will also be used in courses on materials science.

These instruments are pertinent to each applicant's needs and we know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–5193 Filed 4–7–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Puerto Rico at Mayaguez, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 06-002. Applicant: University of Puerto Rico at Mayaguez. Instrument: Electron Microscope, Model JEM-2010. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at71 FR 10650, March 2, 2006. Order Date: 2/11/05.

Docket Number: 06-003. Applicant: Oklahoma State University, Stillwater, OK. Instrument: Electron Microscope, ModelJEM-2100F. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 71 FR 10650, March 2, 2006. Order Date: 12/13/05.

Docket Number: 06-004. Applicant: University of North Texas . Instrument: Electron Microscope, Model Technai G^2 F20 S-TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 71 FR 10650, March 2, 2006. Order Date: 8/4/04.

Docket Number: O6-005. Applicant: University of Maryland, College Park, MD. Instrument: Electron Microscope, Model JEM-2100F. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 71 FR 10650, March 2, 2005. Order Date: 4/13/05.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–5194 Filed 4–7–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the

purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 06-007. Applicant: University of Connecticut, 91 N. Eagleville Road, BSP Bldg., Unit 3242, Storrs, CT 06269. Instrument: Electron Microscope, Model Technai G² Spirit BioTWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used in a multi-user facility providing training and service to faculty, staff and students. A wide variety of cells and tissues will be examined. The ultrastructural arrangement of cells, organelles and macromolecular assemblies and the fine structure of domains within polymers will be investigated. Research projects ranging from evolutionary biology to materials science will use the instrument. Application accepted by Commissioner of Customs: March 20, 2006.

Docket Number: 06-008. Applicant: California Institute of Technology, 1200 E. California Boulevard, Mail Code 103-6, Pasadena, CA 91125. Instrument: Neutron Guide. Manufacturer: SwissNeutronics, Switzerland. Intended Use: The instrument is a compatible key accessory for the high-resolution, direct-geometry, time-of-flight chopper spectrometer (ARCS) at the Spallation Neutron Source at Oak Ridge N.L. It will be used to investigate the energy spectra obtained when neutrons incident on a sample are scattered by the motions of atoms or of electron spins in the sample. Studies will include the thermodynamics of atom vibrations or spin motions, or of their characteristic energies and momenta, cooperative motions of electrons in solids relevant to electrical transport, magnetic properties and superconductivity. The neutron guide is especially useful for studies that require low or medium-energy neutron beams that are incident on the sample. Application accepted by the Commissioner of Customs: February 27, 2006.

Docket Number: 06-009. Applicant: The New York Structural Biology Laboratory, 89 Convent Avenue at 133rd St, New York, NY 10027. Instrument: Electron Microscope, Model JEM 2100F. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used by ten educational and research institutions in New York to investigate, among other things, biological assemblies ranging from isolated protein molecules, complexes of protein molecules potentially bound to nucleic acids or membranes, crystalline arrays composed of these protein complexes, cells, viruses, or intact tissues to pursue a wide variety of biological problems. In addition to standard methods of electron microscopy, work will be done using the procedure of electron tomography which is like a CAT scan at molecular proportions, involving the imaging of a given cellular assembly which is systematically tilted to different angles. It will alsobe used in student courses. Application accepted by Commissioner of Customs: March 6, 2006.

Docket Number: 06-010. Applicant: Emory University Hospital, 1364 Clifton Road, NE, Atlanta, GA 30322. Instrument: Electron Microscope, Model Mogagni 268. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used for examination of normal, abnormal and pathological changes in human cells and tissue samples. Experiments will be conducted based on ultrastructural examination of human kidney biopsies for documentation of pathologic change, if any, for diagnostic evaluation. Ultrathin sections of epoxy embedded specimens under high magnification will be preserved for pathological review. Application accepted by Commissioner of Customs: March 1, 2000.

Docket Number: 06-011. Applicant: President and Fellows of Harvard College, 9 Oxford Street, Cambridge, MA 02138. Instrument: Electron Microscope, Model JEM-2100. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to study and characterize nanoscale structures and chemical compositions of novel materials such as semi-conducting materials, nano metallic catalysts and polymers, etc. Some examples include chemical composition by energy-dispersive x-ray spectroscopy, identification of phases and crystal structures by electron diffraction, interfacial arrangements of atomic structures between polymer materials by stain-inducted contrast imaging and lattice-fringe imaging of metallic thin films and alloys. Application accepted by Commissioner of Customs: March 20, 2006.

Docket Number: 06-013. Applicant: Ames Laboratory - U.S. Department of Energy REF: A5–2764, 211, TASF, Iowa State University, Ames, Iowa 50011-3020. Instrument: Electron Microscope, Model Technai G² F20 X-TWIN. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument is intended to be used to provide both the imaging and spectrographic analysis necessary to evaluate materials ranging from rapidly solidified metals, nanoscale magnetic alloys, directionally solidified metal alloys, mesoporous catalysis and novel polymer compounds. With reduced length scale of materials, interaction with their environment changes. The instrument will allow probing the chemistry and atomic arrangements (nanostructure) down to the level of the atoms and to assess the success of processing procedures. Application accepted by Commissioner of Customs: March 23, 2006.

Docket Number: 06-014. Applicant: Howard Hughes Medical Institute, Harvard Medical School, 77 Ave. Louis Pasteur, Boston, MA 02115. Instrument: Confocal Microscope. Manufacturer: Evotec, Germany. Intended Use: The instrument is intended to be used to assign phenotopic signatures (phenoprints) to every Drosophilia gene using genome-wide RNAi screens. These can be used to cluster genes that are functionally related and important in functional genomics. The instrument combines the high resolution of confocal laser scanning microscopy with ultra high throughput (≤200,00 images per day) and an integrated fast autofocus system provides maximal resolution and lowest background. Application accepted by Commissioner of Customs: March 24, 2006.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–5195 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 060404095–6095–01]

Northern Gulf of Mexico Cooperative Institute

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR) invites

applications to establish a Northern Gulf of Mexico (NGOM) Cooperative Institute (CI). The creation of this CI is the cornerstone of NOAA's commitment to the Gulf of Mexico Alliance, and NOAA's response the U.S. Ocean Action Plan (Executive Office of the President, December, 2004). This institute will facilitate a long-term collaborative environment between NOAA and the recipients within which broad-based research, development, education and outreach capabilities focusing on the priorities in the northern Gulf of Mexico (NGOM) region can be developed and sustained. The CI will be regional in scope and should consist of a group of research institutions in the NGOM region (which is defined by the states of Mississippi, Alabama, Louisiana, Florida, and Texas). Most of the workforce is expected to be located in Stennis Space Center, MS.

DATES: Proposals must be received by the OAR no later than 5 p.m., E.T., May 25, 2006. Proposals submitted after that date will not be considered.

ADDRESSES: Applicants are strongly encouraged to apply online through the Grants.gov Web site (*http://www.grants.gov*) but paper submissions are acceptable. If a hard copy application is submitted, the original and two unbound copies of the proposal should be included. Applicants are not required to submit more than three hard copies of the proposal if the recommended electronic grants submission via grants.gov is not made. Paper submissions should be sent to: NOAA, OAR, 1315 East West Highway, Room 11554, Silver Spring, Md. 20910 Attn: Dr. John Cortinas. No e-mail or facsimile proposal submissions will be accepted. The complete Federal funding opportunity announcement associated with this notice can be found at the Grants.gov Web site, *http://www.grants.gov*, and the NOAA Web site at *http://www.nrc.noaa.gov/ci*.

FOR FURTHER INFORMATION CONTACT: For a copy of the federal funding opportunity announcement and/or application kit, access it at Grants.gov, via NOAA's Web site, or by contacting Dr. John Cortinas, 1315 East West Highway, Room 11554, Silver Spring, Md. 20910 telephone 301–713–9397 x 206. Facsimile: (301) 713–0158; e-mail: *John.Cortinas@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background: A CI is a NOAA-supported, non-federal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission. CIs are established at research institutions that also have a strong education program with established graduate degree programs in NOAA-related sciences. The CI provides significant coordination of resources among all non-government partners and promotes the involvement of students and postdoctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties.

NOAA has identified the need for a new CI to focus upon a region of particular significance to the federal government and NOAA, the NGOM. The creation of this CI is the cornerstone of NOAA's commitment to the Gulf of Mexico Alliance, and NOAA's response to the U.S. Ocean Action Plan (Executive Office of the President, December, 2004), which recommends a ''Regional Partnership in the Gulf of Mexico.'' The objective of the Gulf of Mexico Alliance is to establish an integrated management approach for the Gulf of Mexico led by surrounding states (*http://www.gulfofmexicoalliance.org*). There is a particular emphasis on public health, specifically on water quality for shellfish beds and beaches in the Gulf of Mexico and the use of a regional ocean observing system to provide a real-time alert system for beach and shellfish bed closings. The NGOM CI is expected to contribute to the priority areas initially identified by the Alliance:

- Improving and protecting water quality.
- Restoring and conserving coastal wetlands and estuarine ecosystems.
- Reducing pollution and nutrient loading.
- Identifying and characterizing Gulf habitats to support coastal management.
- Expanding environmental education to improve stewardship.

Gulf States have also agreed upon cooperative efforts to collect information that can be used to better understand, monitor, and manage the Gulf of Mexico and to participate in the national Integrated Ocean Observing System through the Gulf of Mexico Coastal Ocean Observing System (GCOOS) (*http://ocean.tamu.edu/GCOOS/RA/vision.htm*). Thus, the NGOM CI would also contribute to the GCOOS vision to ''establish a sustained observing system for the Gulf of Mexico to provide observations and products needed by users in this region'' to enable:

- Detecting and predicting climate variability and consequences.
- Preserving and restoring healthy marine ecosystems.
- Ensuring human health.
- Managing resources.
- Facilitating safe and efficient marine transportation.
- Predicting and mitigating against coastal hazards.

The above priorities map directly to the NOAA Strategic Plan and its primary scientific goals. They are also consistent with NOAA 5-yr Research Plan and 20-yr Research Vision.

Electronic Access: Applicants can access, download, and submit electronic grant applications, including the full funding opportunity announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov*. The closing date will be the same as for the paper submissions noted in this announcement. For applicants filing through Grants.gov, NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Registration may take up to 10 business days. More details on how to apply are provided in the NOAA June 30, 2005 **Federal Register** Notice on ''Availability of Grant Funds for Fiscal Year 2006'', which can be found at: *http://www.Grants.gov* or *http://www.ago.noaa.gov/grants/funding.shtml*. Proposals submitted to the NOAA Cooperative Institute Program must include elements requested in the full Federal Funding Opportunity announcement on the grants.gov portal. Proposals, electronic or paper, should be no more than 65 pages (numbered) in length, including budget, investigators vitae, and all appendices. Federally mandated forms are not included within the page count. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Funding Availability: The award period will be five years and may be renewed for an additional five years based on the outcome of a CI peer review in the fourth year. All funding is contingent upon availability of Federal appropriations. NOAA expects that approximately $6.3 M will be available for the CI in the first year of the award. Of this amount, $650,000 ($130K per year for 5 years) will be applied to cover Task I base funding for the entire five-year award period. Funding for subsequent years is expected to be constant throughout the period, depending on the quality of the research, the satisfactory progress in achieving the stated goals described in the proposal, continued relevance to program objectives, and the availability of funding.

Authority: 15 U.S.C. 313, 15 U.S.C. 1540; 15 U.S.C. 2901 et seq., 16 U.S.C. 753a, 33 U.S.C. 883d, 33 U.S.C. 1442, 49 U.S.C. 44720 (b), 118 Stat. 71 (January 23, 2004).

Catalog of Federal Domestic Assistance: 11.432, Office of Oceanic and Atmospheric

Research (OAR) Joint and Cooperative Institutes.

Eligibility: Eligibility is limited to non-Federal public and private non-profit universities, colleges and research institutions in the states of Mississippi, Alabama, Louisiana, Florida, and Texas that offer accredited graduate level degree-granting programs in NOAA-related sciences, as described in the CI Interim Handbook, authorized by NOAA Administrative Order 216–107. Because of NOAA's desire to establish a CI that addresses regional issues in the NGOM, NOAA is limiting eligibility to specific states that border the NGOM.

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement, however, the amount of cost sharing will be considered when determining the level of CI commitment under NOAA's standard evaluation criteria of project costs. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of indirect costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff, graduate students, visiting scientists, or postdoctoral scientists.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation Criteria and Review and Selection Procedures: NOAA's standard evaluation criteria and the review and selection procedures contained in NOAA's June 30, 2005, omnibus notice are applicable to this solicitation and are as follows:

A. Evaluation Criteria for Projects

Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are included to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant.

1. Importance and/or relevance and applicability of proposed project to the program goals (25 percent): This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities.

- Does the proposal includes research goals and projects that address the critical issues identified in NOAA's 5-year Research Plan, NOAA's Strategic Plan, and the priorities described in the supplementary information above?
- Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?
- Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourage student participation in NOAA-related research studies?
- Will most of the staff at the CI be located near a NOAA facility in order to enhance collaborations with NOAA?

2. Technical/scientific merit (30 percent): This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

- Does the project description include a summary of clearly stated goals to be achieved during the five-year period that reflect NOAA's strategic plan and goals?
- Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI?

3. Overall qualifications of applicants (30 percent): This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

- If the institution(s) and/or principal investigators have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA scientists on research projects?
- Is there internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/interdisciplinary research described in the proposal?
- Is there a well-developed business plan that includes fiscal and human resource management as well as strategic planning and accountability?
- Are there any unique capabilities in a mission-critical area of research for NOAA?
- Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by a cost sharing contribution?

4. Project costs (5 percent): The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. Outreach and education (10 percent): NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

B. Review and Selection Process

An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer panel review. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, they will be submitting individual reviews and will not be reaching a consensus opinion. The merit reviewers' ratings are used to produce a rank order of the proposals. The Selection Official selects proposals after considering the peer panel reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors.

C. Selection Factors

The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. A program officer may first make recommendations to the Selecting Official applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
a. Geographically.
b. By type of institutions.
c. By type of partners.
d. By research areas.
e. By project types.
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Applicants must comply with all requirements contained in the full

funding opportunity announcements for each project competition in this announcement.

Universal Identifier: Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177–66178 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at NOAA's NEPA Web site, *http://www.nepa.noaa.gov/,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.*

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

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) are applicable to this solicitation.

Limitation of Liability: Funding for years 2–5 of the Cooperative Institute is contingent upon the availability of appropriated funds. In no event will NOAA or the Department of Commerce be responsible for application preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Paperwork Reduction Act: This notification involves collection of information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) respectively under control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: It has been determined that this notice is 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.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, grants, benefits, and contracts (5 U.S.C. 553(a)(2)).

Because notice and opportunity for comments are not required pursuant to U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and none has been prepared.

Stephen B. Brandt,

Acting Deputy Assistant Administrator, OAR, National Oceanic and Atmospheric Administration.

[FR Doc. E6–5184 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032406A]

General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC); Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the General Advisory Committee to the U.S. Section to the IATTC on April 27, 2006, via telephone conference call. The April 27, 2006, teleconference reschedules the April 11, 2006 teleconference.

DATES: The General Advisory Committee meeting will be held on April 27, 2006, from 12 noon to 3 p.m., Pacific Time.

ADDRESSES: The meeting will be held via telephone conference call at (866) 857–1547, participant passcode, 3313634.

FOR FURTHER INFORMATION CONTACT: J.Allison Routt at (562) 980–4019 or (562) 980–4030.

SUPPLEMENTARY INFORMATION: The initial notification of this meeting was published in the **Federal Register** on March 29, 2006, (71 FR 15698). In the original notice, it stated that the meeting date was April 11, 2006. The meeting has been rescheduled to be held on April 27, 2006. All other information previously published remains the same.

In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee to the U.S. Section to the IATTC. The U.S. Section consists of the four U.S. Commissioners to the IATTC and the representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The Advisory Committee supports the work of the U.S. Section in a solely advisory capacity with respect to U.S. participation in the work of the IATTC,

with particular reference to the development of policies and negotiating positions pursued at meetings of the IATTC. NMFS, Southwest Region, administers the Advisory Committee in cooperation and consultation with the Department of State.

The General Advisory Committee to the U.S. Section to the IATTC will meet by telephone conference to receive and discuss information on: (1) 2006 IATTC activities; (2) recent and upcoming meetings of the IATTC and its working groups; (3) IATTC cooperation with other regional fishery management organizations; and (4) Advisory Committee operational issues.

Special Accommodations

The meeting is accessible to people with disabilities. Requests for a telephone teletype device, language interpretation or other auxiliary aids should be directed to Allison Routt at (562) 980–4019 at least 10 days prior to the meeting date for this conference call.

Dated: April 4, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–5154 Filed 4–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on April 10–11, 2006; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting continues the task force's work and will consist of classified, privileged, FOUO, and proprietary briefings on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton,phillips@osd.mil,* or via phone at (703) 571–0083.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committe Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: April 4, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–3385 Filed 4–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Software Assurance will meet in closed session on *April 18, 2006*; at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting is to chart the direction of the study and begin assessing the current capabilities and vulnerabilities of DoD software.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the risk that DoD runs as a result of foreign influence on its software and to suggest technology and other measures to mitigate the risk.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, of via phone at (703) 571–0083.

Dated: April 4, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–3386 Filed 4–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technology Vectors will meet in closed session on *April 20 and 21, 2006;* at Strategic Analysis, Inc. (SAI), 3601 Wilson Boulevard, Suite 500, Arlington, VA. This meeting will be a plenary meeting used to map the study's direction and begin discussion on what the Technology Vectors DoD will need for the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Review previous attempts by DoD to identify critical technologies in order to derive lessons that would help illuminate the current challenge; identify the National Security objectives for the 21st century and the operational missions that U.S. military will be called upon to support these objectives; identify new operational capabilities needed for the proposed missions; identify the critical science

technolgy, and other related enablers of the desired capabilities; assess current S&T investment plans' relevance to the needed operational capabilities and enablers and recommend needed changes to the plans; identify mechanisms to accelerate and assure the transition of technology into U.S. military capabilities; and review and recommend changes as needed, the current processes by which national security objectives and needed operational capabilities are used to develop and prioritize science, technology, and other related enablers, and how those enablers are then developed.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Dated: April 4, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–3387 Filed 4–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Perform an Environmental Assessment for the Retirement of the F–117A and T–38A Aircraft and Beddown of the F–22A at Holloman Air Force Base, NM

AGENCY: Department of the Air Force, Air Combat Command.

ACTION: Notice of Intent to prepare an Environmental Assessment at Holloman Air Force Base, New Mexico for retirement of the F–117A, and T–38A, and 3rd operational beddown of the F–22A.

SUMMARY: The United States Air Force is issuing this Notice of Intent (NOI) to announce that it is conducting an Environmental Assessment (EA) to determine the potential environmental consequences of a proposal to transform the combat capability of the 49th Fighter Wing and maximize the use of available infrastructure at Holloman AFB by replacing the retiring F–117A aircraft and T–38A aircraft supporting the F–117A mission with two F–22A squadrons. The Air Force has identified Holloman AFB as the preferred location for the third operational wing of the Air Force's F–22A Raptor, which would enhance the low observable, precision weapons system capability of the 49th Fighter Wing.

The EA for the proposed action will be prepared in compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347), the Council on Environmental Quality NEPA Regulations (40 CFR 1500–1508); and the Air Force's Environmental Impact Analysis Process (EIAP) (Air Force Instruction 32–7061 as promulgated at 32 CFR 989). As part of the proposal, the Air Force will analyze the following actions at Holloman AFB:

- Retire F–117A and T–38A aircraft currently based at Holloman AFB.
- Beddown and operate two F–22A aircraft squadrons.
- Renovate existing facilities and construct new facilities to support the F–22A squadrons.
- Adjust base manning to reflect F–22A beddown requirements
- Conduct F–22A training routinely in airspace within 100 miles of Holloman AFB, to include supersonic operations.
- Expand chaff and flare use in military airspace.

Alternatives meeting the underlying purpose and need of the proposed action, if any, will be developed during the EIAP process. This process includes gathering information from the scoping meetings.

DATES: The Air Force will host public scoping meetings April 17 through 19, 2006 for the general public and government agencies to help determine the scope of issues to be addressed and identify environmental issues to be analyzed in depth. All meetings will be held from 5:30 p.m.–7 p.m.

April 17, 2006, 5:30 p.m.–7:30 p.m.; Town: Ruidoso; Location: Best Western Pine Springs Inn, 1420 West Highway 70, Ruidoso Downs, NM.

April 18, 2006, 5:30 p.m.–7:30 p.m.; Town: Truth or Consequences; Location: Truth or Consequences Civic Center, 400 W 4th Ave., Truth or Consequences, NM.

April 19, 2006, 5:30 p.m.–7:30 p.m.; Town: Alamogordo; Location: Sergeant Willie Estrada Memorial Civic Center, 800 East First Street, Alamogordo, NM.

During these meetings, the Air Force will provide additional information about the proposed retirement of the F–117A and T–38A aircraft and beddown of the F–22A at Holloman AFB. Public and agency comments presented at the meetings, as well as written comments received by the Air Force during the scoping period and throughout the environmental process, will be considered in the preparation of the EA. These scoping meetings would satisfy the requirement in 32 CFR 989.18 should the AF later determine an EIS is necessary. The Air Force will accept comments at any time during the environmental process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EA, comments should be submitted to the address below by May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Linda A. DeVine, HQ ACC/A7ZP, c/o SAIC, 22 Enterprise Parkway, Suite 200, Hampton, VA 23666, 757–827–2659.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–5169 Filed 4–7–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 10, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The 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.

Dated: April 3, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: An Assessment of Transition and Policies and Practices in State Vocational Rehabilitation Agencies: State VR Agency Survey Data Collection.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 120.

Abstract: The data collection is a critical element in the Assessment of Transition Policies and Practices in State VR Agencies that is needed to improve the provision of services for individuals with disabilities transitioning from secondary school to post-school environments including continuing education, employment, and community living. This study will provide Congress, the U.S. Department of Education, State VR agencies and other interested parties with a description of the current status of transition policies and practices in State VR agencies and identify promising practices in the provision of transition services. The respondents are state personnel responsible for the administration of programs and services in the 80 State VR agencies.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2979. 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. E6–5153 Filed 4–7–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 10, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: April 5, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress, Word Locator Study.

Frequency: One time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,224.

Burden Hours: 108.

Abstract: This study is intended to determine the impact of three different modes in which a reading test may be presented to students in grades 4 and 8, one with line numbering, one without, and the third with bolding used for important words.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3019. 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. E6–5190 Filed 4–7–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Meeting

AGENCY: National Board for Education Sciences; ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Board for Education Sciences. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Sonia Chessen at (202) 219–2195 by April 21, 2006. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: May 8 and 9, 2006.

Time: May 8, 2 p.m. to 5 p.m.; May 9, 9 a.m. to 2 p.m.

Location: The Board Room (Room 100), 80 F St., NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Sonia Chessen, Executive Director, National Board for Education Sciences, Washington, DC 20208. Tel.: (202) 219–2195; fax: (202) 219–1466; e-mail: *Sonai.Chessen@ed.gov.*

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding of applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. On May 8, the Board will meet from 2 to 5 p.m. to hear an update on the work of the Institute of Education Sciences (IES) and a presentation on new initiatives to serve the needs of practitioners, followed by a discussion about jointly sponsored research dissemination. On May 9 at 9 a.m., the Board will review the activities of the previous day and revise the day's agenda as needed. Starting at 9:15 a.m., the Board will hear invited speakers on the topic of Research Evidence Needed by State Education Policy Makers. At 11 a.m., the Board will consider its annual report to Congress on the activities of IES. After a working lunch starting at noon, the Board will issue IES research in the context of the No Child Left Behind legislation, followed by a discussion of next steps. The meeting will adjourn at 2 p.m. Records are kept of all Board proceedings and are available for public inspection at the office of the National Board for Education Sciences, Room 627 H, 555 New Jersey Ave., NW., Washington, DC 20208.

Dated: April 3, 2006.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 06–3371 Filed 4–7–06; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0038, FRL–8056–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Beverage Can Surface Coating (Renewal); EPA ICR Number 0663.09, OMB Control Number 2060–0001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 10, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0038, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, (2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2005–0038, which is available for online viewing at *http://www.regulations.gov* or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Beverage Can Surface Coating (Renewal).

ICR Numbers: EPA ICR Number 0663.09, OMB Control Number 2060–0001.

ICR Status: This ICR is scheduled to expire on April 30, 2006. Under OMB regulations, the Agency may continue to

conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Respondents are owners or operators of beverage can surface coating facilities. These standards apply to each beverage can surface coating operation in which organic coatings are applied (exterior base coat operations, over varnish coating operations, and inside spray coating operations) that commenced construction, modification or reconstruction after November 26, 1980. Owners or operators of the affected facilities described must make initial reports when a source becomes subject to the standards, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to New Source Performance Standards (NSPS).

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

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

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 43 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of beverage can surface coating facilities.

Estimated Number of Respondents: 48.

Frequency of Response: Initially, Semiannually, On Occasion.

Estimated Total Annual Hour Burden: 5,134.

Estimated Total Annual Cost: $515,230, which includes $0 capital/startup costs. $100,800 annual O&M costs, and $414,430 annual labor costs.

Changes in the Estimates: There is an increase of 492 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an expansion of the calculations to include managerial and clerical labor rates. The increase in O&M costs is due to an increase in equipment maintenance costs.

Dated: March 29, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–5198 Filed 4–7–06; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice of Release of Planning Document for the U.S. Ocean Research Priorities Plan; Request for Public Comment

ACTION: Notice of release of planning document for the U.S. Ocean Research Priorities Plan and Request for Public Comment.

SUMMARY: This notice announces the release of the planning document for the U.S. Ocean Research Priorities Plan and Request for Public Comment by the National Science and Technology Council's (NSTC) Joint Subcommittee on Ocean Science and Technology (JSOST). This planning document was prepared to serve as a basis for discussion of theme priorities in the development of the Ocean Research Priorities Plan.

Dates and Addresses: The planning document for the development of the U.S. Ocean Research Priorities Plan is now available for public review and can be accessed at *http://ocean.ceq.gov/about/docs/jsost_orpp_plandoc.pdf.* Comments on the development of the U.S. Ocean Research Priorities Plan must be received by the National Science and Technology Council's Joint Subcommittee on Ocean Science and Technology no later than the close of business on Monday, May 15, 2006 (45 days).

Address for comments: Only electronic (e-mail) comments will be accepted. Individuals who wish to provide comments should refer to the guidelines for comment submission available at *http://ocean.ceq.gov/about/sup_jsost_public_comment.html.* Comments should be sent to: *public-comment@jsost.org.*

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Shelby Walker, Joint Subcommittee on Ocean Science and Technology, CCSP/USGCRP Office, 1717 Pennsylvania Ave., Suite 250, Washington, DC 20006. Telephone: (202) 419–3464. E-mail: *swalker@usgcrp.gov.*

SUPPLEMENTARY INFORMATION: As part of the reformulation of ocean policy, the U.S. Ocean Action Plan (OAP) developed a governance structure that coordinates the tasks and goals of all of the Federal agencies involved in ocean science and management. This multi-tiered governance structure has the goal of advancing ocean science and use in an integrated and productive manner. To that end, the JSOST, as directed by the OAP and governed by the Committee on Ocean Policy (COP), the NSTC, and the Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI), will develop an Ocean Research Priorities Plan. The goal of the Ocean Research Priorities Plan is to formulate the priorities for ocean science and technology initiatives across the wide scope of societal interests. The Ocean Research Priorities Plan will subsequently be complemented by the Ocean Research Priorities Implementation Strategy that will define the fundamental principles for guiding actions and programs in support of the research priorities. A framework for the

Ocean Research Priorities Plan was developed by the JSOST and approved by the ICOSRMI in April 2005. This framework consists of: Vision; Challenges; Principles and Critical Elements; Themes; Goals; Resources; and Evaluating Performance.

Central to the Ocean Research Priorities Plan was the identification of specific themes that would incorporate the scope of the use, impact, and interaction of the ocean, coasts, and Great Lakes with society. These themes were:

1. Enhancing human health.
2. Improving ecosystem health.
3. Sustaining natural resources.
4. Promoting marine operations.
5. The ocean's role in climate change and variability.
6. Mitigating effects of natural hazards.
7. Improving quality of life.

In addition, several elements cut across all of these themes and were identified as cross-cutting themes. They include:

1. Basic understanding of the ocean.
2. Research support through ocean observations and infrastructure.
3. Expanded ocean education.

With the framework and the initial description of the themes as planning materials, the NSTC JSOST now seeks input and comment from all relevant communities. This planning document is intended to serve as a foundation for discussion and community input during the public comment period, and associated public workshop in Denver, Colorado on April 17–20, 2006. The expectation is that public comments will help prioritize among the short-term and long-term opportunities available within the ocean sciences research field, which will in turn inform the development of the Ocean Research Priorities Plan. Additional information on the development of the Ocean Research Priorities Plan, the public comment period, and the public workshop is available at: *http://ocean.ceq.gov/about/sup_jsost_prioritiesplan.html.*

M. David Hodge,

Operations Manager.

[FR Doc. 06–3396 Filed 4–7–06; 8:45 am]

BILLING CODE 3170–W4–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Jennifer Mock, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–7234 or via the Internet at *Jennifer.Mock@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1021.

OMB Approval Date: 11/7/2005.

OMB Expiration Date: 11/30/2008.

Title: Section 25.139, NGSO FSS coordination and information sharing between MVDDS licenses in the 12.2 GHz to 12.7 GHz band.

Form No.: N/A.

Estimated Annual Burden: 6 respondents; 36 annual burden hours; 6 hour per respondent.

Needs and Uses: Section 43.21(c) requires each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in 47 CFR 32.900 for a calendar year to file with the Chief, Wireline Competition Bureau (formerly the Common Carrier Bureau) a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letter must be filed no later that April 1 of the following year. The information is used by FCC staff members to regulate and monitor the telephone industry and by the public to analyze the industry. The information or revenues and total plant is compiled and published in the Commission's annual common carrier statistical publication and trends in telephone service report.

OMB Control No.: 3060–1022.

OMB Approval Date: 1/13/2006

OMB Expiration Date: 1/31/2009.

Title: Section 101.1403, Broadcast Carriage Requirements.

Form No.: N/A.

Estimated Annual Burden: 214 respondents; 214 annual burden hours; 1 hour per respondent.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) respondents that meet the statutory definition of Multiple Video Programming Distributor (MVPD) to comply with the broadcast carriage requirements located at 47 U.S.C. 325(b)(1). Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in section 325(b)(2) of the Communications Act of 1934, as amended. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1023.

OMB Approval Date: 1/13/2006.

OMB Expiration Date: 1/31/2009.

Title: Section 101.103, Frequency Coordination Procedures.

Form No.: N/A.

Estimated Annual Burden: 214 respondents; 1177 total annual burden hours; (estimated time per respondent to complete letter for consent is 0.5 hours × 214 = 107 burden hours, estimated time per respondent to establish and update Internet site is 5 hours × 214 = 1070 burden hours, 107 + 1070 = 1177 total burden hours).

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to provide notice of intent to construct a proposed antenna to NGSO FSS licensing operating in the 12.2–12.7 GHz frequency band and to maintain an Internet Web site of all existing transmitting sites and transmitting antennas that are scheduled for operation within one year including the ''in service'' dates. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1024.

Title: Section 101.1413, License Term and Renewal Expectancy; Section 101.1421, Coordination of Adjacent Area MVDDS Stations and Incumbent Public Safety POFS Stations.

Form No.: N/A.

Estimated Annual Burden: 214 respondents; 107 total annual burden hours; 0.5 hours per respondent.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) renewal applicants to comply with the requirements to provide substantial service by the end of the ten year initial license term. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas

(DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1025.

Title: Section 101.1440, MVDDS Protection of Direct Broadcast Satellites (DBS).

Form No.: N/A.

Estimate Annual Burden: 217 respondents; 8,635 total burden hours; (214 MVDDS licensees × 40 hours = 8560 burden hours, 3 DBS licensees x 25 hours = 75 burden hours, totaling 8635 total annual burden hours).

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers that may potentially be effected by the introduction of its MVDDS service. The MO&O and Second Report and Order will ensure that MVDDS signal will not be in excess of the appropriate Equivalent Power Flux Density (EPFD) limits as written in 47 CFR 101.105(a)(4)(ii)(B) is causing interference to DBS customers. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmission site. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1026.

Title: Section 101.1417, Annual Report.

Form No.: N/A.

Estimated Annual Burden: 214 respondents; 214 total annual burden hours; 1 hour per respondent.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to file two copies of a ''licensee information report'' by March 1st of each year with the Commission, for the preceding calendar year. This report must include the name and address of the licensee, station(s) call letters and primary geographic service area(s), and statistical data for the licensee's station(s). This report enables the Commission to keep track of the number of MVDDS licensee stations. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5196 Filed 4–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 30, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0760.

OMB Approval Date: 3/7/2006.

Expiration Date: 3/31/2009.

Title: Access Charge Reform, CC Docket No. 96–262 (First Report and Order); Second Order on Reconsideration and Memorandum Opinion and Order, and Fifth Report and Order.

Form No.: N/A.

Estimated Annual Burden: 17 responses; 55,454 total annual burden hours; 3—1,575 hours per respondent.

Needs and Uses: This submission revises the collection to eliminate segments that are past the due dates and are no longer needed. This submission also revises the burden and respondent figures to provide more current and accurate data.

In the *Fifth Report and Order (Order)*, CC Docket No. 96–262, Access Charge Reform, the Commission modified the rules that govern the provision of interstate access services by those price cap LECs subject to price regulation to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The pricing flexibility framework adopted in that order was designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) Price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives.

OMB Control No.: 3060–0514.

OMB Approval Date: 3/24/2006.

Expiration Date: 3/31/2009.

Title: Section 43.21 (b)—Holding Company Annual Report.

Form No.: N/A.

Estimated Annual Burden: 17 responses; 17 total annual burden hours; 1 hour per respondent.

Needs and Uses: This submission seeks an extension of the existing collection of information. The filing of SEC Form 10–K is required by sections 1.785 and 43.21(b) of the FCC Rules and authorized by section 219 of the Communications Act of 1934, as amended. Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier having annual revenues equal to or above the indexed revenue threshold, as defined in section 32.9000, shall file annually with the Commission, not later than the date prescribed by SEC for its purposes two complete copies of any Form 10–K annual report (or any superseding form) filed with that Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5197 Filed 4–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting Notice

April 5, 2006.

Open Commission Meeting

Wednesday, April 12, 2006

The Federal Communications Commission will hold an open meeting on the subjects listed below on Wednesday, April 12, 2006, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Office of Engineering and Technology and Wireless Tele-Communications.	*Title:* Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258) and Services Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands (WT Docket No. 02–353). *Summary:* The Commission will consider a Ninth Report and Order and Order establishing procedures for the relocation of Broadband Radio Service and Fixed Microwave Service operations, including cost sharing obligations, in the 2.1 GHz band, as well as addressing a related petition for reconsideration.
2	Wireless Tele-Communications and International and Office of Engineering and Technology.	*Title:* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands (WT Docket No. 03–66, RM–10586); Part 1 of the Commission's Rules—Further Competitive Bidding Procedures (WT Docket No. 03–67); Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions (MM Docket No. 97–217); Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico (WT Docket No. 02–68, RM–9718); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets (WT Docket No. 00–230); Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands (IB Docket No. 02–364); and Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems (ET Docket No. 00–258). *Summary:* The Commission will consider an Order on Reconsideration and Fourth Memorandum Opinion and Order addressing spectrum sharing among incumbent and future services in the 2495–2500 MHz band. The Commission will also consider a Third Memorandum Opinion and Order and Second Report and Order concerning changes to the service rules applicable to the Broadband Radio Service and the Educational Broadband Service.
3	Wireless Tele-Communications	*Title:* Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66 (AU Docket No. 06–30). *Summary:* The Commission will consider a Public Notice addressing filing requirements, minimum opening bids, upfront payments and other procedures for Auction No. 66, an auction of licenses for Advanced Wireless Services scheduled for June 29, 2006.
4	Wireless Tele-Communications	*Title:* Petition by Forest Conservation Council, American Bird Conservancy and Friends of the Earth for National Environmental Policy Act Compliance. *Summary:* The Commission will consider a Memorandum Opinion and Order addressing the petition filed by Forest Conservation Council, American Bird Conservancy and Friends of the Earth for National Environmental Policy Act Compliance.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–3449 Filed 4–6–06; 11:47 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, April 12, 2006. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final

portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION: *Proposed Rule: Federal Home Loan Bank Director Elections.* The Federal Housing Finance Board is proposing to amend its rules to better enable the Federal Home Loan Banks to identify potential members for their boards of directors who are well suited to carry out their corporate governance responsibilities.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: *Periodic Update of Examination Program Development and Supervisory Findings.*

FOR FURTHER INFORMATION CONTACT: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

By the Federal Housing Finance Board.

Dated: April 5, 2006.

John P. Kennedy,

General Counsel.

[FR Doc. 06–3428 Filed 4–6–06; 8:51 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 25, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. The Karlyn B. Lohrenz Trust and Karlyn B. Lohrenz, as trustee and as an individual, to become part of a group acting in concert, which will consist of the Karlyn B. Lohrenz Trust; Karlyn B. Lohrenz, as trustee and an individual; Harold J. Lohrenz, all of Billings, Montana; and Clarence G. Lohrenz, Boise, Idaho; to acquire voting shares of The Bridger Company, and thereby indirectly acquire voting shares of Bank of Bridger, National Association, both of Bridger, Montana.

Board of Governors of the Federal Reserve System, April 5, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5185 Filed 4–7–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E6-4905) published on page 17102 of the issue for Wednesday, April 5, 2006.

Under the Federal Reserve Bank of St. Louis heading, the entry for Nancy Hays Gottwald, Richmond, Virginia, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Nancy Hays Gottwald, Richmond, Virginia; to acquire additional voting shares of First National Bancshares of Hempstead County, Hope, Arkansas, and thereby indirectly acquire additional voting shares of Bank of Blevins, Blevins, Arkansas; The First National Bank of Hope, Hope, Arkansas; and The First National Bank of Lewisville, Lewisville, Arkansas.

Comments on this application must be received by April 20, 2006.

Board of Governors of the Federal Reserve System, April 5, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5186 Filed 4–7–06; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Federal Management Regulation; Asset Management; Notice of GSA Bulletin FMR B–10

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

ACTION: Notice of a bulletin.

SUMMARY: This notice announces GSA Federal Management Regulation (FMR) Bulletin B–10. This bulletin provides guidance to Federal agencies that sell personal property. GSA Bulletin FMR B–10 may be found at *www.gsa.gov/fmrbulletin.*

DATES: The bulletin announced in this notice is effective March 29, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501–1777. Please cite Bulletin FMR B–10.

SUPPLEMENTARY INFORMATION:

A. Background

A list of supply class categories is found in 40 U.S.C. 545(d) (1). Sales under this subsection are limited to categories of personal property for which the Administrator determines that disposal under this subsection best serves the interests of the Government. This notice announces GSA Bulletin FMR B–10 that updates that list of supply class categories.

B. Procedures

Bulletins regarding asset management are located on the Internet at *www.gsa.gov/bulletins* as Federal Management Regulation (FMR) bulletins.

Dated: April 3, 2006.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. E6–5178 Filed 4–7–06; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Cooperative Agreement to the Arizona Outreach Office to Strengthen Public Health Services at the Arizona-Sonora Border

AGENCY: Office of Global Health Affairs, Office of the Secretary, HHS.

Announcement Type: Cooperative Agreement—FY 2006 Initial Announcement. Single Source.

Catalog of Federal Domestic Assistance: 93.018.

Key Dates: Application availability: April 10, 2006.

Applications are due by 5 p.m. eastern time on May 10, 2006.

Executive Summary: The Office of Global Health Affairs (OGHA) announces that up to $267,500 in fiscal year (FY) 2006 funds is available for a cooperative agreement to the Arizona Department of Health Services, Arizona Outreach Office of the U.S.-Mexico Border Health Commission to strengthen the binational public health projects and programs along the Arizona-Sonora border. Working in collaboration with the Arizona

Department of Health Services Office of Border Health, the Secretaria de Salud de Sonora, and the USMBHC Arizona and Sonora Delegation Offices, this initiative targets activities on the following areas: Data analysis; public information, promotion and communication; and Healthy Gente/ Healthy Border 2010 activities. The project will be approved for up to a one-year period for a total of $267,500 (including indirect costs). Funding for the cooperative agreement is contingent upon the availability of funds.

I. Funding Opportunity Description

Under the authority of Section 4 of the U.S.-Mexico Border Health Commission Act (the Act), Public Law 103–400, the Office of Global Health Affairs (OGHA) announces the intent to allocate fiscal year (FY) 2006 funds for a cooperative agreement to the Arizona Department of Health Services, Arizona Outreach Office of the U.S.-Mexico Border Health Commission to strengthen the binational public health projects and programs along the Arizona-Sonora border. Activities to be addressed through the cooperative agreement will relate to the following topic areas: (1) Access to Care; (2) Cancer; (3) Diabetes; (4) Immunizations and Infectious Diseases; (5) Injury Prevention; (6) Maternal, Infant and Child Health; (7) Tuberculosis; and (8) Nutrition and Obesity. Funding will be provided by OGHA, through the U.S.—Mexico Border Health Commission, to the awardee.

This assistance is geared to support current, on-going and proposed public health initiatives in this border region that support the goals and objectives of the U.S.-Mexico Border Health Commission serve to strengthen access to health care, disease prevention, and public health along the Arizona-Sonora border.

Background: The U.S.-Mexico Border Health Commission (USMBHC), in collaboration with the U.S. Department of Health and Human Services, works toward creating awareness about the U.S.-Mexico border, its people, and its environment. It educates others about the unique challenges at the border through outreach efforts, data collection and analysis, and joint collaborative efforts with public and private partners in the border health community. The USMBHC serves as a rallying point for shared concerns about the U.S.-Mexico border and as a catalyst for action to develop plans directed toward solving specific health related problems.

Outreach offices of the USMBHC work with the border states to address public health concerns and needs affecting the border region. The Arizona Outreach Office works with Mexican counterparts to promote and strengthen binational health initiatives along the Arizona-Sonora border.

Purpose: The projects main goals include: (1) Increase access to care and improve quality of care along the Arizona-Sonora border; (2) Improve disease prevention and health education in the region; (3) Increase community outreach in the region; (4) Improve workforce development and retention; and (5) Improve public health infrastructure along the Arizona-Sonora border.

The Arizona Department of Health Services Office of Border Health, the Secretaria de Salud de Sonora, and the USMBHC Arizona and Sonora Delegation Office work together to target activities in the following areas: data analysis, public information, promotion and communication, and Healthy Gente/Healthy Border 2010 activities.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals:

- Improve disease prevention and health education;
- Improve public health infrastructure;
- Improve workforce development and retention; and
- Improve outreach to the community.

Activities: Awardee activities for this program will be focused in the flowing areas and sub-areas:

(1) Outreach and health promotion activities to establish or strengthen linkages between public health and border activities; including

- Community projects supporting Healthy Border/Healthy Gente objectives;
- Continuation of ''Pasos Presidenciales;''
- Implementation of the School Health Index at elementary schools;
- Focusing on injury prevention and immunizations in the Binational Injury Prevention Campaign; and
- Strengthen colposcopy clinics in the region;

(2) Health data analysis and surveillance through SIREN;

(3) Administrative support to the members and staff for the USMBHC; and

(4) Healthy Border/Healthy Gente projects and activities.

II. Award Information

The administrative and funding instrument to be used for this program will be the cooperative agreement in which substantial OGHA/HHS scientific and/or programmatic involvement is anticipated during the performance of the project. Under the cooperative agreement, OGHA/HHS will support and/or stimulate awardee activities by working with them in a non-directive partnership role. Awardee will also be expected to work directly with and in support of the U.S.-Mexico Border Health Commission and its stated goals and initiatives as outlined in the submitted workplan.

Approximately $267,500 in FY 2006 funds is available to support the agreement. The anticipated start date is May 1, 2006. There will only be one single award made from this announcement. The program and budget period for this agreement is for 12 months.

Although this program is provided for in the financial plans of the OGHA, the award pursuant to this RFA is contingent upon the availability of funds for this purpose.

III. Eligibility Information

1. *Eligible Applicants:* This is a single eligibility cooperative agreement offered to the Arizona Department of Health Services, Arizona Outreach Office (ORO) of the USMBHC. The ORO has extensive past experience working with the USMHBC and supporting its binational goals, objectives and initiatives. The Arizona ORO also has an existing working relationship and on-going initiatives with Mexico through the Sonora Outreach Office. Continuity and consistency in this binational effort within this region is essential to the productivity and success of public health efforts in this region.

2. *Cost Sharing or Matching:* Cost sharing, matching funds, and cost participation is not a requirement of this agreement.

IV. Application and Submission Information

1. *Address To Request Application Package:* Application kits may be requested by calling (240) 453–8822 or writing to: Office of Grants Management, Office of Public Health Science (OPHS), 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Applications must be prepared using Form OPHS–1. Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the application kit at (240) 453–8823.

2. *Content and Form of Application Submission:* All applications must be accompanied by a Project Abstract submitted on 3.5 inch floppy disk. The abstract must be typed, single-spaced, and not exceed 2 pages. Reviewers and staff will refer frequently to the information contained in the abstract,

and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will be included in the application packet.

All grant applications must be accompanied by a Project Narrative. In addition to the instructions provided in OPHS–1 (Rev 8/2004) for project narrative, the specific guidelines for the project narrative are provided in the program guidelines. Format requirements are the same as for the Project Abstract Section; margins should be 1 inch at the top and 1 inch at the bottom and both sides; and typeset must be no smaller than 12 cpi and not reduced. Biographical sketches should be either typed on the appropriate form or plain paper and should not exceed two pages, with publications listed being limited only to those that are directly relevant to this project.

Application Format Requirements

If applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. Pages must be numbered consecutively.

Applications submitted electronically that exceed 80 pages when printed will be deemed non-compliant. All non-compliant applications will be returned to the applicant without further consideration.

a. Number of Copies.

Please submit one (1) original and two (2) unbound copies of the application. Please do not bind or staple the application. Application must be single sided.

b. Font.

Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. The text and table portions of the application must be submitted in not less than 12 point and 1.0 line spacing. Applications not adhering to 12 point font requirements may be returned.

c. Paper Size and Margins.

For scanning purposes, please submit the application on 8½″ × 11″ white paper. Margins must be at least one (1) inch at the top, bottom, left and right of the paper. Please left-align text.

d. Numbering.

Please number the pages of the application sequentially from page 1 (face page) to the end of the application, including charts, figures, tables, and appendices.

e. Names.

Please include the name of the applicant on each page.

f. Section Headings.

Please put all section headings flush left in bold type.

Application Format: Applications for funding must consist of the following documents in the following order:

i. Application Face Page

Public Health Service (PHS) Application Form OPHS–1, provided with the application package. Prepare this page according to instructions provided in the form itself.

DUNS Number

All applicant organizations are required to have a Data Universal Numbering System (DUNS) number in order to apply for a grant from the Federal Government. The DUNS number is a unique nine-character identification number provided by the commercial company, Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS number can be found at *https://www.dnb.com/product/eupdate/requestOptions.html* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do electronic business with the Federal Government. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm.*

Finally, applicants applying electronically through Grants.gov are required to register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider.*

Applicants applying electronically through the OPHS E-Grants System are required to register with the provider. Information about this requirement is available at *https://egrants.osophs.dhhs.gov.*

ii. Program Narrative

This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well organized so that reviewers can understand the proposed project.

Use the following section headers for the Narrative:

- Executive Summary.

This section should briefly describe the proposed project and supporting initiatives as well as summarize goals that the program intends to achieve through the project initiatives.

- Work Plan.

Describe the current and proposed activities or steps that will be used to achieve the stated goals and objectives. Describe expected outcomes resulting from activities as well as any evaluation mechanisms that will be used to measure the success of the initiatives.

- Mechanism For Administration.

Describe how resources and funds will be administered with regards to the proposed projects.

- In-Kind Support/Resources.

Describe any in-kind support from other sources, if any, that will be used to support the proposed initiatives and activities.

iii. Appendices

Please provide the additional relevant information (including tables, charts, and other relevant documents) to complete the content of the application. Please note that these are supplementary in nature, and are not intended to be a continuation of the project narrative. Be sure each appendix is clearly labeled.

3. Submission Dates and Times:

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement using one of the

electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions Via the Grants.gov Web Site Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions Via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (eastern time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. *Intergovernmental Review*: This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). Applicants shall submit a copy of the application face page (SF–424) and a one page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprised on proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) A description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OGHA/HHS.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOCs may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*. The due date for State process recommendations is 60 days after the application deadline. The OGHA/HHS does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

5. *Funding Restrictions*: Funds may not be used for construction, building alterations, equipment purchase, medical treatment, renovations, or to purchase food. Allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged are outlined in the following documents: OMB–21 (Institutes of Higher Education); OMB Circular A–122 (Nonprofit Organizations) and 45 CFR part 74, appendix E (Hospitals). Copies of these circulars can be found on the Internet at: *http://www.whitehouse.gov/omb*.

V. Application Review Information

1. *Criteria:* Applications will be screened by OGHA staff for completeness and for responsiveness to the program guidance. Applicants should pay strict attention addressing these criteria, as they are the basis upon which applications will be judged. Those applications judged to be non-responsive or incomplete will be returned to the applicant without review.

Applications that are complete and responsive to the guidance will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HHS policies and procedures. As part of the initial merit review, all applications will receive a written critique. All applications recommended for approval will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. Eligible applications will be assessed according the following criteria:

(1) *Technical Approach (45 Points)*:

- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of the USMBHC.
- The successful applicant must demonstrate a clear understanding of the scope and objectives of the cooperative agreement, recognition of potential difficulties that may arise in performing the work required, presentation of adequate solutions, and understanding of the close coordination necessary between the Arizona Department of Health Services Office of Border Health, the Secretaria de Salud de Sonora, and the USMBHC Arizona and Sonora Delegation Offices.

(2) *Experience and Capabilities of the Organization (45 Points)*:

- Applicants should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.
- Clarity and appropriateness of lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination of a multiple-partner collaboration.

(3) *Facilities and Resources (10 Points)*:

- Documented availability and adequacy of facilities, equipment and resources necessary to carry out the activities.

2. *Review and Selection Process*: Applications will be reviewed in competition with other submitted applications, by a panel of peer reviewers. Each of the above criteria will be addressed and considered by the reviewers in assigning the overall score. Final award will be made on the basis of score, program relevance and, availability of funds.

VI. Award Administration Information

1. *Award Notices:* OGHA/HHS does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter regarding the outcome of their applications. The official document notifying an applicant that an application has been approved and funded is the Notice of Award, which specifies to the awardee the amount of money awarded, the purpose of the agreement, the terms and conditions of the agreement, and the amount of funding, if any, to be contributed by the awardee to the project costs.

2. *Administrative and National Policy Requirements*: The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which

governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from: http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total cost of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. *Reporting*: All projects are required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities and an outcome evaluation to measure changes in knowledge and skills that can be attributed to the project. Project funds may be used to support evaluation activities.

In addition to conducting their own evaluation of projects, successful applicants must be prepared to participate in an external evaluation, to be supported by OGHA/HHS and conducted by an independent entity, to assess efficiency and effectiveness for the project funded under this announcement.

Within 30 days following the end of each of quarter, submit a performance report no more than ten pages in length must be submitted to OGHA/HHS. A sample monthly performance report will be provided at the time of notification of award. At a minimum, monthly performance reports should include:

- Concise summary of the most significant achievements and problems encountered during the reporting period, *e.g.* number of training courses held and number of trainees.
- A comparison of work progress with objectives established for the quarter using the grantee's implementation schedule, and where such objectives were not met, a statement of why they were not met.
- Specific action(s) that the grantee would like the OGHA/HHS to undertake to alleviate a problem.
- Other pertinent information that will permit monitoring and overview of project operations.
- A quarterly financial report describing the current financial status of the funds used under this award. The awardee and OGHA will agree at the time of award for the format of this portion of the report.

Within 90 days following the end of the project period a final report containing information and data of interest to the Department of Health and Human Services, Congress, and other countries must be submitted to OGHA/HHS. The specifics as to the format and content of the final report and the summary will be sent to successful applicants. At minimum, the report should contain:

- A summary of the major activities supported under the agreement and the major accomplishments resulting from activities to improve mortality in partner country.
- An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures resulting from activities during the grant period.

Quarterly performance reports and the final report may be submitted to: U.S. Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs, 5600 Fishers Lane, Suite 18–105, Rockville, Maryland 20857.

A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period and submitted to the OPHS-Office of Grants Management

VII. Agency Contacts

For programmatic requirements, please contact: Jeff Waggoner, Office of Global Health Affairs, 5600 Fishers Lane, Suite 18–105, Rockville, MD 20857.

For administrative requirements, please contact: DHHS, Office of Public Health and Science, Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20857, Telephone: (240) 453–8822.

VIII. Tips for Writing a Strong Application

Include DUNS Number. You must include a DUNS Number to have your application reviewed. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Keep your audience in mind. Reviewers will use only the information contained in the application to assess the application. Be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume that reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

Start preparing the application early. Allow plenty of time to gather required information from various sources.

Follow the instructions in this guidance carefully. Place all information in the order requested in the guidance. If the information is not placed in the requested order, you may receive a lower score.

Be brief, concise, and clear. Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If any required information or data is omitted, explain why. Make sure the information provided in each table, chart, attachment, etc., is consistent with the proposal narrative and information in other tables.

Be organized and logical. Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant or because parts of the application do not fit together.

Be careful in the use of appendices. Do not use the appendices for information that is required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

Carefully proofread the application. Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices) and that page limits are followed. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout application.

Dated: March 31, 2006.

Mary Lou Valdez,

Deputy Director for Policy, Office of Global Health Affairs.

[FR Doc. 06–3338 Filed 4–7–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Secretary, Office of Public Health and Science, HHS.

ACTION: Notice.

SUMMARY: As stipulated in the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting is open to the public.

DATES: The meeting will be held on Monday, April 24, 2006, from 9 a.m. to 5 p.m.

ADDRESSES: Department of Health and Human Services, Room 800 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: CDR John Eckert; Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee; Department of Health and Human Services, 200 Independence Avenue, SW., Room 716G, Washington, DC 20201; (202) 690–7694.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002 to advise, consult with, and make recommendations to the Secretary through the Assistant Secretary for Health, on a broad range of topics including (1) the current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

The agenda for this meeting is being developed and will be posed on the CFSAC Web site, *http://www.hhs.gov/advcomcfs*, when it is finalized.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Pre-registration is required for public comment by April 19, 2006. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker. Any member of the public who wishes to have printed material distributed to CFSAC members should submit materials to the Acting Executive Secretary, CFSAC, whose contact information is listed above prior to the close of business April 19, 2006.

Dated: April 3, 2006.

CDR John J. Eckert,

Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 06–3393 Filed 4–7–06; 8:45 am]

BILLING CODE 4150–42–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Annual Long-Term Care Ombudsman Report and Instructions

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by May 10, 2006.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Sue Wheaton, telephone: (202) 357–3587; e-mail: *sue.wheaton@aoa.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

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. The reporting system, the National Ombudsman Reporting System (NORS), was developed in response to the needs and directives pertaining to the Long Term Care Ombudsman Program and approved by the Office of Management and Budget for use in FY 1995–96 and extended with slight modifications for use in FY 1997–2001 and again for FY 2002–2006.

This request is to institute the use of the revised information collection, State Annual Long-Term Care Ombudsman Report (and Instructions), from state agencies on aging and state long-term care ombudsman programs under Titles III and VII of the Older Americans Act. The data collected on complaints filed with ombudsman programs and narrative on long-term care issues provide information to Centers for Medicare and Medicaid Services and others on patterns of concerns and major long-term care issues affecting residents of long-term care facilities. Both the complaint and program data collected assist the states and local ombudsman programs in planning strategies and activities, providing training and technical assistance and developing performance measures.

A list of the proposed changes and the revised reporting form and instructions may be viewed in the ombudsman section of the AoA Web site, *http://www.aoa.gov/prof/aoaprog/elder_rights/LTCombudsman/NORS/nors_form_instructions.asp.* These documents represent the results of work with the states and local ombudsmen to revise and update the form and instructions for use beginning in FY 2007. AoA estimates the burden of this collection of information as follows: Approximately 10 minutes per case, per respondent, for a total annual hour burden of 10,258 hours, with 52 State Agencies on Aging responding annually.

Dated: April 5, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–5189 Filed 4–7–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-06–05BU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Assessment and Monitoring of Breastfeeding-Related Maternity Care Practices in Intra-partum Care Facility in the United States and Territories New National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

There is substantial evidence of the social, economic and health benefits of breastfeeding for both the mother and infant and the importance of the health care system in promoting the initiation and maintenance of breastfeeding. Yet breastfeeding initiation rates and duration in the United States did not achieve Healthy People 2000 goals, and significant disparities continue to exist for breastfeeding rates between African American and white women. The Healthy People 2010 goals are to increase the proportion of mothers who breastfeed in the early postpartum period from 64% (1998 estimate) to 75%, the proportion who breastfeed their babies through 6 months of age from 29% to 50%, and to increase from 16% to 25% the proportion of mothers who breastfeed to 1 year of age and to decrease the disparities in breastfeeding initiation, exclusivity, and duration between African American and white women. In addition to ethnic and racial disparities, there is evidence of significant variation in state breastfeeding rates. For example, the breastfeeding initiation rate in Louisiana was 46.4% in 2003, while in Oregon it was 88.8%.

One important and effective means to promote and support the initiation and maintenance of breastfeeding is through the health care system. While the few studies on breastfeeding practices at intra-partum care facilities in individual states and facilities show significant variation in practices, it is not currently possible to assess and monitor breastfeeding-related practices and policies in hospitals and free-standing childbirth centers across the United States with the data currently available.

CDC plans to conduct an assessment of breastfeeding-related maternity care practices in intra-partum care facilities in the United States and Territories to provide information to individual facilities, state health departments, and CDC on the extent to which facilities are providing effective breastfeeding-related maternity care. The assessment will provide detailed information on general facility characteristics related to maternity care such as facility policies related to breastfeeding-related maternity care practices, practices related to the training of health care staff on breastfeeding instruction, management and support, rooming-in, infant supplementation, and discharge from facility. CDC will provide facility-specific information based on the assessment to the individual facilities and state-specific information to state health departments. The information from the survey can be used by facilities to evaluate and modify breastfeeding-related maternity care practices, and by states and CDC to inform and target programs and policies to improve breastfeeding-related maternity care practices at intra-partum care facilities.

Approximately 4,375 facilities providing maternity care in the United States and Territories will be mailed a survey every other year in this study. The survey will be administered for the first time in 2006 and for the second time in 2008. Survey content will be similar in each of the administrations to examine changes in practices and policies over time. It is expected that approximately 3,719 facilities will complete the thirty minute questionnaire in each administration. The facilities will be identified from the American Hospital Association's Annual Survey of Hospitals (AHA) and the National Association of Childbearing Centers (NACC). A five minute screening telephone call will be made prior to survey administrations to all facilities identified as providing maternity care in AHA and NACC to ensure they are currently providing maternity care, to identify possible satellite clinics providing maternity care, and to identify survey respondent in each of the facilities. The respondents will have the option of either responding by mail or through a Web-based system. The survey will provide detailed information about breastfeeding-related maternity care practices and policies at hospitals and free-standing birthing centers. The approximate annualized burden is 1,483 hours. The burden estimate is based on CDC's experience with surveys with similar administration protocols and lengths.

There are no costs to respondents except their time to participate in the survey.

Estimated Annualized Burden Table

Respondents	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)	Total burden hours
Screening/Facilities (2006)	1,458	1	5/60	122
Mail survey/Facilities (2006)	1,240	2	30/60	1240
Total				1,362

Dated: April 4, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–5172 Filed 4–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control, Special Emphasis Panel (SEP): Determinants of Receiving Radiation Therapy after Breast Conserving Surgery Among Low-Income Women, Program Announcement Number PEP 2006–R–09

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): Determinants of Receiving Radiation Therapy after Breast Conserving Surgery Among Low-Income Women, Program Announcement Number PEP 2006–R–09.

Time and Date: 1 p.m.–3 p.m., May 15, 2006 (Closed).

Place: Teleconference.

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: To conduct expert review of scientific and technical merit of research applications in response to Determinants of Receiving Radiation Therapy after Breast Conserving Surgery Among Low-Income Women, Program Announcement Number PEP 2006–R–09.

For Further Information Contact: Felix Rogers, PhD, M.P.H., Scientific Review Administrator, CDC, 1600 Clifton Road NE., Mailstop E05, Atlanta, GA 30333, Telephone 404–639–6101.

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: April 4, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5173 Filed 4–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control, Special Emphasis Panel (SEP): Establishing a Surveillance System for Chronic Kidney Disease in the US, Program Announcement Number PEP 2006–R–08

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): Establishing a Surveillance System for Chronic Kidney Disease in the US, Program Announcement Number PEP 2006–R–08.

Time and Date: 1 p.m.–2 p.m., May 17, 2006 (Closed).

Place: Teleconference.

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: To conduct expert review of scientific and technical merit of research applications in response to Impact of DRG 559 on Costs, Quality and Patient Outcomes of Stroke Care, Program Announcement Number PEP 2006–R–08.

For Further Information Contact: Felix Rogers, PhD, M.P.H., Scientific Review Administrator, CDC, 1600 Clifton Road NE, Mailstop E05, Atlanta, GA 30333, Telephone (404) 639–6101.

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: April 4, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5167 Filed 4–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Population Based Studies of Epilepsy Prevalence and Incidence, Program Announcement Number PEP 2006–R–03

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): Population Based Studies of Epilepsy Prevalence and Incidence, Program Announcement Number PEP 2006–R–03.

Time and Date: 2 p.m.–4 p.m., May 16, 2006 (Closed).

Place: Teleconference.

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 Population Based Studies of Epilepsy Prevalence and Incidence, Program Announcement Number PEP 2006–R–03.

For Further Information Contact: Felix Rogers, Ph.D., M.P.H., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop E05, Atlanta, GA 30333, Telephone 404–639–6101.

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: April 4, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5170 Filed 4–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Control of Plague in Uganda, Program Announcement (PA) Number CI 06–007

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): Control of Plague in Uganda, PA Number CI 06–007.

Time and Date: 12 p.m.–4 p.m., May 3, 2006 (Closed).

Place: Teleconference.

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: Control of Plague in Uganda, Program Announcement Number CI 06–007.

For Further Information Contact: Christine Morrison, PhD, Scientific Review Administrator, Office of Extramural Research, CDC, 1600 Clifton Road, NE, Mailstop D–72, Atlanta, GA 30333, Telephone Number 404–639–3098.

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: April 4, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5171 Filed 4–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control, Special Emphasis Panel (SEP): Impact of DRG 559 on Costs, Quality and Patient Outcomes of Stroke Care, Program Announcement Number PEP 2006–R–07

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): Impact of DRG 559 on Costs, Quality and Patient Outcomes of Stroke Care, Program Announcement Number PEP 2006–R–07.

Time and Date: 1 p.m.–2 p.m., May 18, 2006 (Closed).

Place: Teleconference.

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: To conduct expert review of scientific and technical merit of research applications in response to Impact of DRG 559 on Costs, Quality and Patient Outcomes of Stroke Care, Program Announcement Number PEP 2006–R–07.

For Further Information Contact: Felix Rogers, Ph.D., M.P.H., Scientific Review Administrator, CDC, 1600 Clifton Road NE., Mailstop E05, Atlanta, GA 30333, Telephone 404–639–6101.

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: April 4, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5174 Filed 4–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers of Disease Control and Prevention

[Docket Number NIOSH 068]

NIOSH Pilot Study of Truck Driver Anthropometric and Workspace Dimensions; Meeting

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice of public meeting.

Name: Consortium Meeting on the NIOSH Pilot Study of Truck Driver Anthropometric and Workspace Dimensions.

Meeting Date and Time: April 27, 2006, 8:30 a.m.–4:30 p.m.

Place: Room L1CD, NIOSH, CDC, 1095 Willowdale Road, Morgantown, West Virginia.

SUMMARY: *Purpose:* The public meeting will explain and discuss issues related to the current NIOSH pilot project and a possible large-scale research project on U.S. truck driver anthropometric and workspace data. This possible large-scale study will establish an anthropometric and workspace database for U.S. truck drivers. The database will be used to formulate anthropometric guidelines, develop digital human models for cab designs, and upgrade current standards for new generation cabs that would accommodate all trucking populations. Updated anthropometric information for cab design will help to increase truck drivers' visibility, operational comfort, maneuverability, and post-crash survivability, thereby possibly reducing fatal and nonfatal injuries.

The current NIOSH pilot study will (1) identify critical cab design criteria and related human body dimensions, (2) establish test procedures for the large-scale project, and (3) develop research partnerships with interested parties.

The scope of this pilot and possible large-scale study will be limited to medium and heavy trucks and their operators in the continental U.S. Special emphasis will be placed on discussion of the following issues:

(1) What are the key anthropometric and workspace dimensions for the design of an ergonomically sound cab?

(2) What are the essential adjustment parameters and values of the truck buck that is to be constructed for data collection?

(3) What are the essential postures to be scanned in three-dimensional

anthropometry that are to be used in computer simulation?

(4) What are the essential cab accommodation models to be developed once updated anthropometric and workspace data become available?

The public is invited to attend and will have the opportunity to provide comments. NIOSH will use this information to assess the scientific basis for the current pilot project and the possible large-scale project on U.S. truck driver anthropometric and workspace data.

Status: The consortium meeting will include scientists and representatives from various government agencies, industry and other stakeholders and is open to the public, limited only by the space available. The meeting room accommodates 40 people. Due to limited space, notification of intent to attend the meeting must be made to Jinhua Guan, PhD, not later than April 14, 2006. Dr. Guan can be reached by telephone at (304) 599–4676 or by e-mail at *ezg6@cdc.gov*. Requests to attend the meeting will be accommodated on a first-come basis.

Non-U.S. Citizens: Because of CDC Security Regulations, non-U.S. citizens wishing to attend this meeting must provide the following information in writing to Barbara Phillips (telephone: 304–285–6325; fax: (304) 285–6039; e-mail: *djp2@cdc.gov*) no later than April 14, 2006:

1. Visitor's Full Name:
2. Gender:
3. Date of Birth:
4. Place of Birth (city, province, state, country):
5. Citizenship:
6. Passport Number:
7. Date of Passport Issue:
8. Date of Passport Expiration:
9. Type of Visa:
10. Visitor's Organization:
11. Organization Address:
12. Organization Telephone Number:
13. Visitor's Position/Title within the Organization:

This information will be transmitted to the CDC Security Office for approval. Visitors will be notified as soon as approval has been obtained.

A copy of the research protocol titled ''NIOSH Pilot Study of Truck Driver Anthropometric and Workspace Dimensions'' can be obtained from the CDC Internet at *http://www.cdc.gov/niosh/docs* or a hard copy may be requested from the Docket Officer, Karen Dragon (see contact information below).

ADDRESSES: Comments should be submitted to the NIOSH Docket Office, ATTN: Karen Dragon, Robert A. Taft Laboratories, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, telephone 513/533–8303, fax 513/533–8285.

Comments may also be submitted directly through the Web site (*http://www.cdc.gov/niosh/docs/*) or by e-mail to: *niocindocket@cdc.gov*. E-mail attachments should be formatted in Microsoft Word. Comments should be submitted to NIOSH no later than June 30, 2006, and should reference docket number NIOSH–068 in the subject heading.

Oral comments made at the public meeting must also be submitted to the docket office in writing in order to be considered by the Agency.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Person for Technical Information: Jinhua Guan, PhD, telephone (304) 285–6333, Division of Safety Research, NIOSH, 1095 Willowdale Road, Morgantown, WV 26505.

Dated: April 3, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–5168 Filed 4–7–06; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0274]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Voluntary Hazard Analysis and Critical Control Point Manuals for Operators and Regulators of Retail and Food Service Establishments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Voluntary Hazard Analysis and Critical Control Point Manuals for Operators and Regulators of Retail and Food Service Establishments'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 22, 2005 (70 FR 76056), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0578. The approval expires on March 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5142 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0327]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Blood Establishment Registration and Product Listing, Form FDA 2830'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 2006 (71 FR 4145), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the

information collection and has assigned OMB control number 0910–0052. The approval expires on March 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5146 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0190]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Export Certificates for Food and Drug Administration-Regulated Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Export Certificates for FDA-Regulated Products'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 2006 (71 FR 4147), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0498. The approval expires on March 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5148 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0389]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Reprocessed Single-Use Device Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reprocessed Single-Use Device Labeling'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 15, 2005 (70 FR 74324), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0577. The approval expires on January 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5150 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0343]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Requesting an Extension to Use Existing Label Stock After the Trans Fat Labeling Effective Date of January 1, 2006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 10, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Requesting an Extension to Use Existing Label Stock After the Trans Fat Labeling Effective Date of January 1, 2006—(OMB Control Number 0910–0571)—Extension

FDA issued a final rule (the *trans* fat final rule) on July 11, 2003, (68 FR 41434) to require food labels to bear the gram (g) amount of *trans fat* without a percent Daily Value (% DV) directly under the saturated fat line on the Nutrition Facts panel (*http://www.cfsan.fda.gov/~acrobat/fr03711a.pdf)*. The *trans* fat final rule affects almost all manufacturers of packaged, labeled food sold in the United States. FDA believes that most businesses, including small

businesses, should not have difficulty meeting the January 1, 2006, effective date of the *trans* fat final rule. However, under certain circumstances some businesses may want to request that the agency consider an extension of time to use current labels that are not in compliance with the *trans* fat final rule. The agency believes that it would be appropriate to consider, on a case-by-case basis, whether to exercise enforcement discretion on the January 1, 2006, effective date for *trans fat* labeling for some businesses that can make an appropriate showing. Thus, in the **Federal Register** of December 14, 2005 (70 FR 74020), FDA announced the availability of a guidance document for industry and FDA entitled ''Requesting an Extension to Use Existing Label Stock After the *Trans* Fat Labeling Effective Date of January 1, 2006.'' That document provides guidance to FDA and the food industry about when and how businesses may request the agency to consider enforcement discretion for the use of some or all existing label stock, that does not declare *trans* fat labeling in compliance with the final rule, on products introduced into interstate commerce on or after the January 1, 2006, effective date.

The agency intends to consider the following factors in any request from a firm for the agency's exercise of enforcement discretion:

- Whether products contain 0.5 g or less *trans* fat;
- The explanation of why the request is being made;
- The number of existing labels that the firm is requesting to use;
- The dollar amount associated with the number of existing labels to be used; and
- The estimate of the amount of time needed, not exceeding 12 months, to exhaust the number of existing labels the firm is requesting to use.

Firms may submit their requests in writing to FDA's Center for Food Safety and Applied Nutrition. Firms are encouraged to keep this letter of request for their records and should make a copy available for inspection to any FDA officer or employee who requests it. FDA intends to use the information in the letter to make decisions about whether a firm's product is subject to FDA's enforcement discretion for the *trans* fat labeling requirements. FDA expects that small businesses and very small businesses are the firms most likely to take advantage of this opportunity to submit a request for an extension to the *trans* fat labeling deadline. FDA estimates a 2-year time period during which these requests will be made following the issuance of this guidance. Beyond 2 years time, FDA expects businesses to fully comply with the *trans* fat labeling final rule, as it is unlikely that there will still be old labeling stock remaining.

In previous **Federal Register** notices regarding this collection of information (70 FR 52108 and 70 FR 70621), the estimated number of requests was lower than the actual number of requests received by the agency in response to the guidance. Thus, we have increased the estimated number of requests based on FDA's recent experience. In the **Federal Register** of November 22, 2005 (70 FR 70621), FDA published a 60-day notice requesting public comment on the information collection provisions. We received four comments; however, none were related to the information collection.

FDA estimates that it will take one employee approximately 4 hours to put together a request to FDA and approximately 1 hour for a supervisor to look over the request before submitting it to the agency. Thus, each firm submitting a compliance extension request will need 5 hours of employee time to complete the request. Given that 600 businesses are expected to submit written requests in year one, the total burden hours for year one is 3,000 hours.

In year two, FDA expects about one-half as many businesses to request a labeling compliance extension. So, for year two, 300 businesses are expected to file a request for an extension to the labeling compliance date. Again, assuming that it will take 5 hours to complete each request, the total burden hours for year two will be 1,500 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Written requests to FDA in year one	600	1	600	5	3,000
Written requests to FDA in year two	300	1	300	5	1,500
One time burden hours for years one and two					4,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5199 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998D–1218]

Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a guidance that was issued on March 15, 2000.

DATES: April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Pamela Pope, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 15, 2000 (65 FR 13982), FDA announced the availability of a guidance entitled ''Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing.'' This guidance described a

pilot program in which biologics manufacturers could self-certify conformance to licensing criteria prescribed by FDA. This action was intended to reduce unnecessary burdens for industry without diminishing public health protection.

The guidance is being withdrawn because FDA has determined that there is a lack of industry interest in pursuing the pilot licensing program outlined in the guidance.

Dated: March 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5204 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0121]

Guidance for Industry and Food and Drug Administration Staff; In Vitro Diagnostic Devices to Detect Influenza A Viruses: Labeling and Regulatory Path; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''In Vitro Diagnostic Devices to Detect Influenza A Viruses: Labeling and Regulatory Path.'' FDA is issuing this guidance to inform industry and agency staff of steps that are needed to ensure the safe and effective use of in vitro diagnostic (IVD) devices intended for use in the detection of influenza A (or A/B) virus directly from human specimens. FDA is taking this action because of recent significant public health concerns associated with emergence of an avian influenza A virus strain as a human pathogen in Southeast Asia. This guidance document describes recommendations for fulfilling labeling requirements applicable to all IVDs intended to generally detect influenza A (or A/B) virus directly from human specimens, and outlines the premarket regulatory path for new or modified devices intended to generally detect influenza A virus, or to detect and differentiate, specific novel influenza A viruses infecting humans. This guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices.

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''In Vitro Diagnostic Devices to Detect Influenza A Viruses: Labeling and Regulatory Path'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sally Hojvat, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–0496.

SUPPLEMENTARY INFORMATION:

I. Background

The spread of the influenza A H5N1 virus within bird species, along with sporadic transmission to humans, has heightened awareness of the potential for a novel influenza A virus to cause a pandemic in humans. Novel influenza A viruses are new or re-emergent human strains of influenza A that cause cases or clusters of human disease, as opposed to those human strains commonly circulating that cause seasonal influenza and to which human populations have residual or limited immunity (either by vaccination or previous infection). All of the influenza A (or A/B) devices cleared by FDA under 21 CFR 866.3330 before February 3, 2006, are designed to generally detect influenza A viruses in human respiratory specimens (e.g., washes, aspirates, and swabs). None of these devices is designed or intended to detect a specific influenza A virus, or to detect and differentiate one specific influenza A virus from another (e.g., H5N1 from H3N2). For devices cleared on the basis of performance characteristics established when only influenza A/H3 and A/H1 viruses were circulating, there is no evidence that the devices would reliably detect novel influenza A viruses from human respiratory samples. Also, these testing devices are not intended to detect and differentiate a specific human-infecting novel influenza A virus. FDA is making this guidance document immediately available because prior public participation is not feasible given the national and global public health threat of pandemic influenza. At this time public health officials are expediting plans to prepare for and respond to this threat. Immediate implementation of this guidance is part of this preparedness effort as it clarifies the role of in vitro diagnostic devices for the detection and/or differentiation of novel influenza A viruses.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on labeling and regulatory path for in vitro diagnostic devices to detect influenza A viruses. 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 statute and regulations.

III. Electronic Access

To receive ''In Vitro Diagnostic Devices to Detect Influenza A Viruses: Labeling and Regulatory Path'' by fax machine, call the 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 1549 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.*

fda.gov/cdrh/guidance.html. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 809 have been approved under OMB Control No. 0910–0485; the collections of information in 21 CFR part 807 have been approved under OMB Control No. 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB Control No. 0910–0078.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), 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 copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5203 Filed 4–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24258]

Environmental Assessment for Homeporting of Four National Security Cutters at Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for public comments.

SUMMARY: The Coast Guard announces its intent to prepare an Environmental Assessment (EA) for the homeporting of four new 418-foot National Security Cutters (NSCs) at Coast Guard Island (CGI) in Alameda, California, and requests public comments. Preparation of the EA is being conducted in accordance with the National Environmental Policy Act and its implementing regulations. The new NSCs will replace the four existing 30-year old 378-foot High Endurance Cutters (HECs) currently homeported at CGI, starting with one in 2007/2008 and continuing with one replacement per year until 2010/2011, under current plans.

DATES: Comments and related material must reach the Docket Management Facility on or before May 10, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2006–24258 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LCDR Mike Woolard, Coast Guard, telephone 571–218–3382. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Request for Comments

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2006–24258) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five four digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

To continue to meet America's 21st century maritime threats and challenges, the United States Coast Guard (USCG) initiated the Integrated Deepwater System (IDS) Program, the largest and most innovative acquisition in the Coast Guard's history. The IDS will significantly contribute to the Coast Guard's maritime domain awareness, as well as the improved ability to intercept, engage, and deter those activities that pose a direct challenge/threat to U.S. sovereignty and security. IDS will provide the means to extend our layered maritime defenses from our ports and coastal areas to hundreds of miles out to sea.

The underlying need for the IDS is to provide upgraded, modern assets for the Coast Guard's Pacific Area (PACAREA) Command, in support of executing the wide range of Coast Guard missions in the Pacific area. PACAREA has operational responsibility for waters as far south as Central America and over 1,000 miles offshore. CGI is the critical facility that currently provides the support functions for meeting Coast Guard missions in the Pacific area. These missions are currently met with aging (Legacy) 378 ft cutters of the *SECRETARY* class whose end of economic service life is 2008.

Under the Coast Guard's Deepwater Program, the NSC will be the flagship of the new fleet of cutters. The sweeping modernization and new assets acquisitions of the Deepwater Program will bring much needed capability and

capacity to the Coast Guard. When fully implemented, the interoperable Deepwater system will comprise three classes of new cutters and their associated small boats, a new fixed-wing manned aircraft fleet, a combination of new and upgraded helicopters, and both cutter-based and land-based unmanned air vehicles (UAVs). All of these highly capable assets are linked with Command, Control, Communications and Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) systems, and are supported by an integrated logistics system. These new assets, which possess common systems and technologies, common operational concepts, and a common logistics base will give the Coast Guard a significantly improved ability to detect and identify all activities in the maritime arena, a capability known as ''maritime domain awareness,'' as well as the improved ability to intercept and engage those activities that pose a direct threat to U.S. sovereignty and security. The NSCs will be the flagships of the IDS, capable of meeting all maritime security mission needs and operating with a maximum range of 12,000 nautical miles and up to 60 days continuously without replenishment.

The existing base on CGI in Alameda, CA provides the shore support necessary to meet the logistical requirements of four large cutters. This existing support includes security considerations, easy access for Coast Guard personnel, administrative and support buildings and services, and required shore ties to service in-port cutters.

The Coast Guard plans to homeport four NSCs at CGI in Alameda, California. The four NSCs would replace, on a one-for-one basis, the four aging 378-foot High-Endurance Cutters (HECs) currently stationed in Alameda.

In addition to the proposed vessel homeporting, minor improvements to the existing waterfront pier and construction of a new 18,000 sq. ft. administration building would be required at the existing base on CGI in Alameda to provide adequate shore-side support. No other actions or projects are anticipated at this time to support this proposed homeporting plan.

The USCG is preparing an Environmental Assessment (EA) to comply with the National Environmental Policy Act (NEPA) of 1969 (section 102[2][c]) and its implementing regulations at 40 Code of Federal Regulations, part 1500, and other related environmental laws, regulations, and Executive Orders. The EA will evaluate the potential direct, indirect and cumulative impacts associated with the NSC homeporting plan. The EA will tier from the USCG's Programmatic Environmental Impact Statement for the IDS Program, completed in March of 2002.

Dated: March 22, 2006.

J.E. Mihelic,

Capt, USCG, Chief, Deepwater Transition Management Division, (G–DTM).

[FR Doc. E6–5205 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: The National Defense Executive Reserve Personal Qualifications Statement.

OMB Number: 1660–0001.

Abstract: The NDER is a Federal government program coordinated by FEMA. To become a member of the NDER, individuals with the requisite qualifications must complete a FEMA Form 85–3 is an application form that is used by Federal departments and agencies to fill NDER vacancies and to ensure that individuals are qualified to perform in the assigned emergency positions. FEMA reviews the application form to ensure that the candidate meets all basic membership qualifications for the Executive Reserve; ensures that the applicant is not already serving in a Federal department or agency sponsored unit; and, in some cases, determines the Federal department or agency best suited for the applicant.

Affected Public: Individuals or Households.

Number of Respondents: 30.

Estimated Time per Respondent: .5 hr. (30 minutes).

Estimated Total Annual Burden Hours: 15 hours.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before May 10, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: March 30, 2006.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–5165 Filed 4–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: National Urban Search and Rescue Grant Program.

OMB Number: 1660–0073.

Abstract: This information collection activity is for financial, program and administrative information for US&R Sponsoring Organizations relating to preparedness and response grant awards. This information includes a narrative statement that FEMA uses to evaluate a grantee's proposed use of funds, progress reports to monitor overall progress on managing FEMA grant program, extension or change requested to consider changing or extending the time or the performance period of the preparedness or response cooperative agreement and a Memorandum of Agreement between DHS/FEMA and the Sponsoring Organizations of US&R task forces.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 28.

Estimated Time per Respondent: 19 hours.

Estimated Total Annual Burden Hours: 461 hours.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before May 10, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA–Information–Collections@dhs.gov.*

Dated: March 30, 2006.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–5166 Filed 4–7–06; 8:45 am]

BILLING CODE 9110–69–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1633–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1633–DR), dated March 28, 2006, and related determinations.

DATES: *Effective Date:* March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 28, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from tornadoes and severe storms during the period of March 11–13, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, as well as Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Sangamon County for Individual Assistance

Greene, Logan, Morgan, Sangamon, and Scott Counties for Public Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–5160 Filed 4–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1623–DR]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1623–DR), dated January 10, 2006, and related determinations.

DATES: *Effective Date:* April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those

areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 2006:

The counties of Beaver and Jefferson for Public Assistance Categories A and C through G (already designated for Public Assistance Category B emergency protective measures). All categories of assistance under the Public Assistance program are subject to subsequent designation by FEMA for reimbursement.

The counties of Okfuskee and Stephens for Public Assistance Categories A and C through G (already designated for Individual Assistance and Public Assistance Category B emergency protective measures). All categories of assistance under the Public Assistance program are subject to subsequent designation by FEMA for reimbursement.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–5163 Filed 4–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1623–DR]

Oklahoma; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1623–DR), dated January 10, 2006, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 31, 2006.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–5164 Filed 4–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1624–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1624–DR), dated January 11, 2006, and related determinations.

DATES: *Effective Date:* April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 11, 2006: counties of Caldwell, Gray, Guadalupe, Hutchinson, Roberts, and Wheeler for Individual Assistance (already designated for Public Assistance Category B (emergency protective measures), subject to subsequent designation by FEMA for reimbursement.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–5161 Filed 4–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1624–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1624–DR), dated January 11, 2006, and related determinations.

DATES: *Effective Date:* April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 11, 2006:

The counties of Callahan and Montague for debris removal [Category A] under the Public Assistance program (already designated for Individual Assistance and emergency protective measures [Category B] under the Public Assistance program.) All categories of assistance under the Public Assistance program are subject to subsequent designation by FEMA for reimbursement.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations;

97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–5162 Filed 4–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–18]

Notice of Submission of Proposed Information Collection to OMB; Evaluating Outcomes of HUD's Healthy Homes Grants

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD would obtain data from grantees on the results of, and lessons learned from, the research, demonstration and education grants funded since 1999 under the Healthy Homes Initiative. Findings will be used in technical guidance material and program management, and will be summarized in a report.

DATES: *Comments Due Date:* May 10, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2539–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian Deitzer at Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Evaluating Outcomes of HUD's Healthy Homes Grants.

OMB Approval Number: 2539–Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: HUD would obtain data form grantees on the results of, and lessons learned from, the research, demonstration and education grants funded since 1999 under the Healthy Homes Initiative, findings will be used in technical guidance material and program management, and will be summarized in a report.

Frequency of Submission: On occasion, Other, One-time Collection.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	63	1		10		630

Total Estimated Burden Hours: 630.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 4, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–5211 Filed 4–7–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of the Lake Champlain Sea Lamprey Control Alternatives Workgroup

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of establishment.

SUMMARY: The Secretary of the Interior (Secretary), after consultation with the General Services Administration, has established the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup). The Workgroup will provide an opportunity for stakeholders to give policy and technical input on efforts to develop and implement sea lamprey control techniques alternative to lampricides in Lake Champlain.

FOR FURTHER INFORMATION CONTACT: Dave Tilton, Fish and Wildlife Service, Lake Champlain Fish and Wildlife Resources Complex, 11 Lincoln Street, Essex Junction, Vermont 05452, 802–872–0629, extension 12.

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.). The Secretary certifies that she has determined that the formation of the Workgroup is necessary and is in the public interest.

The Workgroup will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary through the Fish and Wildlife Service (Service) and Lake Champlain Fish and Wildlife Management Cooperative (Cooperative) and will function solely as an advisory body.

The Workgroup will provide recommendations and consensus advice to the Cooperative. Specific responsibilities of the Workgroup are to: (1) Develop consensus advice regarding the implementation of sea lamprey control methods alternative to lampricides; (2) recommend priorities for research to be conducted by cooperating organizations and demonstration projects to be developed

and funded by State and Federal agencies; and (3) assist Federal and State agencies with the coordination of alternative sea lamprey control research to advance the state of the science in Lake Champlain and the Great Lakes.

The Secretary will appoint up to 20 members who can effectively represent the varied interests associated with the Lake Champlain Long-term Sea Lamprey Control Program. Members will represent Federal and State agencies and stakeholders. These members will be representatives of their respective constituent groups. In addition, the Secretary will appoint up to five members as special Government employees, selected for their scientific expertise. All members will be knowledgeable about Lake Champlain fishery management issues, including sea lamprey control. The Secretary will appoint Workgroup members based on nominations submitted by interested parties, including but not limited to: Vermont and New York State agencies; recreational and charter fishermen; sportfishing organizations; environmental organizations; research institutions; and the general public residing within the Lake Champlain area.

We expect that the Workgroup will meet two to four times per year. The Service will provide necessary support services to the Workgroup. All Workgroup meetings will be open to the public. The Service will publish a notice announcing each Workgroup meeting in the **Federal Register** at least 15 days before the date of the meeting. The public will have the opportunity to provide input at all meetings.

Fifteen days after publication of this notice in the **Federal Register**, a copy of the Workgroup's charter will be filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, United States Senate; Committee on Resources, United States House of Representatives; and the Library of Congress.

The Certification for establishment is published below.

Certification

I hereby certify that the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup) is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior through the Supplemental Environmental Impact Statement for a Long-term Program of Sea Lamprey Control in Lake Champlain as published in 2001 (66 FR 46651, September 6, 2001). The Workgroup will assist the Department of the Interior by providing recommendations and policy and technical consensus advice on the development and implementation of sea lamprey control techniques alternative to lampricides in Lake Champlain.

Dated: March 30, 2006.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. E6–5138 Filed 4–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC64115]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64115 from Elm Ridge Exploration Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64115 effective September 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 4, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–5206 Filed 4–7–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC64225]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64225 from Elm Ridge Exploration Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16 percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64225 effective December 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 4, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–5207 Filed 4–7–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0091).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 254, ''Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.''

DATES: Submit written comments by June 9, 2006.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0091 as an identifier in your message.

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Identify with Information Collection Number 1010–0091 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0091.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0091'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1010–0091.

Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. This authority and responsibility have been delegated to the Minerals Management Service (MMS). Regulations at 30 CFR 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

The MMS uses the information collected under 30 CFR 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- Determine effectiveness of the spill-response capability of owners/operators;
- Review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements of this rule to ensure that they meet minimum requirements of OPA;
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to witness spill-response exercises;
- Assess the sufficiency and availability of contractor equipment and materials;
- Verify that sufficient quantities of equipment are available and in working order;
- Oversee spill-response efforts and maintain official records of pollution events; and
- Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion and annual.

Estimated Number and Description of Respondents: Approximately 193 owners or operators of facilities located in both State and Federal waters seaward of the coast line.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 38,322 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 254	Reporting requirement	Hour burden
254.1(a) thru (d); 254.2(a); 254.3 thru 254.5; 254.7; 254.20 thru 254.29; 254.44(b).	Submit spill response plan for OCS facilities and related documents	120
254.1(e)	Request MMS jurisdiction over facility landward of coast line (no recent request received).	0.5
254.2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	15
254.2(c); 254.30	Submit revised spill response plan—or notify MMS of no change—for OCS facilities at least every 2 years.	36
254.2(c)	Request deadline extension for submission of revised plan	4
254.8	Appeal MMS orders or decisions. (Exempt under 5 CFR 1320.4)	0
254.40	Make records of all OSRO-provided services, equipment, personnel available to MMS.	5
254.41	Ensure attendance of annual training; retain training records for 2 years	50
254.42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years	110
254.42(f)	Inform MMS of the date of any exercise (triennial)	1
254.43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years.	3.5
254.46(a)	Notify NRC of all oil spills from owner/operator facility. (Burden would be included in NRC inventory.).	0
254.46(b)	Notify MMS of oil spills of one barrel or more from owner/operator facility; submit follow-up report.	2
254.46(c)	Notify MMS & responsible party of oil spills from operations at another facility	2
254.50; 254.51	Submit response plan for facility in State waters by modifying existing OCS plan	42
254.50; 254.52	Submit response plan for facility in State waters following format for OCS plan	100

Citation 30 CFR 254	Reporting requirement	Hour burden
254.50; 254.53	Submit response plan for facility in State waters developed under State requirements.	89
254.54	Submit description of oil-spill prevention procedures	5

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: March 30, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E6–5136 Filed 4–7–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Northwest Area Water Supply Project, North Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public open-house scoping meetings associated with an environmental impact statement (EIS) being prepared for the completion of the Northwest Area Water Supply Project.

SUMMARY: The original notice of intent to prepare this EIS was published in the **Federal Register** on March 6, 2006 (71 FR 43, 11226–11227). This notice is being published to notify interested parties of the dates, times and locations of the public scoping meetings scheduled to solicit public comments. These public scoping meetings will be conducted in an open-house format with displays and Reclamation representatives who will be available for visitation or to accept a written comment. Reclamation is engaging in this planning and EIS effort to address the relevant issues related to completion and operation of the NAWS Project. We are seeking input from the public on the development of reasonable alternatives to the proposed action and analysis of their environmental effects that will be described in the EIS.

Reclamation invites all interested parties to submit verbal or written comments related to the significant issues, potential impacts and reasonable alternatives to the proposed action during the scoping period.

DATES: The public scoping meetings will be held on:

- Tuesday, April 25, 2006, 6:30 p.m., Bismarck, North Dakota.
- Thursday, April 27, 2006, 6:30 p.m., Fort Yates, North Dakota.
- Monday, May 1, 2006, 6:30 p.m., Minot, North Dakota.
- Tuesday, May 2, 2006, 6:30 p.m., New Town, North Dakota.
- Wednesday, May 3, 2006, 6:30 p.m., Bottineau, North Dakota.
- Thursday, May 4, 2006, 6:30 p.m., Mohall, North Dakota.

To be most helpful to Reclamation, scoping comments should be received on or before the close of the formal scoping period, May 6, 2006. Comments received after May 6, 2006 will be considered to the extent possible in the development of the Draft EIS.

ADDRESSES: The open-house, public scoping meetings will be held at:

- Best Western Doublewood Inn, Executive Suite 114, 1400 Interchange Avenue, Bismarck, ND.
- Prairie Knights Casino and Resort, 7932 Highway 24, Fort Yates, ND.
- Sleep Inn—Inn and Suites, 2400 10th Street NW., Minot, ND.
- 4 Bears Casino & Lodge, Mandan Hidatsa Room, 202 Frontage Road, New Town, ND.
- MSU—Bottineau, Nelson Science Center Room 125, 105 Simrall Boulevard, Bottineau, ND.
- Mohall City Hall, 203 Main Street East, Mohall, ND.
- Send written comments to Alicia Waters, Northwest Area Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502.

FOR FURTHER INFORMATION CONTACT: Alicia Waters, Northwest Area Water

Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502; Telephone: (701) 250–4242 extension 3621; or FAX to (701) 250–4326. You may submit e-mail to *awaters@gp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The formal scoping period began on March 6, 2006 and concludes on May 5, 2006. Oral and written comments, including names and home addresses of respondents, will be made available for public review. However, individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's 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 written comment or verbally to the Reclamation representative. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Patience Hurley, at (701) 250–4242 extension 3107 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the meeting.

Dated: March 22, 2006.

Donald E. Moomaw,

Acting Regional Director, Great Plains Region, Bureau of Reclamation.

[FR Doc. E6–5175 Filed 4–7–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Red River Valley Water Supply Project, North Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for extension of the public comment period for the Red River Valley Water Supply Project Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Reclamation is announcing an additional 15-day extension of the public comment period for the Red River Valley Water Supply Project DEIS. The originally announced, extended comment period ends on March 30, 2006, but it has been extended until April 14, 2006. The original notice of availability of the DEIS, notice of public hearings, and additional information on the Red River Valley Water Supply Project were published in the **Federal Register** on December 30, 2005 (70 FR 250, 77425–77427).

DATES: Comments on the DEIS should be postmarked by April 14, 2006.

ADDRESSES: Send comments on the DEIS to Red River Valley Water Supply Project, Attn. Signe Snortland, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502–1017.

FOR FURTHER INFORMATION CONTACT: Signe Snortland, Dakotas Area Office, Bureau of Reclamation, telephone: (701) 250–4242 extension 3619, or Fax to (701) 250–4326.

SUPPLEMENTARY INFORMATION: To be most helpful to Reclamation, comments should be received on or before the close of the formal comment period, April 14, 2006. Comments received after April 14, 2006 will be considered to the extent possible in the development of the Final EIS. Reclamation's practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be other circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: March 23, 2006.

Gary W. Campbell,

Acting Regional Director, Great Plains Region, Bureau of Reclamation.

[FR Doc. E6–5176 Filed 4–7–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Civil Rights; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review: Equal Employment Opportunity Plan Certification and Short Form.

The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 71, Number 24, page 6094, on February 6, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 10, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of previously approved collection.

(2) Title of the Form/Collection: Equal Employment Opportunity Plan Certification and Short Form.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: The Office for Civil Rights, Office of Justice Programs, United States Department of Justice, is sponsoring the collection.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, and local, government instrumentalities. Other: For-profit Institutions. 28 CFR 42.301 *et seq.* authorizes the Department of Justice to collect information regarding employment practices from State or Local units of government, agencies of State and Local governments, and Private entities, institutions or organizations to which, OJP, COPS or OVW extended Federal financial assistance.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: There are a total of 6371 respondents. It is estimated that it will take 1,290 respondents receiving a grant of $500,000 or more one hour to complete an Equal Employment Opportunity Plan Short Form and submit to the Office of Justice Programs. In addition, an estimated 5,081 of respondents seeking grants ranging from $25,000 up to $500,000 will be required to complete Certification stating that they are maintaining a current Equal Employment Opportunity Plan on file and submit the certification to OJP. Completion and submission of the Certification will take hour.

(6) An estimate of the total public burden (in hours) associated with the collection: For the 6371 respondents, the total estimated burden hours on respondents would be 2,560 to complete the EEOP Short Form or Certification.

If additional information is required, contact Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 9, 2006.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 06–2473 Filed 4–7–06; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 5, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: National Medical Support Notice—Part B.

OMB Number: 1210–0113.

Frequency: On occasion.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 500,000.

Number of Annual Responses: 2,900,000.

Estimated Time Per Respondent: Approximately 2 hours.

Total Burden Hours: 1,000,000.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $4,800,000.

Description: Section 609 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and 29 CFR 2590.609–2 establish a National Medical Support Notice, Part B of which is used to implement coverage of children under ERISA covered group health plans pursuant to ''Qualified Medical Child Support Orders.''

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–5179 Filed 4–7–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 5, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: Report on Current Employment Statistics.

OMB Number: 1220–0011.

Form Number: BLS–790 Series.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Form	Number of respondents	Minutes per report	Frequency of response	Annual responses	Annual burden hours
A—Natural Resources and Mining	1,400	11	12	16,800	3080
B—Construction	12,800	11	12	153,600	28,160
C—Manufacturing	18,000	11	12	216,000	39,600
E—Service Providing Industries	153,300	11	12	1,839,600	337,260
G—Public Administration	56,700	6	12	680,400	68,040
S—Education	4,000	6	12	48,000	4,800
F1, F2, F3 Fax Forms	36,400	11	12	436,800	80,080
Total	282,600			3,391,200	561,020

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: In the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2006, signed into law on December 30, 2005, Congress required the Current Employment Statistics (CES) program to collect data on women workers. This revision entrains the required change.

The Current Employment Statistics program provides current monthly statistics on employment, hours, and earnings, by industry. CES data on employment, hours, and earning by industry are among the most visible and widely-used Principal Federal Economic Indicators (PFEIs). CES data are also the timeliest of all PFEIs, with their release by BLS in the Employment Situation on the first Friday of most months.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–5180 Filed 4–7–06; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering

ACTION: Change in notice of meeting.

SUMMARY: The National Science Foundation published a Notice of Meeting in the **Federal Register** on March 10, 2006, FR Doc 06–2308, on page 12403. The revised schedule below includes a meeting the evening before the original start date. The purpose of the meeting has been expanded to include a brainstorming session on strategic directions.

Name: Advisory Committee for Computer and Information Science and Engineering (1115).

Date and Time: April 23, 2006, 3 p.m.–7 p.m., April 24, 2006, 7:30 a.m.–3:30 p.m.

Place: The Westin Arlington Gateway Hotel, 801 N. Glebe Road, Arlington, VA 22203. National Science Foundation, 4201 Wilson Blvd., room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting:

• Retreat of the board to brainstorm strategy direction.

• To advise NSF on the impact of its policies, programs and activities on the CISE community.

• To provide advice to the Assistant Director/CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of research initiatives, education, diversity, workforce issues in IT and long-range funding outlook.

Dated: April 5, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–3399 Filed 4–7–06; 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 (DMR) #1203.

Dates & Times: May 3, 2006; 7:45 a.m.–9:30 p.m. May 4, 2006; 8 a.m.–4 p.m.

Place: University of Pennsylvania, Philadelphia, PA.

Type of Meeting: Part Open.

Contact Persons: Dr. Mafia M. Kukla, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4940.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Nanoscale Science and Engineering Center (NSEC).

Agenda: Wednesday, May 3, 2006

7:45 a.m.–8:45 a.m. Closed—Briefing of Site Visit Panel.

8:45 a.m.–12:15 p.m. Open—Welcome (Institutional representatives, etc).

12:15 p.m.–1:15 p.m. Closed—Lunch with students and postdocs.

1:15 p.m.–5 p.m. Open—Discussion.

5 p.m.–6:30 p.m. Closed—Executive Session.

6:30 p.m.–7:30 p.m. Open—Poster Session (limited number of posters).

7:30 p.m.–9:30 p.m. Closed—Dinner Meeting of Site Panel.

Thursday, May 4, 2006

8 a.m.–9 a.m. Closed—Executive Session.

9 a.m.–10:45 a.m. Open—Industrial Outreach and Other Collaborations.

10:45 a.m.–4 p.m. Closed—Executive Session.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical informational 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: April 5, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–3397 Filed 4–7–06; 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 & Times: May 9, 2006; 7:45 a.m.–9 p.m., May 10, 2006; 8 a.m.–4: p.m.

Place: Princeton University, Princeton, NJ.

Type of Meeting: Part Open.

Contact Person: Dr. Maija M. Kukla, 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) 292–4940.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Materials Research Science and Engineering Center (MRSEC).

Agenda: Tuesday, May 9, 2006

7:45 a.m.–8:45 a.m. Closed—Briefing of Site Visit Panel.

8:45 a.m.–12:15 p.m. Open—Welcome.

12:15 p.m.–1:15 p.m. Closed—Lunch with students and postdocs.

1:15 p.m.–4:45 p.m. Open—Discussion.

4:45 p.m.–6:15 p.m. Closed Executive Session.

6:15 p.m.–7:00 p.m. Open—Poster Session (limited number of posters).

7 p.m.–9 p.m. Closed—Dinner Meeting of Site Panel.

Wednesday, May 10, 2006

8 a.m.–9 a.m. Closed—Executive Session.

9 a.m.–10:45 a.m. Open—Industrial Outreach & Other Collaborations.

10:45 a.m.–4 p.m. Closed Discussion with MRSEC Executive Committee.

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: April 5, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–3398 Filed 4–7–06; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 30b2–1; SEC File No. 270–213; and OMB Control No. 3235–0220.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Rule 30b2–1 under the Investment Company Act of 1940 (17 CFR 270.30b2–1) requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[1] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of registered investment companies.[2]

Registered management investment companies are required to send reports to stockholders at least twice annually. In addition, under the recently adopted amendments to rule 30b2–1, each registered investment company is required to file with the Commission new form N–CSR, certifying the financial statements.[3] The annual burden of filing the reports is included in the burden estimate for Form N–CSR; however, we are requesting one burden hour remain in inventory for administrative purposes.

The burden estimate for rule 30b2–1 is made solely for the purposes of the Act and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 30b2–1 is mandatory. The information provided by rule 30b2–1 is not kept confidential. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Va. 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: April 3, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–5181 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P

[1] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[2] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

[3] See Release No. 34–47262, IC–25914, Jan. 27, 2003 (68 FR 5384 [Feb. 3, 2003]). (Amending rule 30b2–1(a) under the Investment Company Act; adopting Form N–CSR). In addition, the Commission amended new rule 30a–2 to require both Forms N–CSR and N–SAR to include the certification required by Section 302 of the Sarbanes-Oxley Act. No certified shareholder report on Form N–CSR is required with respect to a report to shareholders that is not required under rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1], e.g., voluntary quarterly reports. These reports to shareholders continue to be filed with the Commission as they were prior to the 2003 amendments. Rule 30b2–1(b) [17 CFR 270.30b2–1(b)].

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53589; File No. 4–516]

Joint Industry Plan; Notice of Filing of Options Regulatory Surveillance Authority Plan by the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) and Philadelphia Stock Exchange, Inc.

April 4, 2006.

I. Introduction

On January 31, 2006, pursuant to Rule 608 under the Securities Exchange Act of 1934 (''Act''),[1] the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.)[2] and Philadelphia Stock Exchange, Inc. (collectively, ''Exchanges'') filed with the Securities and Exchange Commission (''Commission'') the Options Regulatory Surveillance Authority Plan, a plan providing for the joint surveillance, investigation and detection of insider trading on the markets maintained by the Exchanges (''ORSA Plan'').[3] Pursuant to Rule 608(b)(1),[4] the Commission is publishing this notice of, and soliciting comments on, the ORSA Plan.

The purpose of the ORSA Plan is to permit the Exchanges to act jointly in the administration, operation, and maintenance of a regulatory system for the surveillance, investigation, and detection of the unlawful use of undisclosed, material information in trading on one or more of their markets. By sharing the costs of these regulatory activities and by sharing the regulatory information generated under the ORSA Plan, the Exchanges believe they will be able to enhance the effectiveness and efficiency with which they regulate their respective markets and the national market system for options. The Exchanges also believe that the ORSA Plan will avoid duplication of certain regulatory efforts on the part of the Exchanges.

A summary of the ORSA Plan is provided below. The full text of the ORSA Plan is available on the Commission's Web site at *http://www.sec.gov,* at the principal offices of the Exchanges, and at the Commission.

II. Description of the ORSA Plan

A. Policy Committee

The ORSA Plan provides for the establishment of a Policy Committee, on which each Exchange will have one representative and one vote. The Policy Committee is responsible for overseeing the operation of the ORSA Plan and for making all policy decisions pertaining to the ORSA Plan, including, among other things, the following:

1. Determining the extent to which regulatory, surveillance, and investigative functions will be conducted on behalf of the Exchanges;
2. Making all determinations pertaining to contracts with (i) persons who provide goods and services under the ORSA Plan, including parties to the ORSA Plan who provide such goods and services, and (ii) parties to the ORSA Plan and other self-regulatory organizations who engage in regulatory, surveillance, or investigative activities under the ORSA Plan;
3. Reviewing and approving surveillance standards and other parameters to be used by self-regulatory organizations who perform regulatory and surveillance functions under the ORSA Plan; and
4. Determining budgetary and financial matters.

All decisions by the Policy Committee, except as otherwise indicated, will be by majority vote, subject to any required approval of the Commission. Regular meetings of the Policy Committee may be attended by one or more nonvoting representatives of the Exchanges.

B. Delegation of Functions

The ORSA Plan permits the Exchanges, as and to the extent determined by the Policy Committee, to delegate all or part of the regulatory and surveillance functions under the ORSA Plan (other than the Policy Committee's own functions) to one or more Exchanges or other self-regulatory organizations. The Policy Committee has determined to delegate the operation of the surveillance and investigative facility contemplated by the ORSA Plan to CBOE. The Exchanges have entered into a Regulatory Services Agreement (''RSA'') with CBOE, as service provider, pursuant to which CBOE will perform certain regulatory and surveillance functions under the ORSA Plan and use its automated insider trading surveillance system to perform these functions on behalf of the Exchanges. The Exchanges have not filed the RSA for Commission approval.

Although CBOE will be delegated responsibility for these activities, the ORSA Plan specifically provides that each Exchange will remain responsible for the regulation of its market and for bringing enforcement proceedings whenever it appears that persons subject to its regulatory jurisdiction may have violated the Exchange's own rules, the Act, or the rules of the Commission thereunder.

C. Review of Service Provider

The ORSA Plan provides that the Policy Committee must periodically, but not less frequently than annually, review the performance of persons to whom regulatory and surveillance activities have been delegated under the ORSA Plan. The Policy Committee must evaluate whether such activities have been performed by the service provider in a reasonably acceptable manner consistent with any contract governing the performance of such services and whether the costs of such services are reasonable. The ORSA Plan also provides that, if the Policy Committee determines that the performance of delegated activities is not reasonably acceptable or that the costs are unreasonable, the Policy Committee may terminate the delegation of activities to such persons subject to applicable contractual terms.

D. Potential Insider Trading Violations

When in the course of performing regulatory and surveillance functions the Exchanges acting under the ORSA Plan, or a self-regulatory organization to whom such functions have been delegated, obtain information indicating that there may have been an insider trading violation by members or associated persons of one or more of the Exchanges, the Exchanges or such delegatee will promptly inform all such parties of the relevant facts. The Exchanges acting jointly will not have authority to take disciplinary action against members or associated persons of any individual Exchange. All such authority will remain that of the Exchanges acting in their individual capacities.

[1] 17 CFR 240.608.

[2] On March 6, 2006, the Pacific Exchange, Inc. (''PCX''), filed with the Commission a proposed rule change, which was effective upon filing, to change the name of PCX, as well as several other related entities, to reflect the recent acquisition of PCX Holdings, Inc., the parent company of PCX, by Archipelago Holdings, Inc. (''Archipelago'') and the merger of the New York Stock Exchange, Inc. with Archipelago. *See* File No. SR–PCX–2006–24. All references herein have been changed to reflect these transactions.

[3] The Exchanges initially filed the ORSA Plan with the Commission on May 5, 2005. The Exchanges filed revised versions of the ORSA Plan on July 6, 2005 and September 29, 2005.

[4] 17 CFR 240.608(b)(1).

E. Dispute Resolution

Disputes arising in connection with the operation of the ORSA Plan will be resolved by the Policy Committee acting by majority vote. As stated above, each Exchange will have one representative and one vote on the Policy Committee.

F. Other Regulatory or Surveillance Functions

The ORSA Plan permits the Exchanges to provide for the joint performance of any other regulatory or surveillance functions or activities that the Exchanges determine to bring within the scope of the ORSA Plan, but any determination to expand the functions or activities under the ORSA Plan would be an amendment to the ORSA Plan subject to the requirements for amendments described below.

G. Allocation of Costs

The costs under the ORSA Plan to be allocated among the Exchanges will consist of all costs duly incurred by any Exchange as a direct result of its performing regulatory or surveillance functions under the ORSA Plan, together with any amounts charged under the ORSA Plan (or charged to any Exchange authorized to incur such charges under the ORSA Plan) by any other person for goods or services provided under the ORSA Plan. The costs incurred by CBOE in developing the insider trading surveillance system to be used by CBOE as the ORSA Plan service provider will be borne by CBOE without reimbursement. Costs incurred by CBOE in maintaining and upgrading its system going forward will be allocated among the Exchanges, provided that such costs have been authorized by the Exchanges.

Costs in each calendar quarter will be allocated among the Exchanges in accordance with a three element formula: (i) Fifty percent of costs will be allocated equally among the Exchanges (with a pro rata adjustment for any exchange that was not an Exchange for the entire calendar quarter); (ii) twenty-five percent of costs will be allocated among the Exchanges in accordance with their respective contract volume market shares during the calendar quarter; and (iii) twenty-five percent of costs will be allocated among the Exchanges in accordance with their respective numbers of classes of securities options traded at any time during the calendar quarter.

H. New Parties to the ORSA Plan; Participation Fee

Any other self-regulatory organization that maintains a market for the trading of securities options in accordance with rules approved by the Commission may become a party to the ORSA Plan, subject to agreeing to the terms and conditions of the ORSA Plan, agreeing to the terms and conditions of any contract pursuant to which the parties to the ORSA Plan have delegated regulatory and surveillance functions under the ORSA Plan, and payment of a participation fee.

The participation fee will be an amount determined by a majority of the Exchanges to be fair and reasonable compensation for the costs incurred in developing and maintaining the facilities used under the ORSA Plan and in providing for participation by the new party. In determining the amount of the participation fee, the Exchanges must consider the following factors:

1. The portion of costs previously paid for the development, expansion and maintenance of facilities used under the ORSA Plan which, under generally accepted accounting principles, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new party;
2. An assessment of costs incurred and to be incurred, if any, to accommodate the new party, which are not otherwise required to be paid by the new party; and
3. Previous participation fees paid by other new parties.

If the Exchanges and a new party cannot agree on the amount of the participation fee, the matter will be subject to review by the Commission.

A self-regulatory organization that does not maintain a market for the trading of securities options may become a party to the ORSA Plan, and a self-regulatory organization that ceases to maintain such a market may continue to be a party to the ORSA Plan, only if permitted by a majority of the other parties.

I. Term and Termination

The ORSA Plan will remain in effect for so long as there are two or more parties to the ORSA Plan. Any Exchange may withdraw from the ORSA Plan at any time on not less than six months prior written notice to each of the other parties. Any Exchange withdrawing from the ORSA Plan will remain liable for its proportionate share of costs allocated to it for the period during which it was a party, but it will have no further obligations under the ORSA Plan or to any of the other Exchanges with respect to the period following the effectiveness of its withdrawal. The right of an Exchange to participate in joint regulatory services under the ORSA Plan is not transferable without the consent of the other Exchanges.

J. Amendments

The ORSA Plan may be amended by the affirmative vote of all of the parties, provided that the provisions pertaining to the allocation of costs may be amended by the affirmative vote of not less than two-thirds of the parties, subject in each case to any required approval of the Commission.

III. Phases of Development

The automated insider trading surveillance system proposed to be used under the ORSA Plan has been developed by CBOE and is currently being used by CBOE for the surveillance, investigation, and detection of insider trading on its own market. The system is available for immediate use by the Exchanges under the ORSA Plan. If the ORSA Plan is approved by the Commission, CBOE intends to supplement its database of options subject to surveillance by the system to include those relatively few options that are traded on the markets of one or more of the other Exchanges but not on CBOE. CBOE has represented that this supplementation will be accomplished promptly after the ORSA Plan has been approved by the Commission.

IV. Impact on Competition

The Exchanges do not believe that the operation of the ORSA Plan will have any impact on competition.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the ORSA Plan 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 4–516 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 4–516. 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 ORSA Plan that are filed with the Commission, and all written communications relating to the ORSA Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchanges. 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 4–516 and should be submitted on or before May 1, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–5147 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8674; 34–53595, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it will hold a public meeting on Thursday, April 20, 2006, in Multi-Purpose Room L006 of the Commission's headquarters, 100 F Street, NE., Washington, DC 20549, beginning at 10 a.m., EDT. The meeting will be audio Webcast on the Commission's Web site at *http://www.sec.gov.*

The agenda for the meeting includes adoption of the Advisory Committee's Final Report to the Commission. The Advisory Committee may also discuss written statements received and other matters of concern. The public is invited to submit written statements for the meeting.

DATES: Written statements should be received on or before April 16, 2006.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acspc.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov.* Please include File Number 265–23 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Nancy M. Morris, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acspc.shtml*).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.–App. 1, § 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: April 4, 2006.

Nancy M. Morris,

Committee Management Officer.

[FR Doc. E6–5182 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53588; File No. SR–Amex–2006–28]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rules and Procedures Governing the Execution of Complex Orders Involving Options and Securities Futures

April 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt rules governing the execution of complex orders [5] involving stock-option orders and security future-option orders, and to adopt definitions of additional types of complex orders. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 900—ANTE

Applicability, Definitions and References

(a) Applicability—The Exchange's new trading system (known as the ANTE System or ANTE) will be rolled-out over a period of time (approximately eighteen months) on a specialist post-by-specialist post basis. The roll-out began on May 25, 2004 and will continue until June 30, 2006 at which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Complex orders include those orders which are defined in 950—ANTE(e)(i)–(iii) and 950—ANTE(e)(vii), and proposed 950—ANTE(e)(viii)–(xii).

time all equity and index option classes traded by the Exchange will be on the ANTE System. Therefore, during the roll-out period, while the Exchange has option classes trading on both systems, current rules (as they are amended from time to time) will apply to those option classes continuing to trade on its current system while the following ANTE rules will apply to those option classes trading on the new trading system. Once the roll-out of ANTE is complete, the amendments to the Exchange's options rules reflecting the implementation of ANTE set forth below will replace, where applicable, the corresponding provisions in Rules 900 through 958A. The following Trading of Option Contracts Rules shall apply to the trading of option contracts on the ANTE System: 901, 902, 903, 904, 905, 906, 907, 908, 909, 915, 916, 917, 920, 921, 922, 923, 924, 925, 926, 927, 928, 930, 932, 940, 942, 943, 944, 952, [953,] 954, 956, 957, 959, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, 980, 981, 982, 990, 991, and 992. In addition, the following Trading of Option Contract Rules, which have been amended to reflect usage in the ANTE System, shall apply to the trading of options contracts on the ANTE System. Moreover, the Rules in this Chapter (Trading of Options Contracts) shall be applicable to (i) the trading on and through the facilities of the Exchange of option contracts issued by the Options Clearing Corporation and the terms and conditions thereof; and (ii) the exercise and settlement, the handling of orders, and the conduct of accounts and other matters, relating to option contracts dealt in by any member or member organization. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and of all other Rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of option contracts. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, option contracts (as defined below) are included within the definition of ''security'' or ''securities'' as such terms are used in the Constitution and the Rules of the Exchange.

(b)–(d) No change.

Commentary * * *

.01 No change.

* * * * *

Rule 950—ANTE

Rules of General Applicability

(a)–(c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply:

Commentary * * *

.01 When a member holding a spread order, a straddle order, ratio order, [or] a combination order*, a stock-option order, or a security future-option order* and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the marketplace, then the order may be executed as a spread, straddle, *ratio,* [or] combination*, stock-option, or security future-option order* at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers. *Stock-option orders and security future-option orders have priority over bids or offers of the trading crowd but not over bids or offers of public customers in the limit order book.*

.02–.07 No change.

(e) The types of orders specified in Rule 131 and the following additional types of orders shall be applicable to Exchange option transactions:

(i)–(vii) No change.

(viii) Combination Orders with Non-Equity Options Legs—One or more legs of an order may be to purchase or sell a stated number of units of another security.

(1) Stock-Option Order—A stock-option order is an order to buy or sell a stated number of units of an underlying or related security coupled with either (a) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying or related security or the number of units of the underlying security necessary to create a delta neutral position; or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock, as and on the opposite side of the market from, the underlying or related security portion of the order.

(2) Security Future-Option Order—A security future-option order is an order to buy or sell a stated number of units of a single stock future or a security convertible into a security future (''convertible security future'') coupled with either (a) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of the underlying for the security future or convertible security future, or the number of units of the underlying for the security future or convertible security future necessary to create a delta neutral position; or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of underlying for the security future or the convertible security future, as and on the opposite side of the market from, the stock underlying for the security future or convertible security future portion of the order.

(ix) Strangle Order—A strangle order is an order to buy (sell) a number of call option contracts and the same number of put option contracts in the same underlying security, which contracts have the same expiration date (e.g., an order to buy two XYZ June 35 calls and to buy two XYZ June 40 puts).

(x) Butterfly Spread Order—A butterfly spread order is an order involving three series of either put or call options all having the same underlying security and time of expiration and, based on the same current underlying value, where the interval between the exercise price of each series is equal, which orders are structured as either (i) a ''long butterfly spread'' in which two short options in the same series offset by one long option with a higher exercise price and one long option with a lower exercise price or (ii) a ''short butterfly spread'' in which two long options in the same series are offset by one short option with a higher exercise price and one short option with a lower exercise price.

(xi) Box/Roll Spread Order: Box spread means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

(xii) Collar and Risk Reversal Orders—A collar order (risk reversal) is an order involving the sale (purchase) of a call (put) option coupled with the purchase (sale) of a put (call) option in equivalent units of the same underlying security having a lower (higher) exercise price than, and same expiration date as, the sold (purchased) call (put) option.

(f)–(n) No change.

* * * * *

Rule 953—ANTE

Acceptance of Bid or Offer

(a) All bids or offers for option contracts dealt in on the Exchange made and accepted in accordance with these Rules shall constitute binding contracts between the parties thereto but shall be subject to the exercise by the Board of Governors of the powers in respect thereto vested in said Board by the Constitution, and to the Rules of the Exchange, and said contracts shall also be subject to the rules of The Options Clearing Corporation and to the exercise by The Options Clearing Corporation of the powers reserved to it in the rules of The Options Clearing Corporation.

(b) Stock-option orders and security future-option orders.

(i) A bid or offer that is identified to the Exchange trading crowd as part of a stock-option order, as defined in Rule 950—ANTE (e)(viii)(1) or, or a security future-option order, as defined in Rule 950—ANTE (e)(viii)(2), is made and accepted subject to the following conditions:

(A) at the time the stock-option order or security future-option order is announced, the member initiating the order must disclose to the crowd all legs of the order and must identify the specific market(s) on which and the price(s) at which the non-option leg(s) of the order is to be filled, and

(B) concurrent with execution of the options leg of the order, the initiating member and each member that agrees to be a contra-party on the non-option leg(s) of the order must take steps immediately to transmit the non-option leg(s) to the identified market(s) for execution.

(ii) A trade representing the execution of the options leg of a stock-option order or a security future-option order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.

(c) Failure to observe the requirements set forth in paragraph (b)(i)(A) and (B) above shall be considered conduct inconsistent with just and equitable principles of trade.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commodity Futures Modernization Act of 2000 lifted the ban on the trading of single stock futures and futures on narrow based security indices (together, ''security futures'') in the United States. The Amex is proposing to (i) adopt a new definition for stock-option orders and security futures option orders (''security future-option order''), (ii) grant certain execution priorities to stock-option orders and security future-option orders, (iii) authorize the execution of stock-option orders and security future-option orders, and (iv) add additional language to the Amex rules regarding different types of complex orders.

The Exchange proposes to adopt language to allow for the execution of stock-option orders and security future-option orders. The Exchange believes that complex orders involving orders consisting of stock or securities futures and option legs are effective hedging strategies that would permit members to initially offset the risk of price movements in an option position with a corresponding purchase or sale of stock underlying the option position or securities futures. Therefore, complex orders consisting of stock or security futures and options legs that fall within their proposed definition would be entitled to the same priorities that spreads, straddles, ratio, and combination orders are afforded.

The Exchange proposes to amend Commentary .01 to Amex Rule 950–ANTE(d), to permit members to execute stock-option orders and security future-option orders, the options legs of which will have priority over bids or offers of the trading crowd but not over bids or offers of public customers in the limit order book. The proposed rules also provide that members holding stock-option orders or security future-option orders and bidding or offering on a net debit or credit basis may execute the order with another member without giving priority to equivalent bids or offers in the trading crowd or the book, provided that at least one leg of the order betters the corresponding bid or offer in the book.

The Exchange further proposes to adopt new Amex Rule 953—ANTE to provide execution procedures for stock-option orders and security future-option orders. The proposed rule text provides that the initiating member and the contra-parties with respect to the non-option leg(s) must take steps to transmit the non-option leg(s) to the appropriate market concurrently with the execution of the options leg(s) of the order. Because security futures products may not be fungible between markets, the member initiating the security future-option order must identify the specific market of execution. If the security or security futures leg of the order cannot be executed at the price(s) agreed upon due to market conditions, a trade representing the execution of the options leg of the transaction may be cancelled at the request of any member that is a party to that trade.

Furthermore, the Exchange proposes to amend Amex Rule 950—ANTE(e) to include the definitions of additional types of complex orders. Specifically, a strangle order, a butterfly spread order, a box/roll spread order, and a collar and risk reversal order. The proposed rule defines a strangle order as an order to buy or sell a certain number of call option contracts and the same number of put option contracts in the same underlying security, which have the same expiration date. A butterfly spread order is defined as an order involving three series of either put or call options all having the same underlying security and time of expiration and, based on the same current underlying value, where the interval between the exercise price of each series is equal. These orders are structured as either (i) a ''long butterfly spread'' in which two short options in the same series offset by one long option with a higher exercise price and one long option with a lower exercise price or (ii) a ''short butterfly spread'' in which two long options in the same series are offset by one short option with a higher exercise price and one short option with a lower exercise price. A box/roll spread order is defined as an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'')

coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: (A) A ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price. A collar and risk reversal order is defined as an order involving the sale or purchase of a call or put option, coupled with the purchase or sale of a put or call option in equivalent units of the same underlying security having a lower or higher exercise price than, and same expiration date as, the sold or purchased call or put option.

Finally, the Exchange seeks to make housekeeping changes to the rules: (1) To add an additional reference to ''ratio order'' into Commentary .01 of Amex Rule 950—ANTE(d), that was inadvertently omitted when the Exchange originally sought immediate effectiveness to trade ratio orders [6] and (2) to remove the reference to Amex Rule 953 in Amex Rule 900—ANTE, as an option rule that will be applicable to the trading of options contracts on the ANTE System because the Amex has proposed to adopt new Amex Rule 953—ANTE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general and furthers the objective of Section 6(b)(5) of the Act [8] in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[6] *See* Securities Exchange Act Release No. 50525 (October 13, 2004), 69 FR 61875 (October 21, 2004) (Notice of Filing and Immediate Effectiveness of SR–Amex–2004–77).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Amex to immediately implement rules and procedures governing the execution of complex orders involving options and securities futures that are substantially similar to the rules of other exchanges.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–(f)(6)(iii).

[12] *Id.*

[13] *See* Securities Exchange Act Release Nos. 46390 (August 21, 2002), 67 FR 55290 (August 28, 2002) (Order approving File No. SR–ISE–2002–18); and 49367 (March 5, 2004), 69 FR 11678 (March 11, 2004) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2002–14). For the purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2006–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Amex–2006–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2006–28 and should be submitted on or before May 1, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5151 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53587; File No. SR–CHX–2006–11]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Bylaws of CHX Holdings, Inc.

April 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The CHX has filed this proposal pursuant to 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

On behalf of its parent company, CHX Holdings, Inc. (''CHX Holdings''), the CHX proposes to amend the CHX Holdings Bylaws to confirm that CHX Holdings will take steps necessary to ensure that directors, officers, and employees of CHX Holdings consent to the applicability of the requirements of Article III, Sections 3 and 5 of the CHX Holdings Bylaws with respect to activities related to the Exchange. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* 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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

As a result of its demutualization in February 2005, the Exchange became the wholly-owned subsidiary of CHX Holdings, a Delaware corporation.[5] The Demutualization Approval Order confirmed that the Exchange's staff had agreed to submit to the CHX Holdings Board of Directors a change to the Bylaws of CHX Holdings that would require CHX Holdings to take such action as is necessary to ensure that officers, directors, and employees of CHX Holdings consent to the applicability of two specific provisions of the CHX Holdings Bylaws.[6] In general, these two CHX Holdings Bylaws confirm that: (1) To the extent that they are related to the activities of the CHX, CHX Holdings' officers, directors, and employees are deemed to be officers, directors, and employees of the CHX for the purposes of the Act; and (2) CHX Holdings' officers, directors, and employees, by virtue of their acceptance of such positions, are deemed to submit to the jurisdiction of the United States federal courts, the Commission, and the CHX for the purposes of securities law-related proceedings that arise out of, or are related to, the activities of the Exchange. The proposed Bylaws change that is the subject of this filing is designed to meet the requirement set out in the Demutualization Approval Order.[7]

2. Statutory Basis

The CHX believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the CHX believes that the proposal is consistent with Section 6(b)(5) of the Act[9] 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 ensuring that the directors, officers, and employees of CHX Holdings consent to the applicability of the requirements Article III, Sections 3 and 5 of the CHX Holdings Bylaws with respect to activities related to the Exchange.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it 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 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 proposal 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. 51149 (February 9, 2005), 70 FR 7531 (February 14, 2005) (order approving File No. SR–CHX–2004–26) (''Demutualization Approval Order'').

[6] *See* Demutualization Approval Order, *supra* note 5, at note 4.

[7] This proposal mirrors a similar proposal submitted by Pacific Exchange, Inc. in the context of a series of similar corporate changes. *See* Securities Exchange Act Release No. 51389 (March 17, 2005), 70 FR 15374 (March 25, 2005) (notice of filing and immediate effectiveness of File No. SR–PCX–2005–17) (relating to the Bylaws of PCX Holdings, Inc.).

[8] 15 U.S.C. 78f(b).

[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). As required by Rule 19b–4(f)(6)(iii) of the Act, the CHX provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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–CHX–2006–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2006–11 and should be submitted on or before May 1, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5183 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53591; File No. SR–NYSE–Arca–2006–08]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Certificate of Incorporation of NYSE Arca Holdings, Inc.

April 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2006, NYSE Arca, Inc. (the ''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 filed the proposed rule change pursuant to Section 19(b)(3)(A) 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

The Exchange hereby submits to the Commission a proposed rule change to further extend certain temporary exceptions from the voting and ownership limitations in the certificate of incorporation of NYSE Arca Holdings, Inc. (f/k/a PCX Holdings, Inc.)[5] (''NYSE Arca Holdings''), a Delaware corporation and a parent company of the Exchange, originally approved by the Commission in an order issued on September 22, 2005 (the ''SEC Order'')[6] and extended pursuant to certain subsequent rule filings,[7] so as to allow Gerald D. Putnam (''Mr. Putnam''), Chairman and Chief Executive Officer of Archipelago Holdings, Inc. (''Archipelago''), a Delaware corporation and a wholly-owned subsidiary of NYSE Group, Inc. (''NYSE Group''), of which Mr. Putnam is also President and Co-Chief Operating Officer, to indirectly own in excess of 5% of Terra Nova Trading, L.L.C. (''TNT'') until May 15, 2006, subject to the conditions set forth in this proposed rule filing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* SR–PCX–2006–24.

[6] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (the ''SEC Order'').

[7] *See* Securities Exchange Act Release No. 53034 (December 28, 2005), 71 FR 636 (January 5, 2006) (the ''First Extension Notice''); Securities Exchange Act Release No. 53202 (January 31, 2006), 71 FR 6530 (February 8, 2006) (the ''Second Extension Notice''); and Securities Exchange Act Release No. 53411 (March 3, 2006), 71 FR 12413 (March 10, 2006) (the ''Third Extension 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. NYSE Arca Holdings and the Amendment of the NYSE Arca Holdings Certificate of Incorporation

As a wholly-owned subsidiary of NYSE Group, Archipelago operates NYSE Arca Marketplace (formerly Archipelago Exchange or ArcaEx), an open, all-electronic stock market for the trading of equity securities. On September 26, 2005, Archipelago completed its acquisition of NYSE Arca Holdings (then known as PCX Holdings) and all of its wholly-owned subsidiaries, including the Pacific Exchange, Inc. (the predecessor entity of the Exchange) and PCX Equities, Inc. (n/k/a NYSE Arca Equities, Inc.) (the ''Acquisition''). On March 7, 2006, the merger of Archipelago and the New York Stock Exchange, Inc. (the ''Archipelago NYSE Merger'') closed and, as a result, Archipelago became a wholly-owned subsidiary of NYSE Group.

The certificate of incorporation of NYSE Arca Holdings (as amended to date, the ''NYSE Arca Holdings Certificate of Incorporation'') contains various ownership and voting restrictions on NYSE Arca Holdings' capital stock, which are designed to safeguard the independence of the self-regulatory functions of the Exchange and to protect the Commission's oversight responsibilities. In order to allow Archipelago to own 100% of the capital stock of NYSE Arca Holdings,

prior to the completion of the Acquisition, the Exchange filed with the Commission a proposed rule change which sought to, among other things, amend the NYSE Arca Holdings Certificate of Incorporation to create an exception from the voting and ownership restrictions for Archipelago and certain of its related persons (the ''Original Rule Filing'').[8] The Original Rule Filing, as amended by Amendment Nos. 1 and 2 thereto, was approved by the Commission on September 22, 2005 [9] and the amended NYSE Arca Holdings Certificate of Incorporation became effective on September 26, 2005, upon the closing of the Acquisition.

Article Nine of the NYSE Arca Holdings Certificate of Incorporation provides that no Person,[10] either alone or together with its Related Persons,[11] may own, directly or indirectly, shares constituting more than 40% of the outstanding shares of any class of NYSE Arca Holdings capital stock,[12] and that no Person, either alone or together with its Related Persons who is a trading permit holder of the Exchange or an equities trading permit holder of NYSE Arca Equities, may own, directly or indirectly, shares constituting more than 20% of any class of NYSE Arca Holdings capital stock.[13] Furthermore, the NYSE Arca Holdings Certificate of Incorporation provides that, for so long as NYSE Arca Holdings controls, directly or indirectly, the Exchange, no Person, either alone or with its Related Persons, may directly or indirectly vote or cause the voting of shares of NYSE Arca Holdings capital stock or give any proxy or consent with respect to shares representing more than 20% of the voting power of the issued and outstanding NYSE Arca Holdings capital stock.[14] The NYSE Arca Holdings Certificate of Incorporation also places limitations on the right of any Person, either alone or with its Related Persons, to enter into any agreement with respect to the withholding of any vote or proxy.[15]

The Exchange proposed and the Commission approved an exception from the ownership and voting limitations described above to add a new paragraph at the end of Article Nine of the NYSE Arca Holdings Certificate of Incorporation, which provides that for so long as Archipelago directly owns all of the outstanding capital stock of NYSE Arca Holdings, these ownership and voting limitations shall not be applicable to the ownership and voting of shares of NYSE Arca Holdings by (i) Archipelago, (ii) any Person which is a Related Person of Archipelago, either alone or together with its Related Persons, and (iii) any other Person to which Archipelago is a Related Person, either alone or together with its Related Persons.[16] These exceptions to the ownership and voting limitations, however, shall not apply to any ''Prohibited Persons,'' [17] which is defined to mean any Person that is, or that has a Related Person that is (i) an OTP Holder or an OTP Firm (as defined in the rules of the Exchange) [18] or (ii) an ETP Holder (as defined in the rules of NYSE Arca Equities),[19] unless such Person is also a ''Permitted Person'' under the NYSE Arca Holdings Certificate of Incorporation.[20] The NYSE Arca Holdings Certificate of Incorporation further provides that any Prohibited Person not covered by the definition of a Permitted Person who is subject to and exceeds the voting and ownership limitations imposed by Article Nine as of the date of the closing of the Acquisition shall be permitted to exceed the voting and ownership limitations imposed by Article Nine only to the extent and for the time period approved by the Commission.[21]

b. TNT

TNT is a wholly owned subsidiary of TAL Financial Services, LLC (''TAL'') and Mr. Putnam indirectly owns a 40% interest in TAL. Accordingly, Mr. Putnam indirectly owns in excess of 5% of TNT. The management committee of TAL performs on behalf of TNT the functions usually associated with a board of directors and executive committee of a corporation. Until the approval of the Third Extension Rule Filing (discussed below), Mr. Putnam was one of the five members of the TAL management committee (a position which Mr. Putnam resigned in accordance with the TNT Conditions (discussed below)). Because TNT, a broker-dealer and an ETP Holder of NYSE Arca Equities, is a Related Person of Archipelago by virtue of Mr. Putnam's ownership of in excess of 5% of TNT, it falls within the definition of ''Prohibited Persons'' under the NYSE Arca Holdings Certificate of Incorporation. Consequently, absent an

[8] *See* File No. SR–PCX–2005–90 (August 1, 2005).

[9] *See* SEC Order, *supra* note 6.

[10] ''Person'' is defined to mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 1(b)(iv).

[11] The term ''Related Person,'' as defined in the NYSE Arca Holdings Certificate of Incorporation, means (i) with respect to any person, all ''affiliates'' and ''associates'' of such person (as such terms are defined in Rule 12b–2 under the Act); (ii) with respect to any person constituting a trading permit holder of the Exchange or an equities trading permit holder of NYSE Arca Equities, any broker dealer with which such holder is associated; and (iii) any two or more persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of NYSE Arca Holdings. NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 1(b)(iv).

[12] NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 1(b)(i). However, such restriction may be waived by the Board of Directors of NYSE Arca Holdings pursuant to an amendment to the Bylaws of NYSE Arca Holdings adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors adopts a resolution stating that it is the determination of such Board that such amendment will not impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Act and is otherwise in the best interests of NYSE Arca Holdings and its stockholders and the Exchange, and will not impair the ability of the Commission to enforce said Act, and such amendment shall not be effective until approved by said Commission; *provided* that the Board of Directors of NYSE Arca Holdings shall have determined that such Person and its Related Persons are not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act). NYSE Arca Holdings Certificate of Incorporation, Article Nine, Sections 1(b)(i)(B) and 1(b)(i)(C).

[13] *Id.*, Article Nine, Section 1(b)(ii).

[14] *Id.*, Article Nine, Section 1(c).

[15] *Id.*

[16] *Id.*, Article Nine, Section 4.

[17] *Id.*

[18] The Exchange rules define an ''OTP Holder'' to mean any natural person, in good standing, who has been issued an Options Trading Permit (''OTP'') by the Exchange for effecting approved securities transactions on the Exchange's trading facilities, or has been named as a Nominee. Exchange Rule 1.1(q). The term ''Nominee'' means an individual who is authorized by an ''OTP Firm'' (a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's trading facilities) to conduct business on the Exchange's trading facilities and to represent such OTP Firm in all matters relating to the Exchange. Exchange Rule 1.1(n).

[19] NYSE Arca Equities rules define an ''ETP Holder'' to mean any sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an Equity Trading Permit, a permit issued by the NYSE Arca Equities for effecting approved securities transactions on the trading facilities of NYSE Arca Equities. NYSE Arca Equities Rule 1.1(n).

[20] ''Permitted Person'' is defined to mean (A) any broker or dealer approved by the Commission after June 20, 2005 to be a facility (as defined in Section 3(a)(2) of the Act) of the Exchange; (B) any Person that has been approved by the Commission prior to it becoming subject to the provisions of Article Nine of the NYSE Arca Holdings Certificate of Incorporation with respect to the voting and ownership of shares of NYSE Arca Holdings capital stock by such Person; and (C) any Person that is a Related Person of Archipelago solely by reason of beneficially owning, either alone or together with its Related Persons, less than 20% of the outstanding shares of Archipelago capital stock. NYSE Arca Holdings Certificate of Incorporation, Article Nine, Section 4.

[21] *Id.*

exception, Archipelago's ownership of NYSE Arca Holdings would cause TNT to exceed the voting and ownership limitations imposed by Article Nine of the NYSE Arca Holdings Certificate of Incorporation. Therefore, in connection with the Acquisition, the Commission approved the Exchange's request for a temporary exception for Mr. Putnam to continue to own in excess of 5% of TNT and continue to serve as a director of TAL until December 31, 2005 (the ''Original TNT Exception'').[22] In the SEC Order, the Commission stated that it believes that such a temporary exception is appropriate and consistent with the Act because it will eliminate the affiliation between TNT and Archipelago but allow Mr. Putnam a reasonable amount of time to effectuate such actions necessary to eliminate the affiliation.[23]

Mr. Putnam has been working to eliminate the affiliation with TNT. In light of the fact that the sale of Mr. Putnam's interest in TNT was unlikely to be consummated by December 31, 2005, in the proposed rule filing submitted by the Exchange on December 19, 2005 (the ''Original Extension Rule Filing''), as amended by Amendment No. 1 thereto, the Exchange also requested an extension of the Original TNT Exception to January 31, 2006.[24] The extension took effect immediately upon the filing of Amendment No. 1 to the Original Extension Rule Filing.[25] In the proposed rule filing submitted by the Exchange on January 27, 2006 (the ''Second Extension Rule Filing''), the Exchange requested that the Original TNT Exception be further extended to the earlier of (x) the closing date of the Archipelago NYSE Merger and (y) March 31, 2006.[26] The extension took effect immediately upon the filing of the Second Extension Rule Filing.[27] In the proposed rule filing submitted by the Exchange on March 3, 2006 (the ''Third Extension Rule Filing''), the Exchange requested that the Original TNT Exception be further extended to March 31, 2006.[28] The extension was approved on an accelerated basis by the Commission.[29] The approval was subject to the following conditions.

First, Mr. Putnam must resign as a member of the management committee of TAL. Second, Mr. Putnam must continue to abstain, as he has abstained in the past, from directing the respective day-to-day operations of TAL or TNT or otherwise participating in the respective management or businesses of TAL or TNT. Third, Mr. Putnam must not exercise any voting rights with respect to any equity interests of TAL or in excess of 5% of voting rights with respect to TNT (collectively, the ''TNT Conditions''). The second and third TNT Conditions, however, are subject to the following exception: Mr. Putnam is permitted to act or vote in a manner otherwise prohibited by such condition if Mr. Putnam's action or exercise of voting rights would be necessary to approve and consummate the sale of Mr. Putnam's interest in TNT. In accordance with the TNT Exception, Mr. Putnam resigned as a member of the management committee of TAL and has otherwise complied with the TNT Conditions.

c. Further Extension of the Original TNT Exception

Since the approval of the Original TNT Exception, Mr. Putnam has been working in good faith to sell his interest in TNT at or below the 5% level, and entered into a definitive agreement for such a sale on March 30, 2006.[30] The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of the National Association of Securities Dealers, Inc. (''NASD'') and other regulatory approvals. Such approvals are expected to be received by within thirty days of signing of the definitive agreement and Mr. Putnam would then close the sale as soon as practicable thereafter. To that end, the Exchange hereby proposes to further extend the Original TNT Exception to May 15, 2006, subject to the TNT Conditions described above.

In requesting such extension, Archipelago and the Exchange note that the NASD, a self-regulatory organization not affiliated with Archipelago, has been designated by the Commission as the ''Designated Examining Authority'' (''DEA'') for TNT pursuant to Rule 17d–1 of the Act.[31] Furthermore, during the interim period, TNT would continue to be covered by the scope of an agreement between NASD and the Exchange, which was entered into pursuant to Rule 17d–2 under the Act[32] and provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of the Exchange, including TNT (''17d–2 Agreement'').[33]

Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original TNT Exception and the extensions thereof outlined above, while allowing Mr. Putnam a reasonable amount of time to effectuate the actions necessary to eliminate the affiliation between TNT and Archipelago.

2. Statutory Basis

The Exchange believes that the proposed rule change in this filing is consistent with Section 6(b)[34] of the Act, in general, and furthers the objectives of Section 6(b)(1),[35] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5),[36] in particular, because the rules summarized herein would create a governance and regulatory

[22] *See* SEC Order, *supra* note 6, at 56960–61.

[23] *Id.* at 56960.

[24] *See* File No. SR–PCX–2005–139 (December 19, 2005), as amended by Amendment No. 1 thereto (December 23, 2005).

[25] *See* the First Extension Notice, *supra* note 7, at 640.

[26] *See* File No. SR–PCX–2006–04 (January 27, 2006).

[27] *See* the Second Extension Notice, *supra* note 7, at 6534.

[28] *See* File No. SR–PCX–2006–21 (March 3, 2006).

[29] *See* the Third Extension Notice, *supra* note 7, at 12419.

[30] The potential purchaser is not a Related Person of Archipelago or a ''Prohibited Person'' under the NYSE Arca Holdings Certificate of Incorporation. Telephone conversation between Tim Elliott, Assistant General Counsel—Regulatory, Exchange, and Jan Woo, Attorney, Division of Market Regulation, Commission, on March 31, 2006.

[31] Pursuant to Rule 17d–1 under the Act, where a member of the Securities Investor Protection Corporation is a member of more than one SRO, the Commission shall designate to one of such organizations the responsibility of examining such member for compliance with the applicable financial responsibility rules. In making such designation, the Commission shall take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among SROs, and the development of a national market system for the clearance and settlement of securities transactions. 17 CFR 240.17d–1.

[32] Rule 17d–2 under the Act provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibilities to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. 17 CFR 240.17d–2.

[33] *See* SEC Order, *supra* note 6, at 56959.

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(1).

[36] 15 U.S.C. 78f(b)(5).

structure with respect to the operation of the equities and options business of the Exchange that is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) [37] of the Act and Rule 19b–4(f)(6) thereunder.[38] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because the current exception with respect to Mr. Putnam's ownership of TNT is set to expire on March 31, 2006, such waiver will allow TNT to remain in compliance with ownership and voting limitations in the NYSE Arca Holdings Certificate of Incorporation. The Commission notes that the Exchange has represented that Mr. Putnam signed a definitive agreement to reduce his ownership interest in TNT on March 30, 2006. However, Mr. Putnam needs an extension of time to receive necessary regulatory approvals and complete the sale. The extension is limited in scope and duration, and Mr. Putnam will continue to be subject to the TNT Conditions described in this rule filing during the extension period. Further, the Commission notes that the following protections are and will continue to be in place during the interim period: TNT is a member of the NASD (as well as NYSE Arca); the NASD is the DEA for TNT pursuant to Rule 17d–1 under the Act; and TNT is and will continue to be covered by the scope of the 17d–2 Agreement.

For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[39]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–08 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–NYSEArca–2006–08. 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–NYSEArca–2006–08 and should be submitted on or before May 1, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5152 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53551; File No. SR–PCX–2006–05]

Self-Regulatory Organizations; The Pacific Exchange, Inc. (n/k/a "NYSE Arca, Inc."); Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fees for Lead Market Makers, Transactions Within Exchange Traded Funds Listed on The New York Stock Exchange, Inc., and Registration and Transaction Fees for Equity Trading Permit Holders

March 27, 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 January 30, 2006, The Pacific Exchange, Inc.[3]

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6). The Exchange provided the Commission with written notice of its intent to file this proposed rule change on March 29, 2006.

[39] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, PCX filed a proposed rule change that amended its rules to reflect the following name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; from PCX Equities, Inc. to NYSE Arca Equities, Inc.; from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and from the

(''PCX''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items were prepared by PCXE. On March 17, 2006, the NYSE Arca, Inc. (''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''Arca Equities'') filed Amendment No. 1. The Exchange designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through Arca Equities, proposes to amend its Schedule of Fees and Charges (''Schedule'') to (i) implement fees for transactions conducted by Lead Market Makers [7] (''LMMs''); (ii) increase fees for transactions in Exchange Traded Funds (''ETFs'') listed on the New York Stock Exchange LLC (''NYSE''), and (iii) make other minor modifications to The Schedule. The text of the proposed rule change is available at the Commission, at the Exchange, and on the Exchange's Web site at *http://www.archipelago.com/regulation/filings.asp#2006.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule, effective February 1, 2006, to reflect (i) charges and credits applicable to transactions by LMMs, (ii) an increase of transaction fees and elimination of market data revenue sharing credits for transactions in ETFs listed on the NYSE, (iii) the amended requirement of investigation fees associated with the review and approval of persons associated with an ETP Holder,[8] (iv) removal of the fee for fingerprint card submission to the Exchange, and (v) an exemption of transaction fees for ETP Holder transactions occurring during the Closing Auction.[9] The Schedule incorporating these changes may be found at the following Web address: *http//www.arcaex.com/traders/equities_fees.asp.*

LMM Transaction Charges and Credits

For LMMs, the exclusive Market-Maker in primary listings on the Exchange and who will be eligible to receive orders in the NYSE Arca, L.L.C.'s (''NYSE Arca'') Directed Order Process, the Exchange proposes to offer a $0.004 per share credit for orders submitted by LMMs that provide liquidity to the NYSE Arca Book, but not allow these transaction to be eligible for the Market Data Revenue Sharing Credit. Additionally, the Exchange will exempt LMMs from the transaction fees and credits for orders executed as a Direct Order against a Directed Fill [10] but will charge $0.0025 per share for orders that remove liquidity from the NYSE Arca Book. Directed Fills will be eligible for Market Data Revenue Sharing Credit.

Fees and Credits for NYSE Listed ETF Securities

To maintain competitive fees, the Exchange proposes to amend the Schedule for ETP Holder transactions in NYSE listed ETF securities. With this, the Exchange proposes to implement a credit of $0.002 per share for limit orders of such securities residing on the NYSE Arca Book that execute against inbound marketable orders, but will eliminate the current Market Data Revenue Sharing Credit for Cross Orders [11] involving NYSE listed ETFs. Additionally, current charges for NYSE listed ETFs are $0.001 per share for orders that execute against orders residing on the NYSE Arca Book and for orders that are routed away and executed by another market center or participant. The Exchange proposes to increase these fees to $0.003 and $0.004 per share, respectively.

ETP Holder Registration Fees

Currently, the Schedule reflects ETP Application Fees for investigations and fingerprints. Use of these fees, $125 and $35, respectively for each person [12] requiring approval by the Exchange, has become outdated as the Exchange now utilizes and is a participant of the Central Registration Depository (''Web CRD®'') system for electronic registration and review of criminal and disclosure background information. Previously, PCX was responsible for receipt and processing of fingerprint cards submitted for registration with the Exchange and for this would collect a $35 processing fee directly from the ETP Holder. Now, ETP Holders are required to maintain registration information electronically on Web CRD® and submit fingerprint information directly to the National Association of Securities Dealers, Inc. (''NASD'') which maintains Web CRD®. All fees relating to registrations and fingerprint information available on Web CRD® are collected by NASD by deducting these fees from ETP Holders' Web CRD® Daily Account. Individuals for whom information is not available on Web CRD® and who must be reviewed and approved by the Exchange will continue to be required to pay the $125 investigation fee per individual.

Closing Auction Transaction Fee Exemption

In order to be consistent with its practices, the Exchange proposes to clarify that ETP Holder transactions during the Closing Auction are exempted from Exchange transaction fees noted on the Schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) [13] of the Act, in general, and Section 6(b)(4) [14] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its ETP Holders, issuers, and other persons using its facilities.

Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. *See* SR–PCX–2006–24.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 17, 2006, the date the Exchange filed Amendment No. 1.

[7] *See* Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (SR–PCX–2005–56).

[8] *See* Arca Equities Rule 1.1(n).

[9] *See* Arca Equities Rule 7.35.

[10] *See* Arca Equities Rule 7.31(j).

[11] *See* Arca Equities Rule 7.31(s).

[12] *See* Arca Equities Rules 1.1(c) and 1.1(d) for Allied Persons and Approved Persons, respectively, requiring approval by the Exchange.

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

[14] 15 U.S.C. 78f(b)(4).

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] and paragraph (f)(2) of Rule 19b–4 thereunder[16] because it establishes or changes a due, fee, or other charge. At any time within 60-days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2006–05 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–PCX–2006–05. 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 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–PCX–2006–05 and should be submitted on or before May 1, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5149 Filed 4–7–06; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] *See* footnote 6 *supra.*

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–09]

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 May 1, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–21839 and FAA–2006–24275] 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 20590–0001.
- *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.

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: John Linsenmeyer (202) 267–5174 or Susan Lender (202) 267–8029, 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 April 7, 2006.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions For Exemption

Docket No.: FAA–2006–21839.

Petitioner: International Cessna 120/140 Association.

Section of 14 CFR Affected: 14 CFR 1.1.

Description of Relief Sought: To allow members of the International Cessna 120/140 Association to obtain special airworthiness certificates in the light-sport category for certain Cessna 120 and Cessna 140 aircraft with maximum takeoff weights that have been reduced using Supplemental Type Certificate SA02482AT.

Docket No.: FAA–2006–24275.

Petitioner: Jet Clipper Johnny, LLC.

Section of 14 CFR Affected: 14 CFR part 36 et seq.

Description of Relief Sought: To allow Jet Clipper Johnny, LLC. to operate a Boeing 707 aircraft at higher takeoff

weights than its existing part 36-compliant configuration permits.

[FR Doc. E6–5210 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement Adoption: Douglas County, KS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of its intent to adopt an existing Final Environmental Impact Statement in accordance with the Council on Environmental Quality regulations, 40 CFR 1506.3. The Final EIS has been prepared and approved by the U.S. Army Corps of Engineers, Kansas City District, for the South Lawrence Trafficway located in Lawrence, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Wendall L. Meyer, Assistant Division Administrator, FHWA, Kansas Division Office, 6111 SW., 29th Street, Topeka, KS 66614, Telephone: (785) 228–2544; or Mr. Corky Armstrong, Road Design Engineer, Kansas Department of Transportation, Dwight D. Eisenhower Building, 700 SW Harrison Street, Topeka, KS 66603–3754, Telephone: (785) 296–3901.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kansas Department of Transportation (KDOT), intends to adopt an approved Final EIS for the South Lawrence Trafficway located in Lawrence, Kansas. The EIS was prepared by the U.S. Army Corps of Engineers, Kansas City District, as part of a Section 404 Permit Application, Permit Application Number 200101697. The Notice of Intent for the EIS appeared in the FR, Volume 66, Number 152, August 7, 2001. The project consists of construction of a new section of K–10 Highway beginning in Douglas County at the existing K–10/U.S. 59 Highway interchange in southwest Lawrence extending approximately six miles north and east to a location on the existing K–10 alignment near the eastern edge of the City of Lawrence. The preferred alternative would replace the existing K–10 route through Lawrence with a limited access freeway along the southern edge of the city on an alignment identified as 32nd Street Alignment B. The EIS considered the social, environmental, and economic impacts of the project. The No-Action alternative and five roadway corridors with a total of twelve reasonable build alternative alignments were evaluated and discussed in the Draft and Final EIS. The FHWA will also prepare and coordinate the distribution of a Draft and Final Section 4(f) Evaluation for the project, in accordance with 49 U.S.C. 303. These documents will evaluate the reasonable alternatives to determine if they are feasible and prudent as they relate to section 4(f). In addition, FHWA will prepare its own Record of Decision for the South Lawrence Trafficway alternative in accordance with 40 CFR 1505.2. Comments or questions concerning these proposed actions should be directed to the FHWA or KDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 3, 2006.

Wendell L. Meyer,

Assistant Division Administrator, Topeka, Kansas.

[FR Doc. 06–3376 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, U.S. Route 20, Galena to Freeport in JoDaviess and Stephenson Counties, State of Illinois. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 10, 2006. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Norman R. Stoner, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703–4514; Office Hours: 7:30 a.m.–4:15 p.m.; Telephone: (217) 492–4640; E-mail Address: *Norman.Stoner@fhwa.dot.gov.* You may also contact Mr. Gregory L. Mounts, Illinois Department of Transportation, Deputy Director, Region Two Engineer, 819 Depot Avenue, Dixon, Illinois 61021; Office Hours: 8 a.m.–4:30 p.m.; Telephone: (815) 284–2271; E-mail Address: *MountsGL@dot.il.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Illinois: U.S. Route 20 from Galena to Freeport is a principal route in northwestern Illinois having national, state, regional, and local importance. This corridor is part of the National Highway System. The route has high existing and forecasted traffic volumes including trucks, high crash rates, and substandard capacity and level of service. The Selected Alternative will be a 78.8 km (49.7 mi) long, four-lane freeway with grade separations at all intersecting roadways requiring approximately 1,127 hectares (2,784 acres) of new right-of-way. It will begin northwest of Galena near the existing intersection of IL Route 84 and U.S. Route 20, proceed to the north and east of Galena, south of the Galena Territory, along the north side of Tapley Woods, north of Elizabeth and Woodbine, north of Stockton and south of Lena, and end northwest of Freeport, tying into the western end of the U.S. Route 20 Freeport Bypass. Except for the termini, which tie in along the existing U.S. Route 20, the entire proposed freeway would be on new alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on November 16, 2004, in the FHWA Record of Decision (ROD) issued on September 22, 2005, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Illinois Department of Transportation at the addresses provided above. The FHWA FEIS can be viewed and downloaded from the project Web site at *http://www.dot.il.gov/desenv/env/html* or hard copies of the FHWA FEIS and the ROD are available upon request.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).
8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: April 4, 2006.

Norman R. Stoner,

Division Administrator, FWHA, Illinois Division, Springfield, Illinois.

[FR Doc. 06–3374 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–23638]

Highway Performance Monitoring System—Reassessment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is initiating a reassessment of the Highway Performance Monitoring System (HPMS), which is a national highway transportation system database maintained and used by the FHWA. This notice requests public comment on issues to be reviewed as part of the reassessment. The FHWA working papers developed during the conduct of this reassessment will be placed in the docket for review and comment.

DATES: This docket will remain open until the reassessment is complete. The anticipated completion date is September 30, 2007. However, in order for comments to be considered in the early stages of the reassessment, comments should be submitted on or before June 9, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dms.dot.gov/submit,* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted 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 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. David Winter, Highway System Performance Division, Office of Highway Information, (202) 366–0175, *David.Winter@fhwa.dot.gov;* or Janet Myers, Office of the Chief Counsel, (202) 366–2019, *Janet.Myers@fhwa.dot.gov;* Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this notice may be downloaded from the Office of the **Federal Register's** home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in a **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov.*

Background

The HPMS was developed in 1978 as a national highway transportation system database. The HPMS replaced numerous annual State data reports and biennial special studies conducted by each State for the FHWA. The FHWA used data from those reports and biennial special studies, and subsequently from HPMS, in reports to Congress pursuant to title 23, U.S.C., section 307 (current statutory provisions relating to the FHWA's biennial Conditions and Performance Reports are contained in 23, U.S.C., section 502(h)). The data gathered in HPMS also are used for a variety of FHWA functions, including apportionment of Federal-aid Highway Funds to individual States and assessment of changes in highway system performance.

A major purpose of the HPMS always has been to provide data that reflect the extent, condition, performance, use, and operating characteristics of the Nation's highways. In order to meet this primary objective, the HPMS has gone through an evolutionary process that has recognized the changing needs for accurate and timely data. For the most part, changes to the HPMS over its nearly 30-year life reflect adjustments that respond to legislative and other changes in the the Federal-aid highway program.

The HPMS was originally implemented as a national sample-based monitoring system. The sample data was supplemented with area-wide mileage, travel, and other data as a means to provide control total information and for other analytical purposes. In 1980, the HPMS was merged with the Mileage Facilities Reporting System (MFRS), which was a basic inventory system that included facility mileage, travel, and accident statistics. After the HPMS and MFRS

systems were merged, a single system evolved to include the universe data attributes of the MFRS and the sample and area-wide data attributes of the original HPMS.

In 1988, the HPMS was enhanced with the addition of detailed pavement data, including International Roughness Index (IRI) measurements of pavement roughness. The HPMS was revised again in 1993 to address changes in the FHWA analysis and simulation models, including the shift to a geographic information system (GIS) environment; the effects of the 1990 Census; the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914); the Clean Air Act Amendments of 1990 (Pub. L. 101–549, 104 Stat. 2399); and the Environmental Protection Agency (EPA) requirements concerning vehicle miles of travel (VMT) tracking data in air quality non-attainment areas (See Section 187, VMT Forecasting and Tracking Guidance, 57 FR 9549 (March 19, 1992)). The 1993 revision of the HPMS added nearly a dozen universal data items to be collected for the National Highway System (NHS) and other principal arterial highways. The amount of sample traffic data for urbanized air quality non-attainment areas was increased, as were the percent truck data requirements. Several pavement data items were deleted in their entirety, as were sample data items for rural minor collectors.

In 1999, the FHWA reassessed the HPMS. The final report from that reassessment is available online at *http://www.fhwa.dot.gov/policy/ohpi/hpms/hpmspubs.htm.* As a result of the 1999 reassessment, the FHWA made substantial changes to the number and detail of the data items in HPMS. The FHWA eliminated 15 data items and changed 21 others, thereby eliminating 90 reported detail lines and adding one new item. Most notably, to eliminate duplication with the National Highway Traffic Safety Administration's Fatality Analysis Reporting System (FARS) database, the reporting of fatal and injury crash data provided by the States on a summary basis by functional system was discontinued. Through the 1999 reassessment, the HPMS was positioned to maximize the use of new technologies for collecting and reporting data.

In its current configuration, the HPMS includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional road systems, and area-wide summary information for urbanized, small urban, and rural areas.

Reassessment Purpose

The purpose of the reassessment is to review the HPMS in light of contemporary issues and anticipated future needs. The reassessment will determine what changes, if any, are necessary at this time. The recent reauthorization of the Federal-aid highway program, as contained in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), provides an appropriate opportunity and framework for the FHWA to undertake a reassessment of the HPMS. Other reasons to reexamine the HPMS are further advancements in technology, requirements of the Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62, 107 Stat. 285), changes to State data requirements, increased use of performance measures, and changes in the various uses of HPMS data by government, academia, and the private sector.

Reassessment Plan

The FHWA will undertake an open approach to complete the reassessment. Major emphasis will be directed towards determining the data needs of FHWA's partners, stakeholders, and customers, the various uses of the existing HPMS, and the ability of data providers to support these data needs. The parameters of the reassessment will include critical issues related to the future form and direction of the HPMS. Issues on which the FHWA will solicit comment will include, but not be limited to, the following:

(a) The purpose, scope and objectives of the existing HPMS;

(b) Uses of HPMS data;

(c) Better integration of the HPMS and the existing State and local data processes; and

(d) More effective collection of HPMS data.

The FHWA invites comments on these, or other appropriate issues for consideration in the reassessment.

As a part of the reassessment, the FHWA will conduct a series of workshops, geographically coordinated throughout the country, at which interested parties will have the opportunity to provide input and explore potential alternatives for a future HPMS. The FHWA will post specific workshop dates and locations online at *http://www.fhwa.dot.gov/policy/ohpi/hpms/index.htm.* Soon after the workshops take place, the FHWA will place the workshop minutes and other supporting documents in the docket noted above for review and comment.

To achieve the maximum opportunity for participation in this reassessment of the HPMS by those customers, stakeholders, partners, and other interests that are impacted by the HPMS, significant effort will be made to facilitate public outreach and involvement. In addition to the workshops described above, mechanisms that are being provided for this effort include, but are not limited to, the following elements:

(a) Participation of the general public and interest groups through a review and comment process on working documents, as well as interim and final products, submitted pursuant to this notice and docket;

(b) Participation of the general public and interest groups through attendance at national/regional meeting(s);

(c) Participation of the transportation community at large through the Transportation Research Board (TRB), which is a division of the National Research Council of the National Academies and is responsible for promoting innovation and progress in transportation through research;

(d) Participation of States through the American Association of State Highway and Transportation Officials (AASHTO), which is a nonprofit nonpartisan association representing highway and transportation departments in the 50 States, the District of Columbia, and Puerto Rico;

(e) Participation of the metropolitan planning organizations (MPOs) through the Association of Metropolitan Planning Organizations (AMPO);

(f) Participation of organizations which represent non-government users of the HPMS data; and,

(g) Participation of technical experts from the following entities: States; FHWA; other Federal agencies such as Research & Innovative Technology Administration (RITA) and National Highway Traffic Safety Administration (NHTSA); AASHTO staff; AASHTO Standing Committee on Planning (SCOP); Metropolitan Planning Organizations; and academia. These technical experts will have the opportunity to attend meetings in order to identify present and future data needs for HPMS users and to provide input on balancing needs with resource requirements. The meetings are designed to gather facts, information and individual advice or recommendations. Comments on the elements of the outreach program for the reassessment are invited.

The FHWA will prepare recommendations for the HPMS, taking

into consideration comments made directly through the docket, raised at the various workshops, and collected through other outreach efforts. The FHWA expects to complete its recommendations by February 28, 2007, and publish them in the **Federal Register** for public review and comment.

The FHWA is initiating this reassessment with the intention of maximizing public input and providing as much flexibility as possible in meeting future HPMS data needs. However, there are a number of principal objectives that will guide the outcome of the reassessment effort. First, the future HPMS will need to support any changes to the FHWA's stewardship and oversight responsibilities that result from SAFETEA–LU. In addition, the future HPMS will need to continue to support various Congressional requirements, including the Conditions and Performance Reports and those imposed by the GPRA. Finally, the outcome of the reassessment process must recognize the national interest in the NHS and the need to continue to assess highway conditions and performance at the national level.

Authority: 23 U.S.C. 502; 23 CFR 1.5.

Issued on: April 3, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

[FR Doc. E6–5139 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24624]

Agency Information Collection Activities; Request for Comment; Renewal of an Existing Information Collection: Annual and Quarterly Reports of Class I Motor Carriers of Passengers (Formerly OMB 2139–0003)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that the Federal Motor Carrier Safety Administration (FMCSA) intends to submit to the Office of Management and Budget (OMB) its request to renew a currently-approved information collection for Class I Motor Carriers of Passengers, Form MP–1, Annual and Quarterly Reports. This information collection is necessary to ensure that motor carriers comply with financial and operating statistics requirements at 49 CFR part 1420. This notice is required by the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments must be submitted on or before June 9, 2006.

ADDRESSES: All comments should reference Docket No. FMCSA–2006–24624. You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493–2251; or submit electronically at *http://dms.dot.gov.*

You may examine and copy all comments received at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you desire your comment to be acknowledged, you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Proctor, Federal Motor Carrier Safety Administration Office of Research and Analysis, Washington, DC 20590, phone (202) 366–2998, FAX (202) 366–3518, e-mail *Toni.Proctor@fmcsa.dot.gov,* Office hours are from 8 a.m. to 4 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: For-hire Class I motor carriers of passengers (including interstate and intrastate) [1] are required to file Motor Carrier Quarterly and Annual Reports (Form MP–1) that provide financial and operating data (see 49 U.S.C. 14123). The agency uses this information to assess the health of the industry and identify industry changes that may affect national transportation policy. The data also show company financial stability and traffic patterns. Motor carriers of passengers required to comply with the regulations are classified on the basis of their annual gross carrier operating revenues. Under the F&OS program the FMCSA collects balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data.

The data and information collected is made publicly available as prescribed in 49 CFR part 1420. The regulations were formerly administered by the Interstate Commerce Commission (ICC), the Interstate Commerce Act, 49 U.S.C. 11145, 49 U.S.C. 11343(d)(1) and the Bus Regulatory Act of 1982 and later transferred to the U.S. Department of Transportation on January 1, 1996, by the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat.803 (Dec. 29, 1995)), now codified at 49 U.S.C. 14123. The Secretary of Transportation (Secretary) transferred the authority to administer the F&OS program to the former Bureau of Transportation Statistics on September 30, 1998 (63 FR 52192). Pursuant to this authority, the BTS, now part of the Research and Innovative Technology Administration (RITA), became the responsible DOT modal administration for implementing the F&OS program and requirements at 49 CFR part 1420. On September 29, 2004, the Secretary transferred the responsibility for the F&OS program from BTS, to FMCSA (69 FR 51009). FMCSA plans to publish a final rule in the future to transfer and re-designate the F&OS program reporting requirements at part 1420, title 49 of the CFR, from BTS (now RITA) to FMCSA.

Type of Information Collection Request: Renewal of an existing information collection.

Title of Information Collection: Annual and Quarterly Report of Class I Motor Carriers. of Passengers (formerly OMB 2139–0004).

OMB Control Number: 2126–0031.

Respondents: Class I Motor Carriers of Passengers.

Frequency: Quarterly and annually.

Estimated Annual Number of Respondents: 26.

Estimated Annual Number of Responses: 130.

Estimated Average Burden per Response: 1.5 hours per response.

Estimated Total Annual Burden Hours: 195 hours [130 responses × 1.5 hours per response = 195 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to

[1] For purposes of the Financial & Operating Statistics (F&OS) program, passenger carriers are classified into the following two groups: (1) Class I carriers are those having average annual gross transportation operating revenues (including interstate and intrastate) of $5 million or more from passenger motor carrier operations after applying the revenue deflator formula in the Note of section 1420.3; (2) Class II passenger carriers are those having average annual gross transportation operating revenues (including interstate and intrastate) of less than $5 million from passenger motor carrier operations after applying the revenue deflator formula as shown in Note A of section 1420.3. Only Class I carriers of passengers are required to file Annual and Quarterly Report Form MP–1, but Class II passenger carriers must notify the agency when there is a change in their classification or their revenues exceed the Class II limit.

enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued on: April 4, 2006.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. E6–5209 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20930 (PDA–31(F))]

District of Columbia Requirements for Highway Routing of Certain Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (DOT).

ACTION: Notice of administrative determination of preemption.

Applicant: American Trucking Associations, Inc.

Local Laws Affected: Terrorism Prevention in Hazardous Materials Transportation Act of 2005; Terrorism Prevention in Hazardous Materials Transportation Congressional Review Emergency Act of 2006.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 et seq., and FMCSA regulations at 49 CFR part 397.

SUMMARY: Federal hazardous material transportation law preempts the highway routing requirements in the Terrorism Prevention in Hazardous Materials Transportation Act of 2005 [D.C. Act 16–266, Jan. 26, 2006] and the Terrorism Prevention in Hazardous Materials Transportation Congressional Review Emergency Act of 2006 [D.C. Act 16–325, Mar. 23, 2006].

FOR FURTHER INFORMATION CONTACT: Mr. Brian Yonish, Office of Chief Counsel (Tel. No. 202–366–0834); Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

This proceeding is based on the March 14, 2005, application (''Application'') of the American Trucking Associations, Inc. (''ATA'') for an administrative determination that Federal hazardous material transportation law, 49 U.S.C. 5101 et seq., and FMCSA regulations at 49 CFR part 397 preempt highway routing requirements under the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 [D.C. Act 16–43, Feb. 15, 2005] (''Emergency DC Act''). Since the time that ATA filed its Application, the Emergency DC Act has expired. However, the Council of the District of Columbia (''D.C. Council'') has since introduced and enacted a series of acts with substantively identical language. The Terrorism Prevention in Hazardous Materials Transportation Congressional Review Emergency Act of 2006 [D.C. Act 16–325, Mar. 23, 2006] will expire June 21, 2006. The Terrorism Prevention in Hazardous Materials Transportation Act of 2005 [D.C. Act 16–266, Jan. 26, 2006] was transmitted to the United States Congress on February 6, 2006, for review.[1] Because the relevant portions of the successive acts are substantively identical, these acts will hereinafter collectively be referred to as the ''DC Act.''

The DC Act applies to the transportation of certain hazardous materials within 2.2 miles of the United States Capitol Building. The DC Act refers to this zone as the ''Capitol Exclusion Zone.''

In the Application, ATA challenges the following two sections of the DC Act:

(1) Section 4 of the DC Act, titled ''Prohibition on shipments of hazardous materials.'' Section 4 makes it illegal, except in cases of emergency, to transport in the Capitol Exclusion Zone without a permit any of the materials in the list below. Section 4 also makes it illegal in the Capitol Exclusion Zone, without a permit, to operate a vehicle which is capable of containing, and has exterior placarding or other markings indicating it contains, any of the listed materials:

(a) Explosives of Class 1, Division 1.1, or Class 1, Division 1.2, as designated in 49 CFR 173.2, in a quantity greater than 500 kilograms;

(b) Flammable gasses of Class 2, Division 2.1, as designated in 49 CFR 173.2, in a quantity greater than 10,000 liters;

(c) Poisonous gasses of Class 2, Division 2.3, as designated in 49 CFR 173.2, in a quantity greater than 500 liters, and belonging to Hazard Zones A or B, as defined in 49 CFR 173.116; and

(d) Poisonous materials, other than gasses, of Class 6, Division 6.1, in a quantity greater than 1,000 kilograms, and belonging to Hazard Zones A or B, as defined in 49 CFR 173.133.

Section 3 of the DC Act defines an ''emergency'' as an unanticipated, temporary situation that threatens the immediate safety of individuals or property, as determined by the District of Columbia Department of Transportation.

(2) Section 5 of the DC Act, titled ''Permits.'' Section 5 of the DC Act enables the District of Columbia Department of Transportation to issue a permit authorizing transportation of the materials listed in Section 4 if there is no ''practical alternative route''—defined in Section 3 of the DC Act as a route which lies entirely outside the Capitol Exclusion Zone and whose use would not make shipment of the hazardous materials cost-prohibitive. The DC Act provides that the permit may require the adoption of safety measures, including time-of-day restrictions. Section 5 authorizes the District of Columbia Department of Transportation to collect fees for the permits, but any permit fees are not to exceed the cost of implementing and enforcing the DC Act.

In its Application, ATA states the DC Act was enacted without regard to the procedures set forth in the Federal hazardous materials routing regulations found in 49 CFR part 397, subpart C. Specifically, ATA asserts the District of Columbia failed to provide the requisite notice and comment period as required by 49 CFR 397.71(b)(2) and failed to hold a public hearing. ATA further states the District of Columbia failed to consult with officials of neighboring jurisdictions as required by 49 CFR 397.71(b)(3). Additionally, ATA asserts the District of Columbia did not engage in the risk analysis required by 49 CFR 397.71(b)(4). Lastly, ATA states the D.C. Council's testimony and findings include no discussion or analysis of population density or special populations in the area outside the Capitol Exclusion Zone, characteristics of the alternative highways to be used, an analysis of the number of shipments that would be impacted by the DC Act, an analysis of the impact upon emergency response capabilities, consideration of comments and concerns of affected persons, impact

[1] Except for emergency acts and certain enumerated types of legislation, all acts passed by the D.C. Council must be transmitted to the U.S. Congress for a specified review period. The review period for acts that do not relate to the criminal code is 30 days in which Congress is in session. After this review period, the act takes effect unless Congress enacts a joint resolution disapproving the act. D.C. Code § 1–206.02.

upon commerce, delays in transportation, or traffic conditions, including motor vehicle accident experience. ATA points out FMCSA's routing regulations relating to non-radioactive hazardous materials require analysis of these factors prior to enacting a routing restriction. See 49 CFR 397.71(b)(9).

Notice of ATA's filing of its Application was published in the **Federal Register** on April 20, 2005, and interested parties were invited to submit comments. 70 FR 20630. Comments were submitted by Yellow Roadway Corporation (''Yellow Roadway''), the National Propane Gas Association (''NPGA''), and the National Tank Truck Carriers, Inc. (''NTTC''). The District of Columbia submitted a reply. ATA then filed rebuttal comments.

On December 21, 2005, FMCSA published a **Federal Register** notice announcing a delay in issuing a determination on ATA's Application in order to allow time for fact-finding and an appropriate consideration of the issues. 70 FR 75858.

II. Federal Preemption

Title 49 U.S.C. 5125 includes several preemption provisions. Relevant to this proceeding is section 5125(c)(1), which allows a State or Indian tribe to establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with 49 U.S.C. 5112(b). The District of Columbia is considered a ''State'' for purposes of hazardous materials transportation law. 49 U.S.C. 5102(11).

Section 5112(b) requires the Secretary of Transportation (the Secretary), in consultation with the States, to prescribe by regulation standards for the States and Indian tribes to follow when designating specific highway routes for transportation of hazardous materials. The Secretary has delegated to FMCSA authority and responsibility for highway routing of hazardous materials. See 49 CFR 1.73(d)(2).

The standards required by 49 U.S.C. 5112(b) for establishing highway routing requirements for non-radioactive hazardous materials are set forth in 49 CFR part 397, subpart C, and apply to any designations established or modified on or after November 14, 1994. 49 CFR 397.69(a). A State or Indian tribe must follow FMCSA standards when establishing highway routing requirements for hazardous materials.

The preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In section 2 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) [Pub. L. 101–615, November 16, 1990, 104 Stat. 3244], Congress underscored the need for uniform regulations relating to transportation of hazardous materials:

> (3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements;
>
> (4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable;
>
> (5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.''

The Committee on Commerce, Science, and Transportation, when reporting in 1990 on the bill to amend the Hazardous Materials Transportation Act (HMTA) [Pub. L. 93–633 section 112(a), 88 Stat. 2161 (1975)], stated ''The original intent of HMTA was to authorize [DOT] with the regulatory and enforcement authority to protect the public against the risks imposed by all forms of hazardous materials transportation, and to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations.'' S. Rep. No. 101–449 (1990), reprinted in 1990 U.S.C.C.A.N. 4595, 4596. A Federal Court of Appeals has indicated uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments expanding the original preemption provisions.[2]

III. Preemption Determinations

Title 49 U.S.C. 5125(d) provides for issuance of binding preemption determinations by the Secretary. The Secretary has delegated to FMCSA authority to make determinations of preemption concerning highway routing of hazardous materials. See 49 CFR 1.73(d)(2). Any directly affected person may apply for a determination whether a requirement of a State, political subdivision or Indian tribe is preempted. 49 CFR 397.205(a).

FMCSA's preemption determinations are governed by procedures under 49 CFR part 397, subpart E, and 49 U.S.C. 5125. After the preemption determination is issued, aggrieved persons have 20 days to file a petition for reconsideration. See 49 CFR 397.211(c) and 397.223. Any party to the proceeding may seek judicial review in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the circuit in which the person resides or has its principal place of business. 49 U.S.C. 5127(a).

In making preemption determinations under 49 U.S.C. 5125(d), FMCSA is guided by the principles and policies set forth in Executive Order 13132, titled ''Federalism.'' 64 FR 43255 (Aug. 4, 1999). Section 4(a) of Executive Order 13132 directs agencies to construe a Federal statute to preempt State law only when the statute contains an express preemption provision, there is other clear evidence that Congress intended preemption of State law, or the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. Section 5125 includes express preemption provisions, which FMCSA has implemented through its regulations.

IV. Discussion

A. Summary of DC Act

The DC Act makes it illegal, except in cases of emergency, to transport in the Capitol Exclusion Zone without a permit certain quantities of hazardous materials specified in Section 4 of the DC Act. The specific quantities of the banned materials are listed in Section I of this preemption determination. Section 4 of the DC Act also makes it illegal in the Capitol Exclusion Zone, without a permit, to operate a vehicle which is capable of containing, and has exterior placarding or other markings indicating it contains, the specified quantities of the listed materials.

Section 3 of the DC Act defines an ''emergency'' as an unanticipated, temporary situation that threatens the immediate safety of individuals or property, as determined by the District of Columbia Department of Transportation.

Section 5 of the DC Act enables the District of Columbia Department of Transportation to issue a permit

[2] *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. [Pub. L. 103–272, 108 Stat. 745].

authorizing transport of the otherwise prohibited materials listed in Section 4 if there is no ''practical alternative route''—defined in Section 3 of the DC Act as a route which lies entirely outside the Capitol Exclusion Zone and whose use would not make shipment of the hazardous materials cost-prohibitive. Section 5 provides that the permit may require the adoption of safety measures, including time-of-day restrictions. Section 5 authorizes the District of Columbia Department of Transportation to collect fees for the permits. Any permit fees are not to exceed the cost of implementing and enforcing the DC Act.

B. Summary of Regulatory Requirements

Because the District of Columbia established routing restrictions in the DC Act, the District of Columbia must comply with FMCSA's standards in 49 CFR part 397, subpart C. 49 CFR 397.69(a). These standards, issued pursuant to 49 U.S.C. 5112(b), specify that there must be:

—A finding by the State that the highway routing designation ''enhances public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation.'' 49 CFR 397.71(b)(1).

—Notice to the public of the proposed routing designation, a 30-day period for the public to submit comments, and consideration of whether to hold a public hearing (with advance notice to the public). 49 CFR 397.71(b)(2).

—Notice to and consultation with ''officials of affected political subdivisions, States and Indian tribes, and any other affected parties,'' and completion of the routing designation process within 18 months of the notice to the public or notice to other affected jurisdictions. 49 CFR 397.71(b)(3), (6).

—Assurance of ''through highway routing * * * between adjacent areas.'' 49 CFR 397.71(b)(4).

—No unreasonable burden on commerce. 49 CFR 397.71(b)(5).

— Agreement with the proposed routing by all affected States within 60 days of notice, or alternatively, approval by the Administrator pursuant to dispute resolution procedures under 49 CFR 397.75. 49 CFR 397.71(b)(5).

—Reasonable access for vehicles to reach terminals, pickup and delivery points, loading and unloading locations, and facilities for food, fuel, repairs, rest, and safe havens. 49 CFR 397.71(b)(7).

—Consideration of specific factors, including population density, emergency response capabilities, continuity of routes, alternative routes, effects on commerce, potential delays in transportation, and congestion and accident history. 49 CFR 397.71(b)(9).

In addition, the State must (1) ensure that its political subdivisions comply with FMCSA's standards and procedures (49 CFR 397.71(b)(8)); (2) make information on highway routing designations available to the public ''in the form of maps, lists, road signs or some combination thereof'' (49 CFR 397.73(a)); and (3) report highway routing designations to FMCSA within 60 days after establishment (49 CFR 397.73(b)).

C. Application of Regulatory Requirements to the DC Act

ATA states in its Application that the District of Columbia did not comply with the public notice and comment period required by 49 CFR 397.71(b)(2). ATA further alleges the District of Columbia did not consult with affected neighboring jurisdictions as required by 49 CFR 397.71(b)(3) and did not receive the agreement of the State of Maryland or the Commonwealth of Virginia as required by 49 CFR 397.71(b)(5). Additionally, ATA states the District of Columbia did not engage in the risk analysis required by 49 CFR 397.71(b)(4).

ATA further maintains that the D.C. Council's findings and the testimony of the D.C. Council members during the session in which the DC Act was enacted contain no discussion or analysis of the factors required by 49 CFR 397.71(b)(9), such as population density, characteristics of alternative highways to be used, analysis of the number of shipments impacted by the DC Act, consideration of comments and concerns of affected persons, impact upon commerce, delays in transportation, and traffic conditions, including motor vehicle accident experience.

In its comments, Yellow Roadway expresses concern that if the DC Act goes unchallenged, other cities and local governments might implement similar measures that would adversely impact the safe and efficient transportation of hazardous material. Yellow Roadway points out the additional miles associated with rerouting increases exposure, driving time and would not ensure an increase in safety or security in the routes chosen. Moreover, Yellow Roadway states a requirement to adhere to different rules and routing requirements in different communities would be confusing, extremely costly, and administratively burdensome and would adversely impact the safe and secure transportation of hazardous materials.

NTTC asserts the DC Act attempts to shift risk from the District of Columbia to other jurisdictions. NTTC further states that Federal law allows the District of Columbia to seek a legal means of addressing a routing scheme.

NPGA notes that the Federal regulations were developed to address situations where localities shift hazardous materials traffic from one jurisdiction to another. NPGA further states there must be an opportunity for full participation by the motor carriers and the neighboring affected communities when a locality seeks to establish a routing restriction. NPGA also filed a separate application for preemption with the Pipeline and Hazardous Materials Safety Administration (PHMSA) in which it asked PHMSA to find that Federal hazardous materials law preempts the DC Act in its entirety. Because the issues raised by NPGA in its application concern the DC Act and because the issues overlap with the issues raised by ATA in its Application, NPGA's application is being considered in the context of the ATA Application and is in essence treated as a comment filed in the instant proceeding. NPGA states in its application that the DC Act contravenes the concept of national hazardous materials regulatory uniformity. NPGA expresses concerns that the actions of individual jurisdictions, with thoughts of only their own constituents and not a broader regional or national view, will fragment the unified system into balkanized pockets of differing rules and restrictions.

In its comments replying to ATA's Application, the District of Columbia states that it promulgated emergency rules implementing the DC Act, and those rules expressly exempt application of the DC Act to non-railroad carriers until certain conditions are met. In light of the exemption contained in the regulations, the District of Columbia argues the issues raised by ATA's Application are not yet ripe. Specifically, the District of Columbia states that the emergency rules implementing the DC Act exclude carriers who own motor vehicles from the routing requirements until thirty days after (a) a court or agency rules the DC Act is not preempted by Federal hazardous materials law; (b) the Director of the District of Columbia Department of Transportation certifies that the list of criteria set forth in 49 CFR 397.71 have been met; or (c) FMCSA issues a waiver of preemption pursuant to 49 CFR 397.213 and 49 CFR 397.219.

Consequently, the District of Columbia requests FMCSA to deny ATA's Application. In the alternative, the District of Columbia asks FMCSA to stay a decision on ATA's Application until the U.S. District Court for the District of Columbia issues an opinion in *CSX Transportation, Inc.* v. *Williams* (''CSX'') [3] relating to preemption, or until one of the three conditions listed in the District of Columbia's rules is satisfied.

The District of Columbia's response to NPGA's application is similar to its response to ATA's Application. Specifically, the District of Columbia states that because the emergency rules implementing the DC Act expressly exempt application of the DC Act to non-railroad carriers until certain conditions are met, the issues raised in NPGA's application are not yet ripe. The District of Columbia states that its rules provide that the routing requirements will not apply to motor carriers until thirty days after one of three conditions have been met, as summarized above in the District of Columbia's response to ATA's Application. The District of Columbia requests FMCSA to deny NPGA's application, or in the alternative, to stay a decision on the application until the United States District Court for the District of Columbia resolves the claims regarding preemption in the CSX proceeding, or until one of the three conditions is satisfied.

ATA filed rebuttal comments responding to the District of Columbia's comments. ATA states that the District of Columbia did not demonstrate in its rebuttal comments that it complied with Federal hazardous materials routing requirements, but instead the District of Columbia opposed ATA's Application on the grounds that the District of Columbia has temporarily delayed the implementation of its routing restrictions with respect to motor carriers. ATA notes that its Application for a preemption determination challenges the DC Act, and not the implementing regulations. ATA states that the routing restriction set forth in the DC Act is self-implementing and that the subsequently issued regulations do not cure the procedural defects in enacting the DC Act.

In its reply, the District of Columbia does not dispute the assertions made by ATA. Significantly, the District of Columbia does not assert that it followed the Federal hazardous materials requirements as set forth in 49 U.S.C. 5112 and 49 CFR part 397. See Morrisville, PA Requirements for Transportation of ''Dangerous Waste,'' 66 FR 37260, 37264 (July 17, 2001) (finding that Borough of Morrisville did not comply with FMCSA's standards in 49 CFR part 397 after Borough failed to dispute commenters' assertions that the Borough adopted a routing limitation without notice and opportunity to comment). Instead, the District of Columbia argues the issue of preemption is not yet ripe because the regulations implementing the DC Act exempt application of the DC Act to non-railroad carriers until certain conditions are met. The District of Columbia failed to submit any evidence demonstrating compliance with the Federal regulatory requirements in establishing the routing designation in the DC Act.

To additionally develop the factual record in this proceeding, on November 22, 2005, FMCSA sent letters to the Maryland State Highway Administration and the Virginia Department of Transportation asking whether the District of Columbia provided them written notice of the District of Columbia's proposal to prohibit the transportation of certain hazardous materials in the Capitol Exclusion Zone, as is required by 49 CFR 397.71(b)(3). Specifically, at least 60 days prior to establishing a routing designation, the District of Columbia was required by regulation to ''provide notice, in writing, of the proposed routing designation to officials responsible for highway routing in all other affected States or Indian tribes.'' 49 CFR 397.71(b)(3)(i). Moreover, any such routing designation shall be established, maintained, or enforced only if the routing designation is ''agreed to by the affected State or Indian tribe within 60 days of receipt of the notice'' or the routing designation is approved by the FMCSA Administrator pursuant to dispute resolution procedures. 49 CFR 397.71(b)(5)(ii).

On December 7, 2005, the Maryland State Highway Administration responded to FMCSA's letter, explaining that it was unable to locate any documentation indicating that the District of Columbia sent any such notice to the State of Maryland and likewise was unable to locate documentation indicating that the State of Maryland sent any reply to the District of Columbia regarding the routing designations contained in the DC Act. On January 12, 2006, the Virginia Department of Transportation responded that it similarly was unaware of any notification from the District of Columbia regarding the routing restrictions at issue in this proceeding. Consequently, FMCSA finds that the District of Columbia did not comply with the requirement in 49 CFR 397.71(b)(3) to provide notice to and consult with officials of affected States. Further, there is no evidence in the record indicating the District of Columbia complied with any of the requirements contained in 49 CFR part 397, subpart C, and the District of Columbia has offered none.

The District of Columbia failed to comply with the statutory requirements in 49 U.S.C. 5112 and FMCSA's standards in 49 CFR part 397 when it enacted the DC Act. The District of Columbia argues the issue of preemption is not yet ripe because the regulations implementing the DC Act do not apply to motor carriers until certain conditions are met.

As discussed below, the issues presented by ATA in its Application are ripe. As an initial matter, however, it should be noted that the ripeness doctrine derives from Article III of the U.S. Constitution, which places limitations on federal judicial powers that are inapplicable to administrative agencies.[4] Courts have held that an administrative agency is not subject to Article III and related prudential limitations, and accordingly may issue declaratory orders ''in mere anticipation of a controversy or simply to resolve an uncertainty.'' [5] Thus, while an administrative agency may, where appropriate, exercise its discretion and decline to address a matter before it on ripeness grounds, it is not compelled to do so under the Constitution.

The District of Columbia argues the issues raised by ATA's Application are not yet ripe because the regulations implementing the DC Act do not apply to motor carriers until certain conditions are met. However, the District of Columbia's promulgation of regulations excluding motor vehicle traffic from the routing restrictions until specified criteria are met does not salvage the District of Columbia's failure to comply with Federal standards when it established in the DC Act a highway routing designation over which certain hazardous materials may not be transported. 49 CFR 397.71. As noted by ATA in its rebuttal comments, its Application challenges the DC Act itself and not the implementing regulations.

[3] *CSX Transportation, Inc.* v. *Williams*, No. 05cv00338 (D.D.C. filed Feb. 16, 2005) (involving a complaint filed by a railroad company seeking a declaration that the DC Act is invalid).

[4] *Metropolitan Council of N.A.A.C.P. Branches* v. *F.C.C.*, 46 F.3d 1154, 1161 (D.C. Cir. 1995) (citing *Chavez* v. *Director, Office of Workers Compensation Programs*, 961 F.2d 1409, 1414 (9th Cir.1992)).

[5] *Pfizer Inc.* v. *Shalala*, 182 F.3d 975, 980 (D.C. Cir. 1999) (citing Metropolitan Council of NAACP Branches, 46 F.3d at 1161).

ATA correctly points out in its rebuttal comments that the District of Columbia's subsequently issued regulations do not cure the procedural defects in enacting the DC Act.

Federal hazardous material law on preemption is triggered when a highway routing designation over which hazardous material may or may not be transported is established, maintained, or enforced. 49 U.S.C. 5125(c). Similarly, FMCSA's regulations require compliance with the highway routing standards in 49 CFR 397.71 when a state establishes or modifies a highway routing designation and maintains or enforces such designation. 49 CFR 397.69. The District of Columbia has established [6] a highway routing designation through the enactment of the DC Act and has maintained [7] that highway routing designation by keeping the DC Act current. As such, the District of Columbia was required to comply with the statutory requirements in 49 U.S.C. 5112 and FMCSA's standards in 49 CFR part 397 with regard to each enactment. A highway routing designation made by the District of Columbia that does not comply with the requirements of part 397 is preempted. 49 CFR 397.69(b). The District of Columbia has attempted to unilaterally exempt itself from this obligation by adopting rules that would avoid FMCSA's regulatory requirements until the rule is literally applied to carriers. That is too late and not the intent of FMCSA's regulations. Consequently, FMCSA rejects the District of Columbia's ripeness argument.

Accordingly, the entire DC Act as it applies to motor carriers is preempted by 49 U.S.C. 5125(c)(1) because the District of Columbia failed to comply with FMCSA's standards for establishing highway routing designations issued pursuant to 49 U.S.C. 5112(b) and 49 CFR part 397, subpart C.

V. Ruling

Federal hazardous material transportation law preempts all provisions of the DC Act as it applies to motor carriers.

VI. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 397.223(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek judicial review in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the circuit in which the person resides or has its principal place of business. 49 U.S.C. 5127(a).

This decision will become the final decision of FMCSA 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this determination is filed within 20 days of publication in the **Federal Register**, the action by FMCSA on the petition for reconsideration will be the final decision. 49 CFR 397.223(d).

Issued in Washington, DC, on April 3, 2006.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. E6–5137 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–EX–P

[6] Merriam Webster's dictionary defines ''establish'' as ''to institute (as a law) permanently by enactment or agreement.'' Merriam Webster's Collegiate Dictionary 397 (10th ed. 1997).

[7] ''Maintain'' is defined as ''to keep in an existing state.'' Merriam Webster's Collegiate Dictionary 702 (10th ed. 1997).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24005]

Hours of Service of Drivers: Institute of Makers of Explosives (IME); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for exemption from a requirement in its hours-of-service (HOS) rules from the Institute of Makers of Explosives (IME). IME requests that a member of a driving team who is transporting hazardous materials requiring constant attendance in accordance with the Federal Motor Carrier Safety Regulations and who is using the sleeper berth be allowed to exit the sleeper berth for brief specified periods without being considered ''on duty.'' FMCSA requests public comment on IME's application for exemption.

DATES: Comments must be received on or before May 10, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket No. FMCSA–2006–24005] using any of the following methods:

- *Web Site: http://dmses.dot.gov/submit.* 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 number 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 to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want to be notified that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). This statement is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Division Chief, Driver and Carrier Operations Division (MC–PSD), Office of Bus and Truck Standards and Operations, phone (202) 366–4009, e-mail *MCPSD@fmcsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, June 9, 1998, 112 Stat. 107) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the motor carrier safety

regulations. On August 20, 2004, FMCSA published a final rule (69 FR 51589) on section 4007. Under the regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and it must provide an opportunity for public comment on the request.

FMCSA reviews the safety analyses and the public comments and determines whether granting the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). FMCSA's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If FMCSA denies the request, it must state the reason for doing so. If FMCSA grants the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

IME seeks by exemption to modify the HOS standard for determining whether a driver operating a property-carrying CMV in interstate commerce is on duty. The HOS rules require, among other provisions, a minimum of 10 hours of rest before the driver of a property-carrying CMV can begin a new duty period. A driver may obtain this rest in four ways: (1) By going off duty and remaining off duty for a single uninterrupted period of 10 or more hours, (2) by obtaining 10 or more consecutive hours of sleeper-berth time, (3) by obtaining a combination of consecutive periods of off-duty and sleeper-berth time totaling 10 or more hours, or (4) by obtaining the equivalent of at least 10 consecutive hours off duty. The *equivalent* can only be obtained by a combination of two separate periods of rest: (1) A period of at least 8 but less than 10 consecutive hours in a sleeper berth and (2) a separate period of at least 2 but less than 10 consecutive hours in a sleeper berth or off duty or a combination of sleeper-berth and off-duty time. These rules for the drivers of property-carrying CMVs (and their motor carrier employers) are prescribed by 49 CFR 395.1(g)(1).

Each of these four methods for obtaining sufficient rest to begin a new duty period is premised in whole or in part upon periods of rest (whether in the sleeper berth or off duty or a combination of the two) that are uninterrupted by on-duty time. The hours within a qualifying period cannot be interrupted by a period of time on duty or driving. The hours in the period must be consecutive in order to comply with the rule. If broken for a period of time, the calculation of consecutive hours ends at that point in time. If off-duty or sleeper-berth status is resumed, the calculation of a new period of rest begins at that point.

IME is applying for this exemption on behalf of drivers who are engaged in team operations, who are using the sleeper-berth provisions of 49 CFR 395.1(g)(1), and who are transporting hazardous materials requiring constant attendance in accordance with 49 CFR 397.5. The usual mode of operation of the team is that the drivers alternate between driving and resting in the sleeper berth of the tractor. Occasionally, circumstances may require the resting driver to perform on-duty tasks for a short period of time. Among these interruptions are roadside vehicle inspections, security checks, and attendance to the CMV while the on-duty driver leaves the immediate area.

Specifically, IME seeks ''* * * exemption from 49 CFR 395.1(g) to allow the off-duty team driver to provide attendance or to participate in security checks or safety inspections for brief periods of 30 minutes or less without triggering a change of duty status and the loss of accumulated sleeper berth time.'' (IME's Application for Exemption, dated November 8, 2005, page 3, paragraph 2).

A copy of IME's application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b) and 31136(e), FMCSA requests public comment on IME's application for exemption from 49 CFR 395.1(g). FMCSA will consider all comments received by close of business on May 10, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA will file comments received after the comment closing date in the public docket and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: April 3, 2006.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. E6–5140 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24375]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ASHLEY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24375 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels.

If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD 2006 24375. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001.

You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ASHLEY is:

Intended Use: ''Charter Boat.''

Geographic Region: Within 75 miles of New England and New York coastline.

Dated: April 3, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–5143 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24373]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BEAUDACIOUS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24373 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD 2006 24373. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BEAUDACIOUS is:

Intended Use: ''I intend to carry passengers only and occasionally do a little sportfishing that won't be sold commercially. Mostly intend to take people out for sailing excursions.''

Geographic Region: Inland and coastal waters in the following states: Alaska, Washington, Oregon, California, Hawaii, Texas, Louisiana, Mississippi, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Washington, DC, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and Maine.

Dated: April 3, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–5144 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24372]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel REEL FUN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24372 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD 2006 24372. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel REEL FUN is:

Intended Use: ''Guided sportfishing, hunting, wildlife viewing, and transportation (water taxi).''

Geographic Region: Kodiak Archaepelago.

Dated: April 3, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–5141 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006—24374]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel YACHT LADY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24374 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels.

If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006–24374. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel YACHT LADY is:

Intended Use: ''Luxury private and short term Charters.''

Geographic Region: Alaska to Mexico.

Dated: April 3, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–5145 Filed 4–7–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held on April 27–28, 2006, at the Mission Inn, 3649 Mission Inn Avenue, Riverside, California. On April 27, 2006, the meeting will begin at 8 a.m. and conclude at 3:45 p.m. On April 28, 2006, the meeting will begin at 8:30 a.m. and conclude at 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits.

On April 27, 2006, the Committee will receive updates on various National Cemetery Administration (NCA) issues, to include the impact of veteran demographics on NCA planning and the status of cemetery construction projects. On April 28, 2006, the Committee will tour Riverside National Cemetery and then reconvene at the Mission Inn for a business session in the afternoon, which will include discussions of Committee recommendations and future meeting sites.

Time will not be allocated for receiving oral presentations from the public. Any member of the public wishing to attend the meeting should contact Mr. Michael Nacincik, Designated Federal Officer, at (202) 273–5221. The Committee will accept written comments. Comments may be transmitted electronically to the Committee at *mike.nacincik@mail.va.gov* or mailed to the National Cemetery Administration, (41C2), 810 Vermont Avenue, NW., Washington, DC 20420. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: March 31, 2006.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–3368 Filed 4–7–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
April 10, 2006

Part II

Department of Housing and Urban Development

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5036–N–02]

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance

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

ACTION: Notice.

SUMMARY: On December 30, 2005, HUD published a final rule implementing a new law that restricts individuals who are (1) enrolled at an institution of higher education (i.e., students), under the age of 24, not a veteran, unmarried, and do not have a dependent child, and (2) seeking assistance under section 8 of the United States Housing Act of 1937 (section 8 assistance) in their individual capacity (that is, separately from their parents) from receiving section 8 assistance if neither the student nor the student's parents are income eligible. This notice provides guidance to further assist with the implementation of these new eligibility restrictions.

FOR FURTHER INFORMATION CONTACT: For section 8 voucher issues, Patricia Arnaudo and LaDonna Reed-Morton, Management and Occupancy Division, Office of Public and Indian Housing, Room 4210, telephone (202) 708–0744; for the Office of Housing's Project-Based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6138, telephone (202) 708–3000. For all of the individuals, the address is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. None of the aforementioned telephone numbers are toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION

I. Background

Fiscal Year 2006 appropriations for HUD were enacted in Title III of Public Law 109–115 (119 Stat. 2936) on November 30, 2005 (the Act). Section 327 of the administrative provisions of the Act (1) introduced new restrictions on housing assistance that may be provided to students of higher education under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (1937 Act), and (2) directed HUD to issue a final rule no later than 30 days following enactment of the Act. In accordance with this statutory direction, HUD published a final rule implementing section 327 of the Act (section 327) on December 30, 2005 (70 FR 77742), and this rule became effective on January 30, 2006.

In brief, the new law and HUD's rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, unmarried and does not have a dependent child, is individually ineligible for section 8 assistance, or the student's parents are, individually or jointly, ineligible for assistance, *no* section 8 assistance can be provided to the student. Unless the student is determined independent from his or her parents, as discussed in this guidance, the eligibility of a student seeking section 8 assistance will be based on both the student *and* the parents being determined income eligible for section 8 assistance.

Under the new law and HUD's rule, the eligibility of a student seeking section 8 assistance will be examined along with the income eligibility of the student's parents. Both the student's income and the parents' income must be separately assessed for income eligibility. Additionally, the financial assistance of the student in excess of tuition will be included in annual income when determining the student's eligibility for section 8 assistance, unless the student is over the age of 23 with dependent children, and for rent calculation purposes as addressed in section II, E of this notice. The new law and rule focus on a student under the age of 24 who meets the additional requirements of section 327 of the Act and who is not residing in a section 8 assisted unit with his or her parents, but who is seeking on his or her own to reside in a section 8 assisted unit. The new law and rule do not apply to students residing with their parents in a section 8 assisted unit or who reside with parents who are applying to receive section 8 assistance. (See definition of ''parents'' in Appendix A of this notice.)

This notice provides guidance to public housing agencies (PHAs) and multifamily project owners and management agents (Owners and Managers) to assist with implementation of the new eligibility restrictions. Appendix A to this guidance defines certain terms. The new law, HUD's recently issued rule, and this guidance are intended to help ensure that section 8 assistance is provided to those truly in need of and eligible for such assistance.

II. Guidance

A. Covered HUD Programs

The new student eligibility restrictions only apply to HUD's section 8 programs. These new restrictions do not apply to HUD's Public Housing program. The new eligibility restrictions apply to the following section 8 programs administered by the Office of Housing and the Office of Public and Indian Housing.

Office of Housing Programs

- The Section 8 New Construction, Substantial Rehabilitation, State Agency, Rural Housing Services Section 515, Loan Management Set-Aside and Property Disposition Set-Aside Programs; and
- The Section 202/8 Direct Loan Program for the Elderly and Persons with Disabilities.

Office of Public and Indian Housing Programs

- The Housing Choice Voucher Program;
- The Project-Based Certificate Program;
- The Project-Based Voucher Program; and
- The Section 8 Moderate Rehabilitation Program.

B. Student Eligibility Requirements

The new eligibility restrictions imposed on students enrolled at institutions of higher education and seeking section 8 assistance are set out in two parts: Section 327(a) and section 327(b) of the Act.

1. Requirements of Section 327(a) of the Act and 24 CFR 5.612 of the Final Rule

The new eligibility restrictions of section 327(a) are implemented and codified in HUD's regulation at 24 CFR 5.612 and provide as follows:

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Does not have a dependent child, and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

For a student under the age of 24 who is not a veteran, is unmarried, does not

have a dependent child and who is seeking section 8 assistance, section 327(a) of the Act sets up a two-part income eligibility test. Both parts of this test must be affirmatively met. That is, both the student and the student's parents (the parents individually or jointly) must be income eligible for the student to receive section 8 assistance. If it is determined that the parents are not income eligible, the student is ineligible to receive section 8 assistance.

As noted earlier in this guidance, based on program practices and criteria already in place, a student under the age of 24 who meets the additional criteria of section 327 of the Act may be income eligible for assistance in circumstances where an examination of the income of the student's parents may not be relevant or where the student can demonstrate the absence of, or his or her independence from, parents. These practices and criteria include but are not limited to consideration of all of the following:

1. The individual must be of legal contract age under state law.

2. The individual must have established a household separate from parents or legal guardians for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of an independent student. (See definition for ''independent student'' in Appendix A of this notice.)

3. The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.

4. The individual must obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.

PHAs, Owners, and Managers of section 8 assistance will need to verify a student's independence from his or her parents to determine that the student's parents' income is not relevant for determining the student's eligibility for assistance by taking into consideration all of the following:

1. Reviewing and verifying previous address information to determine evidence of a separate household, or Verifying the student meets the U.S. Department of Education's definition of ''independent student''; and

2. Reviewing prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education definition of ''independent student''); and

3. Verifying income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.

As also noted earlier in this guidance, the new law and HUD's rule do not affect students residing in a section 8 assisted unit with his or her parents or who reside with parents who are applying to receive section 8 assistance. The law and HUD's rule focus on a student under the age of 24 who meets the additional eligibility requirements of section 327 of the Act *and* who is already residing in a section 8 assisted unit without his or her parents, or who is seeking on his or her own to reside in a section 8 assisted unit.

2. Requirements of Section 327(b) of the Act and 24 CFR 5.609 of the Final Rule

For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 10001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)) shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. (See definition of ''dependent child'' in Appendix A.) For purposes of this paragraph, ''financial assistance'' does not include loan proceeds for the purpose of determining income.

HUD's final rule issued on December 30, 2005, amended § 5.609(b) to add a new paragraph (b)(9) to include, as annual income, any financial assistance in excess of amounts received for tuition that a student who meets the criteria of the new § 5.612 receives. With the exception of students who are over the age of 23 with dependent children, students under the age of 24 who are seeking section 8 assistance will need to meet the income requirements for the section 8 program, taking into consideration the additional eligibility restrictions provided in 24 CFR 5.609(b)(9) and 5.612. Therefore, in determining the income eligibility of a student, the student's financial assistance in excess of tuition as defined in § 5.609(b)(9) will be included in the calculation of annual income. (Also see definitions ''financial assistance'' and ''tuition'' in Appendix A of this notice.) If the student's financial assistance in excess of tuition makes the student income ineligible for section 8 assistance, the student cannot receive section 8 assistance. The income eligibility of a student will also rely on program practices and criteria already in place that assess the student's independence from his or her parents as addressed in paragraph 1, above.

As noted in this guidance, section 327 was not intended to affect the section 8 eligibility of a student's parents when the student is receiving financial assistance and residing with his or her parents, or is residing with parents who are applying to receive section 8 assistance, but only the eligibility of students applying for or receiving section 8 assistance separately from their parents. The amendment of the procedure for the determination of annual income at § 5.609 by the December 30, 2005, final rule is consistent with this intent.

A student's financial assistance under new § 5.609(b)(9) is considered income only in the context of that student's application for, or retention of, section 8 assistance separately from the student's parents. This is consistent with the language of section 327(b), which states, in relevant part, ''For the purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition) that an individual receives * * * shall be considered income to that *individual*,'' (emphasis added). The focus of section 327(b), and of section 327 as a whole, is on the income eligibility of a single student under the age of 24 who is not a veteran, is unmarried, does not have a dependent child, and whether the financial assistance of that individual student in excess of tuition makes that student income ineligible, and whether the income of the student's parents makes the student income ineligible. There is no apparent intent to affect the eligibility of a student's parents when the student resides with his or her parents.

The financial assistance of a student residing with his or her parents therefore would continue to be excluded from annual income under § 5.609(c)(6), which excludes student financial assistance from income. The December 30, 2005, final rule amended the exclusion of student financial assistance from income at § 5.609(c)(6) by making the exclusion, ''Subject to paragraph (b)(9) of this section,'' which is the new section adding student financial assistance as income only to a student applying separately from his or her parents for section 8 assistance.

3. Recertification of Students Already Receiving Section 8 Assistance

HUD strongly encourages PHAs, Owners, and Managers to recertify those section 8 participants who may be affected by this new law as soon as it is practicable. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual recertification.

PHAs, Owners, and Managers must ensure at each annual recertification, a student remains eligible to receive section 8 assistance under the restrictions of this new law.

PHAs, Owners, and Managers have an obligation to make sure that section 8 assisted units are provided to those truly in need of such assistance.

4. All Other Eligibility Requirements Apply

While the new law and HUD's recently issued rule focus on the income eligibility of students, all student applicants for section 8 assistance must also meet all other HUD program requirements that determine eligibility for the section 8 assistance.

C. Screening and Verification of Applicants for Assistance

As it relates to the verification of a parent(s) income, PHAs, Owners, and Managers may accept from a parent(s) a declaration and certification of income, which includes a penalty of perjury. The processing entity retains the right to request and review supporting documentation at any time they determine the declaration, certification, and eligibility of the parent(s) is in question. Supporting documentation includes, but is not limited to: Internal Revenue Services (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, other official and authentic documents from a Federal, State or local agency.

As is the case with all applicants for section 8 assistance, PHAs, Owners, and Managers administering section 8 programs must adequately screen and verify an applicant's source(s) of income. Failure of PHAs, Owners, and Managers, to screen applicants and verify income in accordance with applicable program requirements can result in sanctions being imposed.

PHAs must immediately update their Administrative Plans and Owners and Managers must immediately update their Tenant Selection Plans to reflect the new income eligibility restrictions for students.

D. Denial and Termination of Assistance

Denial of Assistance. An applicant who is a student and who does not meet the income eligibility requirements or who has parents who, individually or jointly, do not meet the income eligibility requirements for section 8 assistance are not eligible for section 8 assistance and will be prohibited from participating in the section 8 Program.

Termination of Assistance. A student under the age of 24 who is not a veteran, unmarried, does not have a dependent child and who is currently receiving section 8 assistance, if at recertification is determined to be ineligible, will have his or her assistance terminated.

Owners and Managers of projects under the Office of Housing's section 8 program cannot evict or require an ineligible student to move from a unit as long as the student is in compliance with the terms of the lease. Although the student is allowed to remain in the unit, the student will no longer be eligible to receive section 8 assistance. The section 8 assistance will not be prorated; therefore, if the ineligible student is residing in a household other than with the student's parents the assistance will be terminated for the entire household. If the ineligible student moves from the unit, the remaining members of the household may again be eligible for section 8 assistance, if available. If the household composition no longer qualifies the household for the unit size, the household may be required to move to an appropriate size unit when one is available, or, with the approval of the owner may move in another eligible person as a member of the household and remain in their same unit.

For PHAs administering the Housing Choice Voucher program, any member within a household comprised of both eligible and ineligible students who is determined ineligible to receive section 8 assistance in accordance with 24 CFR part 5, subpart F, and is terminated under 24 CFR 982.552(b)(5), shall be ineligible to receive continued assistance under the Housing Choice Voucher program. Eligible students, residing in such households, however, shall not be terminated under § 982.552(b)(5), but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate Rehabilitation, Project-Based Certificate and Project-Based Voucher programs.

Upon notification of denial or termination of assistance, the household is entitled to request an informal hearing to discuss the reasons for the denial or termination, in accordance with established program procedures and requirements.

E. Rent Determination

Determination of rent is made in accordance with the requirements for the section 8 program under which the student seeks assistance.

III. Additional HUD Guidance

In addition to this notice, HUD's Office of Housing and Office of Public and Indian Housing are developing additional guidance. This guidance, when completed, will be posted on HUD's Web site at *http://www.hud.gov.*

Dated: April 3, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Appendix A—Definitions

1. *Dependent Child* in the context of the new eligibility restrictions, means a dependent child of an enrolled student who meets the criteria of 24 CFR 5.612. In this context, ''dependent child'' is defined in HUD's income eligibility regulations at 24 CFR 5.603 is a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student.

2. *Financial Assistance* included in annual income is any financial assistance that a student receives in excess of tuition (e.g., athletic and academic scholarships) and that the student receives (1) under the Higher Education Act, (2) from private sources, or (3) from an institution of higher education as defined by the Higher Education Act of 1965. Financial assistance does not include loan proceeds.

a. *Higher Education Act Assistance* under the Higher Education Act of 1965 includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.

b. *Assistance from Private Sources* is non-governmental sources of assistance, including assistance that may be provided to a student from parent, guardian or other family member, whether residing within the family in the section 8 assisted unit or not, and from other persons not residing in the unit.

c. *Assistance from an Institution of Higher Education* requires reference to the particular

institution and the institution's listing of financial assistance. (See definition for Institution of Higher Education in 7, below.)

d. *Loans Are Not Financial Assistance,* and, therefore, the loan programs cited in the Higher Education Act of 1965 (the Perkins, Stafford and Plus loans) are not included in the term ''financial assistance'' in determining student eligibility for section 8 assistance.

3. *Independent Student* for Title IV aid, a student must meet one or more of the following criteria:

a. Be at least 24 years old by December 31 of the award year for which aid is sought;

b. Be an orphan or a ward of the court through the age of 18;

c. Be a veteran of the U.S. Armed Forces;

d. Have legal dependents other than a spouse (for example, dependent children or an elderly dependent parent);

e. Be a graduate or professional student; or,

f. Be married.

4. *Parents,* for purposes of the student eligibility restrictions, and consistent with long-standing HUD policy regarding eligibility for the Section 8 Programs, means the biological or adoptive parents, or guardians (e.g., grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

5. *Student* means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.

6. *Tuition* shall have the meaning given this term by the institution of higher education in which the student is enrolled.

7. *Veteran,* as used by the Department of Veterans Affairs, is codified at 38 U.S.C. 101(2). Since use of this definition is widespread in other federal programs affecting veterans, PHAs, Owners and Managers may find it useful to adopt this definition for purposes of administering the student eligibility restrictions.

Definition of veteran from 38 U.S.C. 101(2): The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

8. *Institution of Higher Education* shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

a. Definition of ''Institution of Higher Education'' From 20 U.S.C. 1001

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' means an educational institution in any State that-(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

b. Definition of ''Institution of Higher Education'' From 20 U.S.C. 1002

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term ''institution of higher education'' for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility,

continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term ''proprietary institution of higher education'' means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term ''proprietary institution of higher education'' also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term ''postsecondary vocational institution'' means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term ''postsecondary vocational institution'' also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

[FR Doc. 06–3365 Filed 4–7–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Monday,
April 10, 2006

Part III

Department of Housing and Urban Development

24 CFR Part 207

Mortgagee Time Limits for Supplemental Claims for Additional Insurance Benefits; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 207

[Docket No. FR–4957–F–02]

RIN 2502–AI31

Mortgagee Time Limits for Supplemental Claims for Additional Insurance Benefits

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations to establish a time limit for filing supplemental multifamily mortgage insurance claims. The time limit established will provide an incentive for mortgagees to complete all mortgage insurance claims in a timely manner. This final rule revises and further defines the term ''final payment.'' This final rule follows publication of a May 6, 2005, proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* May 10, 2006.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Housing Project Manager, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6180, Washington, DC 20410–8000; telephone (202) 708–1320 (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

Section 207 of the National Housing Act (12 U.S.C. 1713) (NHA) authorizes the Secretary to insure certain eligible multifamily mortgages and to pay insurance benefits to the mortgagee. HUD's regulations implementing multifamily mortgage insurance eligibility requirements and contract rights and obligations regarding insurance benefits can be found at 24 CFR part 207. Under part 207, upon an assignment of the mortgage or a conveyance of the property to the Federal Housing Commissioner (Commissioner), and delivery by the mortgagee of items required pursuant to part 207, the Commissioner will pay insurance benefits to the mortgagee. After the initial insurance claim is paid to the mortgagee at final settlement, the Commissioner may also pay additional benefits due to adjustments or corrections of the claim amount paid at final settlement. These additional claims are often known as supplemental insurance claims.

For several years, a considerable number of mortgagees have filed supplemental insurance claims for additional insurance benefits more than a year after the Commissioner paid a final settlement on the mortgagee's initial insurance claim. These supplemental insurance claims are often belatedly filed in part due to insufficient preparation when filing the initial insurance claim. The large and complex nature of supplemental insurance claims, and the time spent reviewing and processing these claims, delays processing and payment of all initial and supplemental insurance claims.

On May 6, 2005, HUD published a proposed rule (70 FR 24272) that amended HUD's multifamily mortgage insurance regulations at 24 CFR part 207 to require mortgagees to file all supplemental insurance claims with HUD within 6 months after the date of final payment of the initial insurance claim. Requiring that mortgagees file supplemental insurance claims within this time period creates an incentive for mortgagees to complete all final settlements promptly and will allow HUD to decrease some of its reviewing and processing costs. For the purposes of the proposed rule, the term ''final payment'' was defined to mean the payment of the initial claim that is made at final settlement by the Commissioner based upon the submission by the mortgagee of all required documents and information.

II. This Final Rule

This final rule follows publication of the May 6, 2005, proposed rule. The public comment period for the proposed rule closed on July 5, 2005, and HUD received one public comment. After careful consideration of the comment, HUD has decided to revise the definition of ''final payment.''

The commenter, an attorney, wrote first that the 6-month time limit should begin not from the date of final payment, but, rather, from the date the mortgagee receives the HUD mortgage insurance claim settlement statement. The commenter also wrote that the proposed regulation should indicate that HUD is bound by its original claim computation based on information HUD receives from the mortgagee. The commenter explained that this indication is necessary because a supplemental insurance claim time limit may be affected by HUD's reexamination of the original claim computation.

HUD understands the commenter's first point and has revised the language to more accurately reflect settlement by defining the time limit for filing as 6 months from the date of ''final settlement'' rather than ''final payment'' of the insurance claim. The term ''final settlement'' shall mean the payment of the insurance claim in either cash or debentures, as appropriate, or the billing for an overpayment of a partial claim. HUD, however, is not adopting the commenter's second suggestion. HUD must make claim adjustments for various reasons and cannot restrict its authority to reopen a claim, which may occur sometimes years after the final settlement. For example, when a mortgagee submits a claim with unreported mortgage payments received from a project owner, HUD must at that time reexamine an original claim computation, regardless of when the original claim was filed.

III. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no additional economic or other burdens on mortgagees participating in HUD's multifamily mortgage insurance programs. All such mortgagees, regardless of size, are subject to the new requirements proposed by the rule. The rule establishes a 6-month time limitation for all mortgagees to file supplemental multifamily housing mortgage insurance claims. Small mortgagees will have no more additional compliance costs than other mortgagees within this 6-month time limit as a result of this rule. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this final 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. Therefore, this

final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and 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 or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 207

Manufactured homes; Mortgage insurance; Reporting and recordkeeping requirements; Solar energy.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 207 as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1709(c)(1), 1713, and 1715b; 42 U.S.C. 3535d.

■ 2. Section 207.259(f) is added to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(f) *Mortgagee Time Limits for Supplemental Claims for Additional Insurance Benefits.* A mortgagee may not file for any additional payments of its mortgage insurance claim more than six months after the date of final settlement of the insurance claim by the Commissioner. For the purpose of this section, the term final settlement shall mean the payment of the insurance claim (in cash or debentures) or billing for any overpayment of a partial claim that is made by the Commissioner. Final settlement is based upon the submission by the mortgagee of all required documents and information pursuant to part 207 of this chapter.

Dated: April 3, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 06–3410 Filed 4–7–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Monday,
April 10, 2006

Part IV

The President

Proclamation 7997—Education and Sharing Day, U.S.A., 2006

Proclamation 7998—National Former Prisoner of War Recognition Day, 2006

Federal Register
Vol. 71, No. 68
Monday, April 10, 2006

Presidential Documents

Title 3—

The President

Proclamation 7997 of April 5, 2006

Education and Sharing Day, U.S.A., 2006

By the President of the United States of America

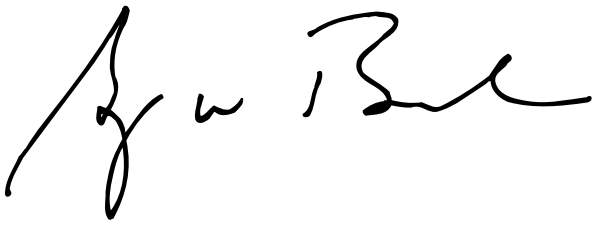
A Proclamation

A quality education is the cornerstone of a hopeful tomorrow for all our children. Education and Sharing Day highlights our strong support for our young people as they pursue lives of learning, prepare to become responsible leaders, and work to reach their full potential.

On Education and Sharing Day, we remember the efforts of Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, who promoted the importance of education and ethical teachings to every student's future. He sought to improve lives and communities through a vast network of education and outreach centers and social service programs around the world. We continue to be inspired by the Rebbe's good works and all those who dedicate their time, talents, and energy to helping our next generation grow into caring, responsible adults. Through devotion to faith, family, education, and community, we can continue building a better and more compassionate society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2006, as Education and Sharing Day, U.S.A. I call upon government officials, educators, volunteers, and all the people of the United States to reach out to young people and work to create a better, brighter, and more hopeful future for all.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of April, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–3475
Filed 4–7–06; 8:47 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7998 of April 5, 2006

National Former Prisoner of War Recognition Day, 2006

By the President of the United States of America

A Proclamation

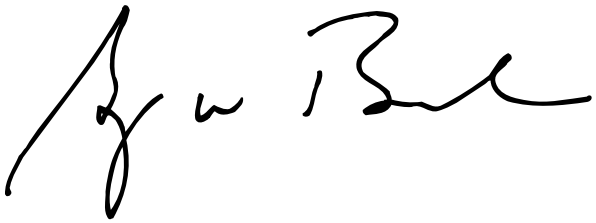
In every generation, America's Armed Forces have answered the call to duty with dedication and valor. On National Former Prisoner of War Recognition Day, we pay tribute to the brave patriots of the United States military who endured captivity because of war. These heroes sacrificed their personal liberty to secure a future of freedom for all Americans.

While held as prisoners of war, American POWs have reflected the best of our country, acting with resourcefulness, bravery, and strength. Former POWs, such as Corporal Tibor ''Ted'' Rubin, USA, continue to inspire new generations to acts of courage and compassion. Liberated by U.S. forces from a Nazi concentration camp, Rubin enlisted in the Army after immigrating to the United States. He was captured and held as a POW during the Korean War even before he became an American citizen. His incredible bravery and service to his fellow POWs saved many lives and has left a legacy of hope and honor, and for his heroism, I had the great privilege to present him our Nation's highest military award, the Medal of Honor.

The sacrifices of those taken as prisoners of war have helped bring security to American citizens and freedom to the world. With determination and courage, America's former POWs, their fallen and missing comrades, and their families have demonstrated the true spirit of our Nation, and they will never be forgotten.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 2006, as National Former Prisoner of War Recognition Day. I call upon the people of the United States to join me in remembering and honoring the sacrifices of all American prisoners of war. I call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of April, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–3476
Filed 4–7–06; 8:47 am]
Billing code 3195–01–P

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34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–056–00050–2)	62.00	Jan. 1, 2005
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
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Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.