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Pages 75929–76128

Federal Register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Wednesday, January 11, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2006–5 of December 14, 2005

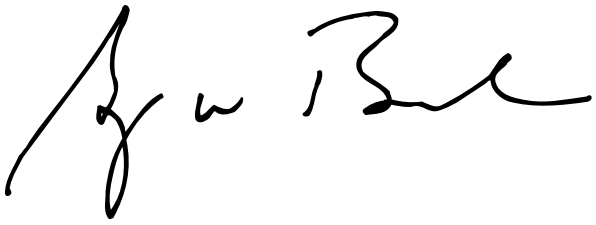
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our Embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, December 14, 2005.

[FR Doc. 05–24430
Filed 12–21–05; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 70, No. 245
Thursday, December 22, 2005

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket No. 05–18]

RIN 1557–AC85

FEDERAL RESERVE SYSTEM

12 CFR Parts 222 and 232

[Regulation V and FF; Docket No. R–1188]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AC81

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[No. 2005–49]

RIN 1550–AB88

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

Fair Credit Reporting Medical Information Regulations; Correction

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA).

ACTION: Final rule; correction.

SUMMARY: The OCC, Board, FDIC, OTS, and NCUA (Agencies) published a final rule to implement section 411 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The intent of that final rule was to finalize, with changes, the interim regulations published on June 10, 2005 and to republish the remaining requirements. However, due to technical errors in the formatting of the November 22, 2005 document, duplicate provisions were added. To correct this error, this document revises the amendatory instructions which added duplicative text.

DATES: This correction is effective December 22, 2005.

FOR FURTHER INFORMATION CONTACT:

OCC: Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel; Minh-Duc T. Le, Ky Tran-Trong, or Krista P. DeLargy, Senior Attorneys, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Andrew Miller, Counsel, Legal Division, (202) 452–3428, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; David Lafleur, Policy Analyst, (202) 898–6569, or Patricia Cashman, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6534, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Glenn Gimble, Senior Project Manager, Operation Risk, (202) 906–7158; Richard Bennett, Counsel, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Regina M. Metz, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: In the final rule FR Doc. 05–22830 published in the **Federal Register** on November 22, 2005 (70 FR 70664) make the following corrections:

PART 41—[CORRECTED]

■ 1. On page 70675, in the second column, instruction number 3 is corrected to read ''Subpart D is revised to read as follows:''.

PART 222—[CORRECTED]

■ 2. On page 70678, in the third column, instruction number 2 is corrected to read ''Amend subpart A to part 222 by revising §§ 222.2 and 222.3 to read as follows:''.

■ 3. On page 70679, in the first column, instruction number 3 is corrected to read ''Subpart D is revised to read as follows:''.

PART 232—[CORRECTED]

■ 4. On page 70682, in the second column, instruction number 4 is corrected to read ''Part 232 is revised to read as follows:''.

PART 334—[CORRECTED]

■ 5. On page 70685, in the second column, instruction number 2 is corrected to read ''Subpart A is revised to read as follows:''.

■ 6. On page 70686, in the first column, instruction number 3 is corrected to read ''Subpart D is revised to read as follows:''.

PART 571—[CORRECTED]

■ 7. On page 70689, in the second column, instruction number 3 is corrected to read ''Section 571.2 is revised to read as follows:''.

■ 8. On page 70689, in the third column, instruction number 5 is corrected to read ''Subpart D is revised to read as follows:''.

PART 717—[CORRECTED]

■ 9. On page 70693, in the second column, instruction number 3 is corrected to read ''Subpart D is revised to read as follows:''.

Dated: December 9, 2005.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, December 16, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 1st day of December, 2005.

Federal Deposit Insurance Corporation.

Carol L. Middlebrook,

Special Assistant to the Executive Secretary.

Dated: December 8, 2005.

By the Office of Thrift Supervision.

Deborah Dakin,

Senior Deputy Chief Counsel.

By the National Credit Union Administration Board on December 15, 2005.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 05–24370 Filed 12–21–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–10–P; 6720–01–P; 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 106

RIN 3245–AF37

Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities, and Gifts

AGENCY: U.S. Small Business Administration.

ACTION: Final Rule; correction.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting a final rule regarding cosponsorships, fee and non-fee based SBA-sponsored activities, and gifts that was published in the **Federal Register** on November 23, 2005. The final rule implemented SBA's statutory authority to provide assistance for the benefit of small businesses through activities sponsored with outside entities (for-profit and non-profit entities and Federal, State, and local government officials or entities) as well as activities sponsored solely by SBA. The final rule also established minimum requirements for those activities as well as the Agency's solicitation and acceptance of gifts. The rule was effective on November 23, 2005, the date of publication, but did not contain a justification for the immediate effective date as required by the Administrative Procedures Act. SBA is correcting the final rule by adding a paragraph which sets forth an appropriate justification for immediate effective date of final rule.

DATES: Effective December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Robert L. Gangwere, Deputy General Counsel, (202) 205–6642.

SUPPLEMENTARY INFORMATION: On November 23, 2005, SBA published a final rule regarding cosponsorships, fee and non-fee based SBA-sponsored activities, and gifts (70 FR 70703). The rule was effective on November 23, 2005, the date of publication, but did not contain a justification for the immediate effective date as required by the Administrative Procedures Act, § 553(d)(3). SBA is correcting the final rule by adding a paragraph which sets forth an appropriate justification for immediate effective date of final rule.

On page 70704, in the second column, add the following paragraph as subsection D of the **SUPPLEMENTARY INFORMATION** section:

D. Justification for Immediate Effective Date of Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective on the same day it is published in the **Federal Register**.

The purpose of the APA provision delaying the effective date of a rule for 30 days after publication is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In this case, however, the 30-day delay is unnecessary because this final rule addresses administrative requirements for Agency management of SBA outreach programs and does not require small business concerns, cosponsors or SBA's other strategic partners to change their behavior when participating with SBA in cosponsorships and other outreach activities. Further, immediate implementation of the final rule is justifiable because SBA's statutory authority for cosponsorship and fee-based SBA-sponsored events will terminate on September 30, 2006. Immediate implementation will give SBA the maximum amount of time to measure the effectiveness of the statutory authorities in furthering the SBA's mission. Furthermore, SBA did not receive any comments on the proposed rule, which was published in the **Federal Register** on July 1, 2005, and does not expect any opposition to an immediate effective date of this final rule from small businesses or other entities participating in its outreach programs.

Adela M. Soriano,

Associate Administrator for Strategic Alliances.

[FR Doc. 05–24374 Filed 12–21–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[FAA–2005–23400; Directorate Identifier 2005–NM–217–AD; Amendment 39–14429; AD 2005–19–16 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 2005–19–16, which is applicable to certain Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes. That AD requires installing a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21. That AD resulted from fuel system reviews conducted by the manufacturer. The requirements of that AD were intended to prevent an ignition source for fuel vapor in the wing, which could result in fire or explosion in the center wing fuel tank. Since the issuance of that AD, the FAA has determined that the procedures specified in the service bulletin and French AD referenced in that AD would result in duplicate actions.

Effective Date: December 22, 2005.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On September 9, 2005, the Federal Aviation Administration (FAA) issued Airworthiness Directive (AD) 2005–19–16, amendment 39–14281 (70 FR 55233, September 21, 2005), applicable to certain Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes. That AD requires installing a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21. That action resulted from fuel system reviews conducted by the manufacturer.

The actions required by that AD are intended to prevent an ignition source for fuel vapor in the center wing fuel tank. That condition, if not corrected, could result in fire or explosion in the center wing fuel tank.

Actions Since Issuance of Previous AD

Since the issuance of that AD, Airbus notified the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, and informed us that it had issued Service Bulletin A320–28–1104, dated December 2, 2003; Revision 01 dated December 8, 2004; and Revision 02 dated February 21, 2005. That service bulletin has been mandated by the European Aviation Safety Authority (EASA) AD F–2005–028 and FAA AD 2005–19–14. That service bulletin specifies inspections and the restoring of electrical bonding integrity in the center tank, including the bonding addressed by Airbus Service Bulletin A320–28–1067, Revision 02, dated January 27, 1997. Airbus states that Service Bulletin A320–28–1067, Revision 02, the service bulletin cited in AD 2005–19–16, is no longer required due to the issuance of Service Bulletin A320–28–1104, original version; Revision 01; and Revision 02. Accordingly, the DGAC canceled French AD F–2005–056 by issuing AD F–2005–056 R1 on September 28, 2005.

FAA's Determination

Since the issuance of AD 2005–19–16, we have determined that it is necessary to rescind that AD in order to prevent operators from performing unnecessary actions.

Since this action rescinds a requirement to perform an unnecessary action, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the rescission may be made effective upon publication in the **Federal Register**.

The Rescission

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding an AD which removes amendment 39–14281, to read as follows:

2005–19–16 R1 Airbus: Amendment 39–14429. FAA–2005–23400; Directorate Identifier 2005–NM–217–AD.

Effective Date

(a) This AD becomes effective December 22, 2005.

Affected ADs

(b) This action rescinds AD 2005–19–16.

Applicability

(c) This action applies to Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes, certificated in any category; except those airplanes on which Airbus Modification 25513 has been accomplished in production.

Issued in Renton, Washington, on December 8, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24343 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22124; Directorate Identifier 2005–NE–21–AD; Amendment 39–14427; AD 2005–26–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45A, CF6–50A, CF6–50C, and CF6–50E Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines. This AD requires removing from service pre-GE Service Bulletin (SB) No. CF6–50S/B 72–1268 configuration low pressure turbine (LPT) stage 2 interstage seal assemblies and stage 3 interstage seal assemblies. This AD also requires installing new or reworked configuration stage 2 interstage seal assemblies and stage 3 interstage seal assemblies. This AD results from reports of fan mid shaft separation, leading to separation of the LPT stage 1 disk, disk overspeed, and uncontained engine failure. We are issuing this AD to prevent uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective January 26, 2006.

ADDRESSES: You can get the service information referenced in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

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

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to GE CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines. We published the proposed AD in the **Federal Register** on August 19, 2005 (70 FR 48660). That action proposed to require removing from service pre-GE SB No. CF6–50 S/B 72–1268 configuration LPT stage 2 interstage seal assemblies and stage 3 interstage seal assemblies. That action also proposed to require installing new or reworked configuration stage 2 interstage seal assemblies and stage 3 interstage seal assemblies.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the three comments received. The commenters support the proposal.

Conclusion

We have carefully reviewed the available data, including the comments

received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 2,079 CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines of the affected design in the worldwide fleet. We estimate that 790 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take about 5 work hours per engine to rework the stage 2 interstage seal assembly and the stage 3 interstage seal assembly. The average labor rate is $65 per work hour. We estimate that 90% of the affected engines will have the parts reworked, and 10% will have new parts installed. A new stage 2 interstage seal assembly and new stage 3 interstage seal assembly will cost about $26,758 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,344,957.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–26–06 General Electric Company: Amendment 39–14427. Docket No. FAA–2005–22124; Directorate Identifier. 2005–NE–21–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines. These engines are installed on, but not limited to, Boeing DC10 and 747 series airplanes, and Airbus Industrie A300 series airplanes.

Unsafe Condition

(d) This AD results from reports of fan mid shaft separation, leading to separation of the low pressure turbine (LPT) stage 1 disk, disk overspeed, and uncontained engine failure. We are issuing this AD to prevent uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next disassembly of the LPT stage 2 interstage seal assembly and stage 3 interstage seal assembly from the LPT stator after the effective date of this AD, but no later than December 31, 2010, unless the actions have already been done.

Stage 2 Interstage Seal Assemblies

(f) Remove from service the pre-GE Service Bulletin (SB) No. CF6–50 72–1268 configuration LPT stage 2 interstage seal assembly.

(g) Install a new or reworked configuration LPT stage 2 interstage seal assembly, part number (P/N) 9198M81G05, 2092M13G01, 2092M13G02, or 2092M13G03, or other FAA-approved equivalent part.

(h) Information on reworking the pre-SB No. CF6–50 S/B 72–1268 configuration stage 2 interstage seal assembly to the new configuration can be found in GE SB No. CF6–50 S/B 72–1268, dated December 16, 2004.

Stage 3 Interstage Seal Assemblies

(i) Remove from service the pre-SB No. CF6–50 S/B 72–1268 configuration stage 3 interstage seal assembly.

(j) Install a new or reworked configuration LPT stage 3 interstage seal assembly, P/N 9044M29G17 or 2092M14G01, or other FAA-approved equivalent part.

(k) Information on reworking the pre-SB No. CF6–50 S/B 72–1268 configuration stage 3 interstage seal assembly to the new configuration can be found in GE SB No. CF6–50 S/B 72–1268, dated December 16, 2004.

Prohibition of Pre-SB No. CF6–50 S/B 72–1268 Configurations

(l) After the effective date of this AD, do not install pre-SB No. CF6–50 S/B 72–1268 configuration LPT stage 2 interstage seal assemblies or stage 3 interstage seal assemblies into any engine.

Alternative Methods of Compliance

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

Related Information

(n) National Transportation Safety Board Safety Recommendation No. A–98–125, dated December 3, 1998, pertains to the subject of this AD.

Material Incorporated by Reference

(o) None.

Issued in Burlington, Massachusetts, on December 14, 2005.

Peter A. White,

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

[FR Doc. 05–24341 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is granting an exemption to firms designated by the Australian Stock Exchange Limited from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

DATES: *Effective Date:* December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Esq., Deputy Director, Susan A. Elliott, Esq., Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Australian Stock Exchange Limited (''ASXL'') From the Application of Certain of the Foreign Futures and Option Rules the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms to the Terms and Conditions of the Order Herein.

Commission rules governing the offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade to customers located in the U.S. are contained in part 30 of the Commission's rules.[1] These rules include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures, that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's rules based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules'' (''Appendix A''), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.[2] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an ''as needed'' basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (''NFA''); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[3] The representations for confirmation of relief also include a representation that the firm will maintain ''the greater of regulatory capital'' as required by regulations of the exchange or the Commission.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by ASXL as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7;
—Those sections of Part 1 of the Commission's financial rules that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
—Those sections of Part 1 of the Commission's rules relating to books and records which apply to transactions subject to Part 30,

based upon submitted compliance by such persons with the applicable statutes and regulations in effect in Australia.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in Australia who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the

[1] Commission rules referred to herein are found at 17 CFR Ch. I (2005).

[2] 52 FR 28990, 29001 (August 5, 1987).

[3] 52 FR 28980, 28981 and 29002.

customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, ASXL, and the Australian regulatory authorities on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Australia, position data, and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, such as the antifraud provision in Rule 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the rules of ASXL for products that customers located in the U.S. may trade.[4] The relief does not extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[5] Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers.[6] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC§ [7] that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Australia; such firm is engaged in business with customers in Australia as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers resident in the U.S. will be made on or subject to the rules of ASXL and the Commission will receive prompt notice of all material changes to the relevant laws in Australia, any rules promulgated thereunder and ASXL rules;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Australian customers under all relevant provisions of Australian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A on an ''as needed'' basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this order.[8]

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks or broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Australia upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request.

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Australian laws and ASXL rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted; and

(g) Maintains the greater of regulatory capital as required by ASXL or Commission regulations.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[9] Among other duties, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order and to grant exemptive relief from registration to qualifying firms. Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective as to any designated ASXL firm the later of the date of publication of the Order in the **Federal Register** or the filing of the representations and consents set forth in paragraphs (2)(a)–(g), as verified by NFA. Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and ASXL.

This Order is issued pursuant to Rule 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A, have been met. Further, if experience demonstrates that the continued effectiveness fo this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the

[4] See, e.g., sections 2(a)(1)(C) and (D) of the Act.

[5] See, e.g., 17 CFR part 18 (2002).

[6] See, e.g., 17 CFR parts 17 and 21 (2002).

[7] As described below, these representations are to be filed with NFA.

[8] The Australian Securities and Investments Commission (ASIC) represented to the Commission that the existing Memorandum of Understanding governing the sharing of information between ASIC and the Commission ''will extend to activities of the ASXF [now ASXL] and its members,'' in letters to DCIO of May 16, 2003 and May 17, 2004.

[9] 62 FR 47792, 47793 (September 11, 1997).

Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

List of Subjects in 17 CFR Part 30

Foreign futures, Foreign options.

■ In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 2, 4(b), 4c and 8a thereof, 7 U.S.C. 1a, 2, 6(b), 6(c) and 12a, and pursuant to the authority contained in 5 U.S.C. 552 and 552b, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN OPTIONS AND FOREIGN FUTURES TRANSACTIONS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c and 12a, unless otherwise noted.

Appendix C to Part 30 —[Amended]

■ 2. Appendix C to Part 30—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules. The following citation is added:

* * * * *

Firms designated by the Australian Stock Exchange Limited (''ASXL'').

FR date and citation: 68 FR 39006 (July 1, 2003).

FR date and citation: 70 FR __ (December 22, 2005).

* * * * *

Issued in Washington, DC on December 16, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24360 Filed 12–21–05; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–00–228]

RIN 1625–AA09 [Formerly 2115–AE47]

Drawbridge Operation Regulations: Mianus River, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations for the Metro-North Bridge, at mile 1.0, across the Mianus River at Greenwich, Connecticut. This final rule requires the bridge to open on signal from 9 p.m. to 5 a.m., after an advance notice is given. The bridge previously did not open for vessel traffic between 9 p.m. and 5 a.m., daily. This action is expected to better meet the present needs of navigation.

DATES: This rule is effective January 23, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–228) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 27, 2000, the Coast Guard published a temporary 90-day deviation and request for comments from the drawbridge operation regulations to provide immediate relief to navigation and to obtain comments from the public concerning this rule (65 FR 24640). The deviation was in effect from June 7, 2000, through September 4, 2000, during which time, the Metro-North Bridge was required to open on signal, from 9 p.m. to 5 a.m., after a four-hour advance notice was given. No comments were received during the comment period that ended on September 30, 2000.

On January 8, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Mianus River, Connecticut, in the **Federal Register** (66 FR 1281). In March 2001, we received one comment in response to the notice of proposed rulemaking from Metro-North Railroad, the owner of the Bridge. The bridge owner objected to the additional crewing of the bridge based upon the additional cost that would result and suggested a meeting with the Coast Guard to discuss the proposed changes to the regulations. No public hearing was requested and none was held.

On June 10, 2004, we published an interim final rule and request for comment entitled Drawbridge Operation Regulations Mianus River, Connecticut, in the **Federal Register** (69 FR 32445). We received no comments in response to the interim final rule.

Background and Purpose

The Metro-North Bridge, mile 1.0, across the Mianus River has a vertical clearance of 20 feet at mean high water and 27 feet at mean low water in the closed position.

The existing operating regulations in 33 CFR 117.209 require the bridge to open on signal from 5 a.m. to 9 p.m., immediately for commercial vessels and as soon as practicable, but no later than 20 minutes after the signal to open is given, for the passage of all other vessel traffic. When a train scheduled to cross the bridge without stopping has passed the Greenwich or Riverside stations and is in motion toward the bridge, the draw shall open as soon as the train has crossed the bridge. From 9 p.m. to 5 a.m., the draw need not be opened for the passage of vessels.

The Coast Guard received a request from a commercial vessel operator requesting a change to the operating regulations for the Metro-North Bridge. The commercial operator requested that the bridge open for vessel traffic during the 9 p.m. to 5 a.m. time period when the bridge is normally closed.

The Coast Guard published a temporary 90-day deviation from the drawbridge operation regulations on April 27, 2000, to provide immediate relief to navigation and to obtain comments from the public concerning this rule. The deviation was in effect from June 7, 2000, through September 4, 2000, during which time, the Metro-North Bridge was required to open on signal, from 9 p.m. to 5 a.m., after a four-hour advance notice was given. No comments were received during the comment period, which ended on September 30, 2000. A late comment letter was received from the commercial mariner that requested the rule change. The mariner indicated that his vessel utilized the additional opening time provided by the test deviation and made about 40 transits after 9 p.m. during the test period. The commercial mariner will be adding an additional vessel,

which will also require bridge openings after 9 p.m., daily.

The Coast Guard believes that in the case of the Metro-North Bridge, that changing the bridge operating regulations to require openings between 9 p.m. and 5 a.m. is reasonable because it provides for the needs of navigation, as demonstrated by the demand for bridge openings during the test deviation, and has no effect on rail traffic over the bridge.

Discussion of Comments and Changes

After the Coast Guard issued the NPRM in January 2001, the Coast Guard received one comment letter from the bridge owner, Metro North, which requested that this rule not be implemented on the basis of the financial burden it will impose on the bridge owner to crew the bridge for requested bridge openings between 9 p.m. and 5 a.m. and that the rule violated the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538).

During the test deviation the mariner that requested this rule change did request bridge openings between 9 p.m. and 5 a.m. as documented by the number of openings recorded in the bridge logs. The mariner indicated further that he added additional vessels to his operating fleet which will also require the bridge to open after 9 p.m., daily.

The Coast Guard's policy concerning regulatory changes to the operating hours at bridges requires that bridges shall operate in accordance with the reasonable needs of navigation.

We believe that it is reasonable to crew the Metro-North Bridge for additional hours at night during the summer months to allow commercial tour boats to return to their docks after evening cruises. The twenty-four-hour notice during the winter months along with the four-hour notice during the summer months should allow the bridge owner sufficient time to respond to any requests for bridge opening without actually maintaining a crew on-site, at all times.

In addition, Coast Guard policy requires that no regulations shall be drafted solely for the purpose of saving the cost of maintenance or operation of the structure. See, Bridge Administration Manual, COMDTINST M165905C.

In addition, this rule does not impose a financial burden on the bridge owner, a non-federal entity, of over $100 million dollars, the Unfunded Mandates Reform Act's economic threshold.

No public hearing was requested and none was held. The Coast Guard believes no new additional information could be obtained by conducting a public hearing because there is documented evidence that there is a navigational need during the time period this final will require the bridge to be operating on call.

No comments were received during the comment period for the Interim Final Rule issued in June, 2004. The Coast Guard believes that this final rule will better meet the present needs of navigation therefore, no changes were made to this final rule.

Regulatory Evaluation

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

This conclusion is based on the fact that this bridge will only be required to be crewed between 9 p.m. and 5 a.m., when a request to open the bridge is given.

Small Entities

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

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

This conclusion is based on the fact that this bridge will only be required to be crewed between 9 p.m. and 5 a.m., when a request to open the bridge is given and that this bridge owner, Metro-North, is not itself a small entity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Assistance

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

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

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.209(b) is revised to read as follows:

§ 117.209 Mianus River

* * * * *

(b) The draw shall open on signal from April 1 through October 31, from 9 p.m. to 5 a.m., after at least a four-hour advance notice is given and from November 1 through March 30, from 9 p.m. to 5 a.m., after at least a twenty-four-hour advance notice is given by calling the number posted at the bridge.

Dated: December 7, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 05–24337 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–110]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Old Saybrook-Old Lyme Bridge (Old Saybrook-Old Lyme Bridge), mile 3.4, across the Connecticut River, Connecticut. This deviation from the regulations allows the bridge to operate on a fixed schedule for bridge openings and two three-day closures from January 3, 2006 through February 1, 2006. This deviation is necessary in order to facilitate necessary scheduled bridge maintenance.

DATES: This deviation is effective from January 3, 2006 through February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Old Saybrook-Old Lyme Bridge, at mile 3.4, across the Connecticut River has a vertical clearance in the closed position of 19 feet at mean high water and 22 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.205(b).

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled electrical and mechanical bridge repairs. In order to prosecute the above repairs the bridge must open on a fixed bridge opening schedule.

This deviation to the operating regulations allows the Old Saybrook-Old Lyme Bridge to operate from January 3, 2006 through February 1, 2006, as follows:

From Monday through Friday, the bridge shall open on signal at 8:15 a.m., 12:15 p.m., and 2:15 p.m., daily. From 4 p.m. through 8 a.m. the bridge shall open on signal after a four-hour advance notice is given by calling the number posted at the bridge.

On Saturday and Sunday, the bridge shall open on signal at 8 a.m., 10 a.m., 1 p.m., and 4 p.m., daily. From 4 p.m. through 8 a.m. the bridge shall open on signal after a four-hour advance notice is given by calling the number posted at the bridge.

The bridge shall open on signal for commercial vessels at any time after a four-hour advance notice is given by calling the number posted at the bridge.

In addition the bridge may remain closed for two three-day closures from January 20, 2006 through January 22, 2006 and from January 27, 2006 through January 29, 2006.

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

regulations is authorized under 33 CFR 117.35.

Dated: December 15, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–24336 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AM36

Traumatic Injury Protection Rider to Servicemembers' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to implement section 1032 of the ''Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005,'' (Public Law 109–13). Section 1032 of Public Law 109–13 establishes an automatic traumatic injury protection rider provision to Servicemembers' Group Life Insurance (SGLI), effective December 1, 2005, providing automatic insurance for any SGLI insured who sustains a serious traumatic injury as prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense that results in certain losses prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense. This rule specifies the losses for which the traumatic injury benefit (TSGLI) will be paid and the amount of the TSGLI benefit payable for each loss.

Section 1032(c)(1) of Public Law 109–13 also provides for the payment of TSGLI benefits to service members who experienced a traumatic injury between October 7, 2001, and the effective date of section 1032 of Public Law 109–13, *i.e.*, December 1, 2005, if the loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom.

DATES: *Effective Date:* This interim final rule is effective December 20, 2005. Comments must be received on or before January 23, 2006.

Applicability Date: VA will apply this rule to injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom on or after October 7, 2001, through and including November 30, 2005, and to all injuries incurred on or after December 1, 2005.

ADDRESSES: Mail or hand deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AM36.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Gregory Hosmer, Senior Insurance Specialist/Attorney, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000 ext. 4280.

SUPPLEMENTARY INFORMATION: TSGLI was designed to provide severely injured service members who suffer a loss as a direct result of a serious traumatic injury, such as a loss of an arm or leg, with monetary assistance to help the member and the member's family through an often long and arduous treatment and rehabilitation period. In many instances, the family of a member who suffers a traumatic loss in the service of his or her country must physically relocate in order to be with the member during this period in order to provide the member with emotional support. Relocating an entire family is not only disruptive but can and does result in economic hardship to the member and the member's family brought on by new and/or additional living expenses, and in some cases the loss of a job. TSGLI helps to lessen that economic burden by providing immediate financial relief.

Traumatic injury protection under SGLI (TSGLI) is modeled after commercial Accidental Death and Dismemberment (AD&D) insurance coverage, specifically, the ''dismemberment'' portion of the coverage, although as we explain below, it deviates in some respects from the commercial AD&D model to account for the unique needs of military personnel. We have relied on commercial AD&D policies as a basis for the TSGLI program for the following reasons. According to 38 U.S.C. 1980A(a), TSGLI is a ''rider'' to the existing SGLI group policy, which the Secretary of Veterans Affairs purchased from a commercial life insurance company, Prudential Insurance Company of America, on behalf of service members. 38 U.S.C. 1966. SGLI premiums after the first policy year are readjusted by the insurance company issuing the policy ''on a basis determined by the Secretary [of Veterans Affairs] in advance of such year to be consistent with the general practice of life insurance companies under policies of group life insurance issued to large employers.'' AD&D policies are often a rider to group life insurance policies offered by commercial life insurance companies. In addition, VA is obligated to manage the TSGLI program ''on the basis of sound actuarial principles,'' 38 U.S.C. 1980A(e)(4) and (5), and these AD&D models have proven to be actuarially sound. Therefore, these rules implementing the TSGLI program are based on commercial AD&D policies, which have a successful track record, because TSGLI is a rider to a group life insurance policy purchased from a commercial life insurance company and because AD&D policies are frequently provided as a rider to a commercial life insurance policy.

We are setting forth the rules for the TSGLI program in a new regulation at 38 CFR 9.20. These rules were drafted in collaboration with the Department of Defense (DoD) as required by statute. We have added definitions relevant to the TSGLI program at 38 CFR 9.1(k)–(q). The term ''activities of daily living'' is defined in 38 U.S.C. 1965(11), as added by section 1032(a)(1) of Public Law 109–13, and we have restated the definition in 38 CFR 9.1(k) because it is a technical term that may not be readily understood by the general public. We have added to the statutory definition of ''transferring'' in 38 CFR 9.1(k)(6) the phrase ''in or out of bed or chair with or without equipment,'' in order to better explain the meaning of the term. We have defined pyogenic infection in 38 CFR 9.1(l) to mean ''a pus-producing infection.'' The definitions of contaminated substance and chemical, biological and radiological weapons in 38 CFR 9.1(m) through (p) are based on various sources, including the National Center for Biotechnical Information, the National Library of Medicine, the National Institutes of Health, the DoD Dictionary of Military Terms, and commercial insurance industry sources. We have reworded the definitions for purposes of consistency and clarity.

We have defined ''attending medical professional'' in 38 CFR 9.1(q) to mean a licensed physician, optometrist, nurse practitioner, registered nurse, or physician assistant.

We have defined the term ''traumatic event'' in 38 CFR 9.20(b)(1) to mean ''the application of external force, violence, chemical, biological, or

radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living body.'' TSGLI coverage, however, is limited to events occurring on certain dates. TSGLI is effective on December 1, 2005, as provided by section 1032(d)(1) of Public Law 109–13, 119 Stat. 260. However, any service member who experienced a traumatic injury between October 7, 2001, and the effective date of section 1032, *i.e.*, December 1, 2005, is eligible for TSGLI coverage if the loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom under section 1032(c)(1) of Public Law 109–13. Therefore, as explained in § 9.20(b)(1) and (2), the term ''traumatic event'' refers to a traumatic injury occurring on or after December 1, 2005, or on or after October 7, 2001, and through and including November 30, 2005, if the scheduled loss is a direct result of a traumatic injury incurred in Operation Enduring Freedom or Operation Iraqi Freedom. For purposes of this rule only, we have defined the terms ''incurred in Operation Enduring Freedom'' and ''incurred in Operation Iraqi Freedom'' in 38 CFR 9.20(b)(2) to mean that a service member was deployed outside the United States on orders in support of Operation Enduring Freedom or Operation Iraqi Freedom or served in a geographic location that qualified the service member for the Combat Zone Tax Exclusion under 26 U.S.C. 211.

We explain in 38 CFR 9.20(b)(3) that the term ''traumatic event'' does not include a surgical procedure in and of itself because the commercial AD&D models we reviewed do not provide coverage for injury caused by a surgical procedure in and of itself. For example, if a service member has surgery for a disease such as diabetes, which is not covered by § 9.20, requiring amputation of a leg, the surgery would not be considered a traumatic event and TSGLI would not be payable for the loss. However, if a service member undergoes surgery for injuries caused by an explosive device, resulting in amputation of a leg, TSGLI would be payable for the loss because it is the result of a traumatic event, *i.e.*, the detonation of the explosive device, not the surgery.

We have defined the term ''traumatic injury'' in 38 CFR 9.20(c)(1) to mean ''physical damage to a living body that is caused by a traumatic event, as defined in § 9.20(b).'' In § 9.20(c)(2), we explain that the term does not include damage to a living body caused by a mental disorder or mental or physical illness or disease, except if the physical illness or disease is caused by chemical, biological, or radiological weapons or accidental ingestion of a contaminated substance. In several precedent opinions, the VA General Counsel has addressed the meaning of the term ''injury'' for purposes of 38 U.S.C. 101(24) and we believe that the discussion of the plain meaning of the term in these opinions is helpful in defining ''traumatic injury'' for purposes of 38 U.S.C. 1980A. The General Counsel has explained that the term ''injury'' refers to the results of an external trauma rather than a degenerative process. VAOPGCPREC 4–2002, para. 7. The term ''trauma'' is frequently defined with reference to external force or violence. VAOPGC 6–86 (1–31–86). The term ''disease,'' on the other hand, refers to some type of internal infection or degenerative process. VAOPGCPREC 86–90. Based upon these General Counsel opinions, we have defined ''traumatic injury'' as damage to a living body that is caused by the application of external force, violence, or chemical, biological, or radiological weapons or accidental ingestion of a contaminated substance. In accordance with these opinions, we have also defined the term ''traumatic injury'' in 38 CFR 9.20(c)(2) to exclude damage to a living body caused by a mental disorder or illness or disease, whether physical or mental in nature, except if the physical illness or disease is caused by chemical, biological, or radiological weapons or accidental ingestion of a contaminated substance. *See Winn* v. *Brown,* 8 Vet. App. 510, 516 (1996) (personality disorder is not disease under 38 U.S.C. 1110 and 1131).

We have defined ''traumatic injury'' in § 9.20(c)(2)(ii) to include physical illness or disease caused by a pyogenic infection, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance because including immediate traumatic harm due to those unique hazards of military service is consistent with the purpose of TSGLI. Because the process by which such hazards produce immediate harm may be characterized as a disease process, we specify in § 9.20(c)(2)(ii) that diseases resulting from those hazards are within the definition of ''traumatic injury.''

Section 9.20(c)(3) states that, for purposes of this section, all traumatic injuries will be considered to have occurred at the same time as the traumatic event. We believe that inherent in the term ''traumatic injury'' is the notion that the injury occurs immediately. This is also the case with regard to the application of chemical, biological, and radiological weapons and accidental ingestion of a contaminated substance because the physical damage resulting in a covered loss would generally occur immediately and require prompt medical treatment.

Section 9.20(d) discusses the eligibility requirements for payment of traumatic injury protection benefits. Section 1980A(c) of title 38, United States Code, provides that TSGLI payments may be made only if: (1) A member is insured under SGLI when the traumatic injury is sustained; (2) the loss results directly from that traumatic injury and from no other cause; and (3) the member suffers the loss before the end of a period that begins on the date on which the member sustains the traumatic injury. Section 1980A(h) of title 38, United States Code, states that coverage for TGSLI ceases at midnight on the date of the member's separation from the uniformed service. Section 9.20(d)(1) and (2) of title 38, Code of Federal Regulations, as added by this interim rule, restates 38 U.S.C. 1980A(c)(1) and (2) and (h). Also, a member is not insured under SGLI, and therefore not covered for purposes of TSGLI, if the member's coverage has terminated under 38 U.S.C. 1968(a)(1)(B) or if the member has forfeited his or her rights to SGLI under 38 U.S.C. 1973.

Section 1980A(g) of title 38, United States Code, prohibits payment for a loss resulting from a traumatic injury if the member dies before the end of the period prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense. Pursuant to this statutory authority, 38 CFR 9.20(d)(3) requires an insured member to survive for seven days after a traumatic injury to be eligible for TSGLI benefits for a loss resulting from that traumatic injury. The seven days (*i.e.*, 168 hours) are measured beginning from the time and date of the traumatic injury. For example if a member suffers a traumatic injury at 12 noon Zulu (Greenwich Meridian) time on December 1, 2005, the member must survive until 12 noon Zulu (Greenwich Meridian) time on December 8, 2005, to be eligible for TSGLI payments.

We selected a seven-day period based on a review of data gathered by DoD concerning traumatic injuries incurred in Operations Enduring Freedom and Iraqi Freedom, which shows that it usually takes a minimum of seven to ten days following a traumatic injury to stabilize the injured member and transport the member back to the United States for further treatment and to begin the rehabilitation process. During this initial period, the service department pays most if not all major expenses that are incurred by an injured member and/

or the member's family relating to travel by the family to be at the member's side, as provided in 37 U.S.C. 411h. As a result, TSGLI benefits are not needed during the initial period following a traumatic injury. Once the member's condition is stabilized and doctors and the member decide on a course of treatment, TSGLI benefits are needed and will be available to help pay for expenses incurred after the initial period. Furthermore, if the insured member dies within seven days after a traumatic injury, although no TSGLI benefit is payable, the basic SGLI death benefits will be paid to the beneficiary designated by the member or other eligible beneficiary.

According to 38 U.S.C. 1980A(c)(3), a TSGLI payment may be made only if a member suffers a scheduled loss before the end of the period prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense, except if the loss is quadriplegia, paraplegia, or hemiplegia, in which case the member must suffer the loss not later than 365 days after sustaining the traumatic injury.

Section 9.20(d)(4) of this rule provides that a member must suffer a scheduled loss within 365 days of the traumatic injury to be eligible for payment. In determining the appropriate period, we took into account that DoD has advised that both physicians and service members do everything possible to save a limb, and as a result, amputation frequently occurs only after a significant period of time passes after a traumatic injury. With respect to other types of losses, it is difficult to determine with any accuracy the time period within which loss due directly to the traumatic injury can be expected to occur. Although in some cases, the loss may be expected to occur sooner than 365 days after the traumatic injury, 365 days is similar to the time frame which Congress has prescribed for severe injuries, such as quadriplegia and is the broadest period of time included in any commercial AD&D policy we reviewed. Therefore, § 9.20(d)(4) of this rule provides that a member must suffer a scheduled loss within 365 days of the traumatic event to be eligible for payment.

Section 1980A(c)(2) of title 38 provides that the TSGLI benefit is payable only if the scheduled loss ''results directly from [the] traumatic injury and from no other cause.'' In addition, section 1032(c)(1) of Public Law 109–13 states that TSGLI benefits are payable for a traumatic injury occurring between October 7, 2001, and December 1, 2005, ''if the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom.'' In 38 CFR 9.20(e)(1), we interpret the phrases ''results directly * * * and from no other cause'' and ''direct result'' to mean that benefits are payable for a scheduled loss only if a traumatic injury directly causes a member's scheduled loss.

Section 1980A(b)(3) of title 38, United States Code, authorizes the Secretary of Veterans Affairs, in collaboration with the Secretary of Defense, to promulgate regulations providing the conditions under which coverage against a scheduled loss will not be provided by TSGLI. Therefore, § 9.20(e)(2) states that the maximum TSGLI benefit payable for losses under the schedule in paragraph (e)(7) due to more than one traumatic event occurring within a seven-day period is $100,000. We do not believe that Congress intended for a service member to receive more than the statutory maximum TSGLI benefit of $100,000 as a result of scheduled losses due to each of several traumatic events occurring within a short period of time. Also, VA must manage the TSGLI program ''on the basis of sound actuarial principles.'' Congress has expressed its understanding that the premium for TSGLI coverage will be minimal. 151 Cong. Rec. S4095 (2005) (statement of Sen. Craig). In accordance with that charge, we have concluded that, in the case of multiple traumatic events occurring within a seven-day period, it is appropriate to limit recovery to the statutory maximum allowed for a single traumatic event, regardless of whether the losses come from multiple traumatic events within a seven-day period. We have concluded that a period of seven days is appropriate to properly balance the need for actuarial soundness and the interests of providing adequate coverage for traumatic events separated by a greater amount of time. A member could incur a second scheduled loss virtually simultaneously with the initial scheduled loss. If the benefit for the initial scheduled loss were for $100,000, we do not believe Congress intended an additional payment, beyond the maximum provided by law.

If a member loses a limb as a result of a traumatic event, and within seven days the member sustains another traumatic injury from a separate traumatic event that results in the loss of sight in both eyes, the member will receive the benefit under the schedule for those two losses up to $100,000, the maximum amount payable for a single traumatic event under the statute. If a member incurs two scheduled losses separated by more than seven days, the member will receive payment for both losses according to the schedule. For example, a member loses a foot, is paid $50,000 according to the schedule, returns to duty six months later, and sustains the loss of both hands, the member will be paid an additional $100,000 according to the schedule. We will calculate the seven-day period beginning with the day on which the first traumatic event occurs. For example, if there were three separate traumatic events occurring on day one, day six, and day nine, a TSGLI benefit will be paid to the member for the scheduled losses resulting from traumatic events on days one and six, up to $100,000. Since the event on day nine is outside of the initial seven-day period, the member would be paid TSGLI according to the schedule for any loss sustained as a result of the event on day nine.

VA is also promulgating 38 CFR 9.20(e)(3), which explains that TSGLI benefits are not payable if a service member's loss is due to a traumatic injury caused by the member's attempted suicide, while sane or insane, an intentionally self-inflicted injury or an attempt to inflict such injury, medical or surgical treatment of an illness, or willful use of an illegal or controlled substance that was not administered or consumed on the advice of a medical doctor. Also, TSGLI benefits are not payable for a loss due to a traumatic injury that a member sustained while committing or attempting to commit a felony. These limitations follow insurance-industry standards relating to traumatic injury coverage and are based upon sound actuarial and financial principles that VA must utilize in administering TSGLI.

As noted, section 1980A(c)(2) of title 38 provides that the TSGLI benefit is payable only if the scheduled loss ''results directly * * * and from no other cause.'' Therefore, 38 CFR 9.20(e)(4) of this rule provides that payment will not be made for a scheduled loss if caused by a physical or mental illness or disease, except pyogenic infection, whether or not caused by a traumatic injury, or a mental disorder, whether or not caused by a traumatic injury. This follows the commercial AD&D model which excludes losses caused by physical or mental illness or disease or mental disorders and which contains an exception for disease resulting from a pyogenic infection, which is likely to occur as a result of injuries, *i.e.*, wounds, that are incurred under military conditions.

We have incorporated into 38 CFR 9.20(e)(6) the statutory definitions in 38 U.S.C. 1980A(b)(2) of quadriplegia, paraplegia, and hemiplegia because

these are technical terms with which the public may not be familiar.

Section 1980A(b)(1) and (d)(1) of title 38, United States Code, authorizes the Secretary of Veterans Affairs, in collaboration with the Secretary of Defense, to prescribe a schedule of losses resulting from traumatic injuries for which TSGLI benefits are payable and the amount that will be paid for each loss that results from the injuries. Section 9.20(e)(7) of title 38, Code of Federal Regulations, contains a schedule of 43 specific losses for which, if resulting directly from traumatic injuries, TSGLI is payable and the corresponding amount of the payment for each loss. In addition, item 44 in the schedule of losses covers losses due to traumatic injuries other than those provided for elsewhere in the schedule that directly result in a member's inability to perform activities of daily living.

Section 1980A(b)(1)(H) requires that the schedule of losses include coma or the inability to carry out the activities of daily living resulting from traumatic injury to the brain. A note at the end of the schedule in § 9.20(e)(7) explains that the period during which a member is unable to carry out activities of daily living for purposes of determining the amount of TSGLI benefits to be paid runs from the day of onset of the member's inability to perform activities of daily living until the day when the member can again carry out activities of daily living.

As required by 38 U.S.C. 1980A(d), the amount of the payment in the schedule at 38 CFR 9.20(e)(7) is based on the severity of the member's loss. Payments in the schedule range from the statutory minimum of $25,000 up to the statutory maximum of $100,000. Generally, commercial AD&D policies pay 100% of the contracted benefit for the loss of two or more members, *e.g.*, hand, foot, or limb, or for the loss of sight in both eyes, while paying 50% for loss of one member or loss of sight in one eye. Based on the commercial AD&D model, the schedule of losses for TSGLI provides a payment of $100,000 for loss of two or more members, as well as quadriplegia, hemiplegia, and paraplegia, and $50,000 for loss of one member or total and permanent loss of sight in one eye.

Although the TSGLI schedule generally follows the commercial AD&D model, it differs from the basic AD&D model we followed with respect to:

- Permanent and total loss of hearing in one ear.
- Combination of losses that include loss of hearing in one ear.
- Combination of losses that include coma.
- Combination of losses that include the inability to carry out the activities of daily living.
- Burns greater than second degree, covering 30 percent of the body or 30 percent of the face.

VA has decided to provide a payment of $25,000 for permanent and total loss of hearing in one ear and $75,000 for combinations such as loss of one limb or loss of sight in one eye and total and permanent loss of hearing in one ear. We note that most of the AD&D policies we reviewed pay no benefit for total and permanent loss of hearing in one ear only. However, a few policies do provide a benefit for the total and permanent loss of hearing in one ear. In those policies, the benefit payable for total and permanent loss of hearing in one ear is less than half the benefit for total and permanent loss of hearing in both ears. We have included the total and permanent loss of hearing in one ear in the schedule so as to tailor TSGLI to the unique needs of those injured in military service.

The benefit amounts to be paid for scheduled losses that include coma or inability to carry out the activities of daily living are based generally upon the likelihood of recovery as determined by the duration of the coma or inability to carry out activities of daily living. In addition, the determination of benefits in this manner is consistent with commercial insurance industry standards.

In another deviation from commercial industry standards, we provide in the schedule that burns greater than second degree, covering 30 percent of the body or 30 percent of the face, warrant a payment of $100,000. The reason for a maximum payment for this type of injury is due to its severity and length of treatment. Because burns are one of the most complex and harmful physical injuries, they often require initial trauma care, followed by careful evaluation and appropriate wound management. In the case of a 3rd degree or worse burn, skin grafting or other replacement options are required. When a burn injury is deep enough to involve muscle, bone, tendon, and/or ligament, it is often classified as a 4th degree burn. These burns are often life-threatening in nature, and sometimes require amputation.

In accordance with 38 U.S.C. 1980A(f), § 9.20(f) states that the uniformed services will determine eligibility for TSGLI. All uniformed services will certify eligibility based upon section 1032 of Public Law 109–13 and this rule.

Section 9.20(g) explains how a member initiates a claim for TSGLI benefits. A member, or someone acting on his or her behalf if he or she is unable to do so, will obtain a Certification of Traumatic Injury Protection Form, GL.2005.261, on the VA Insurance website, *http://www.insurance.va.gov,* or by contacting the Office of Servicemembers' Group Life Insurance (OSGLI) at 1–800–419–1473. A member can also obtain Form GL.2005.261 by contacting his or her branch of service, and the point of contact for each branch of service is available on the VA Insurance website or from OSGLI.

The member must complete and sign Part A of Form GL.2005.261, which requests identifying information. If the member is unable to sign, Form GL.2005.261 may be signed by the member's guardian or attorney-in-fact. If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualified is paid, the beneficiary or beneficiaries of the member's SGLI policy may complete Form GL.2005.261.

Section 9.20(g)(2) explains that, if a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Certification of Traumatic Injury form for a different scheduled loss, the member must submit a completed Form GL.2005.261 for the new scheduled loss and for each subsequent scheduled loss that occurs. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§ 9.20(e)(7)(xxxvii)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§ 9.20(e)(7)(xliv)), a completed Form GL.2005.261 must be submitted for each increment of time for which TSGLI is payable. For example, if a service member suffers a scheduled loss due to a coma, a completed Form GL.2005.261 should be filed after the 15th consecutive day that the member is in the coma, for which $25,000 is payable. If the member remains in a coma for another 15 days, another completed Form GL.2005.261 should be submitted and another $25,000 will be paid.

The certification form that has been completed by the service member, member's guardian or member's attorney-in-fact should then be sent to

an attending medical professional for completion of Part B of Form GL.2005.261 regarding the nature of the member's injury and whether it meets the schedular requirements of this rule. The appropriate administrative office of the branch of service will complete Part C of Form GL.2005.261, certifying that the member was covered under SGLI when the traumatic injury was sustained and that the member meets the other eligibility requirements set forth in section 1032 of Public Law 109–13 and this rule. The branch of service will then forward the completed certification form to the OSGLI for disbursement of the benefit payment.

Section 9.20(h)(1) states that appeals of TSGLI eligibility determinations, such as whether the loss occurred within 365 days of the traumatic injury, whether the injury was self-inflicted, or whether a loss of hearing was total and permanent, will be made to the Secretary of the uniformed service that made the determination regarding the member's eligibility. Points of contact for filing appeals to the branches of service will be provided on the VA Insurance website, *http://www.insurance.va.gov,* and by the Office of Servicemembers' Group Life Insurance (OSGLI) at 1–800–419–1473.

Section 9.20(h)(2) states that an appeal regarding whether a service member was covered under SGLI when the traumatic injury was sustained must be submitted to OSGLI. Appeals regarding actions on the policy itself, such as whether a service member received a TSGLI payment, are also directed to OSGLI. Section 9.20(h)(3) provides that a member is not precluded by anything in this section from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13.

Section 9.20(i) explains to whom the traumatic injury protection benefit will be paid. The benefit will be paid to the injured member, except in the following circumstances. If the member is legally incapacitated, the benefit will be paid to the member's guardian or attorney-in-fact. If the member dies before a TSGLI payment is made, the benefit will be paid to the beneficiary designated by the member or other eligible beneficiary in accordance with 38 U.S.C. 1970(a), which explains the order of precedence for payment of SGLI proceeds following an insured's death.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(3)(B), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for prior comment with respect to this rule which explains how the TSGLI program will be implemented. The Secretary finds that it is impracticable to delay this regulation for the purpose of soliciting prior public comment because TSGLI is effective December 1, 2005, and because service members and their families need the payment provided by TSGLI as soon as possible following a traumatic injury in order to reduce the financial burden that results from the severe losses covered by the schedule. For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary of Veterans Affairs will consider and address comments that are received within 30 days of the date this interim final rule is published in the **Federal Register**.

Congressional Review Act

Although this rule is a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 804(2), it will not be subject to the 60-day delay in effective date applicable to major rules under 5 U.S.C. 801(a)(3) because VA finds that good cause exists under 5 U.S.C. 808(2) to make the rule effective immediately. As stated above, Congress has directed that TSGLI take effect on December 1, 2005. Further, service members and their families have an immediate and urgent need for the payment provided by TSGLI as soon as possible following a traumatic injury in order to reduce the financial burden that results form the severe losses covered by the schedule. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this rule and other information, including VA's economic analysis of this rule as set forth below.

Unfunded Mandates

The Unfunded Mandates Reform Act 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 effect on State, local, or tribal governments.

Paperwork Reduction Act

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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 interim final rule at § 9.20 contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) (the Act). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by January 23, 2006; however, we are also requesting comments on the collection of information provisions contained in § 9.20 on a non-emergency basis. Comments must be submitted by February 21, 2006.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, or faxed to 202–395–6974, with copies mailed or hand-delivered to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AM36.''

Title: Traumatic Injury Protection (TSGLI) Under The Servicemembers' Group Life Insurance Program Certification Form and Instructions.

Summary of collection of information: The interim final rule at § 9.20(g) contains information for applying for the TSGLI benefit using the TSGLI Certification Form and for completion of the form by medical professionals.

Description of the need for information and proposed use of information: Section 9.20(g)(2) requires that a service member insured under Servicemembers' Group Life Insurance (SGLI) who wants to be paid a TSGLI benefit provide certain information to his or her uniformed service. This information is needed by the uniformed services to determine eligibility for the TSGLI benefit. Section 9.20(g)(2) also requires a medical professional to certify that the member has sustained a traumatic injury that resulted in a scheduled loss. The information needed is as follows:

Part A: Completed by the Service Member

In Part A, the service member or his or her guardian or attorney-in-fact needs to provide basic identifying information including: name, address, telephone

number, service branch, social security number and date of birth. In addition, if the member has a guardian or attorney-in-fact who will receive payment for the benefit on their behalf, the name, address, and other contact information of the guardian or attorney-in-fact needs to be provided. The service member also needs to select how they would like to receive payment (either by Electronic Funds Transfer or through a checkbook) and provide the appropriate bank information if they elect Electronic Funds Transfer. Lastly, the service member needs to sign an authorization for release of medical information to their branch of service and the Office of Servicemembers' Group Life Insurance (OSGLI). This release is needed to comply with the Standards for Privacy of Individually Identifiable Health Information, codified at 45 CFR part 160 and part 164, subparts A and E, so that the service departments and OSGLI can obtain necessary medical information to determine if the service member is eligible for the benefit.

Part B: Completed by an Attending Medical Professional

In Part B, an attending medical professional (either military or civilian) must provide information on the service member's medical condition. The attending medical professional must indicate in a signed statement whether the member sustained a traumatic injury or injuries and a scheduled loss as a direct result of the injury or injuries that would make the member eligible for the TSGLI benefit.

Part C: Completed by the Branch of Service

In Part C, the service member's branch of service must provide information on additional eligibility criteria and sign as the certifying official. The requirements of the Paperwork Reduction Act do not apply to collections of information from current Government employees acting within the scope of their duties. 5 CFR 1320.3(c)(4). Accordingly, the information in Part C of the certification does not require OMB approval.

Description of likely respondents: Service members, service members' guardians and attorneys-in-fact, service members' beneficiaries (if the service member is deceased), and civilian physicians.

Estimated number of respondents per year: 950.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 475 hours.

Estimated annual burden per collection: 30 minutes.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses 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.

OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under 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). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

VA estimates that this rule will have an effect $100 million or greater in any one year under section 3(f)(1) of Executive Order 12866. Therefore, this rule is a significant regulatory action under Executive Order 12866.

VA has attempted to follow OMB circular A–4 to the extent feasible in this analysis. The Circular first calls for a discussion of the need for the regulation. The SGLI Traumatic Injury benefit is designed to provide immediate payment to severely injured service members. The preamble above discusses the need for the regulation in more detail.

The impact of this regulation is primarily to the federal budget, although service members themselves will eventually be impacted by changes in the premiums charged for this coverage. A qualifying service member will receive between $25,000 and $100,000 after suffering a traumatic injury, depending on the type of loss suffered as a result of the injury. The premium charged for this coverage is expected to be $1 per month from each service member insured under SGLI. VA continues to study what premium changes may be needed to cover this benefit; therefore, a premium of $1 per month, although a reasonable assumption, may be subject to change in the future. This premium is intended to cover only the civilian incidence of such injuries. The law provides that any excess program costs above the premiums collected from service members will be paid by DoD.

The required funding from DoD is composed of three parts: retroactive costs, program start-up funds, and prospective monthly costs. Based upon the information available from DoD, VA has developed estimates of each of these costs.

By far the largest impact on the budget is due to the retroactive provision of Public Law 109–13, which provides that any service member who suffered a qualifying loss between October 7, 2001, and December 1, 2005, will receive a benefit under the TSGLI program if the loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. Based on information from DoD, VA has derived a preliminary estimate of the retroactive cost in excess of $400 million, based upon over 5000 seriously wounded service members and a $75,000 average payment amount. Please note that this assumed number of wounded and payouts is based on preliminary projections; actual payouts may be significantly higher or lower than this estimated amount. VA will continue to study the actual demand on the program and will make adjustments accordingly.

For program startup funds, the law also specifies that the Secretary of Defense will forward to VA an amount equivalent to half the anticipated cost of excess claims for the fiscal year on the December 1st effective date. Since ten

months will then be left in fiscal year 2006, a five-month advance payment is required. VA had developed an estimate of $68 million for the fiscal year 2006 cost to DoD. Using this estimate, the five-month advance payment due December 1 amounted to $28 million.

In addition, the law provides for the provision of prospective monthly costs. Specifically, the law provides that the cost of providing such coverage, less the premiums paid by members, will be paid by the Secretary of Defense to VA on a monthly basis. Again, using VA's estimated $68 million cost for fiscal year 2006, monthly payments of $5.7 million would be required from DoD starting December 2005.

The total of these estimated costs through fiscal year 2006 amounts to $485 million. VA will continue to develop actuarial models to ensure that future SGLI premiums fully cover the expected civilian incidence of such injuries. Due to the unpredictability of traumatic injuries resulting from military service (including war), VA has not attempted to estimate the costs to DoD beyond fiscal year 2006. As DoD develops claim data and becomes more cognizant of the cost of TSGLI, VA will make appropriate adjustments in the amount of funds requested for fiscal year 2006. VA requests comment on all of these projections.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this interim 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 final rule will not affect any entity since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number and title for this regulation is 64.103, Life Insurance for Veterans.

List of Subjects in Part 9

Life insurance, Military personnel, Veterans.

Approved: December 15, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 9 is amended as follows:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

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

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Section 9.1 is amended by:

■ (a) In paragraph (f), removing ''upon death occurring''.

■ (b) Adding paragraphs (k) through (q).

The addition reads as follows:

§ 9.1 Definitions.

* * * * *

(k) The term *inability to carry out activities of daily living* means the inability to independently perform at least two of the six following functions:

(1) Bathing.

(2) Continence.

(3) Dressing.

(4) Eating.

(5) Toileting.

(6) Transferring in or out of a bed or chair with or without equipment.

(l) The term *pyogenic infection* means a pus-producting infection.

(m) The term *contaminated substance* means food or water made unfit for consumption by humans because of the presence of chemicals, radioactive elements, bacteria, or organisms.

(n) The term *chemical weapon* means chemical substances intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(o) The term *biological weapon* means biological agents or microorganisms intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(p) The term *radiological weapon* means radioactive materials or radiation-producing devices intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(q) The term *attending medical professional* means a licensed physician, optometrist, nurse practitioner, registered nurse, or physician assistant.

(Authority: 38 U.S.C. 501(a), 1980A)

■ 3. Section 9.20 is added to read as follows:

§ 9.20 Traumatic injury protection.

(a) *What is traumatic injury protection?* Traumatic injury protection provides for the payment of a specified benefit amount to a member insured by Servicemembers' Group Life Insurance who sustains a traumatic injury directly resulting in a scheduled loss.

(b) *What is a traumatic event?* (1) A traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living being occurring—

(i) On or after December 1, 2005, or

(ii) On or after October 7, 2001, and through and including November 30, 2005, if the scheduled loss is a direct result of a traumatic injury incurred in Operation Enduring Freedom or Operation Iraqi Freedom.

(2)(i) The term *incurred in Operation Enduring Freedom* means a service member was deployed outside of the United States on orders in support of Operation Enduring Freedom or served in a geographic location that qualified the service member for the Combat Zone Tax Exclusion under 26 U.S.C. 211.

(ii) The term *incurred in Operation Iraqi Freedom* means a service member was deployed outside of the United States on orders in support of Operation Iraqi Freedom or served in a geographic location that qualified the service member for the Combat Zone Tax Exclusion under 26 U.S.C. 211.

(3) A traumatic event does not include a surgical procedure in and of itself.

(c) *What is a traumatic injury?* (1) A traumatic injury is physical damage to a living body that is caused by a traumatic event as defined in paragraph (b) of this section.

(2) For purposes of this section, the term ''traumatic injury'' does not include damage to a living body caused by—

(i) A mental disorder; or

(ii) A mental or physical illness or disease, except if the physical illness or disease is caused by a pyogenic infection, biological, chemical, or radiological weapons, or accidental ingestion of a contaminated substance.

(3) For purposes of this section, all traumatic injuries will be considered to have occurred at the same time as the traumatic event.

(d) *What are the eligibility requirements for payment of traumatic injury protection benefits?* You must meet all of the following requirements in order to be eligible for traumatic injury protection benefits.

(1) You must be a member of the uniformed services who is insured by Servicemembers' Group Life Insurance under section 1967(a)(1)(A)(i), (B) or (C)(i) of title 38, United States Code, on the date you sustained a traumatic injury. (For this purpose, you will be considered a member of the uniformed services until midnight on the date of your separation from service.)

(2) You must suffer a scheduled loss that is a direct result of a traumatic injury and no other cause.

(3) You must survive for a period not less than seven full days from the date of the traumatic injury. The seven day period begins on the date and Zulu (Greenwich Meridean) time of the traumatic injury and ends 168 full hours later.

(4) You must suffer a scheduled loss under paragraph (e)(7) of this section within 365 days of the traumatic injury.

(e) *What is a scheduled loss and what amount will be paid because of that loss?* (1) The term ''scheduled loss'' means a condition listed in the schedule in paragraph (e)(7) of this section if directly caused by a traumatic injury. A scheduled loss is payable at the amount specified in the schedule.

(2) The maximum amount payable under the schedule for all losses resulting from traumatic events occurring within a seven-day period is $100,000. We will calculate the seven-day period beginning with the day on which the first traumatic event occurs.

(3) A benefit will not be paid if a scheduled loss is due to a traumatic injury—

(i) Caused by—

(A) The member's attempted suicide, while sane or insane;

(B) An intentionally self-inflicted injury or an attempt to inflict such injury;

(C) Medical or surgical treatment of an illness or disease;

(D) Willful use of an illegal or controlled substance, unless administered or consumed on the advice of a medical doctor; or

(ii) Sustained while a member was committing or attempting to commit a felony.

(4) A benefit will not be paid for a scheduled loss resulting from—

(i) A physical or mental illness or disease, whether or not caused by a traumatic injury, other than a pyogenic infection or physical illness or disease caused by biological, chemical, or radiological weapons or accidental ingestion of a contaminated substance; or

(ii) A mental disorder whether or not caused by a traumatic injury.

(5) Amount Payable under the Schedule of Losses. (i) The maximum amount payable for all scheduled losses resulting from a single traumatic event is limited to $100,000. For example, if a traumatic event on April 1, 2006, results in the immediate total and permanent loss of sight in both eyes, and the loss of one foot on May 1, 2006, as a direct result of the same traumatic event, the member will be paid $100,000.

(ii) If a member suffers more than one scheduled loss as a result of a single traumatic event, payment will be made for the scheduled loss with the highest benefit amount.

(iii) If a member suffers more than one scheduled loss from separate traumatic events occurring more than seven full days apart, the scheduled losses will be considered separately and a benefit will be paid for each loss up to the maximum amount according to the schedule. For example, if a member suffers the loss of one foot at or above the ankle on May 1, 2006, from one event, the member will be paid $50,000. If the same member suffers loss of sight in both eyes from an event that occurred on November 1, 2006, the member will be paid an additional $100,000.

(6) Definitions. For purposes of this paragraph (e)(6)—

(i) *Quadriplegia* means the complete and irreversible paralysis of all four limbs;

(ii) *Paraplegia* means the complete and irreversible paralysis of both lower limbs; and

(iii) *Hemiplegia* means the complete and irreversible paralysis of the upper and lower limbs on one side of the body.

(7) Schedule of Losses.

If the loss is—	Then the amount that will be paid is—
(i) Total and permanent loss of sight in both eyes	$100,000.
(ii) Total and permanent loss of hearing in both ears	$100,000.
(iii) Loss of both hands at or above wrist	$100,000.
(iv) Loss of both feet at or above ankle	$100,000.
(v) Quadriplegia	$100,000.
(vi) Hemiplegia	$100,000.
(vii) Paraplegia	$100,000.
(viii) 3rd degree or worse burns, covering 30% of the body or 30% of the face.	$100,000.
(ix) Loss of one hand at or above wrist and one foot at or above ankle	$100,000.
(x) Loss of one hand at or above wrist and total and permanent loss of sight in one eye.	$100,000.
(xi) Loss of one foot at or above ankle and total and permanent loss of sight in one eye.	$100,000.
(xii) Total and permanent loss of speech and total and permanent loss of hearing in one ear.	$75,000.
(xiii) Loss of one hand at or above wrist and total and permanent loss of speech.	$100,000.
(xiv) Loss of one hand at or above wrist and total and permanent loss of hearing in one ear.	$75,000.
(xv) Loss of one hand at or above wrist and loss of thumb and index finger of other hand.	$100,000.
(xvi) Loss of one foot at or above ankle and total and permanent loss of speech.	$100,000.
(xvii) Loss of one foot at or above ankle and total and permanent loss of hearing in one ear.	$75,000.
(xviii) Loss of one foot at or above ankle and loss of thumb and index finger of same hand.	$100,000.
(xix) Total and permanent loss of sight in one eye and total and permanent loss of speech.	$100,000.
(xx) Total and permanent loss of sight in one eye and total and permanent loss of hearing in one ear.	$75,000.
(xxi) Total and permanent loss of sight in one eye and loss of thumb and index finger of same hand.	$100,000.
(xxii) Total and permanent loss of thumb of both hands, regardless of the loss of any other digits.	$100,000.

If the loss is—	Then the amount that will be paid is—
(xxiii) Total and permanent loss of speech and loss of thumb and index finger of same hand.	$100,000.
(xxiv) Total and permanent loss of hearing in one ear and loss of thumb and index finger of same hand.	$75,000.
(xxv) Loss of one hand at or above wrist and coma	$50,000 for of loss of hand plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxvi) Loss of one foot at or above ankle and coma	$50,000 for loss of foot plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxvii) Total and permanent loss of speech and coma	$50,000 for total and permanent loss of speech plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxviii) Total and permanent loss of sight in one eye and coma	$50,000 for total and permanent loss of sight in one eye plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxix) Total and permanent loss of hearing in one ear and coma	$25,000 for total and permanent loss of hearing in one ear plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxx) Loss of thumb and index finger of same hand and coma	$50,000 for loss of thumb and index finger of the same hand plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxxi) Total and permanent loss of sight in one eye and inability to carry out activities of daily living due to traumatic brain injury.	$50,000 for loss of sight in one eye plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxxii) Loss of one hand at or above wrist and inability to carry out activities of daily living due to traumatic brain injury.	$50,000 for loss of hand plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxxiii) Loss of one foot at or above ankle and inability to carry out activities of daily living due to traumatic brain injury.	$50,000 for loss of foot plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxxiv) Loss of thumb and index finger of same hand and inability to carry out activities of daily living due to traumatic brain injury.	$50,000 for loss of thumb and index finger plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxxv) Total and permanent loss of hearing in one ear and inability to carry out activities of daily living due to traumatic brain injury.	$25,000 for total and permanent loss of hearing in one ear plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxxvi) Total and permanent loss of speech and inability to carry out activities of daily living due to traumatic brain injury.	$50,000 for total and permanent loss of speech plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.
(xxxvii) Coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury.	At 15th consecutive day in a coma, and/or the inability to carry out activities of daily living—$25,000.
Note 1: Benefits will not be paid under this schedule for concurrent conditions of coma and traumatic brain injury.	At 30th consecutive day in a coma, and/or the inability to carry out activities of daily living—Additional $25,000.
Note 2: Duration of coma includes the day of onset of the coma and the day when the member recovers from coma.	At 60th consecutive day in a coma, and/or the inability to carry out activities of daily living—Additional $25,000.
Note 3: Duration of the inability to carry out activities of daily living due to traumatic brain injury includes the day of the onset of the inability to carry out activities of daily living and the day the member once again can carry out activities of daily living.	At 90th consecutive day in a coma, and/or the inability to carry out activities of daily living—Additional $25,000.
	(Benefits can be paid for both conditions only if experienced consecutively, not concurrently.)
(xxxviii) Total and permanent loss of speech	$50,000.
(xxxix) Loss of one hand at or above wrist	$50,000.
(xl) Loss of one foot at or above ankle	$50,000.
(xli) Total and permanent loss of sight in one eye	$50,000.
(xlii) Loss of thumb and index finger of same hand	$50,000.
(xliii) Total and permanent loss of hearing in one ear	$25,000.
(xliv) The inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain.	At 30th consecutive day of the inability to carry out activities of daily living—$25,000.
Note: Duration of the inability to carry out activities of daily living includes the day of onset of the inability to carry out activities of daily living and the day when the member can once again carry out activities of daily living.	At 60th consecutive day of the inability to carry out activities of daily living—Additional $25,000.
	At 90th consecutive day of the inability to carry out activities of daily living—Additional $25,000.
	At 120th consecutive day of the inability to carry out activities of daily living—Additional $25,000.

(f) *Who will determine eligibility for traumatic injury protection benefits?* Each uniformed service will certify the eligibility of its own members for traumatic injury protection benefits based upon section 1032 of Public Law 109–13 and this section.

(g) *How does a member make a claim for traumatic injury protection benefits?* (1)(i) A member who believes he or she qualifies for traumatic injury protection

benefits must complete Part A of the Certification of Traumatic Injury Protection Form and sign the form.

(ii) If a member is unable to do so, anyone acting on the member's behalf may request a Certification of Traumatic Injury Protection Form from the uniformed service. However, the Certification of Traumatic Injury Protection Form must be signed by the member, the member's guardian, or the member's attorney-in-fact.

(iii) If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualifies is paid the beneficiary or beneficiaries of the member's Servicemembers' Group Life Insurance policy should complete a Certification of Traumatic Injury Protection Form.

(2) If a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Certification of Traumatic Injury Protection Form for a different scheduled loss, the member must submit a completed Certification of Traumatic Injury Protection Form for the new scheduled loss and for each scheduled loss that occurs thereafter. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§ 9.20(e)(7)(xxxvii)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§ 9.20(e)(7)(xliv)), a completed Certification of Traumatic Injury Protection Form must be submitted for each increment of time for which TSGLI is payable. Also, for example, if a service member suffers a scheduled loss due to a coma, a completed Certification of Traumatic Injury Protection Form should be filed after the 15th consecutive day that the member is in the coma, for which $25,000 is payable. If the member remains in a coma for another 15 days, another completed Certification of Traumatic Injury Protection Form should be submitted and another $25,000 will be paid.

(h) *How does a member or beneficiary appeal an adverse eligibility determination?* (1) Notice of a decision regarding a member's eligibility for traumatic injury protection benefits will include an explanation of the procedure for obtaining review of the decision. An appeal of an eligibility determination, such as whether the loss occurred within 365 days of the traumatic injury, whether the injury was self-inflicted or whether a loss of hearing was total and permanent, must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative, within one year of the date of a denial of eligibility, to the office of the uniformed service identified in the decision regarding the member's eligibility for the benefit.

(2) An appeal regarding whether a member was insured under Servicemembers' Group Life Insurance when the traumatic injury was sustained must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative within one year of the date of a denial of eligibility to the Office of Servicemembers' Group Life Insurance.

(3) Nothing in this section precludes a member from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13.

(i) *Who will be paid the traumatic injury protection benefit?* The injured member who suffered a scheduled loss will be paid the traumatic injury protection benefit in accordance with title 38 U.S.C. 1980A except under the following circumstances:

(1) If a member is legally incapacitated, the member's guardian or attorney-in-fact will be paid the benefit on behalf of the member.

(2) If a member dies before payment is made, the beneficiary or beneficiaries who will be paid the benefit will be determined in accordance with 38 U.S.C. 1970(a).

(Authority: 38 U.S.C. 501(a) and 1980A)

[FR Doc. 05–24390 Filed 12–20–05; 10:53 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

RIN 0920–AA13

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Amendments; Interim Final Rule With Request for Comments

AGENCY: Department of Health and Human Services.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Health and Human Services (''HHS'') is amending its procedures to consider designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (''EEOICPA''), 42 U.S.C. 7384–7385. HHS must change these procedures to implement amendments to EEOICPA enacted on October 28, 2004, as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 (codified as amended in scattered sections of 42 U.S.C.).

DATES: *Effective Date:* This interim final rule is effective December 22, 2005.

Comments: The Department invites written comments on the interim final rule from interested parties. Comments on the rule must be received by February 21, 2006.

ADDRESSES: Address written comments on the interim final rule to the National Institute for Occupational Safety and Health (''NIOSH'') Docket Officer electronically by e-mail to *NIOCINDOCKET@cdc.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll free number). Information requests can also be submitted by e-mail to *OCAS@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to the changes in the Special Exposure Cohort (''the Cohort'') rule (42 CFR part 83) effectuated by this rulemaking. Comments concerning any other provisions of the Cohort rule, unchanged and unaffected by this rulemaking, will not be considered.

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: *NIOCINDOCKET@cdc.gov.* Comments submitted by e-mail may be provided as e-mail text or as a Word or

Word Perfect file attachment. Printed comments can also be submitted to the address above. All communications received on or before the closing date for comments will be fully considered by the Secretary. An electronic docket containing all comments submitted will be available over the Internet on the Web page of the National Institute for Occupational Safety and Health (''NIOSH''), Office of Compensation Analysis and Support at *http://www.cdc.gov/niosh/ocas,* and comments will be available in writing by request.

II. Purpose of Rulemaking

On October 28, 2004, the President signed the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 (codified as amended in scattered sections of 42 U.S.C.). Division C, Subtitle E, of this Act includes amendments to the Energy Employees Occupational Illness Compensation Program Act (''EEOICPA'') 42 U.S.C. 7384–7385. Several of these amendments, under section 3166 (b), establish new statutory requirements under 42 U.S.C. 7384q and 7384*l*(14)(C)(ii), relevant to the Department of Health and Human Services (''HHS'') procedures established under 42 CFR part 83: ''Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.'' These new requirements include the following: (1) Following the receipt by NIOSH of a petition for designation as members of the Cohort, NIOSH must submit ''a recommendation'' on that petition, including all documentation, to the Advisory Board on Radiation and Worker Health (''the Board'') within 180 days; (2) following the receipt by the Secretary of HHS (''the Secretary'') of a recommendation by the Board that the Secretary determine in the affirmative that a class meets the statutory criteria for addition to the Cohort, the Secretary must submit to Congress a determination as to whether or not the class meets these statutory criteria within 30 days; (3) if the Secretary does not submit this determination to Congress within 30 days, then it shall be deemed that the Secretary has submitted a report to Congress on the 31st day that designates, as an addition to the Cohort, the class recommended by the Board for addition to the Cohort and that provides the criteria used to support the designation; and (4) the period for Congress to review a report submitted by the Secretary to designate a class as an addition to the Cohort is reduced from 180 days to 30 days.

To implement these new requirements, HHS must amend 42 CFR part 83. As discussed below, some of the changes to the HHS rule are necessary legally for compliance with the new requirements and other changes are necessary to make implementation of the requirements feasible.

III. Summary of the Rule Changes

HHS has made changes to four sections of the Cohort rule to implement the new statutory requirements summarized above. These changes are described below in relation to the relevant statutory requirement.

A. 180-Day Deadline for NIOSH Recommendations

HHS has amended §§ 83.5 and 83.11 of the rule to enable NIOSH to meet the statutory requirement that NIOSH submit to the Board ''a recommendation'' on a petition within 180 days of its receipt (see 42 U.S.C. 7384q(c)(1)). The change to § 83.5 provides a definition of a petition, which was previously undefined in the rule, to specify that only submissions by qualified petitioners that meet the informational and procedural requirements of a petition under the rule will be considered to be ''petitions'' and hence will be covered by the 180-day deadline. This provision is necessary to clarify that the submission of a petition by an unqualified petitioner or the submission of an incomplete petition does not initiate the 180-day requirement. NIOSH experience with petitions demonstrates that it may take months to assist and consult with petitioners to help make incompletely submitted petitions as complete and accurate as possible. Starting the 180-day requirement after such preparatory work of the petitioners will help support the completion of the NIOSH evaluation of the petition within 180-day deadline. NIOSH will provide written notification to the submitter indicating the official date the submission qualified as a petition, thus starting the 180-day deadline for providing a recommendation to the Board.

The changes to § 83.11 support the distinction between an incomplete or non-qualifying submission and a petition, which is subject to the 180-day deadline. They include the substitution of the term ''submission'' for ''petition'' where appropriate.

HHS has also amended paragraph (c) of § 83.11 to reduce, from 30 to 7 calendar days, the time during which a petitioner can request a review of a proposed finding by NIOSH that the petition fails to meet the specified requirements. Seven days is sufficient time for the petitioner to make such a request and the 21 days potentially saved by such a change are necessary to support the completion of the NIOSH evaluation of the petition within 180 days, should the review determine that the petition satisfies the requirements of a petition. Consistent with this change, HHS has also amended paragraph (e) of § 83.11 to reduce, from 31 to 8 calendar days, the time at which a proposed finding by NIOSH under paragraph (b) becomes final if no review is conducted.

B. 30-Day Deadline for Determinations by HHS

HHS has amended §§ 83.16 and 83.17 and added a new § 83.18 of the rule to enable HHS to meet the statutory requirement that the Secretary submit to Congress determinations as to whether or not a class meets the statutory criteria for addition to the Cohort within 30 days of the Secretary receiving a recommendation by the Board to make an affirmative determination in this regard (see 42 U.S.C. 7384q(c)(2)(A)–(B)). The changes to § 83.16 remove the opportunity for petitioners to seek an administrative review of proposed decisions by the Director of NIOSH. This change is being made because it would not be possible for the Director of NIOSH to issue a proposed decision, for petitioners to seek and HHS to provide an administrative review of the proposed decision, and for the Secretary to issue a final decision, all within the 30-day congressional report deadline.

HHS has added provisions under a new § 83.18 (the existing § 83.18 is redesignated as § 83.19) to provide petitioners with the opportunity to seek administrative reviews of final decisions by the Secretary, since petitioners will no longer have the opportunity to seek administrative reviews of proposed decisions. This new administrative review opportunity is essentially identical to that provided previously under § 83.16 for proposed decisions.

Under § 83.16(c) and § 83.17(b), HHS has provided for the Secretary to submit to Congress within 30 days the determinations required under the statutory 30-day deadline.

C. Computation of Time Periods

HHS has added a new paragraph (c) ''Computation of Time Periods'' under § 83.5 to specify how HHS and NIOSH will count the time periods for the various deadlines included in the rule.

IV. Regulatory Procedures

HHS follows the Administrative Procedure Act (''PA'') rulemaking procedures specified in 5 U.S.C. 553 for the development of its regulations. In most circumstances, the APA requires a public notice and comment period and consideration of the submitted comments prior to promulgation of a final rule having the effect of law. However, the APA provides for exceptions to its notice-and-comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of this interim final rule, HHS has determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the notice and comment procedures. For these same reasons, HHS has also determined that good cause exists under 5 U.S.C. 553(d)(3) for these interim rules to become effective immediately.

A number of courts have considered the circumstances under which an agency can conclude that good cause exists for issuing regulations without prior notice and comment. In *American Transfer & Storage Co., et al.* v. *Interstate Commerce Commission,* 719 F.2d 1283, 1295 (5th Cir. 1983), the Fifth Circuit described the impracticability test as requiring ''analysis in practical terms of the particular statutory-agency setting and the reasons why agency action could not await notice and comment.'' Similarly, the Seventh Circuit noted that the ''legislative history of the impracticability standard reveals that Congress intended this exemption to operate when the regular course of rulemaking procedure would interfere with the agency's ability to perform its functions with the time constraints imposed by Congress.'' *United States Steel Corporation* v. *United States Environmental Protection Agency,* 605 F.2d 283, 287 (7th Cir. 1979).

Precisely such an ''analysis in practical terms'' demonstrates that in this case, HHS cannot await the process of notice and comment to implement the changes to 42 CFR part 83 set forth here on an interim final basis. As discussed above, the amendments to EEOICPA addressed by this rulemaking directly conflict, legally and practically, with the existing provisions of the existing provisions of the HHS rule. The potential consequences of these conflicts are that HHS would have to violate the legal requirements of its rule to uphold the statutory requirements of the EEOICPA amendments.

Specifically, under the new 30-day statutory deadline for producing HHS determinations on petitions that the Board recommends receive affirmative determinations (42 U.S.C. 7384q(c)(2)(A)), HHS would not be able to produce a proposed decision, provide petitioners with the opportunity to contest the proposed decision, and provide an administrative review of such a challenge prior to issuing a final decision with respect to the determination, as previously provided for under § 83.16(a)–(c) of the rule. Similarly, the reduction in the statutorily-set congressional review period for designations by the Secretary of additions to the Cohort, from 180 days to 30 days (42 U.S.C. 7384l(14)(C)(ii)), conflicts with § 83.17(b) of the rule, which mandates a period of 180 days before a designation by the Secretary would become effective.

If HHS were to issue a notice of proposed rulemaking proposing changes to the Cohort procedures, HHS would have to violate either the new statutory requirements or its Cohort regulations for each Cohort petition that is considered, until a final regulation could be issued. Hence, HHS believes good cause exists to waive the notice and comment procedures under the APA for the promulgation of this interim final rule.

Although HHS is adopting this rule on an interim final basis, it requests public comment on this rule. After full consideration of public comments, HHS will publish a final rule with any necessary changes. HHS expects to issue a final rule within six months of the publication of this interim final rule.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the agency must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the executive order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

This rule is being treated as a ''significant regulatory action'' within the meaning of the executive order because it meets the criterion of Section 3(f)(4) in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. It amends current procedures by which the Secretary considers petitions to add classes of employees to the Cohort to comport with new statutory deadlines (see 42 U.S.C. 7384q(c)(2)(A) and 42 U.S.C. 7384l(14)(C)(ii)). The amendment also includes the provision of the opportunity for certain affected parties to obtain administrative reviews of final agency actions, versus proposed agency actions. The revisions do not, however, affect the financial cost to the Federal Government of responding to these petitions nor the scientific and policy bases for making decisions on such petitions.

The rule carefully explains the manner in which the procedures are consistent with the mandates of 42 U.S.C. 7384q and 7384l(14)(C)(ii) and implements the detailed requirements of these sections. The rule does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in § 3(f)(1) of the Executive Order 12866. As discussed above, it does not affect the financial cost to the Federal Government of responding to these petitions nor the scientific and policy bases for making decisions on such petitions. Furthermore, it has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by the Department of Labor (''OL'') under 20 CFR parts 1 and 30. DOL has determined that its rule fulfills the requirements of Executive Order 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see 70 FR 33590, June 8, 2005). OMB has reviewed this rule for consistency with the President's priorities and the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.,* requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. HHS certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The rule affects only HHS, DOL, the Department of Energy, and certain individuals covered by EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

C. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Rule?

The Paperwork Reduction Act (''PRA'') 44 U.S.C. 3501 *et. seq.,* requires an agency to invite public comment on and to obtain OMB approval of any regulation that requires ten or more people to report information to the agency or to keep certain records. This rule, which makes limited changes to 42 CFR part 83, does not contain any information collection requirements. Thus, HHS has determined that the PRA does not apply to this rule.

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*), HHS will report to Congress promulgation of this rule prior to its taking effect. The report will state that HHS has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more. However, this rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et. seq.*) directs agencies to assess the effects of federal regulatory actions on State, local, and tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988 on Civil Justice Reform and will not unduly burden the federal court system. HHS adverse decisions may be reviewed in United States District Courts pursuant to the APA. HHS has attempted to minimize that burden by providing petitioners an opportunity to seek administrative review of adverse decisions. HHS has provided a clear legal standard it will apply in considering petitions. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

HHS has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect on them.

J. Effective Date

The Secretary has determined, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for this rule to be effective immediately to eliminate legal inconsistencies between new statutory requirements under 42 U.S.C. 7384l and 7384q and regulatory requirements under 42 CFR part 83 and to make the implementation of the new statutory requirements feasible.

List of Subjects in 42 CFR Part 83

Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

Text of the Rule

■ For the reasons discussed in the preamble, HHS amends 42 CFR part 83 to read as follows:

PART 83—[AMENDED]

■ 1–2. The authority citation for part 83 continues to read as follows:

Authority: 42 U.S.C. 7384q; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

Subpart B—Definitions

■ 3. Amend § 83.5 by redesignating paragraphs (j) through (n) as (l) through (p), respectively and by redesignating paragraphs (c) through (i) as (d) through (j), respectively, and by adding new paragraphs (c) and (k) to read as follows:

§ 83.5 Definition of terms used in the procedures in this part.

* * * * *

(c) *Computation of Time Periods:* In this Rule, all prescribed or allowed time periods will be counted as calendar days from the business day of receipt by the submitter(s), the petitioner(s), NIOSH, or HHS. Receipt by NIOSH, the submitter(s) or petitioner(s) will be either the business day of actual receipt or three (3) business days after initial proof of mailing, whichever time period is shorter. Business days are defined as Monday through Friday, 8 a.m. to 4:30 p.m. est and ''legal holiday'' will be used as defined by the FED. R. CIV. P. 6(a).

* * * * *

(k) *Petition* means a submission under § 83.8 of this part that meets all the requirements of §§ 83.7–83.9 of this part and has incorporated any revisions made by the petitioner under §§ 83.7–83.9 or § 83.11 of this part.

* * * * *

Subpart C—Procedures for Adding Classes of Employees to the Cohort

■ 4. Revise § 83.11 to read as follows:

§ 83.11 What happens to petition submissions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?

(a) NIOSH will notify the petitioner(s) of any requirement that is not met by the submission, assist the petitioner(s) with guidance in developing relevant information, and provide 30 calendar days for the petitioner(s) to revise the submission accordingly.

(b) After 30 calendar days from the date of notification under paragraph (a) of this section, NIOSH will notify any petitioner(s) whose submission remains unsatisfactory of the proposed finding of NIOSH that the submission fails to meet the specified requirements and the basis for this finding.

(c) A petitioner may request in writing a review of a proposed finding within 7 calendar days of notification under paragraph (b) of this section. Petitioners must specify why the proposed finding should be reversed, based on the petition requirements and on the information that the petitioners had already submitted. The request may not include any new information or documentation that was not included in the completed submission. If the petitioner obtains new information within this 7 day period, the petitioner should provide it to NIOSH. NIOSH will consider this new information as a revision of the submission under paragraph (a) of this section.

(d) Three HHS personnel, appointed by the Director of NIOSH, who were not involved in developing the proposed finding will complete reviews within 30 work days of the request for such a review. The Director of NIOSH will consider the results of the review and then make a final decision as to whether the submission satisfies the requirements for a petition.

(e) Proposed findings established by NIOSH under paragraph (b) of this section will become final decisions in 8 calendar days if not reviewed under paragraph (d) of this section.

(f) Based on new information, NIOSH may, at its discretion, reconsider a decision that a submission does not satisfy the requirements for a petition.

■ 5. Revise § 83.16 to read as follows:

§ 83.16 How will the Secretary decide the outcome(s) of a petition?

(a) The Director of NIOSH will propose a decision to add or deny adding any class or classes of employees to the Cohort, including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the proposed decision is based. This proposed decision will take into consideration the evaluations of NIOSH and the report and recommendations of the Board, and may also take into consideration information presented or submitted to the Board and the deliberations of the Board. In the case of a petition that NIOSH has determined encompasses more than one class of employees, the Director of NIOSH will issue a separate proposed decision for each separate class of employees.

(b) The Secretary will make the final decision to add or deny adding a class to the Cohort, including the definition of the class, after considering information and recommendations provided to the Secretary by the Director of NIOSH and the Board. HHS will transmit a report of the decision to the petitioner(s), including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the decision is based. HHS will also publish a notice summarizing the decision in the **Federal Register**.

(c) If, under § 83.15(e), the Board recommends that the Secretary designate a class covered by the petition as an addition to the Cohort, and if, under paragraph (b) of § 83.16, the Secretary decides to deny adding the class, as defined by the Board, to the Cohort, then the Secretary will submit to Congress a determination that the statutory criteria specified under 42 U.S.C. 7384q(b)(1) and (2) have not been met for adding the class to the Cohort. The Secretary will submit this determination to Congress within 30 calendar days following receipt by the Secretary of the recommendation of the Board.

■ 6. Amend § 83.17 by redesignating paragraphs (b), (c), and (d), as (c), (d), and (e), respectively, and by adding new paragraph (b), and revising newly redesignated paragraphs (c) and (e) to read as follows:

§ 83.17 How will the Secretary report a final decision to add a class of employees to the Cohort and any action of Congress concerning the effect of the final decision?

* * * * *

(b) If, under § 83.15(e), the Board recommends that the Secretary designate a class covered by the petition as an addition to the Cohort, and if, under paragraph (b) of § 83.16, the Secretary decides to add a class to the Cohort that is inclusive of the class as defined by the Board, then the Secretary will transmit to Congress the report specified in paragraph (a) of this section within 30 calendar days following receipt by the Secretary of the recommendation of the Board.

(c) A designation of the Secretary will take effect 30 calendar days after the date on which the report of the Secretary under paragraph (a) of this section is submitted to Congress, or is deemed to have been submitted to Congress,[5] unless Congress takes an action that reverses or expedites the designation.

* * * * *

(e) The report specified under paragraph (d) of this section will be published on the Internet at *http://www.cdc.gov/niosh/ocas* and in the **Federal Register**.

§ 83.18 [Redesignated as § 83.19]

■ 7. Redesignate § 83.18 as § 83.19.

■ 8. Add a new § 83.18 to read as follows:

§ 83.18 How can petitioners obtain an administrative review of a final decision by the Secretary?

(a) HHS will allow petitioners to contest only a final decision to deny adding a class to the Cohort or a health endangerment determination under § 83.13(c)(3)(ii). Such challenges must be submitted in writing within 30 calendar days and must include evidence that the final decision relies on a record of either substantial factual errors or substantial errors in the implementation of the procedures of this part. Challenges may not introduce new information or documentation concerning the petition or the NIOSH or Board evaluation(s) that was not submitted or presented by the petitioner(s) or others to NIOSH or to the Board prior to the Board's issuing its recommendations under § 83.15.

(b) A panel of three HHS personnel, independent of NIOSH and appointed by the Secretary, will conduct an administrative review based on a challenge submitted under paragraph (a) of this section and provide recommendations of the panel to the Secretary concerning the merits of the challenge and the resolution of issues contested by the challenge. Reviews by the panel will consider, in addition to the views and information submitted by the petitioner(s) in the challenge, the NIOSH evaluation report(s), the report containing the recommendations of the Board issued under § 83.15, and recommendations of the Director of NIOSH to the Secretary. The reviews may also consider information presented or submitted to the Board and the deliberations of the Board prior to the issuance of the recommendations of the Board under § 83.15. The panel shall consider whether HHS substantially complied with the procedures of this part, the factual accuracy of the information supporting the final decision, and the principal findings and recommendations of NIOSH and those of the Board issued under § 83.15.

[5] Under 42 U.S.C. 7384q(c)(2)(C), if the Secretary does not submit within 30 days the determination required under paragraph (a) of § 83.17 of this part, then on the following day, ''it shall be deemed'' that the Secretary submitted the report specified under paragraph (b) of § 83.17 of this part.

(c) The Secretary will decide whether or not to revise a final decision contested by the petitioner(s) under this section after considering information and recommendations provided to the Secretary by the Director of NIOSH, the Board, and from the HHS administrative review conducted under paragraph (b) of this section. HHS will transmit a report of the decision to the petitioner(s).

(d) If the Secretary decides under paragraph (c) of this section to change a designation under § 83.17(a) of this part or a determination under § 83.16(c) of this part, the Secretary will transmit to Congress a report providing such change to the designation or determination, including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the decision is based. HHS will also publish a notice summarizing the decision in the **Federal Register**.

(e) A new designation of the Secretary under this section will take effect 30 calendar days after the date on which the report of the Secretary under paragraph (d) of this section is submitted to Congress, unless Congress takes an action that reverses or expedites the designation. Such new designations and related congressional actions will be further reported by the Secretary pursuant to paragraphs (d) and (e) of § 83.17.

Dated: September 13, 2005.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

[FR Doc. 05–24358 Filed 12–21–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

RIN 1004–AD80

Onshore Oil and Gas Operations; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendment.

SUMMARY: This document contains a correcting amendment to a final rule reorganizing regulations of the Bureau of Land Management (BLM) relating to onshore oil and gas operations, which was published in the **Federal Register** of Friday, February 20, 1987 (52 FR 5384). The amendment corrects an error in a cross-reference.

DATES: Effective date December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, 202–452–5042. Individuals who use a telecommunications device for the deaf (TDD) may contact him individually through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of this correcting amendment have been in effect for more than 20 years. They pertain specifically to onshore oil and gas operations programs, and particularly to the penalty provision for knowingly submitting false, misleading, or inaccurate reports or other information required by the regulations, taking oil or gas from a Federal or Indian lease without authority, or receiving such oil or gas knowing or having reason to know it was stolen or unlawfully diverted or removed from a Federal or Indian lease site.

Need for Correction

When a final rule redesignated and revised the pertinent sections in 1987, at 52 FR 5394, it created an error in a cross-reference. This error is misleading and needs clarification. The provision assigns a criminal penalty for an act for which a civil penalty is prescribed in another section, referring to that other section by number. However, the section and paragraph number stated, section 3163.4–1(b)(6), does not exist in the current regulations, having been redesignated as section 3163.2(f) in the 1987 rule. The 1987 rule failed to adjust the cross-reference, which now needs to be corrected to eliminate confusion.

List of Subjects in 43 CFR Part 3160

Government contracts; Indians—lands; Mineral royalties; Oil and gas exploration; Penalties, Public lands—mineral resources; Surety bonds.

■ Accordingly, 43 CFR part 3160 is corrected by making the following amendment:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 3163—Noncompliance, Assessments, and Penalties

■ 2. Revise section 3163.3 to read as follows:

§ 3163.3 Criminal penalties.

Any person who commits an act for which a civil penalty is provided in § 3163.2(f) shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

Dated: December 7, 2005.

Chad Calvert,

Acting Assistant Secretary of the Interior.

[FR Doc. 05–24371 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 1625–AA27 (Formerly RIN 2115–AG07)

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule revises Coast Guard requirements for alcohol testing after a serious marine incident to ensure that mariners or their employees involved in a serious marine incident are tested for alcohol use within 2 hours of the occurrence of the incident as required under the Coast Guard Authorization Act of 1998. This final rule also requires that most commercial vessels have alcohol testing devices on board, and authorizes the use of saliva as an acceptable specimen for alcohol testing. This rule also makes some minor procedural changes, including a 32-hour time limit for collecting specimens for drug testing following a serious marine incident.

DATES: This final rule is effective June 20, 2006.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–8773 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Robert Schoening, Coast Guard, telephone 202–267–0684. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402. This is not a toll-free call.

SUPPLEMENTARY INFORMATION:

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I. Background and Purpose

This final rule modifies Coast Guard regulations requiring testing for drug and alcohol use by persons involved in serious marine incidents (SMIs) to require that alcohol testing be conducted within 2 hours of a serious marine incident (SMI). This final rule also requires most commercial vessels to have alcohol testing devices on board and authorizes the testing of saliva as an acceptable specimen for alcohol testing. This rule also adds a 32-hour time limit for the collection of specimens for drug testing following a serious marine incident.

Coast Guard regulations (46 CFR part 4, subpart 4.06) currently require marine employers to take all practical steps after an SMI to have each individual engaged or employed on board a vessel in commercial service, who is directly involved in the incident, chemically tested for evidence of drug and alcohol use. ''Commercial service'' includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel. The regulations do not specify a time requirement following an SMI for collecting specimens for testing or completing the tests to determine the use of alcohol or dangerous drugs. The current regulations also limit testing to blood and breath specimens as the only acceptable specimens for alcohol testing.

In 1998, Congress passed the Coast Guard Appropriations Act of 1998 (the Act), Public Law 105–383, which revised Title 46, U.S. Code, by adding a new section 2303a, ''Post serious marine casualty alcohol testing'' (hereafter section 2303a). Section 2303a requires the Coast Guard to establish procedures to ensure that required alcohol testing is conducted no later than 2 hours after a serious marine casualty occurs.[1] If the alcohol testing cannot be conducted within that timeframe because of safety concerns directly related to the casualty, section 2303a requires the alcohol testing to be conducted as soon as the safety concerns have been adequately addressed to permit such testing, but no later than 8 hours after the incident occurs.

On February 28, 2003, the Coast Guard issued a notice of proposed rulemaking (NPRM) that proposed revisions to 46 CFR part 4 to implement the requirements of section 2303a. 68 FR 9622, *see also* 68 FR 50992 (Aug. 25, 2003), 68 FR 60073 (Oct. 21, 2003). The NPRM proposed that alcohol testing be conducted within 2 hours of an SMI, that commercial vessels be required to have alcohol-testing devices on board, and authorized saliva as an acceptable specimen for alcohol testing. The NPRM also proposed some minor procedural changes to part 4, including a 32-hour time limit for collecting drug test specimens following an SMI.

II. Regulatory History

On February 28, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents'' in the **Federal Register** (68 FR 9622). The NPRM provided a 120-day comment period. In response to requests for a public meeting, the Coast Guard published a reopening of the comment period and a notice of public meeting on August 25, 2003 (68 FR 50992). This meeting was to be held on September 19, 2003 in Washington, DC. Hurricane Isabel forced the closure of all Federal Government offices in the Washington, DC, metropolitan area on September 19, 2003 and the public meeting was not held. As a result of the limited number of participants who had registered to attend the public meeting, the Coast Guard decided not to reschedule the meeting. Instead, on October 21, 2003, the Coast Guard published in the **Federal Register** (68 FR 60073), a reopening of the comment period until November 20, 2003 to allow submission of comments that might otherwise have been presented at the public meeting.

III. Discussion of Comments and Changes

During the comment period, the Coast Guard received 121 comments in response to the NPRM. Comments were submitted by maritime trade associations, large and small vessel marine employers, drug and alcohol testing service agents, manufacturers of alcohol-testing devices, and one Federal agency. The main issues discussed in the comments were the requirement to carry alcohol-testing devices, testing device storage, the costs of purchasing and maintaining the alcohol-testing device, and requests for exemptions based on size of crew and history of safety.

The comments are divided by category and discussed below.

A. Comments Beyond the Scope of the Rulemaking

The NPRM proposed that alcohol testing be conducted within 2 hours of an SMI, that commercial vessels be required to have alcohol-testing devices on board, and authorized saliva as an acceptable specimen for alcohol testing. The NPRM also proposed some minor procedural changes to part 4, including a 32-hour time limit for collecting drug test specimens following an SMI.

Many comments raised issues that are beyond the narrow scope of this rulemaking. Those comments raised issues about:

(1) The potential liability of marine employers if there is a false positive on an alcohol screening test, if a positive alcohol reading was due to an alternate source, such as mouthwash; or because the Alcohol Screening Devices (ASDs) are not as efficient as Evidential Breath Tests (EBTs);

(2) Whether the Coast Guard should require a ''confirmation'' test after the initial screening to verify the presence and level of alcohol;

(3) Whether the U.S. Coast Guard should adopt a flexible enforcement approach that takes into consideration

[1] For purposes of this rulemaking, ''serious marine incident'' or ''SMI'' means the same as ''serious marine casualty'' under section 2303a.

the reasonable and good faith efforts of vessel supervisors who are assigned specimen collection functions; and the safety and operational needs following a serious marine incident;

(4) Whether there should be a separate part to regulate the testing of human remains; and

(5) Whether the existing definition of an SMI in 46 CFR part 4, subpart 4.03, is vague and should be clarified.

These comments are beyond the narrow scope of this rulemaking, which is to implement the timing requirements of section 2302a by ensuring that marine employers conduct alcohol testing within 2 hours after an SMI. Although these comments are not discussed further in this preamble, they have been referred to the appropriate Coast Guard office for review and appropriate action separate from this rulemaking.

B. Comments Generally Supporting the Rulemaking

A few comments generally supported the proposed rule, stating that they fully support all testing of all operators when any accident happens or even when they appear to be operating any vessel unsafely. A comment from a manufacturer of an alcohol-testing device stated that the manufacturer supports this rule and believes that the technology exists to permit implementation of the proposed rule with confidence. The comment further stated that the manufacturer believes that the available technology will protect the individual tested with accurate results, as well as help to ensure public safety by providing timely information. The manufacturer also stated that the alcohol-testing devices include built-in quality control indicators to direct proper use and minimize environmental impact.

C. Who Conducts the Tests

We received 40 comments primarily from small passenger vessel operators and marine employer trade associations, including charterboat operator associations and other interested trade associations that addressed the question of who should be responsible for conducting the drug or alcohol tests after a SMI. Some of these comments stated that the Coast Guard should conduct the alcohol testing following an SMI. Also, 34 of those comments stated that Congress intended that the Coast Guard conduct alcohol testing after an SMI and that it is wrong to shift the testing requirement, and its costs, onto the individual marine employers. One marine employer stated that the Coast Guard, as the regulator, is in the best position to determine whether a test is necessary and whether the test should be administered at the site of a vessel boarding, seizure, or accident investigation, or be conducted ashore at a Coast Guard facility.

We disagree. Section 2303a requires the Coast Guard to establish procedures to ensure that alcohol testing is conducted within 2 hours after a serious marine casualty. It does not require the Coast Guard to conduct the testing. Under the current rule, the marine employer has the responsibility to ensure that the alcohol testing occurs. 46 CFR 4.06. We considered the option of using Coast Guard resources to ensure alcohol testing after a serious marine incident. However, the Coast Guard finds that this option is impracticable because it is not possible for Coast Guard personnel to reach the scene of all serious marine incidents within the 2 hours required by statute to conduct alcohol testing due to the nature and location of marine industry operations. The Coast Guard sometimes is not aware that a serious marine incident has occurred until a report of the incident is filed by the mariner as required under Coast Guard regulations. 46 CFR 4.06–60. Even if Coast Guard resources could be at the scene of all serious marine incidents in time to conduct alcohol testing with 2 hours of the incident, it would be impracticable to require Coast Guard units to respond to every incident to conduct required alcohol testing because it would impermissibly burden Coast Guard resources engaged in other functions critical to the Coast Guard's mission, such as homeland security, search and rescue, drug interdiction, migrant interdiction, marine safety, and environmental protection.

Although the responsibility to ensure proper alcohol testing continues to rest on the marine employer, this final rule allows the employer to choose the most cost effective equipment and procedures for his or her operational circumstances. This rule also allows a marine employer to use alcohol tests administered by Coast Guard, local law enforcement personnel, contractors, or other third parties as long as the test used meets the requirements of part 4. This rule will help to ensure that required alcohol testing can be conducted by the marine employers.

D. Requirement To Carry Alcohol-Testing Devices

We received many comments from marine employers and various trade associations suggesting the Coast Guard allow an exemption from the requirement to carry testing devices on board for commercial vessels that only travel a short distance from the shore. Many of the comments stated that these vessels could meet the 2-hour testing requirement by using shoreside testing facilities because the vessels are always within 2 hours of a facility. One comment suggested that vessels that could return to shore within 4 to 6 hours should be allowed to rely on shoreside testing facilities to meet the 2-hour testing requirement of this rule.

We agree that vessels that can reach a testing facility and conduct required alcohol testing within 2 hours of an SMI should have the option of doing so. The marine employer may use alcohol testing results from tests conducted by Coast Guard or local law enforcement personnel if the alcohol testing meets all of the requirements of this part. Therefore, we have modified the text of the final rule to relieve marine employers of the requirement to carry alcohol testing devices on board if they can receive testing from a shoreside testing facility within 2 hours of an SMI.

Section 2303a states that alcohol tests must be administered within 2 hours of the SMI. Thus, we do not agree that vessels that can return to shore within 4 to 6 hours should be allowed to rely on shoreside testing facilities to meet these requirements. Vessels that cannot return to shore and have testing conducted within 2 hours must carry alcohol testing devices onboard the vessels.

E. Lists of Conforming Products

Several comments from marine employers and alcohol testing device product manufacturers urged the Coast Guard to either publish a list of alcohol-testing devices that meet the requirements of this rule or adopt the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) of Evidential Breath Measurement Devices as the acceptable list of devices that meet the requirements of this rule.

The Coast Guard agrees that a list of acceptable testing devices would help marine employers comply with the requirements of this rule. Accordingly, the final rule requires that marine employers carry alcohol-testing devices listed on the most current versions of either the NHTSA Conforming Products Lists of Evidential Breath Measurement Devices or the NHTSA Conforming Products List of Alcohol Screening Devices. The current Conforming Products Lists were published in the **Federal Register** and are available on the Internet at the following locations: Conforming Products Lists of Evidential Breath Measurement Devices, at 69 FR 42237 (July 14, 2004) or *http://www.nhtsa.dot.gov/people/injury/*

alcohol/ebtcpl040714FR.pdf and Conforming Products List of Alcohol Screening Devices at 70 FR 72502 (December 5, 2005) or *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/E5–6848.pdf.* These lists are also available in the docket for this rulemaking.

F. When the Tests Should Be Conducted

One comment asked if alcohol testing results are ''acceptable up to 8 hours following an SMI, why not require alcohol testing be conducted within 8 hours?''

Section 2303a requires that alcohol testing be conducted within 2 hours of an SMI, unless the testing can not be completed within that time due to safety concerns directly related to the casualty. If there are such safety concerns, then alcohol testing is to be conducted as soon as possible after the safety concerns have been addressed. Therefore, this rule requires testing within 2 hours after an SMI, unless precluded by safety concerns directly related to the incident, in which case the testing must be conducted as soon as the safety concerns are addressed, but not more than 8 hours after the incident.

G. Storage of Testing Devices

A few comments stated that some vessels would have difficulty storing the testing devices because of limited space on the vessel. Several other comments stated that storing the testing devices would be problematic because of ''hostile'' marine weather, which could lead to an inaccurate testing result.

We disagree. A review of the specifications from actual alcohol testing devices on the NHTSA CPL lists indicates that some of the devices are approximately the size of a credit card and others are slightly larger handheld devices. The smallest box, which contains 30 devices, is $10'' \times 4.5'' \times 7''$ and weighs 2.0 lbs. A box of these proportions should not create a storage problem on a vessel. The acceptable temperatures for storage of the alcohol-testing devices ranged from 0–104 °F. The instructions for two of the testing devices stated that the housing for the device was weather resistant. There is no evidence that the testing devices are susceptible to ''hostile'' marine weather and we believe that the temperature ranges for the alcohol-testing devices are wide enough that weather will not lead to an inaccurate testing result.

H. Testing for the Presence of Alcohol

We received several comments stating that the testing devices permitted under this rule do not test the amount of alcohol in a person's system. Instead, they only test for the presence of alcohol in a person's system. Several of these comments also stated that such tests are inadmissible in court. Some of the comments stated that there could be disciplinary measures taken against mariners who test positive for the presence of alcohol without knowing the level of alcohol in their system.

The current alcohol testing regulations in 46 CFR part 4 require that each individual engaged or employed on board the vessel who is directly involved in the incident be chemically tested for evidence of drug and alcohol use. There is no requirement that the amount of alcohol in a mariner's system be determined after an SMI. This rule does not change that requirement. In this rule, we require that currently mandated alcohol testing to be conducted within 2 hours of an SMI. However, a marine employer may choose to use any device from the NHTSA Conforming Products Lists of Evidential Breath Measurement Devices, all of which measure the amount of alcohol in a person's system. This rule does not change how mariners are disciplined by the marine employer or by the Coast Guard.

I. Small Crew Testing and Self-Testing

Several comments stated that one to five person crews would be required to test each other, test family members, or self-test in the event of an SMI and that, in some instances, a crew member would be required to test the captain. Some comments questioned the integrity and reliability of the test results under these circumstances. A few comments suggested that crews smaller than 20 members and crews with a history of safety be exempt from this rule.

This rule does not change the current requirements for who should be chemically tested for alcohol use and who conducts the tests after an SMI. Section 4.06–1(b) requires that marine employers ''take all practicable steps to have each individual engaged or employed on board the vessel who is directly involved in the incident chemically tested for evidence of drug and alcohol use.'' Section 4.06–1(b) has been in effect since 1988 and is not revised by this rule. The statute requiring that alcohol testing be conducted within 2 hours of an SMI, 46 U.S.C. 2303a, does not provide for an exemption based on the size of the crew or the crew's safety history.

J. Comments on Regulatory Evaluation

Several comments stated that the cost of complying with these requirements would be excessive and would be burdensome on businesses.

We disagree. We expect marine employers will choose inexpensive saliva Alcohol Screening Devices (ASDs), thereby meeting the minimum requirements and costs to comply with this rule. The average price for saliva ASDs is $113 per package containing 25 to 30 testing devices. A package of testing devices can easily be separated into smaller quantities of testing devices to accommodate marine employers that own or operate more than one vessel, or to accommodate those marine employers that own or operate one vessel and may want to split the cost of one package. Our cost estimates are conservative (high) because we assume there will be one package of 25 to 30 saliva ASDs purchased for each vessel. We also assume there may be first-year and annual training costs associated with saliva ASDs devices, even though manufacturers and suppliers claim these tests can be properly completed within five minutes, which includes the time to read the instructions.

A few comments stated that our reported prices for testing devices and our compliance cost estimates were inaccurate.

We conducted market research of several testing devices to determine current prices and package quantities. We calculated the direct cost of this rule to industry by estimating the purchase cost of the devices, the training cost, and the cost of replacing the devices due to expiration. We used mariner wage rates to approximate the costs associated with testing device training, and we used wage data from the 2002 National Occupation Employment and Wage Statistics for Captains, Mates, and Pilots of Water Vessels published by the Bureau of Labor Statistics. Our 10-year cost estimate is the discounted present value total of the first-year implementation cost and the annual cost with and without testing device replacement.

Some comments about the cost of ASDs stated that the NPRM acknowledged that ''the cost of the less expensive ASDs could still be too expensive for the smallest commercial vessel operators and owners.''

These comments inaccurately quoted the NPRM, which actually stated ''the cost of the less expensive *breath* ASDs could still be too expensive for the smallest commercial vessel operators and owners.'' Saliva ASDs are less expensive than some breath ASDs and that is why Coast Guard will allow marine employers to use saliva ASDs. Including saliva ASDs provides a wider variety of alcohol-testing devices, which

gives marine employers more control over the cost of compliance.

One comment stated that third-party alcohol screening and testing facilities would be adversely impacted by these requirements and forced out of business.

This rule does not disallow third-party testing, provided the testing is conducted within 2 hours of an SMI, as required by section 2303a.

A few comments stated that the costs associated with this rule could adversely impact small businesses.

We disagree with the comments. We estimate that the percentage impact of annual cost on annual revenue for small businesses range from 0.00% to 0.45%, demonstrating the cost impacts of this rule are a small percentage of revenues for small businesses. Small businesses need only purchase inexpensive saliva ASDs to comply with the minimum requirements of this rule. The saliva ASDs do not require extensive training, and we expect the cost of these requirements will be insignificant for small businesses. A Final Regulatory Flexibility Analysis detailing the impacts on small businesses is available in the docket as part of the Regulatory Analysis indicated under **ADDRESSES**.

Some comments stated that the estimated number of small entities affected by this rulemaking is too low.

We have revised our estimates based on additional information from industry and additional data from the Coast Guard Office of Investigation and Analysis. See the following ''Small Entity'' section for more about the impacts on small businesses.

K. Discussion of Changes From NPRM

The regulatory text in this rule is slightly different from the Coast Guard to the final rule resulted from the comments:

(1) An exception to ensure alcohol testing is conducted within 2 hours of occurrence of the SMI; and

(2) A requirement that alcohol-testing devices used to meet the requirements of this regulation must be listed on one of the current NHTSA Conforming Products Lists.

We did not make any substantive changes to the proposed requirement to collect drug specimens within 32 hours of an SMI because we did not receive any comments on this provision.

IV. Regulatory Analysis

A. Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review'', 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule has been identified as significant under Executive Order 12866 and has been reviewed by OMB and DHS.

The final Regulatory Analysis is available in the docket as indicated under **ADDRESSES**. A summary of the Regulatory Analysis is below.

Section 2303a of Title 46, U.S. Code, requires the Coast Guard to establish procedures to ensure alcohol testing is conducted within 2 hours of an SMI. This final rule will establish a requirement for all marine employers (vessel owners and operators) to have alcohol-testing devices readily available for use to meet the requirements for alcohol testing following an SMI.

This rule will require alcohol testing within 2 hours of an SMI, whereas the current regulation does not specify a time frame for testing. In order to comply with this final rule, marine employers will need to purchase and maintain alcohol-testing devices onboard the vessels they own and operate if they cannot reach a shoreside facility and conduct alcohol testing of their employees within 2 hours of an SMI. We have delayed the implementation of this rule by 180 days from the date of its publication in the **Federal Register**. We believe this will ensure that all marine employers subject to this new requirement will have enough time to purchase the testing devices and to train their employees how to use these devices.

This rule requires marine employers to select testing devices listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products Lists (CPL). The CPLs list Evidential Breath Testing devices (EBTs) and Alcohol Screening Devices (ASDs). The purchase price of EBTs range from $490 to $8,453 per device, however, the purchase price of saliva ASDs average $113 per package of between 25 and 30 testing devices. The maintenance and training costs of EBTs are also much higher than the saliva ASDs.

For saliva ASD's, we estimate that training will take no more than 30 minutes. For the purposes of this analysis, we use mariner wage rates to approximate the cost associated for testing device training. We assume the wage rate to be $37 per hour based on the 2002 National Occupation Employment and Wage Statistics for Captains, Mates, and Pilots of Water Vessels published by the Bureau of Labor Statistics. We assume there will be training costs for five (four training, one trainer) mariners in the first year of implementation and training costs for three (two training, one trainer) mariners thereafter.

We expect marine employers will choose the less expensive saliva ASDs thereby meeting the minimum requirements to comply with this rule. If marine employers choose to purchase more expensive testing devices, then they are making a decision based on other business or operating factors, rather than this final rule. We conclude that industry need only purchase the less expensive saliva ASDs to comply with the minimum requirements of this rule.

This rule affects marine employers that own or operate approximately 183,400 commercial vessels. Of these vessels, approximately 2,600 vessels are already required to carry alcohol breath-testing devices in accordance with 46 CFR 4.06–20(a) and will not incur additional costs from this rule. Therefore, this rule will require marine employers of approximately 181,000 vessels to purchase devices, train employees how to use devices, and maintain or replace expired devices.

We calculated the direct cost of this rule to industry by estimating the purchase cost of the devices, the training cost, and the cost of replacing the devices due to expiration. The average first-year implementation cost per vessel for marine employers is $206 for the purchase of one package of saliva ASDs and initial training. The annual cost per vessel after the first-year implementation of the rule ranges from approximately $56 without testing device replacement to about $169 with testing device replacement. Based on manufacturer information, we expect marine employers to replace saliva ASDs every other year or approximately every 12 to 18 months.

We estimate the first-year implementation cost of this rule for marine employers to be $37 million ($113 for the device plus $93 for training cost multiplied by the total population of 181,000 vessels) to purchase testing devices and to provide initial training. The annual cost for marine employers after the implementation of the rule ranges from $10 million ($56 for training multiplied by the total population of 181,000) without testing device replacement, to about $31 million ($113 for the device plus $56 for training cost multiplied by the total population of 181,000 vessels) with testing device replacement.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We used data from the Coast Guard's Office of Investigations and Analysis, the U.S. Census Bureau's data on companies in the marine transportation industry, and the Small Business Administration's (SBA) business size standards to determine the number of small entities affected by this rule. The SBA size standards are based on the North American Industry Classification System (NAICS) subsectors. We used the following NAICS subsectors:

- Deep Sea, Coastal, & Great Lakes water transportation (sub-sector 4831), 500 employees or less;
- Inland Water Transportation (sub-sector 4832), 500 employees or less;
- Scenic and Sightseeing Transportation (sub-sector 4872), annual revenue of $5,000,000 or less;
- Port and Harbor Operations (sub-sector 48831), annual revenue of $21,500,000 or less;
- Marine Cargo Handling (sub-sector 48832), annual revenue of $21,500,000 or less; and
- Navigational Services to Shipping (sub-sector 48833), annual revenue of $5,000,000 or less.

We estimate that this rule will impact over 13,000 small entities that will comply with this rule by selecting saliva ASDs. We estimate that the percentage impact of cost on revenue for these small entities range from 0.00% to 0.45%, demonstrating the cost impacts of this rule are a small percentage of revenues for these small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. A Final Regulatory Flexibility Analysis explaining the analysis in more detail is available in the docket as part of the Regulatory Analysis indicated under **ADDRESSES**.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

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

D. Collection of Information

This rule revises an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We received no comments related to the collection of information and no changes were made that affect this collection.

Title: Marine Casualty Information and Periodic Chemical, Drug, and Alcohol Testing on Commercial Vessel Personnel (OMB 1625–0001, formerly OMB 2115–0003).

Summary of the Collection of Information: This regulation requires marine employers to document the reason for delaying the alcohol test on form CG–2692B. The requirement to report this information is found in 46 CFR 4.06–3. We revised form CG–2692B accordingly to record the results of all types of alcohol testing (blood, breath, and saliva).

Need for Information: According to 46 U.S.C. 2303a, this regulation requires marine employers to document the reason for delaying the alcohol test on form CG–2692B if alcohol testing is not completed within the 2-hour timeframe. If the alcohol test is not completed within the 8-hour timeframe, the marine employer must document the reason for the further delay of alcohol testing on form CG–2692B.

Use of Information: The Coast Guard will use the information to document the results of alcohol tests after SMIs.

Description of the Respondents: Marine employers whose employees, passengers, or vessels are involved in SMIs.

Number of Respondents: Currently, the approved OMB collection, estimates that 5,703 respondents fill out an accident report. This rulemaking will not change the number of incidents or accidents that trigger a response; therefore the increase in respondents would be zero.

Frequency of Response: The frequency of response continues to be once per incident.

Burden of Response: The possible additional burden imposed by this rule is estimated to be so minimal that it does not merit changing the approved collection (a couple of additional minutes whenever documentation is needed). OMB approved, on previous submissions, the 1-hour burden of completing each form CG–2692B.

Estimate of Total Annual Burden: The currently approved annual burden is 5,703 hours. Because the possible additional burden imposed by this rule is estimated to be so minimal, it does not merit changing the approved annual burden.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the revised collection. The section number is 46 CFR 4.06–3, and the corresponding approval number from OMB is OMB Control Number 1625–0001.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132. Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

The law is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. The law also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000). Rules on testing marine personnel for drugs and alcohol fall into the category of personnel qualification and rules on carrying alcohol-testing devices fall into the category of equipping. Because the States may not regulate within these categories, this rule does not raise new preemption issues under Executive Order 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, UMRA addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the

private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

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

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

M. Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded from further environmental documentation under figure 2–1, paragraph (34)(a) and (c) of the Instruction. This final rule establishes testing procedures which are administrative in nature and could be used in disciplining maritime personnel. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Reporting and recordkeeping requirements, Safety, Transportation.

Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 4 as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

■ 1. The authority citation for part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, and 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 0170.1. Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).

■ 2. In § 4.06–1, in paragraph (b), at the end of the sentence, add the phrase ''as required in this part'' and revise paragraphs (c) and (d) to read as follows:

§ 4.06–1 Responsibilities of the marine employer.

* * * * *

(c) The marine employer determines which individuals are directly involved in a serious marine incident (SMI). A law enforcement officer may determine that additional individuals are directly involved in the SMI. In these cases, the marine employer must take all practical steps to have these additional individuals tested according to this part.

(d) The requirements of this subpart do not prevent personnel who are required to be tested from performing duties in the aftermath of an SMI when their performance is necessary to respond to safety concerns directly related to the incident.

* * * * *

■ 3. Add § 4.06–3 to read as follows:

§ 4.06–3 Requirements for alcohol and drug testing following a serious marine incident.

When a marine employer determines that a casualty or incident is, or is likely to become, an SMI, the marine employer must ensure that the following alcohol and drug testing is conducted:

(a) *Alcohol testing.* (1) Alcohol testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The alcohol testing of each individual must be conducted within 2 hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevent the alcohol testing from being conducted within 2 hours of the occurrence of the incident, then alcohol testing must be completed as soon as the safety concerns are addressed.

(iii) Alcohol testing is not required to be conducted more than 8 hours after the occurrence of the SMI.

(2) Alcohol-testing devices must be used according to the procedures specified by the manufacturer of the testing device and by this part.

(3) If the alcohol testing required in paragraphs (a)(1)(i) and (a)(1)(ii) of this section is not conducted, the marine employer must document on form CG–2692B the reason why the testing was not conducted.

(4) The marine employer may use alcohol-testing results from tests conducted by Coast Guard or local law enforcement personnel to satisfy the alcohol testing requirements of this part

only if the alcohol testing meets all of the requirements of this part.

(b) *Drug testing.* (1) Drug testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The collection of drug-test specimens of each individual must be conducted within 32 hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevent the collection of drug-test specimens from being conducted within 32 hours of the occurrence of the incident, then the collection of drug-test specimens must be conducted as soon as the safety concerns are addressed.

(2) If the drug-test specimens required in paragraphs (b)(1)(i) and (b)(1)(ii) of this section were not collected, the marine employer must document on form CG–2692B the reason why the specimens were not collected.

■ 4. Revise § 4.06–5 to read as follows:

§ 4.06–5 Responsibility of individuals directly involved in serious marine incidents.

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in an SMI must provide a blood, breath, saliva, or urine specimen for chemical testing when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide a blood, breath, saliva, or urine specimen, this refusal must be noted on form CG–2692B and in the vessel's official log book, if a log book is required. The marine employer must remove the individual as soon as practical from duties that directly affect the safe operation of the vessel.

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for 8 hours following the occurrence of the SMI or until after the alcohol testing required by this part is completed.

(d) No individual may be compelled to provide specimens for alcohol and drug testing required by this part. However, refusal to provide specimens is a violation of this subpart and may subject the individual to suspension and revocation proceedings under part 5 of this chapter, a civil penalty, or both.

§ 4.06–10 [Removed]

■ 5. Remove § 4.06–10.

■ 6. Add § 4.06–15 to read as follows:

§ 4.06–15 Accessibility of chemical testing devices.

(a) *Alcohol testing.* (1) The marine employer must have a sufficient number of alcohol testing devices readily accessible on board the vessel to determine the presence of alcohol in the system of each individual who was directly involved in the SMI.

(2) All alcohol testing devices used to meet the requirements of this part must be currently listed on either the Conforming Products List (CPL) titled ''Modal Specifications for Devices To Measure Breath Alcohol'' or ''Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids,'' which are published periodically in the **Federal Register** by National Highway Traffic Safety Administration (NHTSA).

(3) The alcohol testing devices need not be carried on board each vessel if obtaining the devices and conducting the required alcohol tests can be accomplished within 2 hours from the time of occurrence of the SMI.

(b) *Drug testing.* (1) The marine employer must have a sufficient number of urine-specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily accessible for use following SMIs.

(2) The specimen collection and shipping kits need not be carried on board each vessel if obtaining the kits and collecting the specimen can be completed within 32 hours from the time of the occurrence of the SMI.

■ 7. Revise § 4.06–20 to read as follows:

§ 4.06–20 Specimen collection requirements.

(a) *Alcohol testing.* (1) When conducting alcohol testing required in § 4.06–3(a), an individual determined under this part to be directly involved in the SMI must provide a specimen of their breath, blood, or saliva to the marine employer as required in this subpart.

(2) Collection of an individual's blood to comply with § 4.06–3(a) must be taken only by qualified medical personnel.

(3) Collection of an individual's saliva or breath to comply with § 4.06–3(a) must be taken only by personnel trained to operate the alcohol-testing device in use and must be conducted according to this subpart.

(b) *Drug testing.* (1) When conducting drug testing required in § 4.06–3(b), an individual determined under this part to be directly involved in the SMI must provide a specimen of their urine according to 46 CFR part 16 and 49 CFR part 40.

(2) Specimen collection and shipping kits used to conduct drug testing must be used according to 49 CFR part 40.

■ 8. Add § 4.06–70 to read as follows:

§ 4.06–70 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115.

Dated: December 15, 2005.

Thomas H. Collins,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 05–24375 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–05–23407]

RIN 2127–AJ74

Federal Motor Vehicle Safety Standards; Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect

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

ACTION: Final rule; response to petitions for reconsideration; delay of effective date.

SUMMARY: This document responds to petitions for reconsideration of a final rule published on July 1, 2005, which amended the Federal motor vehicle safety standard that includes starter interlock requirements. The final rule announced an effective date of December 28, 2005. NHTSA received petitions for reconsideration from General Motors (GM) requesting a delay in the effective date in the final rule, and a petition from International Truck and Engine Corporation (ITEC) requesting an amendment that addresses hybrid electric systems on trucks with a gross vehicle weight rating over 4,536 kg (10,000 pounds).

In this final rule, NHTSA grants both of these petitions, and is amending the standard accordingly.

DATES: The effective date of the rule amending 49 CFR 571.102 published at 70 FR 38040, July 1, 2005, is delayed until September 1, 2007. The final rule amending 49 CFR Section 571.102 published today is effective September 1, 2007.

Optional early compliance with these final rules is available as of December 22, 2005.

Any petitions for reconsideration of today's final rule must be received by NHTSA not later than February 6, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number for this section and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. William Evans, Office of Crash Avoidance Standards at (202) 366–2272. His FAX number is (202) 366–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Background

At present, the starter interlock requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission shift position sequence, starter interlock, and transmission braking effect* (at S3.1.3) states ''the engine starter shall be inoperative when the transmission shift lever is in a forward or reverse drive position.'' The purpose of this requirement is to prevent injuries and death from the unexpected motion of a vehicle when the driver starts the vehicle with the transmission inadvertently in a forward or reverse gear.

Final Rule of July 1, 2005

In a final rule of July 1, 2005 (70 FR 38040), FMVSS No. 102 was amended to accommodate the new technologies represented by hybrid/electric systems. With respect to vehicles with automatic transmissions, the rule makes it clear that after activation of the vehicle's propulsion system by the driver, the engine may stop and restart automatically when the transmission shift position is in any forward drive gear. The rule prohibits the engine from automatically stopping in reverse gear. When the engine is automatically stopped in a forward drive shift position and the driver selects Reverse, the engine is permitted to restart automatically in Reverse if two conditions are satisfied. The first condition is that the engine must restart immediately whenever the service brake is applied. The second condition is that the engine does not start automatically if the service brake is not applied.

The rule also provides, notwithstanding these limitations, that the engine may stop and start at any time after the driver has activated the vehicle's propulsion system if: (a) The vehicle's propulsion system can propel the vehicle in the normal travel mode in all forward and reverse drive gears without the engine operating, and (b) if the engine automatically starts while the vehicle is traveling at a steady speed and steady accelerator control setting, the engine does not cause the vehicle to accelerate.

The final rule announced an effective date of December 28, 2005.

Petitions for Reconsideration

In response to the final rule, NHTSA received petitions for reconsideration of the July 1, 2005 final rule from General Motors Corporation (GM) and the International Truck and Engine Corporation (ITEC). The following describes the petitions and how we have addressed the issues raised in the petitions:

A. GM's Petitions

The July 1, 2005 final rule announced an effective date of December 28, 2005. In a petition dated September 14, 2005, GM requested that the effective date of the final rule be delayed until September 1, 2007.[1] GM explained that in 2004, it began producing a ''Parallel Hybrid Truck'' (PHT) that incorporates idle-stop technology in that the engine shuts off when the vehicle is stopped and the engine restarts when the brake pedal is released. GM asserted that this system eliminates needless idle time, improving fuel economy and reducing emissions. At present, the PHT is designed so that a rapid process of releasing the brake pedal and selecting Reverse will permit the engine to start in Reverse while the brake is released. GM stated that this action appears to be ''inconsistent with S3.1.3.1(c)(2).'' GM stated it is evaluating possible modifications to the PHT system to comply with S3.1.3.1(c) and asked for a delay in the effective date until September 1, 2007.

NHTSA has carefully reviewed GM's request. GM must modify its PHT system in order to meet the July 1, 2005 final rule's new requirements for starter interlock systems and needs additional time to comply. We were not aware of this need for leadtime when we issued the July 2005 final rule. Accordingly, NHTSA will delay the effective date of the final rule until September 1, 2007. To prevent this final rule; ''response to petitions for reconsideration'' from affecting those manufacturers ready to meet the original effective date, NHTSA is permitting optional early compliance with the July 1, 2005 final rule and the amendments made in this final rule as of the date this document is published in the **Federal Register**.

B. ITEC Petition

A petition from ITEC requested an amendment to S3.1.3.2(a) of the July 1, 2005 final rule. ITEC explained that it is developing a hybrid electric system for large trucks, which would allow the trucks to operate strictly on an electric motor in Reverse gear and in the lower forward gears. Large trucks would thus be able to automatically stop their engines during applications with frequent stopping and starting, such as pickup and delivery, and to run only on the electric motor, eliminating needless engine idling and reducing fuel consumption, emissions, and noise. The engine automatically starts and runs continuously in the higher gears at normal highway speeds. In the final rule of July 1, 2005, S3.1.3.2(a) requires that the propulsion system propel the vehicle in all forward and reverse gears without the engine operating.

ITEC indicated that its system does not meet the requirements in S3.1.3.2(a) in that its system propels the vehicle in Reverse and the lower forward gears (not all forward gears) without the engine operating. ITEC requested that S3.1.3.2 be amended to require the propulsion system in vehicles with a GVWR greater than 4,536 kg (10,000 pounds) to propel the vehicle in ''any'' forward or reverse drive gears without the engine operating.

In S3.1.3.2 of the final rule, NHTSA addresses hybrid vehicles that operate primarily as electric vehicles and that use an internal combustion engine to assist when additional motive power is needed or the batteries need charging. Vehicles that meet S3.1.3.2 are excluded from the engine starting requirements of S3.1.3.1. The final rule allows vehicles meeting S3.1.3.2 to automatically stop and start the engine at any time after the driver has activated the vehicle's propulsion system if:

(a) The vehicle's propulsion system can propel the vehicle in the normal travel mode in all forward and reverse drive gears without the engine operating; and

(b) If the engine automatically starts while the vehicle is traveling at a steady speed and a steady accelerator control

[1] GM submitted two petitions for reconsideration, one dated August 15, 2005, and another dated September 14, 2005. Since the September 14, 2005 petition superseded the earlier one, we are addressing only the issue raised in the September 14, 2005 petition.

setting, the engine does not cause the vehicle to accelerate.

The system described by ITEC would meet the requirements of S3.1.3.2 except for the fact that the propulsion system is only capable of propelling the vehicle in Reverse and the low forward gears instead of all forward and reverse gears. Upon review, NHTSA has decided to amend the standard along the lines requested by ITEC. Amending S3.1.3.2(a) takes into account the special features of hybrid electric vehicles with GVWRs greater than 4,536 kg (10,000 pounds) that distinguish them from smaller vehicles, and minimizes design limits on heavy vehicles, that have a wider range of applications than do lighter vehicles. NHTSA does not foresee any safety implications with amending S3.1.3.2(a) in the way that ITEC intends.

NHTSA believes that it is important that a hybrid propulsion system that falls under the requirements of S3.1.3.2 be capable of propelling the vehicle in Reverse and at least one forward drive gear without the engine operating. If the propulsion system cannot propel the vehicle in Reverse without the engine operating, it would have implications with S3.1.3.1 when the engine was stopped in a forward gear and the brake pedal was rapidly released while Reverse was selected.

For these reasons, NHTSA is amending S3.1.3.2 for hybrid electric vehicles over 4,536 kg (10,000 pounds) GVWR. To effectuate ITEC's intent in its petition for reconsideration, in this final rule; response to petitions for reconsideration, S3.1.3.2(a) is amended to require that propulsion systems on vehicles with a GVWR greater than 4,536 kg must be capable of propelling the vehicle in the normal travel mode in Reverse and at least one forward drive gear without the engine operating.

Statutory Bases for the Final Rule

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 et seq.), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. Id. Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. Section 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 102. As previously discussed in detail, we have solicited public comment in an NPRM and have carefully considered the public comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following decisions in this final rule; ''response to petitions for reconsideration:'' To extend the effective date of the July 1, 2005 final rule to September 1, 2007, and to amend the starter interlock system requirement so that for vehicles with a GVWR greater than 4,536 kg (10,000 pounds), the engine may stop and start at any time after the driver has activated the vehicle's propulsion system if the vehicle's propulsion system can propel the vehicle in the normal travel mode in Reverse and at least one forward drive gear without the engine operating.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

To ensure that manufacturers have time needed to make changes to current vehicles in order to meet the new requirements, we have delayed the effective date of the final rule to September 1, 2007. In addition, we are making a small change to ensure that the amended requirements are appropriate for heavy vehicles. As a result, the impacts are so minimal that a full regulatory evaluation has not been prepared.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not

required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to motor vehicle manufacturers, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply.

C. Executive Order 13045 (Economically Significant Rules Disproportionately Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive or preemptive effect. We conclude that it would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that since this rulemaking makes no substantive changes in the scope of FMVSS No. 102, small manufacturers of passenger cars, multipurpose passenger vehicles, trucks or buses need not make any changes in vehicle manufacturing processes or procedures to ensure that their vehicles meet an amended FMVSS No. 102. Accordingly, the agency concludes that this final rule does not affect the costs of motor vehicle manufacturers considered to be small business entities.

F. National Environmental Policy Act

We have analyzed this rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that this final rule will not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action does not impose any filing or recordkeeping requirements on any manufacturer or any other party. For this reason, we discuss neither electronic filing and recordkeeping nor do we discuss a fully electronic reporting option.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources (including data from International Organization of Standards or other standards bodies), we have determined that there are not any available and applicable voluntary consensus standards that we can use in this final rule.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective

or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments to the docket number cited in the heading of this final rule.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR Part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

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

■ 2. Section 571.102 is amended by revising in S3.1.3.2, the introductory text and paragraph (a) to read as follows:

§ 571.102 Standard No. 102; Transmission shift position sequence, starter interlock, and transmission braking effect.

* * * * *

S3.1.3.2 Notwithstanding S3.1.3.1, the engine may stop and start at any time after the driver has activated the vehicle's propulsion system if the vehicle can meet the requirements specified in paragraphs (a) and (b):

(a) For passenger cars, multi-purpose passenger vehicles, trucks and buses with a GVWR less than or equal to 4,536 kg (10,000 pounds), the vehicle's propulsion system can propel the vehicle in the normal travel mode in all forward and reverse drive gears without the engine operating. For passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR greater than 4,536 kg (10,000 pounds), the vehicle's propulsion system can propel the vehicle in the normal travel mode in Reverse and at least one forward drive gear without the engine operating.

* * * * *

Issued on: December 19, 2005.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05–24372 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229–4300–02; I.D. 121405A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for Western and Eastern U.S./Canada Areas

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

ACTION: Temporary rule; yellowtail flounder landing limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is reducing the Georges Bank (GB) yellowtail flounder trip limit from an unlimited amount to 15,000 lb (6,804.1 kg) per trip for Northeast (NE) multispecies Days-at-Sea (DAS) vessels fishing in both the Western and Eastern U.S./Canada Areas. This action is necessary to prevent the GB yellowtail total allowable catch (TAC) from being caught before the end of the 2005 fishing year and to increase the likelihood that the GB yellowtail TAC will be available through the end of the 2005 fishing year on April 30, 2006. This action is being taken to slow the rate of harvest of GB yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective 0001 hours local time, December 21, 2005, through April 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the Western and Eastern U.S./Canada Areas are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area as defined at § 648.85(a)(1), under specific conditions. The TAC allocation for GB yellowtail flounder for the 2005 fishing year is 4,260 mt (July 7, 2005; 70 FR 39190). When 30 percent of the GB yellowtail flounder TAC is projected to be harvested, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to reduce the yellowtail flounder landing limit for NE multispecies DAS vessels fishing in both the Western and Eastern U.S./Canada Areas to prevent over-harvesting the GB yellowtail TAC allocation.

Based upon vessel monitoring system reports and other available information, the Regional Administrator has determined that over 51 percent (2,172.6 mt) of the GB yellowtail flounder TAC of 4,260 mt has been harvested. Based on current and historic catch rates, it is likely the entire GB yellowtail flounder TAC may be caught before the end of the 2005 fishing year. In order to slow the catch of GB yellowtail flounder to prevent over harvesting and to increase the likelihood that GB yellowtail flounder will be available through the end of the 2005 fishing year on April 30, 2006, the Regional Administrator is reducing the trip limit for GB yellowtail flounder to 15,000 lb (6,804.1 kg) per trip for NE multispecies DAS vessels fishing in both the Western and Eastern U.S./Canada Areas for the remainder of

the 2005 fishing year, effective December 21, 2005, through April 30, 2006.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment for this action, because notice and comment would be impracticable and contrary to the public interest. The regulations under § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to reduce the yellowtail flounder landing limit for NE multispecies DAS vessels fishing in the Western and Eastern U.S./Canada Areas when 30 percent and/or 60 percent of the GB yellowtail flounder TAC has been harvested, to prevent over harvesting of the TAC. Because over 51 percent of the GB yellowtail flounder TAC has been harvested, this action is necessary to immediately slow the rate of harvest of GB yellowtail flounder under the authority of the Magnuson-Stevens Act.

Given the harvest rates during fishing years 2004 and 2005, and the reduced GB yellowtail flounder TAC specified for 2005, the time necessary to provide for prior notice and opportunity for public comment would significantly reduce the ability of the agency to ensure that the 2005 TAC for GB yellowtail flounder is not exceeded during the 2005 fishing year. It was not possible to take this action earlier to provide more time for public comment because of how quickly the GB yellowtail flounder is harvested, the reduced GB yellowtail flounder TAC, and the ability of NMFS to monitor the harvest. Immediately reducing the GB yellowtail flounder trip limit to 15,000 lb (6,804.1 kg) per trip for NE multispecies DAS vessels fishing in both the Western and Eastern U.S./Canada Areas will slow the rate of harvest to a level that will likely prevent the TAC from being exceeded.

Exceeding the 2005 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, potentially undermining the rebuilding efforts for this stock. Moreover, should the GB yellowtail flounder TAC be exceeded, any overages would be deducted from the 2006 GB yellowtail flounder TAC. This would result in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the Western and Eastern U.S./Canada Areas, reduced opportunities to fully harvest the GB haddock and GB cod TAC's in the Eastern U.S./Canada Area (i.e., through the increased possibility of premature closure of the Eastern U.S./Canada Area during the 2006 fishing year due to fully harvesting a reduced GB yellowtail flounder TAC in 2006), a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

For similar reasons there is good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30-day delayed effectiveness period for this action. For the reasons specified above, a delay in the effectiveness of the trip limit modification in this rule would prevent the agency from ensuring that the 2005 catch TAC for GB yellowtail flounder specified for the Western and Eastern U.S./Canada Areas would not be exceeded during the 2005 fishing year. Any such delay could lead to the impacts to the fishing industry described above.

The rate of harvest of the GB yellowtail flounder TAC in the Western and Eastern U.S./Canada Areas is updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to prevent the TAC for GB yellowtail flounder from being exceeded during the 2005 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: December 19, 2005.

Anne M. Lange,

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

[FR Doc. 05–24369 Filed 12–19–05; 12:56 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 245
Thursday, December 22, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–086–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Some of the fruits and vegetables are already eligible for importation under permit, but are not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. In one case, we propose to add a systems approach that would provide an alternative to methyl bromide fumigation. These actions would provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

DATES: We will consider all comments that we receive on or before February 21, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0107 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–086–1, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–086–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

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

At the request of various importers and foreign ministries of agriculture, we are proposing to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under certain conditions, for importation into the United States. We are also proposing to list certain fruits and vegetables that have been imported into the United States under a permit without being specifically listed in the regulations to improve the transparency of our regulations.

The fruits and vegetables referred to in this document would have to be imported under a permit and would be subject to the requirements in § 319.56–6 of the regulations, which provides that all imported fruits and vegetables will be inspected and will be subject to disinfection at the port of first arrival if an inspector requires it. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated.

Some of the fruits and vegetables proposed for importation would have to meet other special conditions. The proposed conditions of entry, which are discussed below, appear adequate to prevent the introduction and spread of quarantine pests through the importation of these fruits and vegetables.

We have prepared a pest risk assessment for each of the fruits and vegetables that we propose to add, unless we have allowed their entry previously under a permit. Copies of the pest risk assessments are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

We propose to make other amendments to update and clarify the regulations and improve their effectiveness. Our proposed amendments are discussed below by topic.

Allium spp. from Canada

In § 319.56–2, paragraph (c) serves as a general permit for fruits and vegetables grown in Canada and provides that fruits and vegetables grown in Canada may be imported into the United States without restrictions, with one exception. (That exception applies to potatoes grown in Newfoundland and a portion of the Municipality of Central Saanich in the Province of British Columbia; potatoes from those two areas are prohibited importation into the United States due to potato wart disease and golden nematode, respectively.) In this document, we propose to amend § 319.56–2(c) to add a requirement that consignments of *Allium* spp. consisting of the whole plant or above ground parts be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Canada with an additional declaration

stating that the articles are free from *Acrolepiopsis assectella* (Zeller).

A. assectella, known as the leek moth, has been reported to infest *Allium* spp. in Canada and is known to be a serious pest in continental Europe, where Italian leek infestation rates have been known to reach 40 percent. Leek moth larvae and pupae are often hidden within *Allium* tops, near new growth at the crown, which is why the proposed phytosanitary certificate requirement would apply to consignments consisting of the whole plant or above ground parts, and not to consignments consisting solely of bulbs. We believe this proposed requirement is necessary to prevent the introduction of leek moth into the United States.

Fruits and Vegetables Eligible for Entry Under Permit

Prior to 1992, APHIS did not specifically amend the regulations to list those fruits and vegetables for which we issued a permit after determining that the fruit or vegetable was eligible for entry under the regulations in § 319.56–2(e). However, in 1992, in an effort to increase transparency, we changed our approach and began to amend the regulations to specifically list all newly eligible fruits and vegetables (i.e., those that were not previously eligible under a specific administrative instruction or imported under permit in accordance with § 319.56–2(e)). In 2004, we began the process of amending the regulations to list those fruits and vegetables that were allowed entry exclusively under permit prior to our decision to specifically list the commodities in the regulations.

In this document, we continue the process of amending the regulations to list those fruits and vegetables that were approved for entry prior to 1992 and that have been eligible for importation under permit. In those cases where a permit has contained additional conditions that apply to the importation of the fruit or vegetable (such as a requirement for a phytosanitary certificate with an additional declaration or limitations on the origin or distribution of the article), those additional conditions would be reflected in the regulations. This proposed action would serve to improve the transparency of our regulations.

The permit requirement for these fruits and vegetables would continue to apply to their importation, as would the requirements of § 319.56–6 of the regulations described earlier in this document.

As noted previously, some of the fruits and vegetables we would list in the regulations would also have to meet other special conditions. The proposed conditions of entry, which are discussed below, have proven to be adequate to prevent the introduction and spread of quarantine pests through the importation of these fruits and vegetables.

Inspected and Subject to Disinfection

Section 319.56–2t lists fruits and vegetables that may be imported into the United States in accordance with the inspection and disinfection requirements of § 319.56–6 and all other applicable requirements of the regulations. We propose to amend that list to include the following additional fruits and vegetables from certain countries. All of these fruits and vegetables are currently eligible for importation into the United States in accordance with § 319.56–6 and all other applicable requirements of the regulations. These fruits and vegetables also meet the criteria of § 319.56–2(e)(4) and have been imported into the United States under permit since before 1992.

Country of origin	Common name	Botanical name
Bahamas	Grapefruit	*Citrus paradisi.*
	Lemon	*Citrus limon.*
	Orange	*Citrus sinensis.*
	Tangelo	*Citrus reticulata.*
Belize	Cichorium	*Cichorium* spp.
	Eggplant	*Solanum melongena.*
Brazil	Cichorium	*Cichorium* spp.
Chile	Cichorium	*Cichorium* spp.
Colombia	Cichorium	*Cichorium* spp.
Costa Rica	Cichorium	*Cichorium* spp.
	Eggplant	*Solanum melongena.*
Guatemala	Cichorium	*Cichorium* spp.
Honduras	Eggplant	*Solanum melongena.*

We have determined that any quarantine pests that might be carried by any of the fruits and vegetables listed above would be readily detectable by an inspector. Therefore, the provisions of § 319.56–6 for inspection and disinfection at the U.S. port of first arrival appear adequate to prevent the introduction into the United States of quarantine pests by the importation of these fruits and vegetables.

Paragraph (b) of § 319.56–2t currently sets out any additional restrictions that may apply to a fruit or vegetable listed in the table in paragraph (a) of that section, such as a requirement for a phytosanitary certificate with an additional declaration or limitations on the species of fruit or vegetables that are eligible for entry. For citrus from the Bahamas, we would add a new paragraph (b)(6)(i) that would specify grapefruit (*Citrus paradisi*), lemon (*C. limon*), orange (*C. sinensis*), and tangelo (*C. reticulata*) as eligible for importation into the United States.

Following an outbreak of citrus canker disease (*Xanthomonas citri* (Hasse) Dowson) on the island of Abaco in 2004, we began requiring all shipments of citrus from the Bahamas to be accompanied by a phytosanitary certificate issued by the NPPO of the Bahamas with an additional declaration stating that the fruit originated in an area that is free of citrus canker. Currently, the island of Abaco is the only area in the Bahamas where citrus canker is known to occur. Therefore, we would also add a new paragraph (b)(5)(vi) to § 319.56–2t which would provide for all shipments of citrus from the Bahamas to be accompanied by a phytosanitary certificate with that additional declaration.

The import permit for eggplant from Belize, Costa Rica, and Honduras specifies that the eggplant may be imported in commercial shipments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often

grown with little or no pest control. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Fruit From Fruit Fly-Free Areas

We propose to amend § 319.56–2t to allow the entry of grapes from Argentina, which are currently eligible for entry under permit, provided the shipments meet the criteria set forth in § 319.56–6, were grown in an area recognized by APHIS as free of Mediterranean fruit fly (Medfly, *Ceratitis capitata*) and *Anastrepha* spp., and are accompanied by a phytosanitary certificate issued by the NPPO of Argentina. The proposed origin and phytosanitary certificate requirements for these fruits, which reflect the current permit conditions that apply to their importation, are necessary to assure us that the fruits originated in a fruit fly-free area and were inspected and found free of plant pests.

To address those cases where grapes from Argentina are grown outside a fruit fly-free area, we would also amend § 319.56–2x to add grapes from Argentina to the list of fruits and vegetables that may be imported into the United States provided that they are treated in accordance with 7 CFR part 305.

Fruits and Vegetables Enterable With Treatment

We propose to amend § 319.56–2x to list the fruits and vegetables in the table below as eligible for importation, provided they have been treated in accordance with 7 CFR part 305. The fruits listed are already admissible under permit with prescribed treatment. This proposed action would provide the same benefit as the amendments to § 319.56–2t discussed earlier in this document, i.e., they would improve the transparency of our regulations. Applicable treatments have proven effective at mitigating the risk of introducing any quarantine pests that might be carried by any of the fruits and vegetables listed below.

Country of origin	Common name	Botanical name	Plant parts
Chile	Lemon	*Citrus limon*	Fruit.
Italy	Kiwi	*Actinidia deliciosa*	Fruit.
Republic of South Africa	Apple	*Malus domestica*	Fruit.
	Grape	*Vitis* spp.	Fruit.

Cichorium From Central and South America

As noted above, articles of the genus *Cichorium* are currently allowed importation under permit from Belize, Brazil, Chile, Colombia, Costa Rica, and Guatemala. In addition, articles of the genus *Cichorium* are currently listed in § 319.56–2t as eligible for importation from Argentina, Bolivia, Ecuador, Honduras, Nicaragua, Panama, and Peru. In this document, we are proposing to amend § 319.56–2t to list *Cichorium* spp. from El Salvador, French Guiana, Guyana, Paraguay, Suriname, Uruguay, and Venezuela as enterable subject to § 319.56–6 and all other applicable requirements of the regulations.

In 1996, we prepared a qualitative pest risk analysis entitled, ''Fresh *Cichorium endivia* and *Cichorium intybus* for Consumption from Ecuador and Nicaragua into the United States.'' In our assessment, we examined potential pests associated with *Cichorium* spp. in Central America and South America so that we could use our conclusions as a basis for future import requests for *Cichorium* spp. from countries in these regions. We concluded that no quarantine pests were likely to follow the pathway and, because of the low risk associated with the importation of *Cichorium* spp., that inspection was the only necessary mitigation measure. There have been no significant developments or data that would necessitate changing our earlier pest risk assessments regarding *Cichorium* spp.

Currently, in the table in § 319.56–2t, in the entries for those Central American and South American countries noted in the paragraph above the previous paragraph, we list only specific species of cichorium (e.g., chicory) as eligible for importation. In order to make our regulations more clear and consistent, we also propose to amend § 319.56–2t by removing the common name entries under Argentina for endive, Bolivia for Belgian endive, Ecuador for radicchio, Honduras for chicory, Nicaragua for radicchio, Panama for Belgian endive, chicory, and endive, and Peru for radicchio and to replace those common name entries with ''cichorium.'' This would allow for the importation of additional varieties of cichorium from these countries.

Eggplant From Central America

Eggplant from Guatemala and Panama is listed in the table in § 319.56–2t. As a condition of entry in its import permit, shipments are limited to commercial eggplant only, but we failed to specify ''commercial shipments only'' when those entries were added to § 319.56–2t. Therefore, we propose to add a reference to paragraph (b)(3), which specifies ''commercial shipments only,'' under the entries for eggplant from Guatemala and Panama in the table in § 319.56–2t.

New Zealand Spinach From Israel

In February 2004, at the request of Israel, we prepared a pest risk analysis entitled, ''Importation of New Zealand Spinach, (*Tetragonia tetragonioides*) Palas., from Israel into the United States.'' In that document, we identified several pests associated with New Zealand Spinach that were known to exist in Israel, including nematodes, bacteria, and fungi. We determined that there was a low risk associated with these pests because they were either already established in the United States or they were not likely to follow the pathway from Israel to the United States. We concluded that inspection at the port of entry was the only necessary mitigation measure. Therefore, we propose to amend § 319.56–2t by adding New Zealand spinach from Israel to the list of commodities eligible for importation into the United States.

Citrus From New Zealand

We propose to amend § 319.56–2t by adding an entry for commercial citrus from New Zealand. We have prepared a pest risk assessment and a risk management document for *Citrus* spp. from New Zealand and identified *Cnephasia jactatana*, *Coscinoptycha improbana, Ctenopseustis obliquana*, *Epiphyas postvittana*, *Planotortrix excessana*, and *Pezothrips kellyanus* as

pests of concern for citrus with a medium risk of introduction. In the risk management document, we described a single set of mitigation measures for all six pests. The mitigation measures, which are discussed below, are also part of the existing Australian citrus import program described in § 319.56–2v. Australia and New Zealand have similar climates and citrus is subject to similar pests in both countries and these measures have been effective at mitigating the risk of introducing pests of concern on Australian citrus. Therefore, we believe the same mitigation measures used for Australian citrus would mitigate the risk of introducing quarantine pests on New Zealand citrus also.

In the entry we would add for New Zealand citrus in the table in § 319.56–2t, a reference to paragraph (b)(3) of that section, which states ''commercial shipments only.'' We would allow only the importation of commercial shipments of citrus from New Zealand because *Cnephasia jactatana*, *Coscinoptycha improbana*, *Ctenopseustis obliquana*, *Epiphyas postvittana*, and *Planotortrix excessana* are surface feeders that would be readily removed by the commercial post-harvest processing, which includes washing, brushing, sanitizing dips, waxing, and drying. Fruit are inspected after washing/brushing, and any fruit with unacceptable feeding damage or that are visibly infested with the larvae of any of the surface feeding pests are culled at this stage. Standard post-harvest processes for commercially produced fruit would also remove larval and adult *P. kellyanus* on the surface of the fruit. *P. kellyanus* is an early season problem with anecdotal evidence indicating that fruit becomes relatively resistant to *P. kellyanus* once the calyx closes up; however, there is no information available about the likelihood of eggs being present in fruit at the time of harvest. Although the species has been reported to lay eggs within the epidermis of green fruit in a laboratory situation, it is not known if eggs are laid in mature fruit under natural conditions. Oviposition, when it does occur, is shallow and the sanitizing agents used and heat (up to 48 °C) treatment during standard post-harvest processing would render non-viable most eggs that might be present in the harvested fruit. In addition, there is evidence that wax treatments, when used in combination with the other post-harvest processes discussed in this paragraph, provide significant control of adult arthropods in fruit crops (e.g., *Brevipalpus chilensis* in cherimoyas and citrus).

In addition, we would amend paragraph (b) of § 319.56–2t by adding a new paragraph (b)(5)(vii), which would require all shipments of citrus from New Zealand to be accompanied by a phytosanitary certificate issued by the country's NPPO with an additional declaration stating that the fruit in the shipment has been inspected and found free of *Cnephasia jactatana*, *Coscinoptycha improbana*, *Ctenopseustis obliquana*, *Epiphyas postvittana*, *Planotortrix excessana*, and *Pezothrips kellyanus*. The phytosanitary certificate would provide additional security that the fruit has been inspected prior to shipment and that the post-harvest procedures have been effective at removing all quarantine pests.

Paragraph (b)(5)(vii) would also provide for an additional inspection at the port of entry consisting of a biometric sampling at a rate of 100 percent of 30 boxes, taken randomly throughout the shipment. This inspection would also include an examination of the box for hitchhiking pests. We believe that the post-harvest procedures, phytosanitary certificate, and port-of-entry inspection would effectively mitigate the risk of introducing the pests of concern into the United States.

Pineapples From South Africa

We currently allow pineapples from South Africa entry into all States, except Hawaii, and territories without restrictions, but the pest risk assessment entitled ''Importation of Pineapple Fruit (*Ananas comosus*) from South Africa into the Continental United States'' (March 1997) only evaluated the risks associated with the importation of South African pineapples into the continental United States. This oversight has recently come to our attention and in order to correct it, we would amend the entry for pineapples from South Africa in the table in § 319.56–2t by adding a reference to a new paragraph (b)(2)(v), which would limit distribution to the continental United States only and require shipments to be labeled accordingly.

Miscellaneous Changes to §§ 319.56–2t and 319.56–2x

We propose to make several nomenclature changes to commodities listed in §§ 319.56–2t and 319.56–2x. These changes would more accurately describe each commodity, are more universally understood, and would allow for easier identification at ports of entry. In § 319.56–2t, we propose to change the common name of chard from the Republic of Korea to Swiss chard and to change the plant part entry to read ''leaf and stem'' instead of ''leaf.'' We also propose to change the botanical name for Swiss chard from Peru from *Beta vulgaris* to *Beta vulgaris* subsp. *cicla*. In § 319.56–2x, we propose to amend the entry for El Salvador by changing the common name for garden bean to green bean.

We also propose to make nonsubstantive changes to § 319.56–2t for clarity. We propose to revise the plant parts entries for rambutan, longan, and litchi to include ''cluster;'' for bananas from Mexico to read ''flower and leaf'' instead of ''flower and fruit;'' for loroco from El Salvador and Nicaragua to read ''flower and leaf;'' and for cassava from Sierra Leone to read ''leaf and root.''

In § 319.56–2x, we would amend all entries for litchis and longan to include ''cluster'' under the plant parts heading.

Tomatoes From Chile

Currently, the regulations in § 319.56–2dd(d) provide for tomatoes from Chile to be imported only if treated for Medfly, the fruit fly *Rhagoletis tomatis*, and tomato leafminer (*Tuta absoluta*) with methyl bromide in accordance with 7 CFR part 305. In March 2005, in an effort to develop alternatives to methyl bromide fumigation, we prepared a pest risk analysis entitled, ''Importation of Fresh Tomato Fruit (*Lycopersicon esculentum* Mill.) from Chile into the United States.'' The risk analysis evaluated the efficacy of a systems approach against Medfly, *Rhagoletis tomatis*, *Tuta absoluta*, and *Liriomyza huidobrensis*, a leafminer. A systems approach is defined as a set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain pests.

We propose to amend § 319.56–2dd by reorganizing paragraph (d) and by adding a new paragraph (d)(2) which would set forth provisions of a systems approach for tomatoes from all regions in Chile. The regulations in § 319.56–2dd currently provide for the importation of tomatoes from Spain, France, and Morocco into the United States under a similar systems approach. Since the implementation of the systems approach, pest interceptions associated with tomatoes from Spain and France have been low, which demonstrate the effectiveness of the systems approach. The provisions of the systems approach, described below,

would include mitigation measures for Medfly, *Rhagoletis tomatis*, *Tuta absoluta*, and *Liriomyza huidobrensis*.

Under paragraph (d)(2)(i) of the proposed regulations, we would require all production sites to be approved and registered with the NPPO of Chile. Initial approval of production sites would be done by APHIS and the NPPO of Chile. The NPPO of Chile would be required to visit and inspect the sites monthly starting 2 months before harvest and continuing through the end of the shipping season. APHIS could monitor the production sites at any time during this period.

Paragraph (d)(2)(ii) would require tomato production sites to consist of pest exclusionary greenhouses, which would be required to have self-closing double doors and have all other openings and vents covered with 1.6 mm (or less) screening.

Under paragraph (d)(2)(iii) of the proposed regulations, production sites located in a region of Chile where Medfly occurs would have to conduct trapping for Medfly; this trapping would not be required for Medfly-free regions of the country. Medfly free areas of Chile are listed in § 319.56–2, paragraph (j). Where trapping is necessary, we would require McPhail traps with an approved protein bait be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least 2 traps per greenhouse. We would also require a minimum of 10 traps with trimedlure to be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap/10 ha. At least one of these traps would have to be near a greenhouse. All traps would have to be checked on a weekly basis.

Production sites would have to maintain Medfly prevalence levels of 0.7 fly/trap/week (F/T/W) or less for 2 months before harvest and throughout the harvest season in order to maintain their registration. If the F/T/W exceeds this level, the production site would be prohibited from shipping under the systems approach until APHIS and the NPPO of Chile agree that risk mitigation has been achieved.

Production sites in all areas of Chile would be required to put in place mitigation measures for *Rhagoletis tomatis*, *Tuta absoluta*, and *Liriomyza huidobrensis*.

Under paragraph (d)(2)(iv), all registered production sites would have to conduct trapping for *Rhagoletis tomatis*. We would require McPhail traps with an approved protein bait be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least 2 traps per greenhouse. We would require only the use of a protein bait approved for *R. tomatis* inside greenhouses because the bait is strong enough to attract both fruit flies if they are present inside greenhouses without attracting additional Medflies from outside of greenhouses. Therefore, it would be unnecessary to duplicate the trapping protocol for greenhouses in areas where Medfly is known to occur. We would require McPhail traps with an approved protein bait be placed in the area surrounding the production site. Traps would have to be placed inside a 500 meter buffer zone at a density of 1 trap/10 ha for a minimum of 10 traps. At least one of the traps would have to be near a greenhouse. All traps would have to be checked on a weekly basis. There is only one approved bait for *R. tomatis* and it is a weak lure for Medfly. While this bait would be sufficient to attract Medfly in the confines of a greenhouse, it would not be strong enough to attract Medfly in the open areas surrounding a greenhouse. Therefore, it would be necessary to use separate traps for both Medfly and *R. tomatis* in areas surrounding production sites in areas where Medfly exists.

If within 30 days of harvest a single *Rhagoletis tomatis* is captured inside the greenhouse or in a consignment or if two *R. tomatis* are captured or detected in the buffer zone, shipments from the production site would be suspended until APHIS and the NPPO of Chile determine that risk mitigation is achieved.

Paragraph (d)(2)(v) would require that registered production sites conduct regular inspections for *Tuta absoluta* throughout the harvest season and find these areas free of *T. absoluta* evidence (e.g., eggs or larvae). We would not require trapping for *T. absoluta* in the greenhouses or surrounding areas because the female *T. absoluta* releases a powerful pheromone that can lure males from long distances.

If within 30 days of harvest two *Tuta absoluta* are captured inside the greenhouse or a single *T. absoluta* is found inside the fruit or in a consignment, shipments from the production site would be suspended until APHIS and the NPPO of Chile determine that risk mitigation is achieved.

Under paragraph (d)(2)(vi), we would require that the NPPO of Chile conduct monthly inspections for *Liriomyza huidobrensis* leaf mines and visible external pupae or adults to maintain low populations of the pest inside greenhouses. *L. huidobrensis* larvae frequently mine along the midribs of leaves and late instar larvae and are almost always found mining the lower surfaces of leaves or within petioles, making them easy to identify. If *L. huidobrensis* is found to be generally infesting the production site, APHIS would immediately cancel exports from the production site until APHIS and the NPPO of Chile determine that risk mitigation is achieved. We believe these inspections would successfully mitigate the risk associated with *L. huidobrensis* because the mines are easy to detect in visual inspections.

Under paragraph (d)(2)(vii), we would require that all traps in registered sites be placed at least 2 months prior to the harvest and be maintained through the harvest season. We would also require traps to be monitored and serviced weekly.

Under paragraph (d)(2)(viii), we would require the NPPO of Chile to maintain records of trap placement, checking of traps, and of any *Rhagoletis tomatis* or *Tuta absoluta* captures for 1 year for APHIS review. The NPPO of Chile would be required to maintain an APHIS approved quality control program to monitor or audit the trapping program. APHIS would have to be notified when a production site is removed from or added to the program.

Paragraph (d)(2)(ix) would require the tomatoes be packed within 24 hours of harvest in a pest exclusionary packinghouse and be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. In addition tomatoes, would have to be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States, which would have to remain intact until arrival in the United States. These requirements would safeguard harvested fruit from infestation as well as deter additional pests that may hitchhike with the shipment.

Under paragraph (d)(2)(x) we would require the packinghouse to only accept fruit from registered approved production sites during the time the packinghouse is in use for exporting fruit to the United States. This measure would ensure that fruit grown and harvested under the systems approach would not be exposed to potentially infested fruit from unregistered groves.

Finally, paragraph (d)(2)(xi) would require each shipment of tomatoes to be accompanied by a phytosanitary certificate issued by the NPPO of Chile with an additional declaration, ''These tomatoes were grown in an approved production site in Chile.'' In addition, we would require each shipment box to

be labeled with the identity of the production site.

Mangoes From Philippines

Section 319.56–2ii contains administrative instructions to provide for the importation of mangoes from the Phillippines. Currently, only mangos from the island of Guimaras are allowed importation into the United States because it is the only area in the Philippines that is free of mango seed weevil, a quarantine pest. We have determined that mangos can be safely imported from most areas of the Philippines into Guam and Hawaii because the mango seed weevil is already present in those areas. Therefore, we propose to amend § 319.56–2ii to allow mangos to be imported from all areas of the Philippines, except the island of Palawan, into Guam and Hawaii. The island of Palawan is an exception because the pulp seed weevil is present there, a pest that is not known to exist in the United States. Shipments would be allowed importation into Guam and Hawaii provided that they are labeled ''For distribution in Guam and Hawaii only.'' We would also require shipments of mangoes originating from those additional islands of the Philippines to meet all other provisions set forth in § 319.56–2ii, which include vapor heat treatment for fruit flies of the genus *Bactrocera*, inspection in either the Philippines or the port of first arrival in the United States, and a phytosanitary certificate stating that the shipment has been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of § 319.56–2ii.

Miscellaneous

We propose to amend § 319.56–1 by adding a definition of *national plant protection organization* (NPPO). Our proposed definition is the same as that provided in the International Plant Protection Convention's Glossary of Phytosanitary Terms.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

We propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Many of these fruits and vegetables are already being imported under permit, but are not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to be treated or meet other special conditions. We also propose to eliminate or modify existing treatment requirements for specified commodities and make other miscellaneous changes. These actions would improve the transparency of our regulations while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

Impact on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities. Data on the number and size of U.S. producers of the various commodities proposed for importation into the United States in this document are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities listed below are small entities.

As previously stated, many of the commodities listed in this document may currently enter the United States under permit. Therefore, we do not expect the amount of many commodities submitted for importation to increase beyond current levels. Additionally, in many cases, importation of certain commodities is necessary given that the commodities are not grown extensively in the United States (e.g., chicory, kiwis, and mangoes). In other instances, importation augments domestic supplies that are not sufficient to meet consumer demand (e.g., apples, garlic, and onions).

Grapes and Cichorium From Argentina

Grapes from Argentina are already admissible under permit into the United States. The United States imports an average of 490,000 tons of grapes (7 percent of its domestic supply) per year to satisfy its domestic demand for consumption.[1] However, less than 1 percent of these imports originate in Argentina. The growing season for grapes in Argentina is opposite of that in the United States, thereby complementing rather than competing with U.S. grape production. Therefore, even if we assume that Argentina greatly increases its exports of grapes to the United States, it is more likely to displace other countries' share of U.S. imports than to affect the level of U.S. consumption of domestic grapes. The economic impact on the level of U.S. grape consumption and production resulting from this proposed change is expected to be small.

With respect to cichorium, no official production data are available in either the United States or Argentina. Therefore, we assume that both the United States and Argentina are small commercial producers of cichorium. Between 2000 and 2003, U.S. imports of fresh cichorium averaged 3.8 thousand tons of a non-witloof variety and 2.5 thousand tons of a witloof variety; none of these imports originated in Argentina.[2] Between 2000 and 2003, Argentina's exports of cichorium to the world as a whole averaged 7 metric tons annually. Even if all of these exports were directed to the United States, they would only represent 0.11 percent of U.S. demand for imported cichorium. The economic impact resulting from this proposed change is not expected to be substantial.

***Allium* spp. From Canada**

Alliaceous vegetables (i.e., onions, shallots, leeks, and garlic) from Canada can be imported into the United States

[1] FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule for trade data.

[2] FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS: 070529 non-witloof variety of chicory, and 070521 fresh chicory of witloof variety).

under the general permit in § 319.56–2(c) for articles from Canada. Between 2000 and 2003, Canada supplied 19 percent of annual U.S. imports of shallots and onions, 3 percent of U.S. imports of leeks and 0.62 percent of U.S. imports of garlic on average.[3] U.S. imports amount to less than 10 percent of U.S. production of shallots and onions and less than 15 percent of U.S. garlic production. The proposed rule would add, as a condition of entry, that each shipment of alliaceous vegetables consisting of the whole plant or above ground parts be accompanied by a phytosanitary certificate containing an additional declaration from the Canadian NPPO that the shipment is free of *Acrolepiopsis assectella*. We would not expect exporters to incur any additional expenses as a result of this proposed requirement. Therefore, U.S. importers/consumers of these commodities would not see an increase in the cost of alliaceous vegetables from Canada. Even if exporters of alliaceous vegetables from Canada were to experience an increase in exporting cost because of the phytosanitary requirement and pass this on to U.S. importers/consumers, the benefits of keeping the leek moth out of the United States would outweigh such an increase in cost. As a result, the economic impact on the U.S. level of demand for consumption and/or production of alliaceous vegetables is not expected to be significant.

Cichorium, Lemons, and Tomatoes (Under a Systems Approach) From Chile

Lemons from Chile are already being imported into the United States under permit; between 2000 and 2003, 4 percent of annual U.S. imports of lemons and limes originated in Chile.[4] We have no reason to expect that listing lemons from Chile in the regulations would result in an increase in exports. Even if we assume that Chile increases its exports of lemons into the United States, it is more likely to displace other countries' share for U.S. imports of them than to affect the level of U.S. consumption of domestic lemons. The economic impact resulting from this change is not expected to be substantial.

Tomatoes from Chile are already being imported into the United States if fumigated with methyl bromide. The proposed rule would provide tomato producers with an alternative to methyl bromide fumigation by providing for a systems approach. APHIS continues to strive to meet the objectives of the Montreal Protocol by providing alternatives to methyl bromide fumigation treatment for fruit and vegetable producers. As registered producers in Chile already comply with most of the production practices that would be required under the systems approach, the proposed requirements would not likely result in any additional economic burden to tomato producers. In addition, registered producers who remain in compliance with the program throughout the shipping season would save money on costly fumigation treatments. Between 2000 and 2003, 0.02 percent of U.S. annual imports of tomatoes originated in Chile.[5] The total amount of tomatoes from Chile exported to the world between 2000 and 2003 (all varieties) was on average only 2,209 tons or 0.38 percent of U.S. imports. This is Chile's maximum capacity of tomato exports and is not expected to increase in the short term. This small amount of imports, whether grown under the systems approach or treated with methyl bromide, is unlikely to affect the level of U.S. consumption of domestic tomatoes. The economic impact resulting from this change is not expected to be substantial.

With respect to cichorium, there are no available data on U.S. or Chilean production. The United States imports approximately 6,000 tons of cichorium per year. Cichorium is already being imported from Chile under permit, and Chile is a major source of U.S. cichorium imports, accounting for approximately 32 percent on average. Because the United States is such a small producer of cichorium, it is unlikely that this proposed rule would significantly alter this situation. In fact, the addition of cichorium into the U.S. market from other countries such as Chile would be a benefit to U.S. consumers. The economic impact on the level of U.S. consumption of cichorium, lemons, and tomatoes as a result of these proposed changes is expected to be small.

New Zealand Spinach From Israel

According to USDA's Foreign Agricultural Service (FAS), in 2000, the United States imported 1.5 metric tons of New Zealand spinach from Israel (0.02 percent of U.S. imports of New Zealand spinach in 2000). However, APHIS' Plant Protection and Quarantine (PPQ) program has no record of these imports and New Zealand spinach from Israel is not currently admissible into the United States.[6] Israel is a small producer of spinach (all varieties), producing, on average, an amount equivalent to a quarter of total U.S. spinach imports annually. The amount imported in 2000 corresponds to 50 percent of Israel's exports. Even if we assume that Israel would double its exports into the United States, it could not supply more than 0.04 percent of U.S. demand for imports of spinach. The economic effects of this proposed change on the level of U.S. consumption and/or production of spinach are not expected to be significant.

Kiwi From Italy

Kiwi fruits from Italy can already be imported into the United States under permit. The United States is a small kiwi producer that imports almost twice as much as it produces to satisfy its domestic demand.[7] Italy supplies approximately 16 percent of U.S. imported kiwi fruits, and it is unlikely that this would change as a result of this proposed rule. Even if Italy increased its exports of kiwi to the United States, it would most likely displace another countries' share because the United States is such a small producer of kiwi. The economic impact resulting from this proposed change on the level of U.S. consumption is not expected to be substantial.

Citrus From New Zealand

Although FAS statistics indicate that between 2001 and 2003, New Zealand supplied, on average, 0.006 percent of U.S. imports of oranges and lemons,[8] APHIS' PPQ has no records of these imports and citrus fruit from New Zealand are not currently admissible into the United States. New Zealand is a small producer/exporter of citrus, and the country's exports account for less than 1 percent of U.S. imports of citrus on average. Its total citrus production is

[3] FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule for trade data.

[4] Source of Production Data: *http://apps.fao.org/faostat/agriculture/*. Production data for lemons include limes. Source of Trade Data: USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Harmonized Tariff Schedule 6 digits.

[5] Source of Production Data: *http://apps.fao.org/faostat/agriculture/*. Source of Trade Data: USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Harmonized Tariff Schedule 6 digits.

[6] The United States imported spinach from Israel for the first time in year 2000, but did not import any Israeli spinach in 2001, 2002, or 2003. Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS 6 Digit—070970) spinach fresh or chilled. Source of production data: *http://apps.fao.org/faostat/agriculture/*.

[7] Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office.

[8] Total citrus trade data here includes the following categories of fruits: Oranges (HS–6: 080510), mandarins (HS–6: 080520), lemons (HS–6: 080530), and grapefruits (HS–6: 080540).

less than 8 percent of U.S. imports of citrus as a whole. Because the United States would import such a small percentage of New Zealand citrus, even if we assume that New Zealand greatly increases its exports to the United States, it is unlikely to have a substantial economic impact.

Mangoes From the Philippines

The United States currently imports a very small amount of mangoes (18 tons per year on average) from the Philippines.[9] Because the Philippines is a significant producer of mangoes, allowing mangoes to be imported into Hawaii and Guam from additional production areas in the Philippines could result in mango exports from the Philippines capturing a larger share of those two markets. U.S. mango production is less than 1 percent of the amount the United States needs to satisfy its domestic consumption. Between 2001 and 2002, the United States imported approximately 100 times the amount of its domestic mango production, with most imports coming from Mexico. Thus, allowing imports from more islands in the Philippines would be a benefit to U.S. consumers in Guam and Hawaii. The economic impact of this proposed change on the level of U.S. consumption or its domestic production of mangoes is not expected to be significant.

Apples and Grapes From South Africa

Apples and grapes from South Africa can already be imported into the United States under permit. South Africa supplies 3 percent of U.S. imports of apples and a little less than 2 percent of U.S. imports of grapes.[10] With respect to grapes, South African exports alone cannot satisfy U.S. demand for domestic consumption. Even if South Africa directs all of its exports of grapes (880,590 tons) into the United States, it would be only enough to supply 22 percent of U.S. annual demand. The economic impact of this proposed change on the level of U.S. consumption and/or domestic production of apples and/or grapes is not expected to be significant.

Cichorium From Central and South America

There are no official data available for cichorium in any of the above countries, either on production or trade in Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, French Guiana, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. Thus, we assume that these countries are very small producers of cichorium and that they are either not currently exporting cichorium or are exporting only small amounts. For these reasons, we cannot determine what the economic effects of this proposed rule would be, but they are not expected to be significant.

Summary

U.S. importation of commodities included in this proposed rule is not expected to have a significant economic impact on U.S. small entities. The different production season of the Southern Hemisphere, where many of the fruits and vegetables included in this proposed rule are produced, helps maintain a steady supply of fresh produce, complementing rather than competing with U.S. production of these commodities. For those commodities that are not principal U.S. products, the additional supply will help satisfy growing demand for these specialty crops. It does not appear that the changes proposed in this document would have a significant economic impact on a substantial number of economic entities. However, we invite public comment on this analysis.

This proposed rule contains certain reporting and recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03–086–1. Please send a copy of your comments to: (1) Docket No. 03–086–1, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to allow a number of fruits and vegetables from certain countries of the world to be imported into the United States, under specified conditions. Before entering the United States, all of the fruits and vegetables would be subject to inspection and disinfection at the port of first arrival in the United States to ensure that no plant pests are inadvertently brought into the United States. These precautions, along with other requirements, would ensure that these items can be imported into the United States with a minimal risk of introducing exotic plant pests such as fruit flies.

Allowing these fruits and vegetables to be imported would necessitate the use of certain information collection activities, including the completion of import permits, phytosanitary certificates, and fruit fly monitoring records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

[9] Trade Data: Harmonized Tariff Schedule (HS 6 Digit). Source of production data: *http://apps.fao.org/faostat/agriculture/*.

[10] Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS 6 Digit). Source of production data: *http://apps.fao.org/faostat/agriculture/*.

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.0796255 hours per response.

Respondents: Growers, shippers, national plant protection organizations.

Estimated annual number of respondents: 61,190.

Estimated annual number of responses per respondent: 1.83979.

Estimated annual number of responses: 112,577.

Estimated total annual burden on respondents: 121,541 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

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

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

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

2. Section 319.56–1 would be amended by adding, in alphabetical order, a definition for *national plant protection organization (NPPO)* to read as follows:

§ 319.56–1 Definitions.

* * * * *

National plant protection organization (NPPO). Official service established by a government to discharge the functions specified by the International Plant Protection Convention.

* * * * *

3. In § 319.56–2, paragraph (c) would be revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(c) *General permit for fruits and vegetables grown in Canada.* Fruits and vegetables grown in Canada may be imported into the United States without restriction under this subpart; provided, that:

(1) Consignments of *Allium* spp. consisting of the whole plant or above ground parts must be accompanied by a phytosanitary certificate issued by the NPPO of Canada with an additional declaration stating that the articles are free from *Acrolepipsis assectella* (Zeller).

(2) Potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited importation into the United States in accordance with § 319.37–2 of this part.

* * * * *

4. Section 319.56–2t would be amended as follows:

a. In the table in paragraph (a), by:

i. Revising the following entries to read as set forth below: Under Belize, for rambutan; under Bermuda, for longan; under Costa Rica, for rambutan; under El Salvador, for loroco and rambutan; under Grenada, for litchi and rambutan; under Guatemala, for eggplant and rambutan; under Honduras, for rambutan; under Mexico, for banana and rambutan; under Nicaragua, for loroco and rambutan; under Panama, for eggplant and rambutan; under Peru, for Swiss chard; under Sierra Leone, for cassava; and under South Africa, for pineapple.

ii. Removing the following entries: Under Argentina, for endive; under Bolivia, for Belgian endive; under Ecuador, for radicchio; under Honduras, for chicory; under Nicaragua, for radicchio; under Panama, for Belgian endive, chicory, and endive; under Peru, for radicchio; and under Republic of Korea, for chard.

iii. Adding, in alphabetical order, the following entries to read as set forth below: Under Argentina, for cichorium and grape; under Belize, for cichorium and eggplant; under Bolivia, for cichorium; under Chile, for cichorium; under Colombia, for cichorium; under Costa Rica, for cichorium and eggplant; under Ecuador, for cichorium; under El Salvador, for cichorium; under French Guinea, for cichorium; under Guatemala, for cichorium; under Honduras, for cichorium and eggplant; under Israel, for New Zealand spinach; under New Zealand, for citrus; under Nicaragua, for cichorium; under Panama, for cichorium; under Peru, for cichorium; under Republic of Korea, for Swiss chard; and under Suriname, for cichorium.

iv. Adding entries for Bahamas, Brazil, French Guiana, Guyana, Paraguay, Uruguay, and Venezuela to read as set forth below.

b. In paragraph (b), by adding new paragraphs (b)(2)(v), (b)(5)(vi), (b)(5)(vii), and (b)(6)(v) to read as set forth below.

§ 319.56–2t Administrative instructions: Conditions governing the entry of certain fruits and vegetables.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
Argentina				
*	*	*	*	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	*	*	*	*
	Grape	*Vitis* spp	Fruit	(b)(1)(ii).

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
*	* *	*	* *	*
Bahamas	Citrus	*Citrus* spp	Fruit	(b)(5)(vi), (b)(6)(i).
*	* *	*	* *	*
Belize				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* *	*	* *	*
Bermuda				
*	* *	*	* *	*
	Longan	*Dimocarpus longan*	Fruit or cluster.	
*	* *	*	* *	*
Bolivia	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
Brazil	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
Chile.				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
Colombia	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
Costa Rica				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* *	*	* *	*
Ecuador				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
El Salvador				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
	Loroco	*Fernaldia* spp	Flower and leaf.	
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* *	*	* *	*
French Guiana	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
Grenada				
*	* *	*	* *	*
	Litchi	*Litchi chinensis*	Fruit or cluster.	
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
*	* * *	*	* *	*
Guatemala				
*	* * *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* * *	*	* *	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	* * *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* * *	*	* *	*
Guyana	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* * *	*	* *	*
Honduras				
*	* * *	*	* *	*
	Cichorium	*Cichorium* spp	Leaf, stems, and roots.	
*	* * *	*	* *	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	* * *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* * *	*	* *	*
Israel				
*	* * *	*	* *	*
	New Zealand spinach	*Tetragonia tetragonioides*	Leaves.	
*	* * *	*	* *	*
Mexico				
*	* * *	*	* *	*
	Banana	*Musa* spp	Flower and leaf.	
*	* * *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* * *	*	* *	*
New Zealand				
*	* * *	*	* *	*
	Citrus	*Citrus* spp	Fruit	(b)(3), (b)(5)(vii).
*	* * *	*	* *	*
Nicaragua	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* * *	*	* *	*
	Loroco	*Fernaldia* spp	Flower and leaf.	
*	* * *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* * *	*	* *	*
Panama				
*	* * *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* * *	*	* *	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	* * *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii)
*	* * *	*	* *	*
Paraguay	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
Peru				
*	* * *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* * *	*	* *	*
	Swiss chard	*Beta vulgaris. subsp. cicla.*	Leaf and stem.	
*	* * *	*	* *	*
Republic of Korea				
*	* * *	*	* *	*
	Swiss chard	*Beta vulgaris* subsp. *subsp. cicla*.	Leaf and stem.	
*	* * *	*	* *	*
Sierra Leone	Cassava	*Manihot esculenta*	Leaf and root.	
*	* * *	*	* *	*
South Africa				
*	* * *	*	* *	*
	Pineapple	*Ananas* spp	Fruit	(b)(2)(v).
*	* * *	*	* *	*
Suriname				
*	* * *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* * *	*	* *	*
Uruguay	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
Venezuela	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* * *	*	* *	*

(b) * * *

(2) * * *

(v) Prohibited entry into Puerto Rico, Virgin Islands, Northern Mariana Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped ''For distribution in the continental United States only.''

* * * * *

(5) * * *

(vi) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is from an area where citrus canker (*Xanthomonas citri* (Hasse) Dowson) is not known to occur.

(vii) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin and with an additional declaration stating that the fruit is free from *Cnephasia jactatana, Coscinoptycha improbana, Ctenopseustis obliquana, Epiphyas postvittana, Pezothrips kellyanus,* and *Planotortrix excessana;* must undergo a port of entry inspection with a biometric sampling of 100 percent of 30 boxes selected randomly from each shipment; and the randomly selected boxes must be examined for hitchhiking pests.

(6) * * *

(v) Grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), and tangelo (*Citrus reticulata*) only.

* * * * *

5. In § 319.56–2x, the table in paragraph (a) would be amended as follows:

a. By revising the following entries to read as set forth below: Under China, for litchi and longan; under India, for litchi; under Israel, for litchi; and under Taiwan, for litchi.

b. By removing, under El Salvador, the entry for garden bean and by adding, in alphabetical order, the following entries to read as set forth below: Under Argentina, for grape; under Chile, for lemons; and under El Salvador, for green bean.

c. By adding, in alphabetical order, entries for Italy and the Republic of South Africa to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina.			
*	* * *	*	* *
	Grape	*Vitis* spp	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).

Country/locality	Common name	Botanical name	Plant part(s)
* *	* *	* *	* *
Chile	Lemon	*Citrus limon*	Fruit.
* *	* *	* *	* *
China	Litchi	*Litchi chinensis*	Fruit or cluster. (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped "Not for importation into or distribution in FL.")
	Longan	*Dimocarpus longan*	Fruit or cluster.
* *	* *	* *	* *
El Salvador	Green bean	*Phaseolus vulgaris*	Pod or shelled.
* *	* *	* *	* *
India	Litchi	*Litchi chinensis*	Fruit or cluster. (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped "Not for importation into or distribution in FL.")
Israel.			
* *	* *	* *	* *
	Litchi	*Litchi chinensis*	Fruit or cluster. (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped "Not for importation into or distribution in FL.")
* *	* *	* *	* *
Italy	Kiwi	*Actinidia deliciosa*	Fruit.
* *	* *	* *	* *
Republic of South Africa	Apple	*Malus domestica*	Fruit.
	Grape	*Vitis spp*	Fruit.
* *	* *	* *	* *
Taiwan.			
* *	* *	* *	* *
	Litchi	*Litchi chinensis*	Fruit or cluster. (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped "Not for importation into or distribution in FL.")
* *	* *	* *	* *

* * * * *

6. In § 319.56–2dd, paragraph (d) would be amended as follows:

a. By revising the introductory text of the paragraph to read as set forth below.

b. By redesignating paragraphs (d)(1), (d)(2), and (d)(3) as paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), respectively, and by adding an introductory paragraph heading to paragraph (d)(1) to read as set forth below.

c. In newly redesignated paragraph (d)(1)(iii), in the first sentence, by adding the words ''with treatment in accordance with this paragraph (d)(1)'' after the word ''Chile''.

d. By adding a new paragraph (d)(2) to read as set forth below.

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

* * * * *

(d) *Tomatoes from Chile.* Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States with treatment in accordance with paragraph (d)(1) of this section or if produced in accordance with the systems approach described in paragraph (d)(2) of this section.

(1) *With treatment.* * * *

* * * * *

(2) *Systems approach.* The tomatoes may be imported without fumigation for *Tuta absoluta, Rhagoletis tomatis*, and Mediterranean fruit fly (Medfly, *Ceratitis capitata*) if they meet the following conditions:

(i) The tomatoes must be grown in approved production sites that are registered with SAG. Initial approval of the production sites will be completed jointly by SAG and APHIS. SAG will visit and inspect the production sites monthly, starting 2 months before harvest and continue until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

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

(iii) The tomatoes must originate from a Medfly free area (see § 319.56-2(j)) of Chile or an area where Medfly trapping occurs. Production sites in areas where Medfly is known to occur must contain traps for both Medfly and *Rhagoletis tomatis* in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. Production sites in all other areas do not require trapping for Medfly. The trapping protocol for the detection of Medfly in infested areas is as follows:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse.

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

(C) Medfly prevalence levels in the surrounding areas must be 0.7 Medflies per trap per week or lower. If levels exceed this before harvest, the production site will be prohibited from shipping under the systems approach. If the levels exceed this after the 2 months prior to harvest, the production site would be prohibited from shipping under the systems approach until APHIS and the NPPO of Chile agree that the pest risk has been mitigated.

(iv) Registered production sites must contain traps for *Rhagoletis tomatis* in accordance with the following provisions:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse. Traps inside greenhouses will use the same bait for Medfly and *Rhagoletis tomatis* because the bait used for *R. tomatis* is sufficient for attracting both types of fruit fly within the confines of a greenhouse; therefore, it is unnecessary to repeat this trapping protocol in production sites in areas where Medfly is known to occur.

(B) McPhail traps, with an approved protein bait must be placed inside a 500 meter buffer zone at a density of 1 trap/10 ha surrounding the production site. At least one of the traps must be near a greenhouse. Traps must be set for at least 2 months before export until the end of the harvest season and must be checked at least every 7 days. In areas where Medfly trapping is required, traps located outside of greenhouses must contain different baits for Medfly and *Rhagoletis tomatis*. There is only one approved bait for *R. tomatis* and the bait is not strong enough to lure Medfly when used outside greenhouses; therefore, separate traps must be used for each type of fruit fly present in the area surrounding the greenhouses.

(C) If within 30 days of harvest a single *Rhagoletis tomatis* is captured inside the greenhouse or in a consignment or if two *R. tomatis* are captured or detected in the buffer zone, shipments from the production site would be suspended until APHIS and SAG determine that risk mitigation is achieved.

(v) Registered production sites must conduct regular inspections for *Tuta absoluta* throughout the harvest season and find these areas free of *T. absoluta* evidence (e.g., eggs or larvae). If within 30 days of harvest, two *Tuta absoluta* are captured inside the greenhouse or a single *T. absoluta* is found inside the fruit or in a consignment, shipments from the production site would be suspended until APHIS and SAG determine that risk mitigation is achieved.

(vi) SAG will ensure that populations of *Liriomyza huidobrensis* inside greenhouses are well managed by doing inspections during the monthly visits specifically for *L. huidobrensis* mines in the leaves and for visible external pupae or adults. If *L. huidobrensis* is found to be generally infesting the production site, shipments from the production site would be suspended until APHIS and SAG agree that risk mitigation is achieved.

(vii) All traps must be placed at least 2 months prior to harvest and be maintained throughout the harvest season and be monitored and serviced weekly.

(viii) SAG must maintain records of trap placement, checking of traps, and of any *Rhagoletis tomatis* or *Tuta absoluta* captures for 1 year for APHIS review. SAG must maintain an APHIS approved quality control program to monitor or audit the trapping program. APHIS must be notified when a production site is removed from or added to the program.

(ix) The tomatoes must be packed within 24 hours of harvest in a pest exclusionary packinghouse. The tomatoes must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin for transit to the United States. These safeguards must remain intact until arrival in the United States.

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

(xi) SAG is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by SAG with an additional declaration, ''These tomatoes were grown in an approved production site in Chile.'' The shipping box must be labeled with the identity of the production site.

* * * * *

7. Section 319.56–2ii would be amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. In paragraph (d), by adding a new sentence at the end of the paragraph to read as set forth below.

c. By revising paragraph (e) to read as set forth below.

§ 319.56–2ii Administrative instructions: conditions governing the entry of mangoes from the Philippines.

* * * * *

(a) Mangoes grown on the island of Guimaras, which the Administrator has determined meet the criteria set forth in § 319.56–2(e)(4) and § 319.56–2(f) with regard to the mango seed weevil (*Sternochetus mangiferae*), are eligible for importation into all areas of the United States. Mangoes from all other areas of the Philippines except Palawan are eligible for importation into Hawaii and Guam only. Mangoes from Palawan are not eligible for importation into the United States.

* * * * *

(d) * * * Shipments originating from approved areas other than Guimaras must be labeled ''For distribution in Guam and Hawaii only.

(e) *Phytosanitary certificate.* Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section. Phytosanitary certificates accompanying

shipments of mangoes originating from the island of Guimaras must also contain an additional declaration stating that the mangoes were grown on the island of Guimaras.

* * * * *

Done in Washington, DC, this 16th day of December 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–7690 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV05–948–1 PRA]

Irish Potatoes Grown in Colorado; Relaxation of Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a relaxation of the minimum grade requirement for certain potatoes handled under the Colorado potato marketing order, Area No. 2. The Colorado Potato Administrative Committee, Area No. 2 (Committee), the agency responsible for local administration of the marketing order, recommended this rule as a replacement for a previously issued proposed rule. This rule would change the minimum grade from U.S. No. 1 to U.S. Commercial for varieties of long, red-skinned, yellow fleshed potatoes produced in Area No. 2 measuring from 1½ inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter. The proposed change is intended to provide potato handlers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of small specialty potatoes.

DATES: Comments must be received by January 6, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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: Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, 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.''

This proposal replaces a proposed rule published in the **Federal Register** on May 6, 2005 (70 FR 23942). The comment period for that proposal, which ended on July 5, 2005, was reopened until September 12, 2005, in a document published on August 22, 2005 (70 FR 48903). Five comments were subsequently received that addressed the substance of the proposed rule. In addition to new information obtained by the Committee, these comments were considered in the preparation of this proposed rule.

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 would relax the minimum grade requirement from U.S. No. 1 to U.S. Commercial for all varieties of long, red-skinned, yellow fleshed potatoes produced in Colorado Area No. 2 measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter. This change to the original proposal was recommended by the Committee on October 20, 2005, with 12 members in favor and one opposed. The member voting against the change felt that the minimum grade for all small potatoes should continue to be U.S. No. 1. This member is opposed to having grading exceptions for any variety of potato. The Committee believes that this change would facilitate the marketing of Area No. 2 Colorado potatoes and improve grower returns. The Committee recommended this rule as a replacement for a previously issued proposed rule.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Grade regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order's handling regulations. Section 948.4 of the order defines the counties

included in Area No. 2, which is commonly known as the San Luis Valley. The State of Colorado is divided into three areas for marketing order purposes. Currently, only Area No. 2 and Area No. 3 are active.

The Committee's initial recommendation, made on August 19, 2004, was to relax the minimum grade requirement from U.S. No. 1 to U.S. Commercial for all Colorado Area No. 2 potato varieties measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter. This change was recommended by the Committee with nine members in favor and four opposed. The members voting against the change believed that the minimum grade for all small potatoes should continue to be U.S. No. 1.

The previous proposed rule was published in the **Federal Register** on May 6, 2005 (70 FR 23942), and comments were invited until July 5, 2005. The comment period was reopened until September 12, 2005, in a document published on August 22, 2005 (70 FR 48903), for the purpose of receiving additional input. Five comments were received during the reopened comment period. All of these comments opposed the relaxation of the grade requirement because of the potentially negative impact on the quality of imported round, red-skinned varieties of potatoes. Under section 980.1 of the import regulations, the initially proposed grade change would have applied to all imported round, red-skinned potatoes of the same size categories during the months of October through June. All of the commenters expressed concern that lower quality imported round, red-skinned potatoes would adversely affect the domestic market.

Because this current proposal is limited to all varieties of long, red-skinned, yellow fleshed potatoes, imported round, red-skinned potato varieties would not be affected. Under § 980.1, imported long type potatoes must meet the grade, size, quality, and maturity requirements of Marketing Order No. 945 (Idaho-Eastern Oregon potatoes) throughout the entire year.

The Committee met on October 20, 2005, to consider the comments received regarding the previously issued proposed rule, as well as other information received from the Colorado potato industry. After much discussion, the Committee recommended that the rule be modified to reflect that the relaxed grade requirement would only apply to long, red-skinned, yellow fleshed potato varieties.

For many years, consumer demand for small fresh market potatoes was relatively soft in comparison to larger sizes. Size B and smaller potatoes were often discarded or fed to livestock. Grade and size regulations were developed to keep lower quality small potatoes out of the fresh market. At that time, the Committee believed that small potatoes, sold at a great discount, eroded the price for large potatoes. By requiring all small potatoes to grade U.S. No. 1 or better, the Committee believed that high quality small potatoes would not have an adverse affect on the market for larger potatoes.

Recently, however, demand has increased for varieties of long, red-skinned, yellow fleshed small potatoes, which often command premium prices compared to larger size A potatoes (1⅞-inch and larger). With the growing demand for this type of small specialty potato, some growers and handlers are concerned that they will not be able to supply this market, because only U.S. No. 1 or better grade can be shipped under the order. Growers and handlers have had requests from their customers for long, red-skinned, yellow fleshed varieties of small potatoes that grade U.S. Commercial or better. This action would help handlers in Area No. 2 meet their buyers' needs.

Committee statistics show that approximately 65 percent of the entire potato crop in Area No. 2 grades U.S. No. 1 or better. However, the percentage of Size B and smaller potatoes meeting U.S. No. 1 grade is only about 50 percent. The reason for the lower percentage of smaller potatoes is because several potato defects are scored based on the percentage of surface area affected on the individual potato. For example, a cut on a large potato may not affect a large enough surface area to be a scorable defect, but the same size cut would be scorable on a smaller potato. Under such circumstances, it would be much harder for a small potato to meet the U.S. No. 1 grade than it would for a large potato. The U.S. Commercial grade allows a slightly higher percentage of total defects than the U.S. No. 1 grade.

By changing the grade requirement to allow long, red-skinned, yellow fleshed potato varieties that are size B and those measuring from 1-inch minimum diameter to 1¾-inch maximum diameter to meet U.S. Commercial grade or better, the Committee believes more of this type of small specialty potato would be available to meet increasing demand, and thus help increase returns to growers. Not only would more small long, red-skinned, yellow fleshed potatoes enter the market, these small specialty potatoes typically sell for a premium price in today's marketplace.

The Committee believes that by allowing small long, red-skinned, yellow fleshed potatoes to meet the more relaxed U.S. Commercial grade instead of U.S. No. 1 grade, available volume for sale into the fresh market could increase by about 10 percent.

Although facing an increasing demand, the market for small long, red-skinned, yellow fleshed potatoes is a minor segment of the market served by the Area No. 2 production area. As a consequence, the Committee believes that this type of small specialty potato does not compete directly with the predominant large potatoes produced in this area, and that the relaxation of the grade requirement would not adversely effect the overall Area No. 2 potato market.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 88 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2004–2005 marketing year, 17,626,974 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $6.75 per hundredweight, the Committee estimates that 83 Area No. 2 handlers or about 94 percent had annual receipts of less than $6,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average grower price for Colorado fall potatoes for 2004 was $4.55 per hundredweight. The

average annual grower revenue for the 230 Colorado Area No. 2 potato growers is therefore calculated to be approximately $348,708. In view of the foregoing, the majority of the Colorado Area No. 2 potato growers and handlers may be classified as small entities.

This proposal would relax the grade requirement implemented under the order from U.S. No. 1 grade to U.S. Commercial grade for all long, red-skinned, yellow fleshed Area No. 2 potato varieties measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B) and from 1-inch minimum diameter to 1¾-inch maximum diameter.

Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386.

Regarding the impact of this rule on affected entities, relaxing the grade requirement for small long, red-skinned, yellow fleshed varieties of potatoes is expected to benefit handlers and growers. By relaxing the minimum grade requirement for this type of small specialty potato, a potentially greater quantity of potatoes would meet the order's handling regulations. This could translate into an increased market for small long, red-skinned, yellow fleshed potatoes and greater returns for handlers and growers.

As small long, red-skinned, yellow fleshed varieties of potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of these small, high quality potatoes available from Area No. 2. The Committee believes that a relaxation in the grade requirement would increase the available supply of small long, red-skinned, yellow fleshed varieties of potatoes. These small specialty potatoes are a minor segment of the potato market served by the Area No. 2 production area. As such, the Committee believes that these small long, red-skinned, yellow fleshed potato varieties do not compete directly with most of the potatoes produced in this area and that the relaxation of the grade requirement would not adversely effect the overall Area No. 2 potato market.

Based on Committee records, about half the handlers ship all of the size B and smaller potatoes grown in Area No. 2. Committee records also indicate that during the 2004–2005 fiscal period, approximately 165,000 hundredweight (less than 1 percent) of size B and smaller were inspected and shipped. If this proposed change in the minimum grade requirement is implemented, the Committee estimates that the marketable supply of size B and smaller long, red-skinned, yellow fleshed potato varieties would increase approximately 10 percent and add about 16,500 hundredweight to the marketable supply. The Committee anticipates that the greater quantity of small long, red-skinned, yellow fleshed varieties of potatoes would expand Area No. 2's market share, increase the supply of potatoes available for consumers, and increase grower returns.

After discussing possible alternatives to this proposal and reviewing the comments received in regards to the previously issued proposed rule (70 FR 23942, May 6, 2005; and 70 FR 48903, August 22, 2005), the Committee determined that a relaxation in the grade requirement to U.S. Commercial grade for small long, red-skinned, yellow fleshed potatoes would sufficiently meet the industry's current needs. The relaxation in the grade requirement for this type of small specialty potato would provide the greatest benefit to the industry by augmenting the developing market for these potatoes and thereby increasing grower returns.

The previously issued proposal would have allowed all varieties of small potatoes produced in Area No. 2 to meet U.S. Commercial grade, including round, red-skinned potato varieties. Under the import regulations, round, red-skinned potatoes are required to meet the grade, size, quality, and maturity requirements of the Area No. 2 Colorado potato marketing order from October through June. Under the previous proposal, all imported round, red-skinned potatoes would have been allowed into the U.S. as U.S. Commercial grade during this period. Commenters expressed concern that such a relaxation of the grade requirement for small round, red-skinned potatoes could potentially have a negative impact on the quality of imported round, red-skinned potatoes. They were concerned that lower quality imported round, red-skinned potatoes would adversely affect the domestic market. However, this current proposal would only relax the grade requirement for long, red-skinned, yellow fleshed potato varieties and, therefore, would not change the grade requirement for round, red-skinned potatoes or for any imported round, red-skinned potatoes during the months of October through June.

This proposal would not impose any additional reporting or recordkeeping requirements on either small or large potato 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meetings were widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the August 19, 2004, and the October 20, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping potatoes from the 2005–2006 crop. In addition, this rule replaces a previously proposed rule. Affected entities were allowed to provide input during the previous comment periods and all comments were considered in the preparation of this proposal. Also, any additional comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 948.386, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(3) *All varieties.* Size B, if U.S. No. 1 or better grade: *Provided,* That varieties of long, red-skinned, yellow fleshed potatoes shall grade U.S. Commercial or better.

(4) *All varieties.* 1-inch minimum diameter to 1¾-inch maximum diameter, if U.S. No. 1 or better grade:

Provided, That varieties of long, red-skinned, yellow fleshed potatoes shall grade U.S. Commercial or better.

* * * * *

Dated: December 15, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E5–7677 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV06–979–1 PR]

Melons Grown in South Texas; Proposed Termination of Marketing Order 979

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to terminate the Federal marketing order for melons grown in South Texas (order) and the rules and regulations issued thereunder. The order contains authority to regulate the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). The Committee recommended terminating the order at a meeting on September 7, 2005. The Department of Agriculture (USDA) suspended regulations under the order while it considered the Committee's recommendation. This rule invites comments on proposed termination of the order.

DATES: Comments must be received by February 21, 2006.

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: Martin J. Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; telephone: (559) 487–5110, Fax: (559) 487–5906; or Kathleen M. Finn, Formal Rulemaking Team Leader, 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 proposed rule is governed by section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act'', and § 979.84 of the order.

USDA is issuing this rule in conformance with Executive Order 12866.

This proposed termination of the order 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 proposes to terminate the Federal marketing order for melons grown in South Texas and the rules and regulations issued thereunder. The order contains authority to regulate the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). At a meeting held on September 7, 2005, the Committee recommended terminating the order. USDA suspended indefinitely regulations under the order while it considers the Committee's recommendation for termination (70 FR 57995; October 5, 2005). This rule invites comments on proposed termination of the order.

Section 979.84 of the order provides, in pertinent part, that the Secretary shall terminate or suspend any or all provisions of the order when he finds that it does not tend to effectuate the declared policy of the Act. Section 608c(16)(A) of the Act provides that the Secretary shall terminate or suspend the operation of any order whenever the order or provision thereof obstructs or does not tend to effectuate the declared policy of the Act. The Secretary must notify Congress not later than 60 days before the date the order would be terminated.

The order has been in effect since 1979. It contains authority for grade, size, quality, maturity, pack, container, and reporting requirements. It also authorizes production research and marketing research and development activities. Grade, quality, maturity, container, and pack regulations have historically been utilized under the order, as well as mandatory inspection to ensure these requirements were met. Assessments have been collected to fund order operations, including production research and marketing research and promotion activities. Reporting requirements have also been implemented under the order.

The South Texas melon industry has been shrinking in recent seasons due to the inability to provide a dependable supply of good quality fruit, a lack of success in developing new varieties of improved quality melons, and intense domestic and foreign competition. Acreage decreased from a high of 27,463 acres in 1987 to 4,780 acres in 2004. The number of producers and handlers has decreased significantly as well.

Because of the declining status of the industry, on September 16, 2004, the Committee recommended suspending all regulatory and reporting requirements and assessment collections under the order for the 2004–05 season, except one reporting requirement regarding planted acreage. The suspension was recommended for one season with the hope that new

melon varieties may be developed to help revive the industry, and to provide a period of time to allow the Committee to evaluate whether it believed the marketing order should be continued. An interim final rule suspending the regulatory and reporting requirements and assessment collections for the 2004–05 season, except for one reporting requirement regarding planted acreage, was published in the **Federal Register** on November 26, 2004 (69 FR 68761), followed by a final rule published on February 23, 2005 (70 FR 8709). The 2004–05 season began on October 1, 2004, and ended on September 30, 2005.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. Planted acreage continued to decline, from 4,780 acres in 2003–04 to 2,364 acres in 2004–05. The number of melon growers and handlers also continued to decline. During the 2003–04 season, there were 29 growers and 16 handlers; in 2004–05 the number of known growers decreased to 13 and handlers decreased to seven. In addition, no new varieties were introduced to improve the quality and make the product more competitive with product from other producing areas. In short, the industry situation continues to worsen. The Committee believes that there is no longer a need for the order, and therefore recommended its termination by unanimous vote.

USDA continued the suspension of regulations, reporting requirements, and assessment collections for an indefinite period, and also suspended the one remaining reporting requirement regarding planted acreage for an indefinite period to allow adequate time to collect additional information in order to determine if terminating the order is warranted. Suspension of regulations, reporting requirements, and assessment collections for an indefinite period was published in the **Federal Register** on October 5, 2005 (70 FR 57995). No comments were received as a result of that publication and a final rule was published in the **Federal Register** on December 7, 2005 (70 FR 72699). The rule continued to relieve handlers of regulatory requirements while USDA evaluated the Committee's recommendation for terminating the order.

This proposed termination of the order is intended to solicit input and any additional information available from interested parties regarding whether the order should be terminated. USDA will evaluate all available information prior to making a final determination on this matter.

Initial Regulatory Flexibility Analysis

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

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

During the 2004–05 marketing year, there were approximately seven handlers of South Texas melons subject to regulation under the marketing order and approximately 13 melon growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000 and small agricultural growers are defined as those having annual receipts of less than $750,000.

Most of the handlers are vertically integrated operations involved in growing, shipping, and marketing melons. For the 2003–04 marketing year, the industry's 16 handlers shipped melons produced on 4,780 acres with the average and median volume handled being 89,012 and 10,655 containers, respectively. In terms of production value, total revenue for the 16 handlers was estimated to be $12,175,919, with the average and median revenues being $760,996 and $91,094, respectively. Complete comparable data is not available for the 2004–05 marketing year, but based on a reduction of acreage from 4,780 acres in 2003–04 to 2,364 acres in 2004–05, and the reduced number of growers and handlers, it follows that the volume handled and the value of production likely declined as well.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternative crops, like onions.

Based on the SBA's definition of small entities, it is estimated that all of the seven handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises might push a number of these handlers above the $6,000,000 annual receipt threshold. Of the 13 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

The South Texas cantaloupe and honeydew melon industry has been shrinking. South Texas historically had enjoyed a marketing window of approximately six weeks beginning about May 1 each season.That window has steadily eroded in recent years due to strong competition from other melon producing areas, and quality problems with Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987, to 4,780 in 2004, and 2,364 acres in 2005. The number of producers and handlers also has steadily declined.

Because of the declining status of the industry, the Committee recommended suspending all regulatory and reporting requirements and assessment collections under the order for the 2004–05 season, except one reporting requirement regarding planted acreage. The suspension was recommended for one season with the hope that new melon varieties may be developed to help revive the industry, and to provide a period of time to allow the Committee to evaluate whether it believed the marketing order should be continued. An interim final rule suspending the regulatory and reporting requirements and assessment collections for the 2004–05 season, except for one reporting requirement regarding planted acreage, was published in the **Federal Register** on November 26, 2004 (69 FR 68761), followed by a final rule published on February 23, 2005 (70 FR 8709).

Suspending the regulations enabled handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for the 2004–05 fiscal period. It decreased industry expenses associated with inspection and payment of assessments. During the 2003–04 season, inspection costs associated with the order were estimated at $46,000 and assessments collected were $102,988. These costs were not incurred during the 2004–05

season as a result of the suspension of regulations and assessment obligations.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. As previously discussed, planted acreage continued to decline and the number of melon growers and handlers also continued to decline during the 2004–05 season. In addition, no new varieties were introduced to improve the quality and make South Texas melons more competitive with other producing areas. The Committee believes that there is no longer a need for the order, and therefore unanimously recommended its termination.

Suspension of regulations, reporting requirements, and assessment collections was continued for an indefinite period, and the one remaining reporting requirement regarding planted acreage was also suspended indefinitely pursuant to publication in the **Federal Register** on October 5, 2005 (70 FR 57995). No comments were received as a result of that publication and a final rule was published in the **Federal Register** on December 7, 2005 (70 FR 72699). The rule continued to relieve handlers of regulatory requirements while USDA evaluated the Committee's recommendation for terminating the order.

This proposal would reduce the regulatory burden on handlers under the marketing order. There are no other viable alternatives to this proposal.

This proposed termination of the order is intended to solicit input and any additional information available from interested parties on whether the order should be terminated. USDA will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. Suspension of all the reporting requirements under the order is expected to reduce the reporting burden on small or large South Texas melon handlers by 24.90 hours, and should further reduce industry expenses. Handlers are no longer required to file any forms with the Committee. This proposed rule would thus not impose any additional reporting or recordkeeping requirements on either small or large melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Further, the Committee's meeting was widely publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 16, 2004, meeting and the September 7, 2005 meeting were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on the proposed termination of Marketing Order 979 covering melons grown in South Texas. All written comments timely received will be considered before a final determination is made on this matter.

Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 979.84 of the Order, USDA is considering termination of the order. If USDA decides to terminate the order, trustees would be appointed to conclude and liquidate the affairs of the Committee, and would continue in that capacity until discharged by USDA. In addition, USDA would notify Congress 60 days in advance of termination pursuant to § 608c(16)(A) of the Act.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is proposed to be removed.

PART 979—[REMOVED]

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, 7 CFR part 979 is removed.

Dated: December 16, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–24339 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chap. VII

Request for Burden Reduction Recommendation; Rules Relating to Agency Programs, Capital, and Corporate Credit Unions; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The NCUA Board is continuing its review of its regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on federally-insured credit unions pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). NCUA requests comments and suggestions on ways to reduce burden in regulations that govern agency programs, capital and corporate credit unions, consistent with our statutory obligations. All comments are welcome. This is the final notice in the ten-year regulatory review required by EGRPRA.

NCUA will analyze the comments received and propose burden reducing changes to its regulations where appropriate. Some suggestions for burden reduction might require legislative changes. Where legislative changes would be required, NCUA will consider the suggestions in recommending appropriate changes to Congress.

DATES: Comments must be received on or before March 22, 2006.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov*. Include ''[Your

name] Comments on Sixth EGRPRA Notice'' in the e-mail subject line.

• Fax: (703) 518–6319. Use the subject line described above for e-mail.

• Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGC_Mail @*ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Introduction

NCUA seeks public comment and suggestions on ways it can reduce regulatory burdens consistent with our statutory obligations. This notice requests comments to help identify which requirements in three regulatory categories—Agency Programs, Capital, and Corporate Credit Unions—are outdated, unnecessary, or unduly burdensome. The rules in these categories are listed in a chart at the end of this notice. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.

NCUA specifically invites comment on the following issues: Whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small credit unions; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

Commenters should note that NCUA has recommended that Congress consider amending provisions of the Federal Credit Union Act governing capital requirements for federally insured credit unions. Congress last amended the law in 1998 to impose certain ''prompt corrective action'' requirements for credit unions, based on their capital ratios. The proposed amendments would make credit union capital standards more comparable with other federally insured financial institutions and would provide greater enforcement flexibility to NCUA. More information about the proposed legislation is available at the NCUA Web site, *http://www.ncua.gov*, under the heading of ''Legislation'' in the left hand menu on the home page.

In drafting this notice, the NCUA participated in the EGRPRA planning process with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Agencies). Because of the unique circumstances of federally-insured credit unions and their members, NCUA is issuing a separate notice from the Agencies, which are issuing a joint notice. NCUA's notice is consistent and comparable with the joint notice, although there are differences. For example, credit unions are not covered under the Community Reinvestment Act, and so this notice makes no reference to that subject. Similarly, the Agencies have no category similar to NCUA's corporate credit union category, so their notice does not include that subject.

II. A. The EGRPRA review requirements and NCUA's proposed plan

This is the sixth and final notice in the multi-year regulatory review required by section 2222 of EGRPRA.[1] NCUA described the review requirements in its initial **Federal Register** notice, published on July 3, 2003 (68 FR 39863). As noted at that time, NCUA anticipates that the EGRPRA review's overall focus on the ''forest'' of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. Nevertheless, NCUA's efforts to reduce regulatory burden must be consistent with applicable statutory mandates and provide for the continued safety and soundness of federally-insured credit unions and appropriate consumer protections.

The EGRPRA review required that NCUA categorize its regulations by type. Our July 3, 2003, **Federal Register** publication identified ten broad categories for our regulations.

The categories are:

1. Applications and Reporting
2. Powers and Activities
3. Agency Programs
4. Capital
5. Consumer Protection
6. Corporate Credit Unions
7. Directors, Officers and Employees
8. Money Laundering
9. Rules of Procedure
10. Safety and Soundness

To spread the work of commenting on and reviewing the categories of rules over a reasonable period of time, NCUA proposed to publish one or more categories of rules approximately every six months between 2003 and 2006 and provide a 90-day comment period for each publication. NCUA asked for comment on all aspects of our plan, including: the categories, the rules in each category, and the order in which we should review the categories. Because NCUA was eager to begin reducing unnecessary burden where appropriate, the initial notice also published the first two categories of rules for comment (Applications and Reporting and Powers and Activities). NCUA published its second notice, soliciting comment on consumer protection rules in the lending area, on February 4, 2004 (69 FR 5300); its third notice, relating to other consumer protection rules, on July 8, 2004 (69 FR 41202); its fourth notice, relating to safety and soundness and anti-money laundering, on February 4, 2005 (70 FR 5946); and its fifth notice, relating to directors, officers and employees and rules of procedure, on July 7, 2005 (70 FR 39202). All covered categories of rules must be published for comment and reviewed by the end of September 2006.

The EGRPRA review then requires the Agencies to: (1) Publish a summary of the comments, identifying and discussing the significant issues raised in them; and (2) eliminate unnecessary regulatory requirements. Within 30 days after the Agencies publish the comment summary and discussion, the Federal Financial Institutions Examination Council (FFIEC), which is an interagency body to which all of the Agencies belong, must submit a report to Congress. This report will summarize significant issues raised by the public comments and the relative merits of those issues. It will also analyze whether the appropriate federal financial institution regulatory agency can address the burdens by regulation, or whether the burdens must be addressed by legislation.

[1] Public Law 104–208, div. A, title II, § 2222, 110 Stat. 3009–414; codified at 12 U.S.C. 3311.

B. Public Response and NCUA's Current Plan

NCUA received eight comments in response to its first notice, four comments in response to its second notice, six in response to the third notice, eleven in response to the fourth notice, and five in response to the fifth notice. The comments have been posted on the interagency EGRPRA Web site, *http://www.EGRPRA.gov*, and can be viewed by clicking on ''Comments.'' NCUA is actively reviewing the coments received about specific ways to reduce regulatory burden, as well as conducting its own analyses. Because the main purpose of this notice is to request comment on the next category of regulations, NCUA will not discuss specific recommendations received in response to earlier notices here. As NCUA develops initiatives to reduce burden on specific subjects in the future—whether through regulatory, legislative, or other channels—it will discuss the public's recommendations that relate to its proposed actions.

III. Request for Comment on Agency Programs, Capital and Corporate Credit Union Categories

NCUA is asking the public to identify the ways in which the rules in the category of Agency Programs, Capital and Corporate Credit Unions may be outdated, unnecessary, or unduly burdensome. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change. NCUA encourages comments that not only deal with individual rules or requirements but also pertain to certain product lines. A product line approach is consistent with EGRPRA's focus on how rules interact, and may be especially helpful in exposing redundant or potentially inconsistent regulatory requirements. NCUA recognizes that commenters using a product line approach may want to make recommendations about rules that are not in the current request for comment. They should do so since the EGRPRA categories are designed to stimulate creative approaches rather than limiting them.

Specific issues to consider. While all comments are welcome, NCUA specifically invites comment on the following issues:

- *Need for statutory change.* Do any of the statutory requirements underlying these regulations impose redundant, conflicting or otherwise unduly burdensome requirements? Are there less burdensome alternatives?
- *Need and purpose of the regulations.* Are the regulations consistent with the purposes of the statutes that they implement? Have circumstances changed so that the regulation is no longer necessary? Do changes in the financial products and services offered to consumers suggest a need to revise certain regulations or statutes? Do any of the regulations impose compliance burdens not required by the statutes they implement?
- *General approach/flexibility.* Generally, is there a different approach to regulating that NCUA could use that would achieve statutory goals while imposing less burden? Do any of the regulations in this category or the statutes underlying them impose unnecessarily inflexible requirements?
- *Effect of the regulations on competition.* Do any of the regulations in this category or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?
- *Reporting, recordkeeping and disclosure requirements.* Do any of the regulations in this category or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden? Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?
- *Consistency and redundancy.* Do any of the regulations in this category impose inconsistent or redundant regulatory requirements that are not warranted by the purposes of the regulation?
- *Clarity.* Are the regulations in this category drafted in clear and easily understood language?
- *Burden on small insured institutions.* NCUA has a particular interest in minimizing burden on small insured credit unions (those with less than $10 million in assets). More than half of federally-insured credit unions are small—having $10 million in assets or less—as defined by NCUA in Interpretative Ruling and Policy Statement 03–2, Developing and Reviewing Government Regulations. NCUA solicits comment on how any regulations in this category could be changed to minimize any significant economic impact on a substantial number of small credit unions.

NCUA appreciates the efforts of all interested parties to help us eliminate outdated, unnecessary or unduly burdensome regulatory requirements.

IV. Regulations About Which Burden Reduction Recommendations Are Requested Currently

AGENCY PROGRAMS, CAPITAL, AND CORPORATE CREDIT UNIONS

Subject	Code of Federal Regulations (CFR) Citation
Community Development Revolving Loan Program.	12 CFR Part 705.
Central Liquidity Facility	12 CFR Part 725.
Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
Prompt Corrective Action.	12 CFR Part 702.
Adequacy of Reserves	12 CFR 741.3(a).
Corporate Credit Unions	12 CFR Part 704.

By the National Credit Union Administration Board on December 15, 2005.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 05–24368 Filed 12–21–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 341, and 357

[Docket Nos. 1976N–0052N (formerly 1976N–052N) and 1981N–0022 (formerly 81N–0022)]

RIN 0910–AF34, 0910–AF45

Phenylpropanolamine-Containing Drug Products for Over-the-Counter Human Use; Tentative Final Monographs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking (notice) for over-the-counter (OTC) nasal decongestant and weight control drug products containing phenylpropanolamine preparations. This proposed rule reclassifies phenylpropanolamine preparations from their previously proposed monograph status (Category I) for these uses to nonmonograph (Category II)

status based on safety concerns. FDA is issuing this proposed rule after considering new data and information on the safety of phenylpropanolamine as part of its ongoing review of OTC drug products.

DATES: Submit written and electronic comments and new data by March 22, 2006. Written and electronic comments on the agency's economic impact determination by March 22, 2006. Please see section X of this document for the effective date of any final rule that may be published based on this proposal.

ADDRESSES: You may submit comments, identified by Docket Nos. 1976N–0052N and 1981N–0022 and/RIN number 0910–AF34 and 0910–AF45, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket 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 detailed instructions on submitting comments and additional information on the rulemaking process, see the ''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: Gerald M. Rachanow or Robert L. Sherman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5426, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking (ANPR) under 21 CFR 330.10(a)(6) to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel). This Panel was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. This Panel recommended monograph (Category I) status for phenylpropanolamine preparations (phenylpropanolamine bitartrate, phenylpropanolamine hydrochloride, and phenylpropanolamine maleate) as an oral nasal decongestant.

In the **Federal Register** of February 26, 1982 (47 FR 8466), FDA published an ANPR to establish a monograph for OTC weight control drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel). This Panel was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. This Panel recommended monograph status for phenylpropanolamine hydrochloride for weight control use. However, after the Panel submitted its report, FDA became aware of and discussed studies indicating that certain dosages of phenylpropanolamine cause blood pressure elevation (47 FR 8466). Therefore, in the preamble to the Panel's report, FDA specifically requested data and information on the extent to which phenylpropanolamine induces or aggravates hypertension (47 FR 8466 at 8468).

In the **Federal Register** of January 15, 1985 (50 FR 2220), FDA published a proposed regulation for OTC nasal decongestant drug products in the form of a tentative final monograph. Because the issues concerning the safety of phenylpropanolamine for nasal decongestant and weight control use were closely related, FDA stated in that document that it was deferring phenylpropanolamine and would consider the issues concurrently in a future **Federal Register** publication (50 FR 2220 at 2221).

Phenylpropanolamine was not included in the October 30, 1990 (55 FR 45788), proposed rule or the August 8, 1991 (56 FR 37792), final rule for OTC weight control drug products, in which 111 weight control active ingredients were determined to be nonmonograph. Benzocaine and phenylpropanolamine hydrochloride, the two ingredients the Miscellaneous Internal Panel classified as Category I, were deferred to a future publication. The current document addresses phenylpropanolamine. FDA will discuss benzocaine for weight control use in a future issue of the **Federal Register**.

In a letter to the Nonprescription Drug Manufacturers Association dated March 9, 1993 (Ref. 1), FDA stated that, based on a relatively small number of spontaneous reports of intracranial bleeding associated with weight control drug products containing phenylpropanolamine, FDA's principal safety concern was the possibility that phenylpropanolamine might increase the risk of stroke. FDA further stated that although the available data could not support a conclusion that phenylpropanolamine increased the rate of strokes, these data could not rule out the possibility of an increased stroke risk associated with OTC phenylpropanolamine use.

Phenylpropanolamine preparations also were not included in the final rule for OTC nasal decongestant drug products that published in the **Federal Register** of August 23, 1994 (59 FR 43386). FDA stated that because of still unresolved safety issues concerning phenylpropanolamine preparations, it was deferring action on this drug (59 FR 43386).

In the **Federal Register** of February 14, 1996 (61 FR 5912), FDA published a proposed regulation requiring new warning labeling for all OTC phenylpropanolamine preparations. In that document, FDA stated that dose-response studies submitted by drug manufacturers to investigate phenylpropanolamine's effects on blood

pressure were inadequate to alleviate FDA's concern that phenylpropanolamine used in OTC drug products might increase the risk of hemorrhagic stroke.

Spontaneous case reports and published case series accumulated from 1969 to 1991 suggested a possible association between phenylpropanolamine use and an increased risk of hemorrhagic stroke. Thus, the status of phenylpropanolamine had been deferred pending further study. In an effort to resolve these issues, representatives of the manufacturers of products containing phenylpropanolamine and FDA staff met in 1991 to plan a study that could further examine whether there was an association between phenylpropanolamine use and risk of hemorrhagic stroke. An epidemiologic case-control study was determined to be the most feasible study design to evaluate the possible association between exposure to phenylpropanolamine and a rare outcome such as hemorrhagic stroke. The industry sponsors of the study selected investigators at Yale University School of Medicine to conduct the study. The Yale investigators submitted protocols to FDA for review. The results of the study are discussed in section II of this document.

In this proposed rule, FDA proposes to categorize all phenylpropanolamine preparations as nonmonograph (Category II) for OTC use in both nasal decongestant and weight control drug products. This action is based on reports published in the medical literature, FDA's initial review of adverse drug event reports associated with OTC phenylpropanolamine drug products between 1969 and 1991, continuing adverse drug event reports since 1991, and the results of the Yale Hemorrhagic Stroke Project (Ref. 2). Because safety concerns are the basis for this proposed nonmonograph status, FDA does not address the effectiveness of phenylpropanolamine preparations in this document.

II. Data on the Safety of Phenylpropanolamine from the Yale Hemorrhagic Stroke Project

A. Introduction and Rationale

The following discussion was developed from the study report (Ref. 2) submitted to FDA.

The Yale Hemorrhagic Stroke Project (Ref. 2) was a case-control study. Because several case reports had involved strokes in young women who took phenylpropanolamine as an appetite suppressant, often after a first dose, the study examined three questions: (1) Whether all users of phenylpropanolamine, compared to nonusers, had an increased risk of hemorrhagic stroke, (2) the possible association between phenylpropanolamine and hemorrhagic stroke by type of exposure (appetite suppressant or cough-cold product), and (3) among women age 18 to 49 years, the possible association between first use of phenylpropanolamine and hemorrhagic stroke and the possible association between use of phenylpropanolamine-containing appetite suppressants and hemorrhagic stroke.

The study was performed between December 1994 and July 1999 and involved men and women 18 to 49 years old who were hospitalized with a primary subarachnoid hemorrhage (SAH) or a primary intracerebral hemorrhage (ICH) (unrelated to ischemic infarction, trauma, cerebral thrombosis, or thrombolytic therapy). The subjects were recruited from 44 hospitals in 4 geographic regions of the United States.

Both SAH and ICH were determined by clinical symptoms and specific diagnostic information from computed tomography. Magnetic resonance imaging was accepted for the diagnosis of SAH or ICH only if other procedures were not diagnostic. Because misclassification of exposure status by surrogate responders could increase or reduce the observed odds ratio and the true level of risk (Ref. 2), subjects were ineligible for enrollment if they died (n=389) or were not able to communicate (n=194) within 30 days after their event. Subjects were also ineligible if they had a previously diagnosed brain lesion predisposing to hemorrhage risk (e.g., arteriovenous malformation, vascular aneurysm, or tumor) (n=48), a prior stroke (n=120), or first experienced stroke symptoms after being in the hospital for 72 hours (e.g., for an unrelated matter) (n=33).

For each case subject, random digit dialing (matched to the first three digits of the case subject's telephone number) was used to identify two control subjects who were matched on : (1) Gender, (2) race (African-American versus non-African-American), (3) age (within 3 years for case subjects less than 30 years and within 5 years for subjects 30 years or over), (4) educational level, and (5) telephone exchange (as a surrogate for socioeconomic status). Case subjects and control subjects were interviewed to ascertain medical history, medication use, and habits affecting health, such as use of tobacco and alcohol. Interviews of control subjects were completed within 30 days of the case subject's stroke event to minimize seasonal differences in the likelihood of exposure to cough-cold drug products. Eligibility criteria for control subjects were the same as for case subjects except for the stroke event. During the consent procedure, all subjects (cases and controls) were told that the study was designed to examine causes of hemorrhagic stroke in young persons without specific mention of phenylpropanolamine or other potential risk factors. Case and control subjects were interviewed by a trained interviewer using a structured questionnaire developed for this study. Reported phenylpropanolamine exposures were verified by the study investigators, who documented the actual product(s) used and their ingredients.

A focal time (the calendar day and the time of onset of symptoms plausibly related to hemorrhagic stroke that caused a subject to seek medical help) was identified for each case subject. The focal time used for each control subject was matched to the day of the week and the time of day that corresponded to the case subject's focal time. Control subjects were interviewed within 7 days of their focal time to minimize recall bias.

The exposure window referred to the interval before the focal time (onset of symptoms) when the status of a subject's exposure to phenylpropanolamine was defined. For analyses other than those involving first use of phenylpropanolamine, the exposure window was defined as 4 days preceding the focal time. For first use of phenylpropanolamine, the exposure window was within 24 hours before the focal time, provided that the subject had not used any other phenylpropanolamine products during the preceding 2 weeks. To maintain a consistent reference group, nonexposure for all analyses was defined as no use of phenylpropanolamine within 2 weeks before the focal time. Exposure windows for control subjects were matched to those for the corresponding case subjects.

B. Statistical Analysis

Case and control subjects were compared on a variety of clinical and demographic features, including those used in matching, to determine the comparability of the two groups. Statistical comparisons were made using chi-square tests and the Fisher's exact test (where appropriate) for categorical variables, and the Student t-test for continuous variables. For the

analyses of the primary endpoints, conditional logistic models for matched sets (with a variable number of controls per case) were used to estimate odds ratios, lower limits of the one-sided 95 percent confidence intervals, and p-values for the risk factors under investigation. One-tailed statistical results were reported because the focus of the study was whether phenylpropanolamine use increased the risk of stroke and this was the pre-specified analysis. Each logistic model was estimated with two mutually exclusive binary exposure terms: (1) The subject's primary exposure status as defined by the specific aim (e.g., phenylpropanolamine use in the 3-day window; yes/no), and (2) phenylpropanolamine users who were not exposed within the 3-day window (but with some exposure within 2 weeks of the focal time).

In multivariate conditional logistic models (using asymptotic methods), adjustments were made for race (African-American compared with non-African-American), history of hypertension (yes/no), and current cigarette smoking (current compared with never or ex-smoker) because these are the major risk factors for stroke. Other underlying diseases and/or conditions (i.e. diabetes, polycystic kidney disease, congestive heart failure, sickle cell anemia, and clotting disorders) were also examined to determine if any of them, when added to this basic adjusted model, altered the matched odds ratio by at least 10 percent.

C. Study Results

There were 702 case subjects, including 425 subjects (60 percent) with an SAH and 277 (40 percent) with an ICH, and 1,376 control subjects. Hemorrhage was associated with an aneurysm in 307 subjects (44 percent), an arteriovenous malformation in 50 subjects (7 percent), and a tumor in one subject (0.1 percent). Two control subjects were located for each of 674 case subjects (96 percent) and one control subject for each of 28 case subjects (4 percent). All control subjects were matched to their case subjects on gender and telephone exchange. Age matching was successful for 1,367 controls (99 percent) and race matching was achieved for 1,321 controls (96 percent). Twenty-seven case subjects and 33 control subjects reported phenylpropanolamine use within the 3-day exposure window.

Compared to control subjects, case subjects were significantly more likely to be African-American (21 percent compared with 17 percent). Case subjects were also more likely to report lower educational achievement (20 percent did not graduate from high school compared with 9 percent of control subjects), current cigarette smoking (51 percent compared with 30 percent), a history of hypertension (39 percent compared with 20 percent), family history of hemorrhagic stroke (9 percent compared with 5 percent), heavy alcohol use (14 percent compared with 7 percent), and recent cocaine use (2 percent compared with less than 1 percent). For all other clinical variables examined, case and control subjects were not dissimilar. Case subjects were significantly (0.05) less likely to report use of nonsteroidal anti-inflammatory drugs and significantly more likely to report use of caffeine and nicotine in the 3 days before their event. Of the factors examined, only education changed the adjusted odds ratio for the association between phenylpropanolamine and hemorrhagic stroke by more than 10 percent, and this demographic factor was included in all subsequent models.

Analyses of the study results demonstrated an association between hemorrhagic stroke and use of phenylpropanolamine (in both nasal decongestant and weight control drug products) in the 3 days prior to the event. Such use of phenylpropanolamine, compared to no use in the prior 2 weeks, was associated with a relative risk for hemorrhagic stroke of 1.67 (unadjusted odds ratio) (p=0.040). The corresponding adjusted odds ratio was 1.49 (lower limit of the one-sided 95 percent confidence interval (LCL)=0.93, p=0.084).

The relative risks of hemorrhagic stroke observed with use of the two types of phenylpropanolamine-containing products (in the 3–day exposure window, compared to no use in the prior 2 weeks) were as follows. For cough-cold products, the unadjusted odds ratio was 1.38 (p=0.163) and the adjusted odds ratio (AOR) was 1.23 (LCL=0.75, p=0.245). For weight control products, the unadjusted odds ratio was 11.98 (p=0.007) and the AOR was 15.92 (LCL=2.04, p=0.013).

To analyze the relation between recency of phenylpropanolamine exposure and risk for hemorrhagic stroke, odds ratios were also calculated according to the timing of the most recent phenylpropanolamine use. The pre-specified definition for current use was use of any phenylpropanolamine-containing product on the day of the event (before focal time) or the preceding calendar day. Prior use was defined as use 2 or 3 calendar days before the focal time. The odds ratio was slightly higher for current use (AOR=1.61, LCL=0.93, p=0.078) than for prior use (AOR=l.16, LCL=0.47, p=0.393). Within current use, odds ratios were then calculated according to first use or non-first use. First use was defined as current use with no other use within the prior 2 weeks. Non-first use included other uses within the 2–week interval. The odds ratio was higher for first use (AOR=3.14, LCL=l.16, p=0.029) than for non-first use (AOR=1.20, LCL=0.61, p=0.329). All first uses of phenylpropanolamine (n=13) reported in these data were in cough-cold products.

In women using phenylpropanolamine in weight control drug products (3–day exposure window, versus no use in the prior 2 weeks), the unadjusted odds ratio for hemorrhagic stroke was 12.19 (p=0.006) and the AOR was 16.58 (LCL=2.22, p=0.0l1). All hemorrhagic stroke events that occurred within the 3-day exposure window were in women. In the analyses of the association between hemorrhagic stroke and first-day use of phenylpropanolamine, 11 of the 13 first-day use events were in women (7 cases compared with 4 controls). The unadjusted odds ratio was 3.50 (p=0.039) and the AOR was 3.13 (LCL=1.05, p=0.042).

Based on the findings that risk for hemorrhagic stroke seemed to be concentrated among current users, the association between current phenylpropanolamine dose and risk for hemorrhagic stroke was examined. Among 21 exposed control subjects, the median current dose of phenylpropanolamine (i.e., total amount taken on the index day or preceding day) was 75 milligrams (mg). Analysis according to dose shows that the odds ratio was higher for current doses above the median (greater than 75 mg) (AOR=2.31, LCL=l.10, p=0.031) than for lower doses (AOR=l.0l, LCL=0.43, p=0.490). Among first-dose users, four of eight cases and two of five controls were exposed to greater than 75 mg of phenylpropanolamine. To examine the potential effect of ambiguity in the correct focal time, the odds ratios were recalculated after excluding all 154 case subjects who were classified as having a definite (n=76) or uncertain (n=78) sentinel symptom preceding the stroke event. The magnitude of the AORs did not change substantially.

D. Study Conclusions

According to the investigators, several features of the study supported the validity of the study findings regarding a demonstrated association between phenylpropanolamine use and risk of hemorrhagic stroke in subjects between

18 and 49 years of age. First, in addition to the finding of elevated odds ratios that reached statistical significance, the magnitude of the odds ratios for phenylpropanolamine use as an appetite suppressant (15.92) and as a first-dose use (3.14) remained large even after adjustment for important clinical features. Second, the data demonstrate an association between both types of phenylpropanolamine drug products (nasal decongestant and weight control) and hemorrhagic stroke. Because so few men were exposed to phenylpropanolamine in this study (n=19), it was not possible to determine whether their risk for hemorrhagic stroke (when using phenylpropanolamine) is different from that of women.

E. FDA's Evaluation of the Study

Observational studies, particularly case-control studies, are potentially subject to a number of biases, and this case-control study is no exception. The hallmark of a good case-control study is that biases are anticipated and measures are instituted in the design and analysis stages to minimize biases to the greatest extent possible.

Strict diagnostic criteria, as described previously, were developed to ensure accurate identification of hemorrhagic stroke cases in the target population. A number of steps were taken to minimize misclassification bias. One of the investigators confirmed the stroke by reviewing the medical records of suspected cases, without knowledge of the exposure status. Inclusion and exclusion criteria were clearly defined for both cases and controls. Exposure was clearly defined, an exposure window was identified, and exposure was ascertained by trained interviewers. Interviewers were randomly assigned to cases or controls, and questions were asked about multiple medications, thus blinding subjects to the exact exposure under study. The interviews were highly structured and scripted to protect against interviewer bias. Because phenylpropanolamine use might be seasonal, controls were identified and interviewed within 30 days of the date of their matched case subject's stroke, to ensure that cases and controls had similar opportunities for exposure. Controls were also matched to cases for day of the week and time of day of the stroke. This matching strategy helped increase the probability that exposure to any seasonal medication or other covariates (e.g., alcohol drinking or cigarette smoking) was similar between cases and controls.

The investigators attempted to identify two controls per case by using random digit dialing (with a match for the first three digits of the telephone number). Because controls were population-based, the results were generalizable to the source population from which the cases and controls were drawn. Matching on race and educational level was slightly unequal between cases and controls. The investigators further controlled for these inequalities by adjustment during analysis. The agency concludes that matching was largely successful.

The investigators reduced the possibility of misclassification of phenylpropanolamine use by using a highly structured questionnaire. Each reported medication was verified by asking subjects to present the actual container or by picking out reported brand-name medications from a book containing photographs. Verification of medication use in the 3-day window prior to the focal time was 96 and 94 percent for cases and controls, respectively. The investigators conducted two additional steps to further ensure that the possibility of exposure misclassification error was reduced to an absolute minimum: (1) Only ''definite'' and ''possible'' exposure responses were considered in the analyses, and (2) the use of other OTC drugs between cases and controls were compared to ensure that the cases did not have greater recall of the use of any drugs as a reason for their stroke. Based on this analysis, FDA did not find any evidence of recall or misclassification bias.

Several key elements of study design and conduct determine the success of a case-control study. Studies must have adequate sample size and/or power to detect a difference between treatment groups if a difference really exists, and detection of rare events can require substantial numbers of study subjects. FDA had concerns that the protocol might result in an underpowered study because the sample size calculation was based on an odds ratio of five for an association between first-day use of phenylpropanolamine and hemorrhagic stroke. This ratio was derived primarily from study conduct considerations, such as time and cost, rather than on predictive epidemiologic data that may have suggested that a greater number of subjects would be needed to show a difference between groups. Because case-control studies also demand adherence to strict matching criteria between case and control subjects, the duration of this study was longer than expected due to difficulties in recruiting well-matched controls.

The resultant study was the largest prospective case-control study ever conducted on hemorrhagic stroke. FDA finds that, despite these limitations, this study was well-conducted and the statistical analyses demonstrate an association between phenylpropanolamine and hemorrhagic stroke, as explained as follows.

FDA notes that the three most important risk factors (race, history of hypertension, and cigarette smoking) were included in the multivariate analysis (basic adjusted model). The confounding effect of the other covariates was examined if adding any of them to the basic model altered the odds ratio estimate by 10 percent. High school education was the only covariate determined to change the odds ratio by at least 10 percent.

Because the study had a matched design, FDA considers the conditional logistic regression model appropriate to calculate both unadjusted and AORs. In addition, the number of exposures was small, particularly for analysis of appetite suppressant and first use, thus, the authors calculated the confidence interval of the unadjusted odds ratio based on an exact method.

Hypertension is the single most important risk factor for a stroke. Misclassification of hypertension status could result in residual confounding. FDA examined the possible effects of this residual confounding on the results of the study. FDA found that the odds ratio for appetite suppressant use was 15.92, a substantial increase in risk. Its very magnitude makes it difficult to explain by confounding alone. Because product labeling advises hypertensive persons to avoid phenylpropanolamine use, the association of phenylpropanolamine use with hypertension should be negative. Such a negative association would result in biasing the result towards no association if the confounding factor is not controlled for. In addition to the steps taken by the investigators, FDA examined this further by additional analyses restricted to subjects without a past history of hypertension, and the results were not significantly different, thereby providing additional evidence that confounding by hypertension was not present in the study.

FDA requested the Yale investigators to explore the possible impact of cigarette smoking and alcohol consumption in more detail. The investigators found that the odds ratios for phenylpropanolamine and stroke were essentially unchanged by inclusion of several qualitative and quantitative measures of smoking and alcohol consumption.

The investigators examined the association between current

phenylpropanolamine dose and risk for hemorrhagic stroke. Among 21 exposed control subjects, the median current dose of phenylpropanolamine (i.e., the total amount taken on the index day or preceding day) was 75 mg. The AOR was higher for current doses above 75 mg than for lower doses. Among first dose users, four of eight cases and two of five controls were exposed to greater than 75 mg of phenylpropanolamine. As 75 mg is a single dose of many OTC extended-release phenylpropanolamine cough-cold drug products with recommended adult dosing every 12 hours (150 mg a day), the agency further evaluated the association between risk of hemorrhagic stroke and a range of current phenylpropanolamine doses. Exploratory analyses suggest that there may be an increased risk of hemorrhagic stroke with labeled doses at or above 75 mg a day. Although not statistically significant, a trend toward a dose-ordering of odds ratios was seen. The odds ratio was higher (AOR=2.31, LCL=1.10, p=0.031) for current doses above 75 mg than for doses below 75 mg (AOR=1.01, LCL=0.43, p=0.490).

FDA concludes that the Yale study (Ref. 2) was well-designed and demonstrated an association between use of phenylpropanolamine and an increased risk of hemorrhagic stroke. The increased risk was most striking in women and was associated with both use in appetite suppressants and first-dose use in cough-cold products. The case-control design was best suited for this study because the outcome under investigation was rare. The investigators took reasonable steps to minimize bias and confounding and built quality control measures into the study design. Analysis was appropriate for the type of study and was performed according to the protocol. The study had clear objectives and sound epidemiology practices were used in its design and execution.

F. Additional Reports

FDA reviewed its adverse events reporting system for spontaneous reports of hemorrhagic stroke from 1991 to 2000 and identified 22 cases, 16 in the 18 to 49 age group with 13 cases in women (Ref. 3). In all cases, the suspect drug was an extended-release product containing 75 mg of phenylpropanolamine per unit dose. Of 11 cases for which the indication for use was provided, 10 reported use for respiratory symptoms. FDA believes that the fact that there were no reports associated with immediate release drug products marketed under the OTC drug monograph system may be related to the lack of a requirement to submit any such reports to the agency.

Therefore, the absence of such reports does not indicate these products are not associated with adverse events.

G. Advisory Committee Recommendations

On October 19, 2000, at a public meeting, FDA presented to its Nonprescription Drugs Advisory Committee (NDAC) the regulatory history of OTC phenylpropanolamine (including FDA's concerns about case reports of hemorrhagic stroke associated with phenylpropanolamine prior to 1991), the data from the Yale Hemorrhagic Stroke Project, and additional case reports of stroke since 1991.

The Yale investigators presented the study results and their conclusions. Industry representatives raised concerns about the design of the study that they believed made interpretation of the results difficult (Ref. 4). NDAC evaluated whether the Yale study showed an association between phenylpropanolamine use and an increased risk of stroke in different populations aged 18 to 49 (female, male, both) and for different uses (nasal decongestant, appetite suppressant, all) (Ref. 5). More importantly, NDAC was asked if the data support the conclusion that there is an association between phenylpropanolamine and an increased risk of hemorragic stroke, taking into account all currently available information, including: (1) Phenylpropanolamine's effects on blood pressure, (2) spontaneous reports of hemorrhagic stroke associated with phenylpropanolamine from 1969 to 1991, (3) case reports in the medical literature, (4) continuing adverse drug reports to FDA from 1991 to the present, and (5) the results of the Yale Hemmorhagic Stroke Project. Thirteen of 14 NDAC members voted (with 1 voting ''uncertain'') that there is such an association (Ref. 5). When asked whether phenylpropanolamine can be generally recognized as safe for use as a nasal decongestant, 12 of the 14 NDAC members voted (with 2 abstaining) that phenylpropanolamine could not be considered to be generally recognized as safe for OTC nasal decongestant use. In addition, when asked whether phenylpropanolamine can be generally recognized as safe for use as an appetite suppressant, 13 of the 14 NDAC members voted (with 1 abstaining) that phenylpropanolamine could not be considered to be generally recognized as safe for OTC weight control use.

III. FDA's Tentative Conclusions on the Safety of Phenylpropanolamine

FDA believes that the known scientific evidence supports the conclusion that nasal decongestant and weight control drug products containing phenylpropanolamine cannot be generally recognized as safe and should no longer be available for OTC use. This evidence includes the results of the Yale study suggesting an association between phenylpropanolamine and hemorrhagic stroke, previous and continuing adverse event reports, reports in the published medical literature, and the biological plausibility related to phenylpropanolamine's ability to cause increases in blood pressure. As stated in section II.E of this document, FDA concludes that the Yale study (Ref. 2) was well-designed and demonstrated an association between use of phenylpropanolamine and an increased risk of hemorrhagic stroke. The increased risk was most striking in women and was associated with both use in appetite suppressants and first-dose use in cough-cold products. The case-control design was best suited for this study because the outcome under investigation was rare. The investigators took reasonable steps to minimize bias and confounding and built quality control measures into the study design. Analysis was appropriate for the type of study and was performed according to the protocol. The study had clear objectives and sound epidemiology practices were used in its design and execution. Regardless of the analytic methods used, the findings were consistent.

Although the Yale study focused on men and women 18 to 49 years of age, FDA has no data to show that the increased risk of hemorrhagic stroke is limited to a specific age range. While the Yale study was being conducted, FDA received spontaneous reports of hemorrhagic stroke in people 28 to 54 years of age with cough-cold products that contain OTC doses of phenylpropanolamine.

Because the factors that may cause some individuals to be particularly sensitive to the effects of phenylpropanolamine are unknown, individuals at risk cannot be adequately warned through labeling. Although there is no other active ingredient that is generally recognized as safe and effective for OTC weight control use, OTC nasal decongestant drug products can be reformulated with other ingredients, such as pseudoephedrine and phenylephrine. Because hemorrhagic strokes often lead to catastrophic, irreversible outcomes,

FDA concludes that the benefits of the intended uses of phenylpropanolamine do not outweigh the potential risk, and that phenylpropanolamine is not considered to be generally recognized as safe.

IV. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). 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). Under the Regulatory Flexibility Act, if a rule might have a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize any significant economic impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.

FDA tentatively concludes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. As shown as follows, FDA does not believe the proposed rule will be economically significant as defined by the Executive order. Based on its preliminary Regulatory Flexibility Analysis, FDA tentatively concludes that this proposed rule would not impose a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in an expenditure that would exceed $100 million adjusted for inflation in any one year. The current inflation-adjusted statutory threshold is about $110 million.

The purpose of the proposed rule is to establish that phenylpropanolamine preparations are not generally recognized as safe for OTC use both as a nasal decongestant and for weight control. This proposed rule would assure the removal of OTC drug products containing phenylpropanolamine, if any are still marketed, and prohibit future marketing of such products.

FDA believes that the benefits of this rule justify the costs. Our estimate of the benefits of complete elimination of phenylpropanolamine preparations suggests that they could be as high as $250 million to $625 million annually, if estimated using a willingness to pay approach. The vast majority of these benefits are not directly attributable to this rule, however, because industry previously took voluntary action to discontinue production and marketing of phenylpropanolamine preparations.

Similarly, most costs of product withdrawal or reformulation have already been incurred because of the voluntary actions. However, a few affected products may still be available and products that have been withdrawn could still, in principle, be reintroduced in the absence of the rule. Any remaining products containing phenylpropanolamine will need to cease OTC marketing upon the effective date of any final rule, but can be reformulated with another ingredient, where applicable. Products that are reformulated will also need to be relabeled.

A. Background for Analysis of Impact

In November 2000, FDA issued a public health advisory on the safety of phenylpropanolamine and announced that it would take steps to remove phenylproanolamine from all drug products and had requested all drug companies to voluntarily discontinue marketing products containing phenylpropanolamine (Ref. 6). As a result of this announcement and the publication of the Yale Hemorrhagic Stroke Project, national chain drugstore and major and smaller manufacturers voluntarily removed phenylpropanolamine-containing OTC drug products from the market. Manufacturers of phenylpropanolamine-containing OTC drug products were aware of the potential health problem and some manufacturers of OTC nasal decongestant drug products containing phenylpropanolamine had already reformulated or were in the process of reformulating their products to remove phenylpropanolamine in advance of FDA's announcement. Nevertheless, a number of factors markedly accelerated this trend:

- The recommendation of FDA's NDAC
- The publication of the results of the Yale Hemorrhagic Stroke Project
- FDA's subsequent announcement of its intent to reclassify phenylpropanolamine as a Category II ingredient, and FDA's request for a voluntary recall.

These events led to the voluntary removal from the market of most remaining phenylpropanolamine-containing OTC drug products. Both market forces (i.e., avoidance of tort liability) and FDA's request for a voluntary recall contributed to the decision by retail establishments and manufacturers to discontinue sales. Because public awareness, market forces, and FDA's announcement and request to voluntarily withdraw occurred within a short span of time, it is not possible for FDA to disentangle the impact these various factors had on manufacturers' decisions to voluntarily recall phenylpropanolamine drug products.

OMB guidelines on economic impact analyses direct agencies to estimate costs and benefits from an appropriate baseline. ''This baseline should be the best assessment of the way the world would look absent the proposed regulation'' (Ref. 7). We do not believe that the conditions prior to FDA's announcement of its intent to classify this ingredient as nonmonograph are the appropriate baseline because the publication of the Yale Hemorrhagic Stroke Project in a leading medical journal alone would have generated a market response. We acknowledge that the timing and wording of FDAs public announcement and request for voluntary recalls contributed to the magnitude of the incurred costs. However, because the costs attributable to the withdrawal of phenylpropanolamine-containing OTC drug products have already occurred, and may have occurred absent this proposed rule, albeit at a slower pace, FDA believes present conditions are the appropriate baseline from which to estimate the impact of this proposed rule.

Even if all of these costs were attributed to this proposed rule, however, they would not rise to the $100 million per year threshold sufficient to categorize this rule as economically significant under section 3.f. of E.O. 12866. Nonetheless, we account for as much of the cost as possible using 2000 as the baseline year for the number of affected products

B. Costs of Regulation

a. *Costs of removing products from the market.* FDA finds that a number of affected firms incurred substantial costs from these voluntary product withdrawals. In addition, we are not aware of any phenylpropanolamine-containing OTC drug products currently marketed, so we believe the removal-

related costs have already been incurred.

The voluntary product withdrawals primarily affected two major OTC drug markets—weight control and cough-cold medications. The weight control drug products sector reported $48 million in annual sales for phenylpropanolamine-containing drug products in 2000. The much larger cough-cold products sector had total sales of about $1.2 billion (Ref. 8), but FDA does not have an estimate of the proportion of this figure that included only phenylpropanolamine-containing products. As a result, FDA cannot estimate the total sales of all OTC drug product lines that contained phenylpropanolamine.

In 2000, FDAs drug listing system included approximately 400 drug products containing phenylpropanolamine, with approximately 100 manufacturers and 250 distributors and repackers. Many of the 400 products were marketed by distributors and hence do not represent unique formulations. FDA estimates that there may have been around 150 distinct products for both cough-cold and weight loss. Not all of these products, however, were reformulated. Some manufacturers had already added product lines containing a substitute active ingredient and had no plans to reformulate the older product. The sales volume of some products was too small to cover the cost of reformulation. Also, only one substitute active ingredient was available for weight control drug products. Hence, FDA estimates that only about 100 products were reformulated.

The cost to reformulate a product varies greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. To reformulate, manufacturers also have to redo validation (product, process, new supplier), conduct stability tests, and change master production records. FDA estimates that the full cost of reformulation ranged from $100,000 to $500,000 per product. Assuming that 100 products were reformulated implies a total estimated one-time reformulation cost of from $10 million to $50 million.

Manufacturers that reformulated would also have incurred costs to relabel their products. They would have had to revise the active (and for some the inactive) ingredient list and may have had to make other labeling changes if they removed the phenylpropanolamine from a combination product and did not replace it with another ingredient. FDA believes that relabeling costs of the type required by this proposed rule generally averaged about $3,000 to $4,000 per stockkeeping unit (SKU) (individual products, packages, and sizes). Assuming 350 OTC SKUs in the marketplace were relabeled, the total one-time costs of relabeling would have ranged from $1.05 to $1.4 million.

Using 2000 as the baseline year for affected products, the total estimated one-time costs for reformulation and labeling range from $11 million to $51 million. Annualized over 20 years yields annual costs of $0.7 - $3.4 million (at 3 percent) and $1.0 - $4.8 million (at 7 percent).

b. *Distributional issues and impact on industry*. Other costs incurred by the industry include costs associated with the recall and destruction of inventory and the loss of product sales. FDA does not have reliable information to estimate either the incremental impacts of recalling and destroying product or to distinguish the market response to the results of the Yale study from FDAs announcement and request for voluntary withdrawal . Moreover, industry costs would be offset substantially by countervailing events including avoided lawsuits associated with continued marketing of products containing phenylpropanolamine and possibly reduced insurance costs. The value of lost profit due to lost product sales would generally be offset as firms gain sales by distributing substitute products. These gains and losses represent transfers within the industry and are not a social cost.

Reports of withdrawal related expenses from trade press and some 10–K filings with the Securities and Exchange Commission include other costs not attributable to costs of this regulation, such as set-asides for potential litigation. Because of this, we cannot use these reports as a basis for estimating regulatory costs. These reports, however, provide anecdotal information about the magnitude of the impact of the voluntary actions on specific firms. One of the hardest hit large multinational firms explained that the Company immediately ceased global production and shipments of any products containing phenylpropanolamine and voluntarily withdrew any such products from customer warehouses and retail store shelves. As a result, the Company recorded a special charge of $80,000,000 to provide primarily for product returns and the write-off of inventory'' (Ref. 9). Another heavily impacted large firm claimed that withdrawal would cost between $51 and $68 million (Ref. 10). Similarly, a large private-label manufacturer reportedly took a $24 million charge against earnings (Ref. 11). These last two figures likely included costs of product reformulation as well as lost inventory value and sales revenues. These accounts represent projections and are estimates for financial reporting requirements but do not accurately reflect actual costs used for regulatory impact analyses.

FDA believes that the lost sales estimates may be overstated, as alternative cough-cold drug products were widely available. Most manufactures quickly offered alternative products and received offsetting increases in sales revenues. OMB guidelines for economic analysis state that, ''[t]he preferred measure of cost is the 'opportunity cost of the resources used or the benefits forgone as a result of the regulatory action'' (Ref. 7).

The costs of reformulation, recalls, and lost inventories are clearly ''opportunity costs,'' but the company sales revenues lost from recalled phenylpropanolamine-containing cough-cold drug products were likely matched by increased sales of other phenylpropanolamine-free products, frequently manufactured by the same or competing drug companies. These distributional effects are important to individual firms, but are not considered ''opportunity costs.''

c. *Summary of costs*. The regulatory costs of the proposed rule would include: (1) The one-time costs to reformulate and relabel affected products, (2) lost inventory, and (3) the cost of recalls. We estimate one-time costs of $11 million to $51 million for reformulation and labeling. Annualized over 20 years yields annual costs of $0.7 - $3.4 million (at 3 percent) and $1.0 - $4.8 million (at 7 percent). We lack sufficient information to estimate the value of lost inventories or the costs of recall. The uncertainty associated with the costs presented in financial reports and the inability to adjust for transfers makes it impossible to use these data to estimate the potential incremental regulatory impact of this proposed rule.

C. Benefits of Regulation

The benefit of removing phenylpropanolamine-containing products from the market was the reduction in the number of hemorrhagic strokes that would otherwise occur each year. Because phenylpropanolamine-containing OTC drug products have already been removed from the market, most of the expected health benefits are attributable to these past voluntary product withdrawals, rather than to FDA's future regulatory action. FDA has estimated that phenylpropanolamine causes 200 to 500 hemorrhagic strokes per year in people 18 to 49 years old (Ref. 5).

Assigning a monetary value to the prevention of strokes is problematic and there is no consensus on how it should be calculated. Taylor (Ref. 12) used a lifetime cost model to estimate the cost, by type of stroke. The model accounts for direct medical costs and indirect costs, such as earnings and premature mortality and morbidity. Updating this estimate to 2003 dollars (Ref. 13) and weighting it for the occurrence rate of subarachnoid and intracerebral hemorrhage (60 percent and 40 percent, respectively) (Ref. 14) results in an estimated figure of about $304,719 for the lifetime cost of stroke per person. With these values, the monetized benefit of preventing from 200 to 500 strokes per year by removing all phenylpropanolamine-containing OTC drug products from the market ranges from $60.9 million to $152.4 million per year. When groups less than 18 and over 49 years old (the ages of the subjects in the Yale Hemorrhagic Stroke Project) are included, the total yearly benefits will be higher.

Another method of calculating benefits is to value the statistical-lives saved due to the removal of drug products containing phenylpropanolamine. Assuming a mortality rate from phenylpropanolamine-caused strokes of about 25 percent, an estimated 50 to 125 lives saved per year in people 18 to 49 years old would be attributed to the removal of products containing phenylpropanolamine. The value of a statistical-life has been estimated to range from $1.6 million to $8.5 million 1986–dollars (Ref. 15). Using a rough midpoint value of $5 million per statistical-life, the estimated benefit of averting these stroke-induced fatalities ranges from $250 million to $625 million per year. Again, FDA is not asserting that this proposed rule will generate such benefits, because the benefit-producing activities have already occurred. Nevertheless, to the extent that some phenylpropanolamine-containing OTC drug products might remain available or might return to the market, some fraction of these benefits would be attributable to the issuance of this proposed rule.

D. Small Business Impacts

A drug manufacturer is defined as small by the Small Business Administration if it employs fewer than 750 people. Approximately 70 percent of all OTC drug manufacturers meet the definition of a small entity, and FDA believes that the same rate applies to manufacturers of phenylpropanolamine-containing OTC drug products. Hence, 70 of the 100 manufacturers were classified as small. The cost to distributors and repackers was not significant because the manufacturers of the products bore the brunt of the recall costs, product destruction, and usually were responsible for designing new labels. As explained in this section, to the extent that there are still phenylpropanolamine-containing OTC drug products being marketed, the impact on a manufacturer can vary greatly depending on the number and type of phenylpropanolamine-containing products it produces, the availability of substitute ingredients, and the number of SKUs that will require reformulation and/or relabeling. For example, a small branded product manufacturer may have to reformulate three products and relabel nine SKUs for a total one-time reformulation and relabeling cost ranging from $327,000 (3 products x $100,000 reformulation + 9 SKUs x $3,000 label) to $1.536 million (3 products x $500,000 reformulation + 9 SKUs x $4,000 label). Because there is only one substitute available for OTC weight control drug products, the manufacturer would have to cease production of its existing product and the impact to the firm would be lost sales. The lost sales could be partially offset by sales of a substitute product, if marketed. The cost of the voluntary product recall would also vary by firm and again depend on the number and quantity of products that needed to be recalled and destroyed.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (21 CFR parts 210 and 211), all firms would have the necessary skills and personnel to perform these tasks either in-house or by contractual arrangement. No additional professional skills are needed. In addition, there are no other Federal rules that duplicate, overlap, or conflict with the proposed rule.

FDA considered but rejected alternatives such as leaving products containing this ingredient on the OTC market, or not publicly announcing our intent to reclassify phenylpropanolamine as a Category II ingredient. These alternatives were unacceptable because the health risk posed by products containing phenylpropanolmine was greater than the benefits the products provided, especially given the number of substitute OTC drug products available that did not pose such risks. To have further delayed the removal of OTC phenylpropanolamine drug products from the market would have left consumers exposed to an unacceptable level of risk.

Because the cost of removal and reformulation of phenylpropanolamine containing OTC drug products has already been incurred when the products were voluntarily recalled, and FDA has chosen to use the present as a baseline for its analysis, FDA tentatively concludes that this proposed rule will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that there are no paperwork requirements in this document under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) 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. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed 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 tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

VIII. Request for Comments

Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IX. Time for Submission of New Data

The OTC drug review procedures (21 CFR 330.10(a)(7)(iii)) provide for a 12-month period after publication of a TFM for any interested person to file new data and information to support a condition excluded from the monograph

in the TFM. As discussed in section I of this document, FDA has published proposed and final rules for OTC nasal decongestant and weight control drug products and deferred a decision on the status of phenylpropanolamine so new data on this ingredient could be included in the record before a TFM or notice of proposed rulemaking was published. Manufacturers have been aware of this deferral for a number of years and have waited for the results of the study described in section II of this document to resolve the monograph status of phenylpropanolamine. It has taken many years for the phenylpropanolamine study to be completed, and the results indicate a major safety concern about this ingredient. FDA does not believe that any additional significant new safety data and information will be presented in the next 12 months. Because of the need to address and finalize FDA action on the existing safety concerns, and because there has already been public consideration of the issues before an FDA advisory committee, the comment period and the time for submission of new data is 90 days. FDA considers it an important public health concern to complete its classification of phenylpropanolamine preparations in OTC drug products as quickly as possible.

X. Proposed Effective Date

FDA is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

XI. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Comment No. LET86, Docket No. 1981N–0022 (formerly Docket No. 81N–0022).

2. Horwitz et al., ''Phenylpropanolamine & Risk of Hemorrhagic Stroke: Final Report of The Hemorrhagic Stroke Project,'' May 10, 2000 in Comment No. C230, Docket No. 1976N–0052N (formerly Docket No. 76N–052N) and Comment No. RPT14, Docket No. 1981N–0022 (formerly Docket No. 81N–0022).

3. Phenylpropanolamine case reports from 1991 to 2000 on file in Docket Nos. 1976N–0052N (formerly 76N–052N) and 1981N–0022 (formerly 81N–0022).

4. Consumer Healthcare Products Association (CHPA), ''Comments on the Hemmorhagic Stroke Project Report,'' May 24, 2000, in Comment No. C231, Docket No. 1976N–0052N (formerly Docket No. 76N–052N) and Comment No. C113, Docket No. 1981N–0022 (formerly Docket No. 81N–0022).

5. Food and Drug Administration, Transcript of Nonprescription Drugs Advisory Committee meeting, October 19, 2000, in Docket Nos. 1976N–0052N, (formerly 76N–052N) and 1981N–0022 (formerly 81N–0022).

6. Food and Drug Administration, Public Health Advisory, ''Safety of Phenylpropanolamine,'' November 6, 2000, Comment No. M1 in Docket No. 1976N–0052N (formerly 76N–052N) and Comment No. M7 in Docket No. 1981N–0022 (formerly 81N–0022).

7. Office of Management and Budget, ''Guidelines to Standardized Measures of Costs and Benefits and the Format of Accounting Statements,'' M0008, March 22, 2000, downloaded from *http://www.whitehouse.gov/omb/memoranda/index.html*, accessed June, 13, 2001.

8. Jarvis, Lisa, ''PPA Ban Is a Serious Threat to OTC Diet Aids,'' Chemical Market Reporter, November 20, 2000.

9. U.S. Security and Exchange Commission, Form 10-K, Voluntary Market Withdrawals, fiscal year ended December 31, 2000, American Home Products Corp., in Docket Nos. 1976N–0052N (formerly Docket No. 1976N–052N) and 1981N–0022.

10. F-D-C Reports-''The Tan Sheet,'' ''Dexatrim Natural Fattens Chattem's First Quarter; Extensions Planned,'' vol. 9, no. 14, April 2, 2001.

11. F-D-C Reports-''The Tan Sheet,'' ''AHP Dimetapp, Robitussin PPA Withdrawals Lead To $80 Mil. Charge In 2000,'' vol. 9, no. 5, January 29, 2001.

12. Taylor, Thomas N., ''The Medical Economics of Stroke,'' Drugs, supp. 3:51–58, 1997.

13. U.S. Census Bureau, No. 768, Consumer Price Index by Major Group., downloaded from *http://www.census.gov/statab/freq/00s0768.txt*, accessed June 12, 2001. U.S. Bureau of Labor Statistics, accessed July 23, 2004. Updated 1999 data to 2003 (18.56 percent increase in medical care CPI).

14. Kernan, Walter N. et al., ''Phenylpropanolamine and the Risk of Hemorrhagic Stroke,'' *The New England Journal of Medicine*, 343: 1826–1832, 2000.

15. Fisher, A., L., G. Chestnut, and D. M. Violette, ''The Value of Reducing Tisks of Death: a Note on New Evidence,'' *Journal of Policy Analysis and Management*, 8: 88–100, 1989.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

21 CFR Part 357

Labeling, Over-the-counter drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310, 341 (as proposed in the **Federal Register** of September 9, 1976 (41 FR 38312)), and 357 (as proposed in the **Federal Register** of February 26, 1982 (47 FR 8466)) be amended as follows:

PART 310–NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by redesignating the text of paragraph (a)(20) as paragraph (a)(20)(i) and by adding paragraph (a)(20)(i) heading, by adding paragraphs (a)(6)(ii)(D), (a)(20)(ii), and (d)(35), and by revising paragraph (d)(2) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(ii) * * *

(D) Approved as of January 23, 2006. Any phenylpropanolamine ingredient.

* * * * *

(a) * * *

(20) * * *

(i) Approved as of February 8, 1991.

* * *

(ii) Approved as of January 23, 2006. Any phenylpropanolamine ingredient.

* * * * *

(d) * * *

(2) February 10, 1992, for products subject to paragraph (a)(20)(i) of this section.

* * * * *

(35) January 23, 2006, for products subject to paragraphs (a)(6)(ii)(D) and (a)(20)(ii) of this section.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 341.20 [Amended]

4. Section 341.20 of the proposed rule published at 41 FR 38312 is amended by removing paragraph (e) and redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g), respectively.

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR part 357 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 357.510 [Amended]

6. Section 357.510 of the proposed rule published at 47 FR 8466 is amended by removing and reserving paragraph (b).

§ 357.520 [Removed]

7. Section 357.520 of the proposed rule published at 47 FR 8466 is removed.

§ 357.550 [Amended]

8. Section 357.550 of the proposed rule published at 47 FR 8466 is amended by removing and reserving paragraphs (c)(2) and (d)(2).

§ 357.555 [Removed]

9. Section 357.555 of the proposed rule published at 47 FR 8466 is removed.

Dated: December 5, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–7646 Filed 12–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–138647–04]

RIN 1545–BE30

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G.

DATES: The public hearing is being held on February 23, 2006, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by February 2, 2006.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–138647–04), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138647–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments directly to the IRS Internet site *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, the hearing, and/or to be placed on the building access to attend the hearing, Kelly Banks at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–138647–04) that was published in the **Federal Register** on August 26, 2005 (70 FR 50233).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

A period of 10 minutes is allotted to each person for presenting oral comments. The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E5–7650 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 153

[0790–AH73]

Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Service Members, and Former Service Members

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Military Extraterritorial Jurisdiction Act of 2000 (MEJA) establishes Federal criminal jurisdiction over whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year (*i.e.*, a felony offense) while employed by or accompanying the Armed Forces outside the United States, certain members of the Armed Forces subject to the Uniform Code of Military Justice and former members of the Armed Forces.

DATES: Comments must be received on or before February 21, 2006.

ADDRESSES: Forward comments to the Deputy General Counsel (Personnel and Health Policy), 1600 Defense Pentagon, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Reed, 703–695–1055.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

This proposed regulatory action is a significant regulatory action, as defined by Executive Order 12866 and has been reviewed by OMB and approved for publication.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any 1 year. This rule making will not significantly or uniquely affect small governments.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any additional reporting or

recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures for coordinating criminal jurisdiction matters between the Department of Defense, Justice, and State that involve crimes committed by civilians employed by or accompanying the Armed Forces overseas.

List of Subjects in 32 CFR Part 153

Courts, Intergovernmental relations, Military personnel.

Accordingly, 32 CFR part 153 is proposed to be revised to read as follows:

PART 153—CRIMINAL JURISDICTION OVER CIVILIANS EMPLOYED BY OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE UNITED STATES, CERTAIN SERVICE MEMBERS, AND FORMER SERVICE MEMBERS

Sec.

Authority: 18 U.S.C. Chapter 212.

§ 153.1 Purpose.

This part:

(a) Implements policies and procedures, and assigns responsibilities under the Military Extraterritorial Jurisdiction Act of 2000, as amended by section 1088 of the ''Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,'' (hereinafter the Act) for exercising extraterritorial criminal jurisdiction over certain military personnel, former service members of the United States Armed Forces, and over civilians employed by or accompanying the Armed Forces outside the United States (U.S.).

(b) Implements section 3266 of the Act.

§ 153.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as ''the DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) *Coast Guard.* The Coast Guard ordinarily operates as a separate branch of the Armed Forces in the Department of Homeland Security (DHS). However, upon Presidential Directive, the Coast Guard operates as a Service within the Department of the Navy and becomes part of the Department of Defense. By agreement with the Secretary of the Department of Homeland Security, when the Coast Guard is operating as a separate Service within the DHS, this part shall apply to the Coast Guard to the extent permitted by the Act. Whether a provision of this Instruction applies to a Coast Guard case is determined by whether the Coast Guard is operating as a Service in the DHS or as a Service within the Department of the Navy.

(c) While some Federal criminal statutes are expressly or implicitly extraterritorial, many acts described therein are criminal only if they are committed within ''the special maritime and territorial jurisdiction of the United States'' or if they affect interstate or foreign commerce. Therefore, in most instances, Federal criminal jurisdiction ends at the nation's borders. State criminal jurisdiction, likewise, normally ends at the boundaries of each State. Because of these limitations, acts committed by military personnel, former service members, and civilians employed by or accompanying the Armed Forces in foreign countries, which would be crimes if committed in the U.S., often do not violate either Federal or State criminal law. Similarly, civilians are generally not subject to prosecution under the Uniform Code of Military Justice (UCMJ), unless Congress had declared a ''time of war'' when the acts were committed. As a result, these acts are crimes, and therefore criminally punishable, only under the law of the foreign country in which they occurred. See section 2 of Report Accompanying the Act. While the U.S. could impose administrative discipline for such actions, the Act and this Part are intended to address the jurisdictional gap with respect to criminal sanctions.

(d) Nothing in this part may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or the law of war may be tried by court-martial, military commission, provost court, or other military tribunal (18 U.S.C. 3261(c)). In some cases, conduct that violates section 3261(a) of the Act may also violate the UCMJ, or the law of war generally. Therefore, for military personnel, military authorities would have concurrent jurisdiction with a U.S. District Court to try the offense. The Act was not intended to divest the military of jurisdiction and recognizes the predominant interest of the military in disciplining its service members, while still allowing for the prosecution of members of the Armed Forces with non-military co-defendants in a U.S. District Court under section 3261(d) of the Act.

(e) This part, including its enclosures, is intended exclusively for the guidance of military personnel and civilian employees of the Department of Defense, and of the United States Coast Guard by agreement with the Department of Homeland Security. Nothing contained herein creates or extends any right, privilege, or benefit to any person or entity. See *United States* v. *Caceres,* 440 U.S. 741 (1979).

§ 153.3 Definitions.

(a) *Accompanying the Armed Forces Outside the United States.* As defined in section 3267 of the Act, the dependent of:

(1) A member of the Armed Forces; or

(2) A civilian employee of the Department of Defense (including a non-appropriated fund instrumentality of the Department); or

(3) A DoD contractor (including a subcontractor at any tier); or

(4) An employee of a DoD contractor (including a subcontractor at any tier); and

(5) Residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

(6) Not a national of or ordinarily resident in the host nation.

(b) *Active Duty.* Full-time duty in the active military service of the United States. It includes full-time training

duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. See 10 U.S.C. 101(d)(1).

(c) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard. See 10 U.S.C. 101(a)(4).

(d) *Arrest.* To be taken into physical custody by law enforcement officials.

(e) *Charged.* As used in the Act and this part, this term is defined as an indictment or the filing of information against a person under the Federal Rules of Criminal Procedure. See the analysis to Section 3264 of the Report Accompanying the Act.

(f) *Civilian Component.* A person or persons employed by the Armed Forces outside the United States, as defined in this section and section 3267(a)(1), as amended, of the Act. A term used in Status of Forces Agreements.

(g) *Dependent.* A person for whom a member of the Armed Forces, civilian employee, contractor (or subcontractor at any tier) has legal responsibility while that person is residing outside the United States with or accompanying that member of the Armed Forces, civilian employee, contractor (or subcontractor at any tier), and while that responsible person is so assigned, employed or obligated to perform a contractual obligation to the Department of Defense. For purposes of this part, a person's ''command sponsorship'' status while outside the United States is not to be considered in determining whether the person is a dependent within the meaning of this part, except that there shall be a rebuttable presumption that a command-sponsored individual is a dependent.

(h) *Designated Commanding Officer (DCO).* A single military commander in each foreign country where U.S. Forces are stationed and as contemplated by DoD Directive 5525.1,[1] Status of Forces Policy and Information.

(i) *Detention.* To be taken into custody by law enforcement officials and placed under physical restraint.

(j) *District.* A District Court of the United States.

(k) *Employed by the Armed Forces Outside the United States.* Any person employed as:

(1) A civilian employee of the Department of Defense (including a non-appropriated fund instrumentality of the Department); or

(2) A civilian employee of any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

(3) A contractor (including a subcontractor at any tier) of the Department of Defense (including a non-appropriated fund instrumentality of the Department of Defense); or

(4) A contractor (including a subcontractor at any tier) of any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

(5) An employee of a contractor (including a subcontractor at any tier) of the Department of Defense (including a non-appropriated fund instrumentality of the Department of Defense); or

(6) An employee of a contractor (including a subcontractor at any tier) of any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; and, when the person:

(i) Is present or resides outside the United States in connection with such employment; and

(ii) Is not a national of or ordinarily resident in the host nation.

(l) *Federal Magistrate Judge.* As used in the Act and this part, this term includes both Judges of the United States and U.S. Magistrate Judges, titles that, in general, should be given their respective meanings found in the Federal Rules of Criminal Procedure. (See footnote 32 of the Report to Accompany H. R. 3380, House of Representatives Report 106–778, July 20, 2000.) The term does not include Military Magistrates or Military Judges, as prescribed by the UCMJ, or regulations of the Military Departments or the Department of Defense.

(m) *Felony Offense.* Conduct that is an offense punishable by imprisonment for more than one year if the conduct had been engaged in the special maritime and territorial jurisdiction of the United States. See sections 3261 of the Act and 18 U.S.C. 7. Although the Act, uses the conditional phrase ''if committed within the special maritime and territorial jurisdiction of the United States,'' acts that would be a Federal crime regardless of where they are committed in the U.S., such as drug crimes contained in 21 U.S.C. chapter 13, also fall within the scope of section 3261(a) of the Act. See the analysis to section 3261 of the Report Accompanying the Act.

(n) *Host Country National.* A person who is not a citizen of the United States, but who is a citizen of the foreign country in which that person is located.

(o) *Inactive Duty Training.* Duty prescribed for Reservists by the Secretary of the Military Department concerned under 37 U.S.C. 206, or any other provision of law; and special additional duties authorized for Reservists by an authority designated by the Secretary of the Military Department concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. Inactive Duty Training includes those duties performed by Reservists in their status as members of the National Guard while in Federal service. See 10 U.S.C. 101(d)(7).

(p) *Juvenile.* A person who has not attained his or her eighteenth birthday, as defined in 18 U.S.C. 5031.

(q) *Military Department.* The Department of the Army, the Department of the Navy, and the Department of the Air Force. See 10 U.S.C. 101(a)(8).

(r) *National of the United States.* As defined in 8 U.S.C. 1101(a)(22).

(s) *Outside the United States.* Those places that are not within the definition of ''United States'' below and, with the exception of subparagraph 7(9), those geographical areas and locations that are not within the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. The locations defined in 18 U.S.C. 7(9) are to be considered ''Outside the United States'' for the purposes of this Part. See 18 U.S.C. 3261–3267.

(t) *Qualified Military Counsel.* Judge advocates assigned to or employed by the Military Services and designated by the respective Judge Advocate General, or a designee, to be professionally qualified and trained to perform defense counsel responsibilities under the Act.

(u) *Staff Judge Advocate.* A judge advocate so designated in the Army, the Air Force, the Marine Corps, or the Coast Guard; the principal legal advisor of a command in the Navy who is a judge advocate, regardless of job title. See Rule for Courts-Martial 103(17), Manual for Courts-Martial, United States (2002 Edition).

(v) *Third Country National.* A person whose citizenship is that of a country other than the U.S. and the foreign country in which the person is located.

(w) *United States.* As defined in 18 U.S.C. 5, this term, as used in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except for the Panama Canal Zone.

§ 153.4 Responsibilities.

(a) The *General Counsel of the Department of Defense* shall provide

[1] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

initial coordination and liaison with the Departments of Justice and State, on behalf of the Military Departments, regarding a case for which investigation and/or Federal criminal prosecution under the Act is contemplated. This responsibility may be delegated entirely, or delegated for categories of cases, or delegated for individual cases. The General Counsel, or designee, shall advise the Domestic Security Section of the Criminal Division, Department of Justice (DSS/DOJ), as soon as practicable, when DoD officials intend to recommend that the DOJ consider the prosecution of a person subject to the Act for offenses committed outside the United States. The Assistant Attorney General, Criminal Division, Department of Justice, has designated the Domestic Security Section (DSS/DOJ) as the Section responsible for the Act.

(b) The *Inspector General of the Department of Defense* shall:

(1) Pursuant to section 4(d) of the Inspector General Act of 1978, as amended (5 U.S.C. App. 3), ''report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.'' This statutory responsibility is generally satisfied once an official/special agent of the Office of the Inspector General of the Department of Defense notifies either the cognizant Department of Justice representative or the Assistant Attorney General (Criminal Division) of the ''reasonable grounds.''

(2) Pursuant to section 8(c)(5) of the Inspector General Act of 1978, as amended 5 U.S.C. App. 3), and 10 U.S.C. 141(b), ensure the responsibilities described in DoD Directive 5525.7,[2] ''Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes,'' January 22, 1985,[3] to implement the investigative policies, monitor compliance by DoD criminal investigative organizations, and provide specific guidance regarding investigative matters, as appropriate are satisfied relative to violations of the Military Extraterritorial Jurisdiction Act of 2000.

(c) The *Heads of Military Law Enforcement Organizations and Military Criminal Investigative Organizations, or Their Designees* shall:

(1) Advise the Commander and Staff Judge Advocate (or Legal Advisor) of the Combatant Command concerned, or designees, of an investigation of an alleged violation of the Act. Such notice shall be provided as soon as practicable. In turn, the General Counsel of the Department of Defense, or designee, shall be advised so as to ensure notification of and consultation with the Departments of Justice and State regarding information about the potential case, including the host nation's position regarding the case. At the discretion of the General Counsel of the Department of Defense, other agencies and organizations (such as the Legal Counsel to the Chairman of the Joint Chiefs of Staff and Secretary of the Military Department that sponsored the person into the foreign country) shall be informed, as appropriate. Effective investigations lead to successful prosecutions and, therefore, these cases warrant close coordination and cooperation between the Departments of Defense, Justice, and State.

(2) Provide briefings to, and coordinate with, appropriate local law enforcement authorities in advance or, if not possible, as soon thereafter as is practicable, of investigations or arrests in specific cases brought under the Act. If not previously provided to local law enforcement authorities, such briefings about the case shall, at a minimum, describe the Host Nation's position regarding the exercise of jurisdiction under the Act that followed from any briefings conducted pursuant to appendix A of this part.

(d) *The Domestic Security Section, Criminal Division, Department of Justice (DSS/DOJ)* has agreed to:

(1) Provide preliminary liaison with the Department of Defense, coordinate initial notifications with other entities of the Department of Justice and Federal law enforcement organizations; make preliminary decisions regarding proper venue; designate the appropriate U.S. Attorney's Office; and coordinate the further assignment of DOJ responsibilities.

(2) Coordinate with the designated U.S. Attorney's office arrangements for a Federal Magistrate Judge to preside over the initial proceedings required by the Act. Although the assignment of a particular Federal Magistrate Judge shall ordinarily be governed by the jurisdiction where a prosecution is likely to occur, such an assignment does not determine the ultimate venue of any prosecution that may be undertaken. Appropriate venue is determined in accordance with the requirements of 18 U.S.C. 3238.

(3) Coordinate the assistance to be provided the Department of Defense with the U.S. Attorney's office in the district where venue for the case shall presumptively lie.

(4) Continue to serve as the primary point of contact for DoD personnel regarding all investigations that may lead to criminal prosecutions and all associated pretrial matters, until such time as DSS/DOJ advises that the case has become the responsibility of a specific U.S. Attorney's Office.

(e) The *Commanders of the Combatant Commands* shall:

(1) Assist the DSS/DOJ on specific cases occurring within the Commander's area of responsibility. These responsibilities include providing available information and other support essential to an appropriate and successful prosecution under the Act with the assistance of the Commanders' respective Staff Judge Advocates (or Legal Advisors), or their designees, to the maximum extent allowed and practicable.

(2) Ensure command representatives are made available, as necessary, to participate in briefings of appropriate host nation authorities concerning the operation of this Act and the implementing provisions of this part.

(3) Determine when military necessity in the overseas theater requires a waiver of the limitations on removal in section 3264(a) of the Act and when the person arrested or charged with a violation of the Act shall be moved to the nearest U.S. military installation outside the United States that is adequate to detain the person and facilitate the initial proceedings prescribed in section 3265(a) of the Act and this part. Among the factors to be considered are the nature and scope of military operations in the area, the nature of any hostilities or presence of hostile forces, and the limitations of logistical support, available resources, appropriate personnel, or the communications infrastructure necessary to comply with the requirements of section 3265 of the Act governing initial proceedings.

(4) Annually report to the General Counsel of the Department of Defense, by the last day of February for the immediately preceding calendar year, all cases involving the arrest of persons for violations of the Act; persons placed in temporary detention for violations of the Act; the number of requests for Federal prosecution under the Act, and the decisions made regarding such requests.

(5) Determine the suitability of the locations and conditions for the temporary detention of juveniles who commit violations of the Act within the Commander's area of responsibility. The conditions of such detention must, at a minimum, meet the following

[2] See footnote 1 to § 153.3(h).

[3] See footnote 1 to § 153.3(h).

requirements: Juveniles alleged to be delinquent shall not be detained or confined in any institution or facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges; insofar as possible, alleged juvenile delinquents shall be kept separate from adjudicated delinquents; and every juvenile in custody shall be provided adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, and medical care, including necessary psychiatric, psychological, or other care and treatment.

(6) As appropriate, promulgate regulations consistent with and implementing this part. The Combatant Commander's duties and responsibilities pursuant to this part may be delegated.

(f) The *Secretaries of the Military Departments* shall: (1) Consistent with the provisions of paragraph (c) of this section, make provision for defense counsel representation at initial proceedings conducted outside the United States pursuant to the Act for those persons arrested or charged with violations of section 3261(a) of the Act.

(2) Issue regulations establishing procedures that, to the maximum extent practicable, provide notice to all persons covered by the Act who are not nationals of the United States but who are employed by or accompanying the Armed Forces outside the United States, with the exception of individuals who are nationals of or ordinarily resident in the host nation, that they are potentially subject to the criminal jurisdiction of the United States under the Act. At a minimum, such regulations shall require that employees and persons accompanying the Armed Forces outside the United States, who are not nationals of the United States, be informed of the jurisdiction of the Act at the time that they are hired for overseas employment, or upon sponsorship into the overseas command, whichever event is earlier applicable. Such notice shall also be provided during employee training and any initial briefings required for these persons when they first arrive in the foreign country. For employees and persons accompanying the Armed Forces outside the United States who are not nationals of the United States, but who have already been hired or are present in the overseas command at the time this part becomes effective, such notice shall be provided within 60 days of the effective date of this part.

(3) Ensure that orientation training, as described in paragraph (f)(2) of this section, is also provided for all U.S. nationals who are, or who are scheduled to be, employed by or accompanying the Armed Forces outside the United States, including their dependents, and include information that such persons are potentially subject to the criminal jurisdiction of the United States under the Act.

(i) For members of the Armed Forces, civilian employees of the Department of Defense and civilians accompanying the Armed Forces overseas, notice and briefings on the applicability of the Act shall, at a minimum, be provided to them and their dependents when travel orders are issued and, again, upon their arrival at command military installations or place of duty outside the United States.

(ii) For civilian employees, contractors (including subcontractors at any tier), and employees of contractors (including subcontractors at any tier) of any other Federal agency, or any provisional authority, permit such persons to attend the above-referenced briefings on a voluntary basis. In addition, to the maximum extent practicable, make available to representatives of such other Federal agencies or provisional authorities such notice and briefing materials as is provided to civilian employees, contractors, and contractor employees of the Department of Defense overseas.

(4) Failure to provide notice or orientation training pursuant to paragraphs (f)(2) and (f)(3) of this section shall not create any rights or privileges in the persons referenced and shall not operate to defeat the jurisdiction of a court of the United States or provide a defense or other remedy in any proceeding arising under the Act or this part.

(5) Provide training to personnel who are authorized under the Act and designated pursuant to this part to make arrests outside the United States of persons who allegedly committed a violation of section 3261(a) of the Act. The training, at a minimum, shall include the rights of individuals subject to arrest.

§ 153.5 Procedures.

(a) *Applicability.* (1) *Offenses and Punishments.* Section 3261(a) of the Act establishes a separate Federal offense under 18 U.S.C. for an act committed outside the United States that would be a felony crime as if such act had been committed within the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. Charged as a violation of section 3261(a) of the Act, the elements of the offense and maximum punishment are the same as the crime committed within the geographical limits of 18 U.S.C. 7, but without the requirement that the conduct be committed within such geographical limits. See section 1 of the Section-By-Section Analysis and Discussion to section 3261 in the ''Report Accompanying the Act.''

(2) *Persons Subject to This Part.* This part applies to certain military personnel, former military service members, and persons employed by or accompanying the Armed Forces outside the United States, and their dependents, as those terms are defined in § 153.3 of this part, alleged to have committed an offense under the Act while outside the United States. For purposes of the Act and this part, persons employed by or accompanying the Armed Forces outside the U.S. are subject to the ''military law'' of the U.S., but only to the extent to which this term has been used and its meaning and scope have been understood within the context of a SOFA or any other similar form of international agreement.

(3) *Military Service Members.* Military service members subject to the Act's jurisdiction are:

(i) Only those active duty service members who, by Federal indictment or information, are charged with committing an offense with one or more defendants, at least one of whom is not subject to the UCMJ. See section 3261(d)(2) of the Act.

(ii) Members of a Reserve component with respect to an offense committed while the member was not on active duty or inactive duty for training (in the case of members of the Army National Guard of the United States or the Air National Guard of the United States, only when in Federal service), are not subject to UCMJ jurisdiction for that offense and, as such, are amenable to the Act's jurisdiction without regard to the limitation of section 3261(d)(2) of the Act.

(4) *Former Military Service Members.* Former military service members subject to the Act's jurisdiction are:

(i) Former service members who were subject to the UCMJ at the time the alleged offenses were committed, but are no longer subject to the UCMJ with respect to the offense due to their release or separation from active duty.

(ii) Former service members, having been released or separated from active duty, who thereafter allegedly commit an offense while in another qualifying status, such as while a civilian employed by or accompanying the Armed Forces outside the United States, or while the dependent of either or of a person subject to the UCMJ.

(5) *Civilians Employed by the Armed Forces.* Civilian employees employed by the U.S. Armed Forces outside the

United States (as defined in § 153.3), who commit an offense under the Act while present or residing outside the U.S. in connection with such employment, are subject to the Act and the provisions of this part. Such civilian employees include:

(i) Persons employed by the Department of Defense (including a non-appropriated fund instrumentality of the Department of Defense).

(ii) Persons employed as a DoD contractor (including a subcontractor at any tier).

(iii) Employees of a DoD contractor (including a subcontractor at any tier).

(iv) Civilian employees, contractors (including subcontractors at any tier), and civilian employees of a contractor (or subcontractor at any tier) of any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas.

(6) *Civilians Accompanying the Armed Forces.* Subject to the requirements of paragraph (a)(6)(ii) of this section, the following persons are civilians accompanying the Armed Forces outside the United States who are covered by the Act and the provisions of this part:

(i) Dependents of:

(A) An active duty service member.

(B) A member of the reserve component while the member was on active duty or inactive duty for training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States, only when in Federal service.

(C) A former service member who is employed by or is accompanying the Armed Forces outside the United States.

(D) A civilian employee of the Department of Defense (including non-appropriated fund instrumentalities of the Department of Defense).

(E) A contractor (including a subcontractor at any tier) of the Department of Defense.

(F) An employee of a contractor (including a subcontractor at any tier) of the Department of Defense.

(ii) In addition to the person being the dependent of a person who is listed in paragraph (a)(6)(i) of this section, jurisdiction under the Act requires that the dependent also:

(A) Reside with one of the persons listed in paragraph (a)(6)(i).

(B) Allegedly commit the offense while outside the United States; and

(C) Not be a national of, or ordinarily resident in, the host nation where the offense is committed.

(iii) Command sponsorship of the dependent is not required for the Act and this part to apply.

(iv) If the dependent is a juvenile, as defined in § 153.3, who engaged in conduct that is subject to prosecution under section 3261(a) of the Act, then the provisions of 18 U.S.C. chapter 403 would apply to U.S. District Court prosecutions.

(7) *Persons Not Subject to the Act or the Procedures of This Part.* (i) Persons who are the nationals of, or ordinarily resident in, the host nation where the offense is committed, regardless of their employment or dependent status.

(ii) Persons, including citizens of the United States, whose presence outside the United States at the time the offense is committed, is not then as a member of the Armed Forces, a civilian employed by the Armed Forces outside the United States, or accompanying the Armed Forces outside the United States.

(A) Persons (including members of a Reserve component) whose presence outside the United States at the time the offense is committed, is solely that of a tourist, a student, or a civilian employee or civilian accompanying any other non-federal agency, organization, business, or entity (and thereby can not be said to be employed by or accompanying the Armed Forces within the definitions of those terms as established by the Act, as modified) are not subject to the Act. Civilian employees of an agency, organization, business, or entity accompanying the Armed Forces outside the U.S. may, by virtue of the agency, organization, business, or entity relationship with the Armed Forces, be subject to the Act and this part.

(B) Persons who are subject to the Act and this part remain so while present, on official business or otherwise (e.g., performing temporary duty or while in leave status), in a foreign country other than the foreign country to which the person is regularly assigned, employed, or accompanying the Armed Forces outside the United States.

(iii) Persons who have recognized dual citizenship with the United States and who are the nationals of, or ordinarily resident in, the host nation where the alleged conduct took place are not persons ''accompanying the Armed Forces outside the United States'' within the meaning of the Act and this part.

(iv) Juveniles whose ages are below the minimum ages authorized for the prosecution of juveniles in U.S. District Court under the provisions of 18 U.S.C. chapter 403.

(v) Persons subject to the UCMJ (See 10 U.S.C. 802 and 803) are not subject to prosecution under the Act unless, pursuant to section 3261(d) of the Act, the member ceases to be subject to the UCMJ or an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to the UCMJ. A member of a Reserve component who is subject to the UCMJ at the time the UCMJ offense was committed is not relieved from amenability to UCMJ jurisdiction for that offense. Such reserve component members are not subject to the Act unless section 3261(d)(2) of the Act applies. Retired members of a regular component who are entitled to pay remain subject to the UCMJ after retiring from active duty. Such retired members are not subject to prosecution under the Act unless section 3261(d)(2) of the Act applies.

(vi) Whether Coast Guard members and civilians employed by or accompanying the Coast Guard outside the United States, and their dependents, are subject to the Act and this part depends on whether at the time of the offense the Coast Guard was operating as a separate Service in the Department of Homeland Security or as a Service in the Department of the Navy.

(8) *Persons Having a Tenuous Nexus to the United States.* Third Country Nationals who are not ordinarily resident in the host nation, and who meet the definition of ''a person accompanying the Armed Forces outside the United States,'' may have a nexus to the United States that is so tenuous that it places into question whether the Act's jurisdiction should be applied and whether such persons should be subject to arrest, detention, and prosecution by U.S. authorities. Depending on the facts and circumstances involved, and the relationship or connection of the foreign national with the U.S. Armed Forces, it may be advisable to consult first with the DSS/DOJ before taking action with a view toward prosecution. In addition, to facilitate consultation with the government of the nation of which the Third Country National is a citizen, the State Department should be notified of any potential investigation or arrest of a Third Country National.

(b) *Investigation, Arrest, Detention, and Delivery of Persons to Host Nation Authorities.* (1) *Investigation.* (i) Investigations of conduct reasonably believed to constitute a violation of the Act committed outside the United States must respect the sovereignty of the foreign nation in which the investigation is conducted. Such investigations shall be conducted in accordance with recognized practices with host nation authorities and applicable international law, SOFA and other international agreements. After general coordination with appropriate

host nation authorities, as referenced in Appendix A of this part, specific investigations shall, to the extent practicable, be coordinated with appropriate local law enforcement authorities, unless not required by agreement with host nation authorities.

(ii) When a Military Criminal Investigative Organization is the lead investigative organization, the criminal investigator, in order to assist DSS/DOJ and the designated U.S. Attorney representative in making a preliminary determination of whether the case warrants prosecution under the Act, shall provide a copy of the Investigative Report, or a summary thereof, to the Office of the Staff Judge Advocate of the Designated Commanding Officer (DCO) at the location where the offense was committed for review and transmittal, through the Combatant Commander, to the DSS/DOJ and the designated U.S. Attorney representative. The Office of the Staff Judge Advocate shall also furnish the DSS/DOJ and the designated U.S. Attorney representative an affidavit or declaration from the criminal investigator or other appropriate law enforcement official that sets forth the probable cause basis for believing that a violation of the Act has occurred and that the person identified in the affidavit or declaration has committed the violation.

(iii) When the Defense Criminal Investigative Service (DCIS) is the lead investigative organization, the criminal investigator, in order to assist the DSS/DOJ and the designated U.S. Attorney representative in making a preliminary determination of whether the case warrants prosecution under the Act, shall provide a copy of the Investigative Report, or a summary thereof, to the DSS/DOJ and the designated U.S. Attorney representative. The criminal investigator shall also furnish the DSS/DOJ and the designated U.S. Attorney representative, an affidavit or declaration that sets forth the probable cause basis for believing that a violation of the Act has occurred and that the person identified in the affidavit or declaration has committed the violation. Within the parameters of 5 U.S.C. App 3, the Inspector General may also notify the General Counsel of the Department of Defense and the DCO's Office of the Staff Judge Advocate at the location where the offense was committed, as appropriate.

(2) *Residence Information.* To the extent that it can be determined from an individual's personnel records, travel orders into the overseas theater, passport, or other records, or by questioning upon arrest or detention, as part of the routine ''booking'' information obtained, an individual's last known residence in the United States shall be determined and forwarded promptly to the DSS/DOJ and the designated U.S. Attorney representative. See *Pennsylvania* v. *Muniz,* 496 U.S. 582, at 601 (1990) and *United States* v. *D'Anjou,* 16 F.3d 604 (4th Cir. 1993). The information is necessary to assist in determining what law enforcement authorities and providers of pretrial services, including those who issue probation reports, shall ultimately have responsibility for any case that may develop. Determination of the individual's ''last known address'' in the United States is also important in determining what Federal district would be responsible for any possible future criminal proceedings.

(i) Due to the venue provisions of 10 U.S.C. 3238, the DSS/DOJ and the designated U.S. Attorney representative shall be consulted prior to removal of persons arrested or charged with a violation of the Act by U.S. law enforcement officials. The venue for Federal criminal jurisdiction over offenses committed on the high seas or elsewhere beyond the jurisdiction of a particular State or District (as would be required under the Act), is in the Federal district in which the offender is arrested or first brought. However, if the individual is not so arrested in or brought into any Federal district in the United States (i.e., is to be indicted, or an information obtained, prior to the individual's return to the United States), then an indictment or information may be sought in the district of the person's last known residence. If no such residence is known, the indictment or information may be filed in the District of Columbia.

(ii) ''First brought'' connotes the location within the U.S. to which the person is returned in a custodial status.

(iii) ''Last known residence'' refers to that U.S. location where the person lived or resided. It is not necessarily the same as the person's legal domicile or home of record.

(iv) Prompt transmittal of venue information to the DSS/DOJ and the designated U.S. Attorney representative in the United States may prove helpful in determining whether a particular case may be prosecuted, and may ultimately be a pivotal factor in determining whether the host nation or the U.S. shall exercise its jurisdiction over the matter.

(v) The Investigative Report, and any affidavit or declaration, as well as all other documents associated with a case shall be transmitted promptly by the command Staff Judge Advocate to the DSS/DOJ and the designated U.S. Attorney representative. This may be accomplished through the use of facsimile or other means of electronic communication.

(3) *Notice of Complaint or Indictment.* Upon receipt of information from command authorities or Defense Criminal Investigation Organizations (the Defense Criminal Investigation Service, the Army's Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations) that a person subject to jurisdiction under this Act has violated section 3261(a), the U.S. Attorney for the District in which there would be venue for a prosecution may, if satisfied that probable cause exists to believe that a crime has been committed and that the person identified has committed this crime, file a complaint under Federal Rule of Criminal Procedure 3. As an alternative, the U.S. Attorney may seek the indictment of the person identified. In either case, a copy of the complaint or indictment shall be provided to the Office of the Staff Judge Advocate of the overseas command that reported the offense. The DSS/DOJ and the designated U.S. Attorney representative will ordinarily be the source from which the command's Staff Judge Advocate is able to obtain a copy of any complaint or indictment against a person outside the United States who is subject to the jurisdiction under the Act. This may be accomplished through the use of facsimile or other means of electronic communication.

(4) *Arrest.* (i) Federal Rule of Criminal Procedure 4 takes the jurisdiction of the Act into consideration in stating where arrest warrants may be executed: ''Location. A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest.'' The Advisory Committee Note explains that the new language reflects the enactment of the Military Extraterritorial Jurisdiction Act permitting arrests of certain military and Department of Defense personnel overseas.

(ii) The Act specifically authorizes persons in DoD law enforcement positions, as designated by the Secretary of Defense, to make arrests outside the United States, upon probable cause and in accordance with recognized practices with host nation authorities and applicable international agreements, those persons subject to the Act who violate section 3261(a) of the Act. Section 3262(a) of the Act constitutes authorization by law to conduct such functions pursuant to 10 U.S.C. 801–946 and therefore avoids possible restrictions of the Posse Comitatus Act

regarding military personnel supporting civilian law enforcement agencies.

(iii) When the host nation has interposed no objections after becoming aware of the Act, arrests in specific cases shall, to the extent practicable, be first coordinated with appropriate local law enforcement authorities, unless not required by agreement with host nation authorities.

(iv) Military and civilian special agents assigned to the Defense Criminal Investigative Organizations are hereby authorized by the Secretary of Defense to make an arrest, outside the United States, of a person who has committed an offense under section 3261(a) of the Act. Civilian special agents assigned to Defense Criminal Investigative Organizations while performing duties outside the U.S. shall make arrests consistent with the standardized guidelines established for such agents, as approved in accordance with 10 U.S.C. 1585a, 4027, 7480, and 9027.

(v) Military personnel and DoD civilian employees (including local nationals, either direct hire or indirect hire) assigned to security forces, military police, shore patrol, or provost offices at military installations and other facilities located outside the United States are also authorized to make an arrest, outside the United States, of a person who has committed an offense under section 3261(a) of the Act. This authority includes similarly-assigned members of the Coast Guard law enforcement community, but only when the Coast Guard is operating at such locations as a Service of the Department of the Navy.

(vi) Law enforcement personnel thus designated and authorized by the Secretary of Defense in this part may arrest a person, outside the United States, who is suspected of committing a felony offense in violation of section 3261(a) of the Act, when the arrest is based on probable cause to believe that such person violated section 3261(a) of the Act, and when made in accordance with applicable international agreements. Because the location of the offense and offender is outside the United States, it is not normally expected that the arrest would be based on a previously-issued Federal arrest warrant. Law enforcement personnel authorized to make arrests shall follow the Secretaries of the Military Departments' guidelines for making arrests without a warrant, as prescribed by 10 U.S.C. 1585a, 4027, 7480, and 9027. Authorizations issued by military magistrates under the UCMJ may not be used as a substitute for Federal arrest warrant requirements.

(vii) The foregoing authorization to DoD law enforcement personnel to arrest persons subject to 18 U.S.C. chapter 212, for violations of the Act is not intended as a limitation upon the authority of other Federal law enforcement officers to effect arrests when authorized to do so. (e.g., see 18 U.S.C. 3052 authorizing agents of the Federal Bureau of Investigation to make arrests ''for any felony cognizable under the laws of the United States, 21 U.S.C. 878(a)(3) for the same authority for Drug Enforcement Administration agents, and 18 U.S.C. 3053 for the same authority for U.S. Marshals and their deputies.)

(5) *Temporary Detention.* (i) The Commander of a Combatant Command, or designee, may order the temporary detention of a person, within the Commander's area of responsibility outside the United States, who is arrested or charged with a violation of the Act. The Commander of the Combatant Command, or designee, may determine that a person arrested need not be held in custody pending the commencement of the initial proceedings required by section 3265 of the Act and paragraph (d) of this section. The Commander of the Combatant Command may designate those component commanders or DCO commanders who are also authorized to order the temporary detention of a person, within the commanding officer's area of responsibility outside the United States, who is arrested or charged with a violation of the Act.

(ii) A person arrested may be temporarily detained in military detention facilities for a reasonable period, in accordance with regulations of the Military Departments and subject to the following:

(A) Temporary detention should be ordered only when a serious risk is believed to exist that the person shall flee and not appear, as required, for any pretrial investigation, pretrial hearing or trial proceedings, or the person may engage in serious criminal misconduct (e.g., the intimidation of witnesses or other obstructions of justice, causing injury to others, or committing other offenses that pose a threat to the safety of the community or to the national security of the United States). The decision as to whether temporary detention is appropriate shall be made on a case-by-case basis. 18 U.S.C. 3142 provides additional guidance regarding conditions on release and factors to be considered.

(B) A person arrested or charged with a violation of the Act who is to be detained temporarily shall, to the extent practicable, be detained in areas that separate them from sentenced military prisoners and members of the Armed Forces who are in pretrial confinement pending trial by courts-martial.

(C) Separate temporary detention areas shall be used for male and female detainees.

(D) Generally, juveniles should not be ordered into temporary detention. However, should circumstances warrant temporary detention, the conditions of such temporary detention must, at a minimum, meet the following requirements: Juveniles alleged to be delinquent shall not be detained or confined in any institution or facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges; insofar as possible, alleged juvenile delinquents shall be kept separate from adjudicated delinquents; and every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, and medical care, including necessary psychiatric, psychological, or other care and treatment. Appointment of a guardian ad litem may be required under 18 U.S.C. 5034 to represent the interests of the juvenile when the juvenile's parents are not present or when the parents' interests may be adverse to that of the juvenile.

(iii) Persons arrested or charged with a violation of the Act, upon being ordered into temporary detention and processed into the detention facility, shall, as part of the processing procedures, be required to provide the location address of their last U.S. residence as part of the routine booking questions securing ''biographical data necessary to complete booking or pretrial services.'' See *United States* v. *D'Anjou,* 16 F.3d 604 (4th Cir.1993). This information shall be recorded in the detention documents and made available to the DCO's Office of the Staff Judge Advocate. This information shall be forwarded with other case file information, including affidavits in support of probable cause supporting the arrest and detention, to the DSS/DOJ. The information is provided so that the DSS/DOJ may make appropriate preliminary decisions about venue. See paragraph (b)(2) of this section.

(A) Notice of the temporary detention of any person for a violation of the Act shall be forwarded through command channels, without unnecessary delay, to the Combatant Commander, who shall advise the General Counsel of the Department of Defense, as the representative of the Secretary of Defense, of all such detentions. At the discretion of the General Counsel of the Department of Defense, other agencies and organizations (such as the Legal

Counsel to the Chairman of the Joint Chiefs of Staff and Secretary of the Military Department that sponsored the person into the foreign country) shall be informed, as appropriate.

(B) Such notice shall include a summary of the charges, facts and circumstances surrounding the offenses, information regarding any applicable SOFA or other international agreements affecting jurisdiction in the case, and the reasons warranting temporary detention.

(iv) If military command authorities at the military installation outside the United States intend to request a person's detention by order of the Federal Magistrate Judge, the military representative assigned to the case shall gather the necessary information setting forth the reasons in support of a motion to be brought by the attorney representing the government at the initial proceeding conducted pursuant to section 3265 of the Act.

(v) This part is not intended to eliminate or reduce existing obligations or authorities to detain persons in foreign countries as required or permitted by agreements with host countries. See generally, *United States* v. *Murphy,* 18 M.J. 220 (CMA 1984).

(6) *Custody and Transport of Persons While in Temporary Detention.* (i) The Department of Defense may only take custody of and transport the person as specifically set forth in the Act. This is limited to delivery as soon as practicable to the custody of U.S. civilian law enforcement authorities for removal to the United States for judicial proceedings; delivery to appropriate authorities of the foreign country in which the person is alleged to have committed the violation of section 3261(a) of the Act in accordance with section 3263; or, upon a determination by the Secretary of Defense, or the Secretary's designee, that military necessity requires it, removal to the nearest U.S. military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in 3265(a) of the Act.

(ii) Responsibility for a detained person's local transportation, escort, and custody requirements remains with the command that placed the person in temporary detention for a violation of section 3261(a) of the Act. This responsibility includes:

(A) Attendance at official proceedings and other required health and welfare appointments (e.g., appointments with counsel, medical and dental appointments, etc.).

(B) Delivery to host nation officials under section 3263 of the Act.

(C) Attendance at Initial Proceedings conducted under section 3265 of the Act.

(D) Delivery under the Act to the custody of U.S. civilian law enforcement authorities for removal to the United States.

(iii) A person who requires the continued exercise of custody and transportation to appointments and locations away from the detention facility, including delivery of the person to host nation officials under section 3263 of the Act, may be transferred under the custody of command authorities or those law enforcement officers authorized to make arrests in paragraphs (b)(4)(iv) and (b)(4)(v) of this section. Transportation of a detainee outside an installation shall be coordinated with the host nation's local law enforcement, as appropriate and in accordance with recognized practices.

(iv) Military authorities retain responsibility for the custody and transportation of a person arrested or charged with a violation of the Act who is to be removed from one military installation outside the United States to another military installation outside the United States, including when the person is transferred under the provisions of section 3264(b)(5) of the Act. Unless otherwise agreed to between the sending and receiving commands, it shall be the responsibility of the sending command to make arrangements for the person's transportation and custody during the transport or transfer to the receiving command.

(v) In coordination with appropriate host nation authorities, U.S. civilian law enforcement authorities shall be responsible for taking custody of a person arrested or charged with a violation of the Act and for the removal of that person to the United States for any pretrial or trial proceedings. DoD officials shall consult with the DSS/DOJ to determine which civilian law enforcement authority (i.e., U.S. Marshals Service, Federal Bureau of Investigation, Drug Enforcement Agency, or other Federal agency) shall dispatch an officer to the overseas' detention facility to assume custody of the person for removal to the United States. Until custody of the person is delivered to such U.S. civilian law enforcement authorities, military authorities retain responsibility for the custody and transportation of the person arrested or charged with a violation of the Act, to include transportation within the host nation to help facilitate the removal of the person to the United States under the Act.

(7) *Release From Temporary Detention.* When a person subject to the Act has been placed in temporary detention, in the absence of a Criminal Complaint or Indictment pursuant to the Federal Rules of Criminal Procedure, only the Commander who initially ordered detention, or a superior Commander, or a Federal Magistrate Judge, may order the release of the detained person. If a Criminal Complaint or Indictment exists, or if a Federal Magistrate Judge orders the person detained, only a Federal Magistrate Judge may order the release of the person detained. If a Federal Magistrate Judge orders the person temporarily detained to be released from detention, the Commander who ordered detention, or a superior Commander, shall cause the person to be released. When a person is released from detention under this provision, the Commander shall implement, to the extent practicable within the commander's authority, any conditions on liberty directed in the Federal Magistrate Judge's order. When the commander who independently ordered the person's temporary detention without reliance on a Federal Magistrate Judge's order, or a superior commander, orders a person's release before a Federal Magistrate Judge is assigned to review the matter, the commander may, within the commander's authority, place reasonable conditions upon the person's release from detention.

(i) A person's failure to obey the conditions placed on his or her release from detention, in addition to subjecting that person to the commander's, or Federal Magistrate Judge's order to be returned to detention, may consistent with the commander's authority and applicable policy, laws, and regulations, subject the person to potential criminal sanctions, or to administrative procedures leading to a loss of command sponsorship to the foreign country, as well as the possibility of additional disciplinary or adverse action.

(ii) A copy of all orders issued by a Federal Magistrate Judge concerning initial proceedings, detention, conditions on liberty, and removal to the United States shall promptly be provided to the Commander of the Combatant Command concerned and the Commander of the detention facility at which the person is being held in temporary detention.

(8) *Delivery of Persons to Host Nation Authorities.* (i) Persons arrested may be delivered to the appropriate authorities of the foreign country in which the person is alleged to have violated section 3261(a) of the Act, when:

(A) Authorities of a foreign country request that the person be delivered for

trial because the conduct is also a violation of that foreign country's laws, and

(B) Delivery of the person is authorized or required by treaty or another international agreement to which the United States is a party.

(ii) Coast Guard personnel authorized to make arrests pursuant to paragraph (b)(4)(v) of this section are also authorized to deliver persons to foreign country authorities, as provided in section 3263 of the Act.

(iii) Section 3263(b) of the Act calls upon the Secretary of Defense, in consultation with the Secretary of State, to determine which officials of a foreign country constitute appropriate authorities to which persons subject to the Act may be delivered. For purposes of the Act, those authorities are the same foreign country law enforcement authorities as are customarily involved in matters involving foreign criminal jurisdiction under an applicable SOFA or other international agreement or arrangement between the United States and the foreign country.

(iv) No action may be taken under this part with a view toward the prosecution of a person for a violation of the Act if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense(s), except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity). See section 3261(b) of the Act. Requests for an exception shall be written and forwarded to the Combatant Commander. The Combatant Commander shall forward the request to the General Counsel of the Department of Defense, as representative for the Secretary of Defense, for review and transmittal to the Attorney General of the United States. At the discretion of the General Counsel of the Department of Defense, other agencies and organizations (such as the Legal Counsel to the Chairman of the Joint Chiefs of Staff and the Secretary of the Military Department that sponsored the person into the foreign country) shall be informed, as appropriate.

(v) Except for persons to be delivered to a foreign country, and subject to the limitations of section 3264 of the Act and paragraph (e)(5) of this section, persons arrested for conduct in violation of the Act shall, upon the issuance of a removal order by a Federal Magistrate Judge under section 3264(b) of the Act, be delivered, as soon as practicable, to the custody of U.S. civilian law enforcement authorities. See paragraph (b)(6)(iv) of this section.

(c) *Representation.* (1) *Civilian Defense Counsel.* (i) Civilian defense counsel representation shall not be at the expense of the Department of Defense or the Military Departments.

(ii) The Act contemplates that a person arrested or charged with a violation of the Act shall be represented by a civilian attorney licensed to practice law in the United States. However, it is also recognized that in several host nations where there has been a long-standing military presence, qualified civilian attorneys (including lawyers who are U.S. citizens) have established law practices in these host nations to assist assigned U.S. personnel and to represent service members in courts-martial, or before host nation courts. With the consent of the person arrested or charged with a violation of the Act who wishes to remain in the foreign country, these lawyers can provide adequate representation for the limited purpose of any initial proceedings required by the Act. When the person entitled to an attorney or requests counsel, staff judge advocates at such locations should assemble a list of local civilian attorneys for the person's consideration. The list shall contain a disclaimer stating that no endorsement by the United States government or the command is expressed or implied by the presence of an attorney's name on the list.

(A) To the extent practicable, military authorities shall establish procedures by which persons arrested or charged with a violation of the Act may seek the assistance of civilian defense counsel by telephone. Consultation with such civilian counsel shall be in private and protected by the attorney-client privilege.

(B) Civilian defense counsel, at no expense to the Department of Defense, shall be afforded the opportunity to participate personally in any initial proceedings required by the Act that are conducted outside the United States. When civilian defense counsel cannot reasonably arrange to be personally present for such representation, alternative arrangements shall be made for counsel's participation by telephone or by such other means that enables voice communication among the participants.

(C) When at least one participant cannot arrange to meet at the location outside the United States where initial proceedings required by the Act are to be conducted, whenever possible arrangements should be made to conduct the proceedings by video teleconference or similar means. Command video teleconference communication systems should be used for this purpose, if resources permit, and if such systems are not otherwise unavailable due to military mission requirements. When these capabilities are not reasonably available, the proceedings shall be conducted by telephone or such other means that enables voice communication among the participants. See section 3265 of the Act.

(D) The above provisions regarding the use of teleconference communication systems apply to any detention proceedings that are conducted outside the United States under section 3265(b) of the Act.

(E) Civilian defense counsel practicing in host nations do not gain Department of Defense sponsorship, nor any diplomatic status, as a result of their role as defense counsel. To the extent practicable, notice to this effect shall be provided to the civilian defense counsel when the civilian defense counsel's identity is made known to appropriate military authorities.

(2) *Qualified Military Counsel.* (i) Counsel representation also includes qualified military counsel that the Judge Advocate General of the Military Department concerned determines is reasonably available for the purpose of providing limited representation at initial proceedings required by the Act and conducted outside the United States. By agreement with the Department of Homeland Security, Coast Guard commands and activities located outside the United States shall seek to establish local agreements with military commands for qualified military counsel from the Military Departments to provide similar limited representation in cases arising within the Coast Guard. The Secretaries of the Military Departments shall establish regulations governing representation by qualified military counsel. These regulations, at a minimum, shall require that the command's Staff Judge Advocate:

(ii) Prepare, update as necessary, and make available to a Federal Magistrate Judge upon request, a list of qualified military counsel who are determined to be available for the purpose of providing limited representation at initial proceedings.

(iii) Ensure that the person arrested or charged under the Act is informed that any qualified military counsel shall be made available only for the limited purpose of representing that person in any initial proceedings that are to be conducted outside the United States, and that such representation does not extend to further legal proceedings that may occur either in a foreign country or the United States. The person arrested

or charged shall also be required, in writing, to acknowledge the limited scope of qualified military counsel's representation and therein waive that military counsel's further representation in any subsequent legal proceedings conducted within a foreign country or the United States. The ''Acknowledgement of Limited Representation,'' at appendix A of this part, may be used for this purpose. A copy of the ''Acknowledgement of Limited Representation'' shall be provided to the person arrested or charged under the Act, as well as to the qualified military counsel. The original acknowledgement shall be kept on file in the DCO's Office of the Staff Judge Advocate.

(iv) Provide available information that would assist the Federal Magistrate Judge make a determination that qualified civilian counsel are unavailable, and that the person arrested or charged under the Act is unable financially to retain civilian defense counsel, before a qualified military counsel who has been made available is assigned to provide limited representation. See Analysis and Discussion of Section 3265(c), Report Accompanying the Act.

(3) *Union Representation.* Agency law enforcement officials shall comply with applicable Federal civilian employee rights and entitlements, if any, regarding collective bargaining unit representation under 5 U.S.C. chapter 71, during pretrial questioning and temporary detention procedures under this part.

(4) *Military Representative.* (i) To assist law enforcement officers and the U.S. Attorney's representative assigned to a case, a judge advocate, legal officer, or civilian attorney-advisor may be appointed as a military representative to represent the interests of the United States. As appropriate, the military representative may be appointed as a Special Assistant U.S. Attorney. The military representative shall be responsible for assisting the command, law enforcement, and U.S. Attorney representatives during pretrial matters, initial proceedings, and other procedures required by the Act and this part. These responsibilities include assisting the U.S. Attorney representative determine whether continued detention is warranted, and to provide information to the presiding Federal Magistrate Judge considering the following:

(ii) If there is probable cause to believe that a violation of the Act has been committed and that the person arrested or charged has committed it,

(iii) If the person being temporarily detained should be kept in detention or released from detention, and, if released, whether any conditions practicable and reasonable under the circumstances, should be imposed.

(d) *Initial Proceedings.* (1) A person arrested for or charged with a violation of the Act may be entitled to an initial appearance before a judge and/or a detention hearing (collectively, the ''initial proceedings''). The initial proceedings are intended to meet the requirements of the Federal Rules of Criminal Procedure. The initial proceedings are not required when the person under investigation for violating the Act has not been arrested or temporarily detained by U.S. military authorities, or the person's arrest or temporary detention by U.S. law enforcement authorities occurs after the person ceases to accompany or be employed by the Armed Forces outside the United States, or the arrest or detention takes place within the United States.

(2) The initial proceedings to be conducted pursuant to the Act and this part shall not be initiated for a person delivered to foreign country authorities and against whom the foreign country is prosecuting or has prosecuted the person for the conduct constituting such offense, except when the Attorney General or Deputy Attorney General (or a person acting in either such capacity) has approved an exception that would allow for prosecution in the United States may initial proceedings under the Act be conducted, under these circumstances. Requests for approval of such an exception shall be forwarded through the Commander of the Combatant Command to the General Counsel of the Department of Defense, in accordance with paragraph (b)(8)(iv) of this section.

(3) Initial proceedings required by the Act and this part shall be conducted, without unnecessary delay. In accordance with the U.S. Supreme Court decision in *County of Riverside* v. *McLaughlin*, 500 U.S. 44 (1991), the initial appearance shall be conducted within 48 hours of the arrest. The initial proceedings required by the Act shall be conducted when:

(i) The person arrested has not been delivered to foreign country authorities under the provisions of section 3263 of the Act; or

(ii) The foreign country authorities having custody of the person delivers the person to U.S. military authorities without first prosecuting the person for such conduct as an offense under the laws of that foreign country.

(4) A Federal Magistrate Judge shall preside over the initial proceedings that are required by the Act and this part. The proceedings should be conducted from the United States using video teleconference methods, if practicable, and with all parties to the proceedings participating. In the event that there is no video teleconference capability, or the video teleconference capability is unavailable due to military requirements or operations, the parties to the proceeding shall, at a minimum, be placed in contact by telephone.

(5) Initial proceedings conducted pursuant to the Act and this part shall include the requirement for the person's initial appearance under the Federal Rules of Criminal Procedure. The Federal Magistrate Judge shall determine whether probable cause exists to believe that an offense under section 3261(a) of the Act has been committed and that the identified person committed it. This determination is intended to meet the due process requirements to which the person is entitled, as determined by the U.S. Supreme Court in *Gerstein* v. *Pugh*, 420 U.S. 103 (1975).

(6) Initial proceedings shall also include a detention hearing where required under 18 U.S.C. 3142 and the Federal Rules of Criminal Procedure. A detention hearing may be required when:

(i) The person arrested or charged with a violation of the Act has been placed in temporary detention and the intent is to request continued detention; or

(ii) The United States seeks to detain a person arrested or charged with a violation of the Act who has not previously been detained.

(7) A detention hearing shall be conducted by a Federal Magistrate Judge. When the person arrested or charged requests, the detention hearing be conducted while the person remains outside the United States, detention hearing shall be conducted by the same Federal Magistrate Judge presiding over the initial proceeding and shall be conducted by telephone or other means that allow for voice communication among the participants, including the person's defense counsel. If the person does not so request, or if the Federal Magistrate Judge so orders, the detention hearing shall be held in the United States after the removal of the person to the United States.

(8) In the event that the Federal Magistrate Judge orders the person's release prior to trial, and further directs the person's presence in the district in which the trial is to take place, the U.S. Attorney Office's representative responsible for prosecuting the case shall inform the military representative

and the DCO's Office of the Staff Judge Advocate.

(9) Under circumstances where the person suspected of committing an offense in violation of the Act has never been detained or an initial proceeding conducted, the presumption is that a trial date shall be established at which the defendant would be ordered to appear. Such an order would constitute an order under section 3264(b)(4) of the Act that ''otherwise orders the person to be removed.'' The person's failure to appear as ordered shall be addressed by the Court as with any other failure to comply with a valid court order.

(10) The DCO's Office of the Staff Judge Advocate shall assist in arranging for the conduct of initial proceedings required by the Act and this part, and shall provide a military representative to assist the U.S. Attorney's Office representative in presenting the information for the Federal Magistrate Judge's review. The military representative shall also provide any administrative assistance the Federal Magistrate Judge requires at the location outside the United States where the proceedings shall be conducted.

(e) *Removal of Persons to the United States or Other Countries.* (1) In accordance with the limitation established by section 3264 of the Act, military authorities shall not remove, to the United States or any other foreign country, a person suspected of violating section 3261(a) of the Act, except when:

(i) The person's removal is to another foreign country in which the person is believed to have committed a violation of section 3261(a) of the Act; or

(ii) The person is to be delivered, upon request, to authorities of a foreign country under section 3263 of the Act and paragraph (b)(8) of this section; or

(iii) The person is arrested or charged with a violation of the Act and the person is entitled to, and does not waive, a preliminary examination under Federal Rule of Criminal Procedure 5.1, in which case the person shall be removed to the U.S. for such examination; or

(iv) The person's removal is ordered by a Federal Magistrate Judge. See paragraph (e)(2) of this section; or

(v) The Secretary of Defense, or the Secretary's designee, directs the person be removed, as provided in section 3264(b)(5) of the Act and paragraph (e)(3) of this section.

(2) *Removal By Order of a Federal Magistrate Judge.* Military authorities may remove a person suspected of violating section 3261(a) of the Act to the United States, when:

(i) A Federal Magistrate Judge orders that the person be removed to the United States to be present at a detention hearing; or

(ii) A Federal Magistrate Judge orders the detention of the person prior to trial (See 18 U.S.C. 3142(e), in which case the person shall be promptly removed to the United States for such detention; or

(iii) A Federal Magistrate Judge otherwise orders the person be removed to the United States.

(3) *Removal By Direction of the Secretary of Defense or Designee.* The Secretary of Defense, or designee, may order a person's removal from a foreign country within the Combatant Command's geographic area of responsibility when, in his sole discretion, such removal is required by military necessity. See section 3264(b)(5) of the Act. Removal based on military necessity may be authorized in order to take into account any limiting factors that may result from military operations, as well as the capabilities and conditions associated with a specific location.

(i) When the Secretary of Defense, or designee, determines that a person arrested or charged with a violation of the Act should be removed from a foreign country, the person shall be removed to the nearest U.S. military installation outside the United States where the limiting conditions requiring such a removal no longer apply, and where there are available facilities and adequate resources to temporarily detain the person and conduct the initial proceedings required by the Act and this part.

(ii) The relocation of a person under this paragraph does not authorize the further removal of the person to the United States, unless that further removal is authorized by an order issued by a Federal Magistrate Judge under paragraph (e)(2) of this section.

(iii) *Delegation.* The Commander of a Combatant Command, and the Commander's principal assistant, are delegated authority to make the determination, based on the criteria stated in paragraph (e)(3) of this section, that a person arrested or charged with a violation of the Act shall be removed from a foreign country under section 3264(b)(5) of the Act and this part. Further delegation is authorized, but the delegation of authority is limited to a subordinate commander within the command who is designated as a general court-martial convening authority under the UCMJ.

(4) A person who is removed to the United States under the provisions of the Act and this part and who is thereafter released from detention, and otherwise at liberty to return to the location outside the United States from which he or she was were removed, shall be subject to any requirements imposed by a Federal District Court of competent jurisdiction.

(5) Where a person has been removed to the United States for a detention hearing or other judicial proceeding and a Federal Magistrate Judge orders the person's release and permits the person to return to the overseas location, the Department of Defense (including the Military Department originally sponsoring the person to be employed or to accompany the Armed Forces outside the United States) shall not be responsible for the expenses associated with the return of the person to the overseas location, or the person's subsequent return travel to the United States for further court proceedings that may be required.

Appendix A To Part 153—Guidelines

(a) Civilians employed by the Armed Forces outside the United States who commit felony offenses while outside the U.S. are subject to U.S. criminal jurisdiction under the Act, and shall be held accountable for their actions, as appropriate.

(b) Civilians accompanying the Armed Forces outside the United States who commit felony offenses while outside the U.S. are subject to U.S. criminal jurisdiction under the Act, and shall be held accountable for their actions, as appropriate.

(c) Former members of the Armed Forces who commit felony offenses while serving as a member of the Armed Forces outside the U.S., but who ceased to be subject to UCMJ court-martial jurisdiction without having been tried by court-martial for such offenses are subject to U.S. criminal jurisdiction under the Act and shall be held accountable for their actions, as appropriate.

(d) The procedures of this part and DoD actions to implement the Act shall comply with applicable Status of Forces Agreements, and other international agreements affecting relationships and activities between the respective host nation countries and the U.S. Armed Forces. These procedures may be employed outside the United States only if the foreign country concerned has been briefed or is otherwise aware of the Act and has not interposed an objection to the application of these procedures. Such awareness may come in various forms, including but not limited to Status of Forces Agreements containing relevant language, Diplomatic Notes or other acknowledgements of briefings, or case-by-case arrangements, agreements, or understandings with appropriate host nation officials.

(e) Consistent with the long-standing policy of maximizing U.S. jurisdiction over its citizens, the Act and this part provide a mechanism for furthering this objective by closing a jurisdictional gap in U.S. law and thereby permitting the criminal prosecution of covered persons for offenses committed outside the United States. In so doing, the Act and this part provide, in appropriate cases, an alternative to a host nation's exercise of its criminal jurisdiction should

the conduct that violates U.S. law also violate the law of the host nation, as well as a means of prosecuting covered persons for crimes committed in areas in which there is no effective host nation criminal justice system.

(f) In addition to the limitations imposed upon prosecutions by section 3261(b) of the Act, the Act and these procedures should be reserved generally for serious misconduct for which administrative or disciplinary remedies are determined to be inadequate or inappropriate. Because of the practical constraints and limitations on the resources available to bring these cases to successful prosecution in the United States, initiation of action under this part would not generally be warranted unless serious misconduct were involved.

(g) The procedures set out in the Act and this part do not apply to cases in which the return of fugitive offenders is sought through extradition and similar proceedings, nor are extradition procedures applicable to cases under the Act.

Appendix B to Part 153—Acknowledgment of Limited Legal Representation (Sample)

1. I, _____, have been named as a suspect or defendant in a matter to which I have been advised is subject to the jurisdiction of the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261, et. seq.); hereinafter referred to as ''the Act''. I have also been informed that certain initial proceedings under 18 U.S.C. 3265 may be required under this Act, for which I am entitled to be represented by legal counsel.

2. I acknowledge and understand that the appointment of military counsel for the limited purpose of legal representation in proceedings conducted pursuant to the Act is dependent upon my being unable to retain civilian defense counsel representation for such proceedings, due to my indigent status, and that qualified military defense counsel has been made available.

3. Pursuant to the Act, _____, a Federal Magistrate Judge, has issued the attached Order and has directed that that military counsel be made available:

____ For the limited purpose of representing me at an initial proceeding to be conducted outside the United States pursuant to 18 U.S.C. 3265,

____ For the limited purpose of representing me in an initial detention hearing to be conducted outside the United States pursuant to 18 U.S.C. 3265(b),

4. _____, military counsel, has been made available in accordance with Department of Defense Instruction 5525.bb, and as directed by the attached Order of a Federal Magistrate Judge.

5. I (do) (do not) wish to be represented by _____, military counsel _____ (Initials).

6. I understand that the legal representation of _____, military counsel, is limited to:

a. Representation at the initial proceedings conducted outside the United States pursuant to 18 U.S.C. 3265. _____ (Initials)

b. The initial detention hearing to be conducted outside the United States pursuant to the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261, et. seq.). _____ (Initials)

c. Other proceedings (Specify): _____. _____ (Initials)

_____

Signature of Person To Be Represented By Military Counsel _____

Signature of Witness*

Attachment:

Federal Magistrate Judge Order

(***Note:** The witness must be a person other than the defense counsel to be made available for this limited legal representation.)

Dated: December 2, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5001–06–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU57

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D–2007–08 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2007–08 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish taking regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D–2006–07 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on March 31, 2007. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 24, 2006. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 16, 2006–March 21, 2006. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

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

- E-mail: *Subsistence@fws.gov.*
- Fax: 907–786–3898.
- Mail: Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council, Saxman, February 27, 2006
Region 2—Southcentral Regional Council, Anchorage, March 14, 2006
Region 3—Kodiak/Aleutians Regional Council, King Cove, March 21, 2006
Region 4—Bristol Bay Regional Council, Naknek, February 20, 2006
Region 5—Yukon-Kuskokwim Delta Regional Council, Emmonak, February 23, 2006
Region 6—Western Interior Regional Council, Koyukuk, March 7, 2006
Region 7—Seward Peninsula Regional Council, Nome, February 23, 2006
Region 8—Northwest Arctic Regional Council, Kotzebue, March 7, 2006
Region 9—Eastern Interior Regional Council, Venetie, February 28, 2006
Region 10—North Slope Regional Council, Barrow, February 16, 2006

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change

locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments (preferred method): Please submit electronic comments (proposals) and other data to *Subsistence@fws.gov*. Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

During May 2006, we will compile and distribute for additional public review the written proposals to change Subpart D fishing regulations and in Subpart C the customary and traditional use determinations. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on June 30, 2006.

We will hold a second series of Regional Council meetings in September and October 2006, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Board will discuss and evaluate proposed changes to the subsistence taking of fish and shellfish regulations during a public meeting to be held in Anchorage, January 2007. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note: The Board will not consider proposals for changes relating to hunting or trapping regulations at this time. The Board will be calling for proposed changes to those regulations in August 2006.

The Board's review of your comments and fish and shellfish proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, Subpart C, and §§ __.25, __.27, or __.28, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence fishing seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). Consistent with Subparts A, B, and C of these regulations, as revised October 14, 2004 (69 FR 60957), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this proposed rule and agree with its substance. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this proposed rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2004) and 50 CFR 100.11 (2004), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in January 2007.

Proposed Changes from 2006–07 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ __.24 of Subpart C) are also subject to an annual review process

providing for modification each year. The text of the 2005B06 Subparts C and D final rule, as modified by Federal Subsistence Board actions during their January 10–12, 2006, public meeting, serves as the foundation for the 2007B08 Subparts C and D proposed rule. Please see the 2005B06 Subparts C and D final rule published in the March 21, 2005, (70 FR 13377) issue of the **Federal Register**. The modifications for 2006–07 made by the Board during their January 2006 meeting may be viewed on the Office of Subsistence Management Web site at *http://www.alaska.fws.gov/asm/home.html.* The regulations contained in this proposed rule would take effect on April 1, 2007, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

A section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with section 810. This evaluation supports the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold for notice and hearings under ANILCA section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and assigned OMB control number 1018–0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects

This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [**Note:** $3.00 per pound is much higher than the current commercial value for salmon] and $0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, USDA—Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2007–08 regulatory year. The text of the amendments would be the same as the final rule for the 2005–06 regulatory year (70 FR 13377) as modified by Federal Subsistence Board actions January 10–12, 2006.

Dated: December 5, 2005.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 05–24353 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–55–P; 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[EPA–HQ–OW–2005–0523, FRL—8013–9]

National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Peak Wet Weather Discharges From Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: Today, EPA is inviting comment on a draft policy regarding NPDES permit requirements for peak wet weather discharges from publicly owned treatment works (POTW) treatment plants serving separate sanitary sewer collection systems. Regulatory agencies, municipal operators of wastewater facilities, and representatives of environmental advocacy groups have expressed uncertainty about the appropriate regulatory interpretation for such situations. Today's draft policy describes both an interpretation of regulations, as well as guidance to implement such an interpretation. EPA's intention is to ensure that NPDES requirements be developed and applied in a nationally-consistent manner that improves the capacity, management, operation and maintenance of POTW treatment plants and separate sanitary sewer collection systems and protects human health and the environment.

DATES: Comments must be received or postmarked on or before January 23, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2005–0523, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2005–0523. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.
- Mail: Send an original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2005–0523.
- Hand Delivery: Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2005–0523. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2005–0523. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or through e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identify or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket Facility 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 Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For questions about the substance of this draft policy, contact Kevin Weiss (e-mail at *weiss.kevin@epa.gov* or phone at (202) 564–0742) at Water Permits Division, Office of Wastewater Management, U.S. Environmental Protection Agency (Mailcode 4203M), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. Submitting CBI

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code or Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may copy 266 pages per day free of charge. Beginning with page 267, you will be charged $0.15 per page plus an administrative fee of $25.00.

Acronyms Used

CSO Combined sewer overflow.
EPA Environmental Protection Agency.
I/I infiltration and inflow.
NPDES National Pollutant Discharge Elimination System.
POTW Publicly owned treatment works.
SSO Sanitary sewer overflow (this does not include CSOs).

II. Background

EPA has received requests from many stakeholders to clarify the NPDES requirements for discharges from POTW treatment plants serving separate sanitary sewers where peak wet weather flow is routed around biological treatment units and then blended with the effluent from the biological units prior to discharge and where the final discharge meets permit effluent limitations based on the secondary treatment regulation (40 CFR Part 133) or any more stringent limitations necessary to attain water quality standards. On November 7, 2003, EPA requested public comment on a proposed policy addressing this issue. Under the proposed interpretation in the November 7, 2003 proposed policy, a wet weather diversion around biological treatment units that was blended with the wastewaters from the biological units prior to discharge would not have been considered to constitute a prohibited bypass if the six criteria specified in the November 7, 2003 proposed policy were met.

EPA received significant public comment on the proposed policy, including over 98,000 comments opposing the policy due to concerns about human health risks. On May 19, 2005, EPA indicated that after consideration of the comments, the Agency had no intention of finalizing the 2003 proposal. On July 26, 2005, Congress enacted the FY 2006 Department of the Interior, Environment, and Related Agencies Appropriations Act (P.L. 109–54). Section 203 of the Appropriations Act provides that none of the funds made available in the Act could be used to finalize, issue, implement or enforce the November 7, 2003 proposed blending policy.

In October of 2005, the Natural Resources Defense Council (NRDC) and the National Association of Clean Water Agencies (NACWA) provided EPA with their joint proposal recommending further action that the Agency should take regarding the blending issue. The NRDC/NACWA recommended approach includes an interpretation of the bypass regulation that is significantly different from the November 7, 2003 proposal, in that it would clarify that the bypass provision would apply, in all instances, to wet weather diversions at POTW treatment plants serving separate

sanitary sewers. Today's draft policy invites comment on this interpretation, as well as the recommended guidance to implement the interpretation, and reflects the approach of the NRDC/NACWA recommendation.

III. General Information

A. Draft Policy

If the draft policy is made final, the following statement will be announced by EPA.

Draft Memorandum

From: Benjamin H. Grumbles, Assistant Administrator, Office of Water.

To: Regional Administrators, Region I-X, Granta Y. Nakayama, Assistant Administrator, Office of Enforcement and Compliance Assurance.

Subject: National Pollutant Discharge Elimination System Permit Requirements for Peak Wet Weather Discharges from Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems

Introduction

Many municipalities currently have situations in which high peak influent flows during significant wet weather events exceed the treatment capacity of existing secondary treatment units. In these situations, wet weather flows are sometimes diverted around secondary treatment units and then either recombined with flows from the secondary treatment units or discharged directly into waterways from the treatment plant. This policy only applies to peak wet weather diversions around secondary treatment units that occur at publicly owned treatment works (POTW) treatment plants serving separate sanitary sewer systems that are recombined with flow from the secondary treatment unit. The process by which wet weather diversions can be approved in National Pollutant Discharge Elimination System (NPDES) permits for POTW treatment plants serving combined sewer systems was previously outlined in the 1994 CSO Policy, 59 FR 18,693–18,694 (April 19, 1994). Nothing in this policy addresses the requirements for POTW treatment plants serving combined sewer systems.

While EPA recognizes that peak wet weather flow diversions around secondary treatment units at POTW treatment plants serving separate sanitary sewer conveyance systems may be necessary in some circumstances to prevent temporary loss of function of secondary treatment units, the Agency and stakeholders have been concerned for some time that peak wet weather flow diversions could have adverse environmental or public health impacts because of the higher expected pollutant load of diverted flows.

Accordingly, EPA strongly discourages reliance on peak wet weather flow diversions around secondary treatment units as a long-term wet weather management approach at a POTW treatment plant serving separate sanitary sewer conveyance systems and that such diversions should be minimized to the maximum extent feasible taking into account the factors discussed in this policy. EPA anticipates that, over time, the need to undertake peak wet weather flow diversions at POTW treatment plants serving separate sanitary sewer conveyance systems can be eliminated from most systems in a variety of ways, such as by enhancing storage and treatment capacity and reducing sources of peak wet weather flow volume. EPA expects that aggressive efforts by POTW treatment plant operators in consultation with NPDES authorities can lead to dramatic reductions in the volume and duration of peak wet weather flows and can improve the treatment and quality of peak wet weather flow discharges. EPA also believes that the involvement of the general public will improve the assessment of various options to minimize peak wet weather flow diversions.

In recent years there has been substantial confusion regarding the regulatory status of peak wet weather flow diversions around secondary treatment units at POTW treatment plants serving separate sanitary sewer conveyance systems. In some cases, such diversions have been considered a bypass and held to the criteria of the NPDES bypass regulation (40 CFR 122.41(m)). In other cases, diversion scenarios around secondary treatment units at POTW treatment plants have been constructed and permitted at facilities without consideration of the bypass regulation criteria.

In 2003, EPA proposed a policy to clarify the regulatory status of peak wet weather flows that are combined with secondary effluent, a practice known as blending. 68 FR 63,042 (Nov. 7, 2003). In that proposed policy, EPA stated that if certain procedures were followed, peak wet weather flow blending would not be considered a bypass under 40 CFR 122.41(m). The Agency received over 98,000 comments on the proposed policy and on May 19, 2005 indicated that it no longer intended to pursue further action on the proposal.

Applicability of the Bypass Regulation to Blending

This policy provides the Agency's interpretation that the 40 CFR 122.41(m), the bypass regulation, applies to peak wet weather diversions at POTW treatment plants serving separate sanitary sewer conveyance systems that are recombined with flow from the secondary treatment units. If the criteria of 40 CFR 122.41(m)(4)(i)(A)–(C) are met, NPDES authorities can approve peak wet weather flow diversions around secondary treatment units in a NPDES permit for discharges from a POTW treatment plants as an anticipated bypass under 40 CFR 122.41(m)(4)(ii).

This policy:

- Interprets the provisions of 40 CFR 122.41(m)(4) as they apply to peak wet weather flow diversions around secondary treatment units at POTW treatment plants serving separate sanitary sewer systems where the diverted flow is recombined with flow from the secondary treatment units prior to discharge;
- Interprets the term ''no feasible alternatives'' in 40 CFR 122.41(m)(4)(i)(B) as it applies to such peak wet weather flow diversions;
- Does not apply to discharges or overflows prior to the headworks of a POTW treatment plant; dry weather diversions; diversions around primary or tertiary treatment units; or diverted flow that is not recombined with flow from the secondary treatment units prior to discharge;
- Promotes use of measures to provide the highest possible treatment to the greatest possible peak wet weather flow; and
- Promotes reporting and public notification of peak wet weather diversion events.

A combination of approaches can be used to achieve the goals of this policy. These approaches include:

- Ensuring full utilization of available secondary treatment capacity;
- Reducing infiltration and inflow (I/I);
- Maximizing the use of the collection system for storage;
- Providing off-line storage; and
- Providing sufficient secondary treatment capacity.

EPA recognizes that these approaches, alone or in combination, may not be sufficient in some cases to enable a POTW treatment plant to process its peak wet weather flows through its secondary treatment units. In such cases, a POTW treatment plant operator may have no feasible alternative to peak wet weather flow diversions around

secondary treatment units. This policy sets forth a process for determining whether or not such feasible alternatives to peak wet weather flow diversions exist. If the NPDES authority determines that there are no feasible alternatives to peak wet weather flow diversions around secondary treatment units at the treatment plant using the analysis set forth in this policy, then the NPDES authority may approve peak wet weather flow diversions around secondary treatment units at a POTW treatment plant serving separate sanitary sewer conveyance systems as an anticipated bypass in accordance with 40 CFR 122.41(m) in a new or renewed NPDES permit. The only flow that can be approved as an anticipated bypass around secondary treatment units is flow that is anticipated to exceed the peak flow capacity of the secondary treatment unit(s) even after implementation of the feasible technologies and approaches identified via the process outlined in this policy. NPDES authorities should include an implementation schedule in the permit for the feasible technologies and approaches that would need to be implemented and the associated flow volumes. In NPDES permits with such implementation schedules, the approval of any anticipated bypass would be contingent upon the permittee's performance of the implementation schedule. This implementation schedule would be considered a permit condition as opposed to a schedule of compliance under 40 CFR 122.47.

A thoughtful public planning process at the local level is important to minimize or eliminate overflows in the collection system, minimize I/I into the collection system, maximize treatment of all flows, and improve wet weather flow management. EPA recommends that POTW treatment plant operators work with their NPDES authorities and local communities to proactively minimize peak wet weather influent flow volume and improve effluent quality, reduce the frequency and volume of diversion events, and improve the structural integrity and capacity of collection systems and the reliability of POTW treatment plants.

The use of diversions around secondary treatment units at POTW treatment plants serving separate sanitary sewer conveyance systems to manage peak wet weather flows is not necessary in many cases and cannot be approved if feasible alternatives are identified through the analysis described herein. Accordingly, on permit renewal, the presumption by the NPDES authority would be against the utility's continued use of diversions to manage peak wet weather flows. This presumption could be overcome by the POTW treatment plant operator again demonstrating that there are no feasible alternatives to such diversions through updating and resubmission of the utility analysis described in this policy, ensuring that the submission identifies any changes at the facility, progress made in relevant areas, any new circumstances, the timing of ongoing projects or construction, or I/I reduction schedules. Timely permit renewals for facilities that employ peak wet weather diversions around secondary treatment units at the POTW treatment plant should be a priority. Because of the importance of regular analysis of the ongoing need to utilize diversions at a particular facility, NPDES permits for facilities that employ or seek to employ peak wet weather diversions around secondary treatment units at their treatment plant should be timely renewed rather than administratively continued.

The determination of what constitutes a 'peak wet weather event,' during which the use of a peak wet weather diversion may be approved by a NPDES authority as an anticipated bypass, will be a site-specific determination. Certainly, EPA does not expect diversions at POTW treatment plants serving separate sanitary sewer conveyance systems to be used for routine rain events. EPA also cannot reasonably estimate or endorse an 'acceptable' number of anticipated bypasses (e.g., five per year). Such a one-size-fits all approach would not recognize the site-specific nature of peak wet weather diversions and could lead to excessive use of diversions in some communities. Rather, it is EPA's intention through this policy to ensure that POTW treatment plant operators, NPDES authorities, and the general public evaluate what constitutes a peak wet weather event for a POTW treatment plant for which there is no feasible alternative to a peak wet weather diversion, based upon past diversions, opportunities for eliminating or reducing diversions, and future considerations. Where such peak wet weather diversions at a POTW treatment plant cannot be feasibly avoided, additional technologies (*e.g.*, providing supplemental biological or physical/chemical treatment) and approaches should be used to maximize treatment of diverted flows where feasible. EPA does not support the use of peak wet weather diversions around secondary treatment units at POTW treatment plants when the peak flows are largely due to poor (or lack of) collection system maintenance or the lack of investment in or upgrades to treatment capacity.

Under this policy, NPDES authorities and POTW treatment plant operators need to ensure that all flows that will be diverted from the secondary treatment units in peak wet weather events receive a minimum of primary treatment and any supplemental treatment or technology shown feasible using the factors outlined in this policy. All discharges from POTW treatment plants serving separate sanitary sewer conveyance systems must meet effluent limitations, including the 85 percent removal requirement (unless the discharge from the POTW treatment plant meets the requirements of 40 CFR 133.103(d) (less concentrated influent wastewater for separate sanitary sewers)) and other secondary treatment requirements and any more stringent limitations necessary to meet water quality standards. Failure to meet effluent limitations is a permit violation. NPDES authorities should ensure that the facility, including when diverting, does not have the reasonable potential to cause or contribute to non-attainment of any water quality standards.

EPA recognizes that some POTW treatment plants may be implementing technologies more advanced than or supplementary to secondary treatment. The Agency encourages the use and permitting of such technologies (*e.g.*, membrane, tertiary) where they produce a higher quality effluent. In the case where a POTW treatment plant is using, or plans to use, technology that is more effective in baseline pollutant removal than is required to meet secondary treatment-based permit limits, the NPDES authority should take that improved baseline performance into consideration when determining whether peak flow diversions at a POTW treatment plant are approved and under what conditions.

No Feasible Alternatives Analysis Process

An authority's determination as to whether or not there is a feasible alternative to peak wet weather diversions at a POTW treatment plant serving a separate sanitary sewer collection system should be made using the following inputs and criteria, which are based on 40 CFR 122.41(m)(4)(i)(A)–(C) and 40 CFR 122.21(j). At the time of NPDES permit application or NPDES permit renewal:

1. POTW treatment plant operators seeking approval of peak wet weather diversions at a treatment plant as an anticipated bypass should submit a

comprehensive analysis (utility analysis) to the NPDES authority that:

a. Documents current treatment plant design capacity for all treatment units, the maximum flow that can be processed through those units, and the feasibility of increasing such treatment capacity and related costs;

b. Estimates the frequency, duration, and volume of current wet weather diversions, and evaluates alternatives to reduce the frequency, duration, and volume of such occurrences and related costs;

c. Estimates the potential for future peak wet weather diversions based upon information such as predicted weather patterns, population growth, and projected treatment plant and collection system changes (*e.g.*, upgrades, extensions, deterioration) and evaluates options for reducing diversions based on these variables;

d. Assesses existing storage within the collection system or on-site and options for enhanced utilization or expansion (taking into account physical and technological considerations) of storage to reduce the frequency, duration, and volume of peak wet weather diversions, and the related costs;

e. Assesses other ways to reduce peak wet weather flow volumes, such as limiting collection system extensions or slug loadings from indirect dischargers;

f. Evaluates technologies (such as supplemental biological treatment, physical chemical treatment, ballasted flocculation, deep bed filtration, or membrane technology) that are or could be used to provide additional treatment to peak wet weather flows or peak wet weather diversions at the POTW treatment plant and the costs of implementing those technologies;

g. Evaluates the extent to which the permittee is maximizing its ability to reduce I/I throughout the entire collection system (*i.e.*, not only the portions operated by the utility, but also portions operated by any municipal satellite community), including the use of existing legal authorities, potential improvements in the timing or quality of such efforts, and options for obtaining or expanding legal authorities to reduce I/I from satellite collection systems;

h. Evaluates peak flow reductions obtainable through implementation of existing Capacity, Management, Operations, and Maintenance (C–MOM) programs and potential improvements in the timing or enhancement of those programs and the related costs; or, if no such program exists, reductions obtainable through the development and implementation of a C–MOM program and the related costs;

i. Assesses the community's ability to fund the peak wet weather flow improvements discussed in the utility analysis, taking into consideration: current sewer rates, planned rate increases, and the costs, schedules, anticipated financial impacts to the community of other planned water and wastewater expenditures, and other relevant factors impacting the utility's rate base, using as a guide EPA's CSO Guidance for Financial Capability Assessment and Schedule Development, EPA 832–B–97–004;

j. Proposes a protocol for monitoring the recombined flow at least once daily during diversions for all parameters for which the POTW treatment plant has daily effluent limitations or other requirements (*e.g.*, monitoring only requirements) and ensures appropriate representative monitoring for other monitoring requirements of the permit, the total volume diverted, and the duration of the peak wet weather diversion event; and

k. Projects the POTW treatment plant effluent improvements and other improvements in collection system and treatment plant performance that could be expected should the technologies, practices, and/or other measures discussed in the utility analysis be implemented.

2. For any POTW treatment plant operator seeking approval in an NPDES permit for an anticipated bypass under this policy, the NPDES authority should:

a. Make the utility analysis publicly available with other draft permit information for public review and comment;

b. Review and evaluate the utility analysis and require measures to be undertaken to provide the highest possible treatment to the greatest possible peak wet weather flow, taking into account the full range of economic, environmental, public health, and engineering considerations;

c. Review and approve or deny the peak wet weather diversions based on the determination of whether there are feasible alternatives to those diversions using the analysis set forth in this policy;

d. Include a permit provision recognizing any approved peak wet weather diversions as anticipated bypasses, and specify the conditions for allowing such diversions;

e. Include a permit provision requiring any POTW treatment plant operator that has an approved anticipated bypass to provide notice of the peak wet weather diversion event consistent with 40 CFR 122.41(m)(3);

f. Include a permit provision requiring the operator of any POTW treatment plant that has an approved anticipated bypass to monitor the recombined flow at least once daily during diversions for all parameters for which the POTW treatment plant has daily effluent limitations or other requirements (*e.g.*, monitoring only requirements), the total volume diverted, and the duration of the peak wet weather diversion event. For parameters for which the permit establishes non-daily effluent limitations, include in the permit monitoring requirements sufficient to yield data representative of the final blended discharge, in order to ensure compliance with applicable effluent limitations. See 40 CFR 122.48(b);

g. Describe in the permit Fact Sheet prepared under 40 CFR 124.8(b) how the peak wet weather event was calculated, the reason for allowing peak wet weather diversions, and any requirements for such peak wet weather diversions;

h. Ensure that permit load limitations account for the anticipated flow into secondary treatment units during both wet and dry weather conditions;

i. Include permit provisions for public notification (*e.g.*, via utility website) of the peak wet weather diversion event within 24 hours of the inception of each event; follow up public notification of the duration and volume of the event within 48 hours of its cessation; and for public review of the POTW treatment plant operator's peak wet weather flow diversion practices upon request;

j. Include permit provisions requiring the control authority with an approved pretreatment program to review, and revise if necessary, local pretreatment limits for indirect dischargers to take into account peak wet weather diversion events (*e.g.*, significant industrial users with batch discharging);

k. If the discharge will be to sensitive receiving waters (*i.e.*, waters used for recreation; drinking water; shellfish beds; waters formally designated by state or federal authorities as requiring special consideration or protection; waters with threatened or endangered species), ensure that the impact of any peak wet weather diversion events on these waters is minimized and additional caution exercised as permit limitations are set; and

l. Rigorously review each and every POTW permit renewal request that seeks continued approval of peak wet weather diversions to ensure that a comprehensive utility analysis consistent with section 1 above is submitted and evaluated and that peak wet weather diversions are approved only when no feasible alternatives to

them are identified through the process set forth in this policy.

3. EPA will:

a. Use this policy in making NDPES permitting decisions for all POTW treatment plants serving separate sanitary sewer conveyance systems in non-authorized states;

b. Review permits in NPDES authorized states within the timelines specified in 40 CFR 123.44 for all POTW treatment plant operators seeking approval for diversions pursuant to this policy to ensure that they are consistent with this interpretation of the regulations;

c. Ensure that enforcement actions are taken, where appropriate, against POTW treatment plant operators that fail to move forward expeditiously to meet their legal obligations as determined consistent with this policy; and

d. Ensure that monitoring data received concerning peak wet weather diversions at POTW treatment plants is available to the public on EPA's website in a searchable and correctable database.

Dated: December 19, 2005.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

[FR Doc. E5–7696 Filed 12–21–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT90

Endangered and Threatened Wildlife and Plants; Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a correction to the proposed rule to revise critical habitat for the endangered Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) and Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*), and designate critical habitat for the endangered St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) published in the **Federal Register** on December 15, 2005. The proposed rule was published with an incorrect electronic mail address for submission of comments.

DATES: We will accept comments from all interested parties until February 13, 2006. We must receive requests for public hearings in writing by January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405, (telephone 850–769–0552; facsimile 850–763–2177).

SUPPLEMENTARY INFORMATION: On December 15, 2005, a document entitled ''Endangered and Threatened Wildlife and Plants; Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse'' was published in the **Federal Register** (70 FR 74426) with an incorrect electronic mail address for submission of comments.

Correction

In the **Federal Register** of December 15, 2005, on page 74426, in the first column, correct item 3 in the **ADDRESSES** section to read: 3. You may send comments by electronic mail (e-mail) to *floridabeachmouse@fws.gov*.

Dated: December 16, 2005.

Sara Prigan,

Federal Register Liaison Officer.

[FR Doc. E5–7701 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 70, No. 245
Thursday, December 22, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 16, 2005.

The Department of Agriculture has submitted the following information collection requirements(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) 720–8958.

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.

Food and Nutrition Service

Title: School Lunch and Breakfast Cost Study-II.

OMB Control Number: 0584–NEW.

Summary of Collection: In light of all of the changes that have taken place in school food service and school finance over the past 12 years, there is a critical need for updated information on the adequacy of Federal meal reimbursement rates. There is an important need to understand the current cost and revenue structure of School Food Authorities (SFAs). Rising labor costs, food costs, and tighter school district budgets may have changed the way in which school meals are produced. The School Lunch and Breakfast Cost Study-II will collect and analyze data from a nationally representative sample of public schools participating in the National School Lunch Program (NSLP). Data will be collected so as to provide sufficient information on school meal production costs to assess the adequacy of Federal meal reimbursement rates.

Need and Use of the Information: The collected information from the study will be used to determine the national average reported and full costs to produce NSLP and School Breakfast Program (SBP) reimbursable meals, the extent to which indirect costs are charged to SFA accounts for food service operations, the value of administrative costs used to produce reimbursable NSLP and SBP meals, and the composition of SFA revenues, including federal reimbursements, cafeteria sales and State and local cash assistance in comparison to costs.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 904.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 2,874.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–24333 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program: Agency Information Collection Activities: Proposed Collection; Comment Request; Disaster Food Stamp Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This information collection is based on the Robert T. Stafford Disaster Relief and Emergency Assistance Act and Section 5(h) of the Food Stamp Act of 1977, as amended, which provide the Secretary of Agriculture with the authority to develop an emergency food stamp program to address the needs of families temporarily in need of food assistance after a disaster. The information collection under this notice is required for the establishment and operation of emergency food stamp assistance programs.

DATES: Written comments must be received on or before February 21, 2006.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Patrick Waldron, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Mr. Waldron at (703) 305–2486. The Internet address is:

Patrick.Waldron@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 812.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Waldron at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Disaster Food Stamp Program.

OMB Number: 0584–0336.

Expiration Date: March 31, 2006.

Type of Request: Revision of a previously approved collection.

Abstract: Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act and Section 5(h) of the Food Stamp Act of 1977, as amended, the Secretary of Agriculture has the authority to develop an emergency food stamp program to address the temporary food needs of families following a disaster. The information collection under this notice is required to be provided by State agencies in order to receive approval from the Food and Nutrition Service (FNS) to operate an emergency food stamp program as the result of a disaster.

The number of disasters that occur annually and the average number of households affected by disasters cannot be accurately predicted. During the period from calendar year 1996 through calendar year 2004, the number of disasters has ranged from a low of three (in calendar years 2000 and 2001) to highs of 13 and 14 (for calendar years 2003 and 1998 respectively). The information collection under this reporting burden is limited to burden encountered by State agencies in preparing their requests to operate disaster food stamp programs. FNS estimates that approximately 10 hours of State agency personnel time would be required to prepare such requests. Burden associated with the process of applying for food stamp benefits under disaster food stamp programs and the processing of these applications by State and local food stamp personnel are approved under OMB docket #0584–0064. The burden associated with preparing requests to operate disaster food stamp programs varies very little from disaster to disaster and is independent of the scope of the disaster with major disasters requiring little additional document preparation time than relatively minor disasters.

Based on an estimate of eight State agency requests per year to operate disaster food stamp programs and 10 hours of State agency personnel time to prepare each application, we have calculated an estimated burden of 80 hours per year in an average year. This represents a small increase from our 2003 estimate based on a slight increase in the annual average number of disasters. We note that in most years the number of disasters (eight) necessitating the operation of disaster food stamp programs falls below the minimum threshold for which OMB approval of the reporting burden associated with this information collection is required. Since an above average number of disasters may occur in any given year we have elected to submit this information collection to OMB for their approval, and consequently, are requesting public comments associated with the collection.

Affected Public: State and local governments.

Estimated Number of Responses: 8.

Estimated Number of Respondents: 8.

Estimated Number of Responses per Recipient: 1.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden: 80 hours.

Dated: December 12, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E5–7689 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Go Over Applications Received, (5) Sub-Committee Reports, (6) Chairman's Perspective, (7) General Discussion, (8) County Update, (9) Next Agenda.

DATES: The meeting will be held on January 12, 2006 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5529; E-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by December 4, 2005 will have the opportunity to address the committee at those sessions.

Dated: December 15, 2005.

James S. Giachino,

Designated Federal Official.

[FR Doc. 05–24335 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Apache-Sitgreaves National Forests; Arizona; Notice of New Fee Site

AGENCY: Forest Service, USDA.

ACTION: Notice and solicitation of comments.

SUMMARY: The Apache-Sitgreaves National Forests proposes to begin charging a fee for the overnight rental of Caldwell Cabin. Rentals of other cabins in the Arizona National Forests have shown that publics appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of Caldwell Cabin. Caldwell Cabin is located in T4N, R28E Sec. 14.

DATES: Caldwell Cabin is expected to become available for rent July, 2006. Comments, concerns or questions about this new fee must be submitted by June 1, 2006.

ADDRESSES: Submit written comments, concerns, or questions about the new fee associated with the Caldwell Cabin rental to: Forest Supervisor, Apache-Sitgreaves National Forests, P.O. Box 640 Springerville, Arizona 85938.

FOR FURTHER INFORMATION CONTACT: Richard Davalos, District Ranger, (928) 339–4384 or (928) 339–4566 (TTY).

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The intent of this notice is to give publics an opportunity to comment if they have concerns or questions about new fees. This will be the Apache-Sitgreaves National Forest first cabin rental. Other cabin rentals exist in neighboring Arizona National Forests. These rentals are often fully booked throughout their rental season. A market analysis will be conducted to determine the fee, ensuring that it is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Caldwell Cabin will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a fee for reservations.

Responsible Official

Elaine J. Zieroth, Apache-Sitgreaves Forest Supervisor.

Dated: December 15, 2005.

Elaine J. Zieroth,

Apache-Sitgreaves Forest Supervisor.

[FR Doc. 05–24334 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Awards Under the RUS Distance Learning and Telemedicine Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications selected to receive grant awards.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the recipients selected to receive grant awards during fiscal year (FY) 2005 under the Distance Learning and Telemedicine Grant Program.

ADDRESSES: Subject to the provisions of the Freedom of Information Act, (5 U.S.C. 552), applications will be available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gary B. Allan, Chief, Universal Services Branch, U.S. Department of Agriculture, Rural Utilities Service. Telephone: (202) 720–0413, Fax (202) 720–1051, *dltinfo@usda.gov*. The list of awards may be viewed on the Internet at *http://www.usda.gov/rus/telecom/dlt/dlt.htm*.

SUPPLEMENTARY INFORMATION: Pursuant to 7 CFR 1703.101, RUS hereby publishes the names of the 79 organizations that have been awarded $29.4 million in grants under 7 CFR 1703, subpart D, Distance Learning and Telemedicine Grant Program. The recipients are as follows:

State	Organization	Amount
AK	Alaska Primary Care Association, Inc	$258,765
AK	Yukon-Kuskokwim Health Corporation	500,000
AK	Maniilaq Association	269,892
AK	Aleutians East Borough School District	488,030
AK	Norton Sound Health Corporation	499,646
AK	Eastern Aleutian Tribes	412,867
AL	Talladega County Schools/Talladega County Board of Education	499,978
AR	Ozark Health Foundation	420,505
AR	White River Rural Health Center, Inc	341,297
AZ	La Paz Regional Hospital, Inc	458,061
CA	Open Door Community Health Centers, Inc	205,833
CO	Mesa State College	338,892
GA	East Central Technical College Foundation	498,252
HI	Maui Community College	387,743
IA	The University of Iowa	198,000
ID	St. Mary's Hospital, Inc	289,369
IL	Lewis and Clark Community College	294,678
IN	St. Vincent Health	205,706
IN	Southwest Dubois County School Corp. LEA for the Southern Indiana Education Center	389,599
KS	Rural Health Resources of Jackson County, Inc	492,076
KS	Southeast Kansas Education Service Center	499,920
ME	Northeast Health	107,450
ME	Central Maine Medical Center	500,000
MI	Alpena General Hospital	421,872
MI	Berrien County Intermediate School District	350,000
MI	Borgess Health Alliance	321,020
MI	Trinity Health Michigan	200,015
MN	Tri-County Hospital, Inc	500,000
MN	MediSota, Inc	102,100
MN	Minnesota Association of Community Mental Health Programs, Inc	475,022
MO	Citizens Memorial Hospital District	432,265
MS	Carroll County School District	500,000
MT	Clark Fork Valley Hospital	134,947
NC	Beaufort County Schools	114,211
NE	Educational Service Unit #15	378,800
NE	Chase County High School	183,100
NH	Exeter Region Cooperative School District	499,330
NH	VNA at HCS, Inc	327,100
NM	Northwest Regional Education Center #2	486,100
NM	High Plains Regional Education Cooperative	454,668
NV	Elko County School District	474,872
NV	White Pine County School District	500,000
NY	Steuben-Allegany BOCES	252,948

State	Organization	Amount
NY	Washington County Public Health	136,035
NY	Sullivan County Board of Cooperative Education	446,232
NY	Jefferson-Lewis-Hamilton-Herkimer-Oneida Board of Cooperative Educational Services	467,635
NY	Madison-Oneida Board of Cooperative Educational Services (BOCES)	468,853
OH	Adams County Hospital	141,812
OH	Allen County Health Partners, Inc	339,641
OK	Choctaw Nation of Oklahoma	304,542
OK	Lane Elementary School	346,325
OK	Wapanucka Public School	486,050
OK	Western Oklahoma State College	485,490
OK	Connor State College	498,148
OR	Asante Health System	499,165
OR	Libraries of Eastern Oregon	53,885
PA	Lewistown Hospital	392,950
PA	Bradford Regional Medical Center	110,575
SD	Avera Health	500,000
SD	Catholic Chancery of Sioux Falls	173,429
SD	Avera McKennan	307,831
SD	South Dakota State University	319,517
SD	Northern State University	496,463
TN	Scott County Schools	500,000
TN	Mountain States Health Alliance	476,944
TX	Education Service Center, Region 17	291,918
TX	Driscoll Children's Hospital	455,208
TX	Region 16 Education Service Center	500,000
TX	Region XIV Education Service Center	499,990
TX	Education Service Center Region XI	500,000
TX	Ricardo ISD	248,580
VA	Southwest Virginia Education and Training Network	500,000
WA	Ocean Beach Hospital	248,400
WA	Community Choice PHCO	461,005
WA	Colville Confederated Tribes	449,636
WI	Highland School District	303,064
WV	Harrison County Board of Education	349,935
WV	Braxton County Schools	500,000
WV	Roane County Schools	485,825

Dated: December 15, 2005.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 05–24239 Filed 12–21–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1426]

Extension of Nonprivileged Foreign Status Authority, Five Oil Refinery/ Petrochemical Subzones

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Board approved the oil refinery/petrochemical complex subzones listed below to conduct certain activity under zone procedures, subject to three conditions;

Whereas, applications were submitted from the FTZ grantees of the subzones listed below, requesting a time extension of authority (removing Condition No. 3) to elect nonprivileged foreign status (NPF) on crude oil and related inputs used in the production of certain petrochemical feedstocks and refinery by–products at the crude oil refineries/petrochemical complexes listed below;

Whereas, Conditions No. 1 and No. 2 of the original Board Orders would remain in effect, with Condition No. 2 updated to conform to the standard FTZ oil refinery/petrochemical restrictions on eligible foreign inputs and finished products as listed below;

Whereas, the applications were filed by the Board on November 30, 2004, and notice describing the applications and inviting public comment was given in the **Federal Register** (FTZ Docket 54–2004, 69 FR 70996, 12/8/2004); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the applications would be in the public interest if approval were subject to the conditions listed below;

Now, therefore, the Board hereby amends the Board Orders listed below, authorizing an extension of authority for the listed subzones, subject to the FTZ Act and the Board's regulations, including Sec. 400.28, and further subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.
2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that nonprivileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery

inputs covered under HTSUS Subheadings 2709.00.10, 2709.00.20, 2710.11.25, 2710.11.45, 2710.19.05, 2710.19.10, 2710.19.45, 2710.91.00, 2710.99.05, 2710.99.10, 2710.99.16, 2710.99.21 and 2710.99.45 which are used in the production of:

--petrochemical feedstocks and refinery by–products (examiner's report, Standard Appendix ''C'');

--products for export;

--and, products eligible for entry under HTSUS ı9808.00.30 and ı9808.00.40 (U.S. Government purchases).

GRANTEE: PORT OF LONG BEACH, CALIFORNIA

Board Order	Subzone	Company	Location
1050	50G	Shell Oil ProductsU.S.	Los Angeles, CA

GRANTEE: PORT OF CORPUS CHRISTI AUTHORITY, TEXAS

Board Order	Subzone	Company	Location
1086	122N	Equistar Chemicals, LP	Nueces Co., TX

GRANTEE: PORT OF FREEPORT, TEXAS

Board Order	Subzone	Company	Location
1087	149F	Equistar Chemicals, LP	Brazoria Co., TX
1088	149G	Dow Chemical Company	Brazoria Co., TX

GRANTEE: BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LOS ANGELES, CALIFORNIA

Board Order	Subzone	Company	Location
1032	202C	ConocoPhillips Company	Los Angeles, CA

Signed at Washington, DC, this 9th day of December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–7709 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1424]

Expansion of Foreign–Trade Zone 74, Baltimore, Maryland Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Baltimore Development Corporation on behalf of the City of Baltimore, Maryland, grantee of Foreign–Trade Zone No. 74, submitted an application to the Board for authority to expand FTZ 74 in the Baltimore, Maryland area, to include new sites in Baltimore, Anne Arundel County and Harford County, within the Baltimore Customs port of entry (FTZ Docket 4–2005, filed 1/7/2005);

Whereas, notice inviting public comment was given in the **Federal Register** (70 FR 2997, 1/19/2005) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 74 is approved, subject to the Act and the Board's regulations, including Section 400.28;

Signed at Washington, DC, this 9th day of December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–7706 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1425]

Expansion of Foreign–Trade Zone 40, Cleveland, Ohio, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland–Cuyahoga County Port Authority, grantee of Foreign–Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40 to include a new site at the Oakwood Commerce Center (Site 10B, 20 acres) in the Cleveland, Ohio, area, within the Cleveland Customs port of entry (FTZ Docket 30–2005, filed 6/9/05);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 34743, 6/15/05) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000 acre limit for the overall zone project.

Signed at Washington, DC, this 9th day of December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–7708 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[T–3–2005]

Foreign–Trade Zone 77 Memphis, Tennessee, Expansion of Manufacturing Authority Subzone 77B. Brother Industries (U.S.A.) Inc. (Manufacture/Refurbish Toner Cartridges), Notice of Approval

On September 29, 2005, the Executive Secretary of the Foreign–Trade Zones (FTZ) Board filed an application submitted by the City of Memphis and Shelby County, Division of Planning and Economic Development, grantee of FTZ 77, requesting temporary/interim manufacturing (T/IM) authority for manufacturing/refurbishing toner cartridges within Subzone 77B, at the Brother Industries (U.S.A.) Inc. plant in Bartlett, Tennessee. Brother later amended the application with the following statement: ''Privileged foreign status (19 CFR Part 146.41) shall be elected on foreign merchandise admitted to the zone, which is classifiable in HTSUS headings or subheadings 2821, 2823, 3901.20, chapter 32, or where the foreign merchandise in question is described as a pigment, pigment preparation, masterbatch, plastic concentrate, flush color, paint dispersion, coloring preparation, or colorant.''

The application has been processed in accordance with T/IM procedures, as authorized by FTZ Board Order 1347, including notice in the **Federal Register** inviting public comment (70 FR 58371–58372, 10/6/05). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures.

Pursuant to the authority delegated to the FTZ Board Executive Secretary in Board Order 1347, the application, as amended, is approved, effective this date, until December 9, 2007, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: December 9, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–7707 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1419]

Grant of Authority, Establishment of a Foreign–Trade Zone, Dane County, Wisconsin

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''. . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, Dane County, Wisconsin (the Grantee), has made application to the Board (FTZ Docket 16–2005, filed 3/17/05), requesting the establishment of a foreign–trade zone at sites in Dane County, Wisconsin, adjacent to the Milwaukee Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 15066, 3/24/05); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign–trade zone, designated on the records of the Board as Foreign–Trade Zone No. 266, atthe sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 2nd day of December 2005.

FOREIGN–TRADE ZONES BOARD

Secretary of Commerce Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–7705 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Hot–Rolled Carbon Steel Flat Products from Romania.

Initiation of Reviews:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty

orders and findings. We intend to issue the final results of these reviews not later than November 30, 2006.

Antidumping Duty Proceedings	Period to be Reviewed
MEXICO: Carbon and Certain Alloy Steel Wire Rod.	
A–201–803	10/1/04 - 9/30/05
Siderurgica Lazaro Cardenas las Truchas S.A. (SICARTSA)[1].	
MEXICO: Circular Welded Non–Alloy Steel Pipe and Tube.	
A–201–805	11/1/04 - 10/31/05
Hylsa, S.A. de C.V..	
Mueller Comercial de Mexico, S. de R.L. de C.V..	
Niples Del Norte, S.A. de C.V..	
Productos Laminados de Monterrey, S.A. de C.V..	
NETHERLANDS: Certain Hot–Rolled Carbon Steel Flat Products.	
A–421–807	11/1/04 - 10/31/05
Corus Staal B.V..	
ROMANIA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–485–806	11/1/04 - 10/31/05
Mittal Steel Galati S.A. (formerly known as S.C. Ispat Sidex S.A.,. including Sidex O.O. Trading S.A.).	
THAILAND: Certain Hot–Rolled Carbon Steel Flat Products.	
A–549–817	11/1/04 - 10/31/05
Nakornthai Strip Mill Public Company Ltd..	
Sahaviriya Steel Industries Public Co., Ltd..	
G Steel Public Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cut–to-Length Carbon Steel Plate[2].	
A–570–849	11/1/04 - 10/31/05
Angang New Steel Co, Ltd..	
Angang Group Hong Kong Co., Limited.	
China Metallurgical Import & Export Liaoning Company.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hot–Rolled Carbon Steel Flat Products[3].	
A–570–865	11/1/04 - 10/31/05
Angang Group International Trade Corporation.	
New Iron & Steel Co., Ltd..	
Angang Group Hong Kong Co., Ltd.	
Shanghai Baosteel Group Corporation.	
Baoshan Iron and Steel Co., Ltd..	
Baosteel Group International Trade Corporation.	
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic[4].	
A–570–831	11/1/04 - 10/31/05
Anqiu Friend Food Co., Ltd..	
Clipper Manufacturing Ltd..	
Jinxiang Dong Yun Freezing Storage Co., Ltd..	
Taian Fook Huat Tong Kee Foodstuffs Co., Ltd..	
Heze Ever–Best International Trade Co., Ltd. (f/k/a Shandong Heze. International Trade and Developing Company).	
H&T Trading Company.	
Huaiyang Huamei Foodstuff Co., Ltd..	
Huaiyang Hongda Dehydrated Vegetable Company.	
Jinxiang Shanyang Freezing Storage Co., Ltd..	
Jinxiang Hongyu Freezing and Storing Co., Ltd..	
Jinxiang Tianshan Foodstuff Co., Ltd..	
Jinan Yipin Corporation, Ltd..	
Jining Yun Feng Agriculture Products Co., Ltd..	
Linshu Dading Private Agricultural Products Co., Ltd..	
Linyi Sanshan Import & Export Trading Co., Ltd..	
Pizhou Guangda Import and Export Co., Ltd..	
Qingdao Saturn International Trade Co., Ltd..	
Qufu Dongbao Import & Export Trade Co., Ltd..	
Shandong Chengshun Farm Produce Trading Co., Ltd..	
Shandong Dongyue Produce Co., Ltd..	
Shandong Jining Jinshan Textile Co., Ltd..	
Shanghai Ever Rich Trade Company.	
Shanghai LJ International Trading Co., Ltd..	
Shenzhen Fanhui Import & Export Co., Ltd..	
Sunny Import & Export Co., Ltd..	
Taiyan Ziyang Food Co., Ltd..	
Tancheng County Dexing Foods Co., Ltd..	
Weifang Shennong Foodstuff Co., Ltd..	
Xi'an XiongLi vFoodstuff Co., Ltd..	
Jining Trans–High Trading Co., Ltd..	
Xiangcheng Yisheng Foodstuffs Co..	
XuZhou Simple Gasrlic Industry Co., Ltd..	

Antidumping Duty Proceedings	Period to be Reviewed
Zhangqui Qingyuan Vegetable Co., Ltd..	
Zhengzhou Harmoni Spice Co., Ltd..	
Countervailing Duty Proceedings.	
None..	
Suspension Agreements.	
UKRAINE: Certain Cut–to-Length Carbon Steel Plate.	
A–823–808	11/1/04 - 10/31/05
OJSC Alchevsk Iron and Steel Works.	
Dnepropetrovsk Iron and Steel Works.	
OPSC Dneprovsky Iron and Steel Integrated Works (named after. F.E. Dzhershinsky (OPSC DMKD)).	
Azovstal Iron & Steel Works.	
JSC Ilyich Iron & Steel Works, Mariupol.	

[1] Company inadvertently omitted from initiation notice that published December 1, 2005 (70 FR 72107)
[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of certain cut-to-length carbon steel plate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part
[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of certain hot-rolled carbon steel flat products from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part
[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of fresh garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 16, 2005.

Thomas F. Futtner,

Acting Office Director,AD/CVD Operations Office 4for Import Administration.

[FR Doc. E5–7712 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703, A–588–707]

Continuation of Antidumping Duty Orders on Granular Polytetrafluoroethylene Resin from Italy and Japan

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

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin (''PTFE Resin'') from Italy and Japan would likely lead to continuation or recurrence of dumping, and to material injury to an industry in the United States, the Department is publishing notice of continuation of these antidumping duty orders.

EFFECTIVE DATE: December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2004, the Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on PTFE Resin from Italy and Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1]

As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2] On December 8, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on PTFE Resin from Italy and Japan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Orders

Italy (A–475–703)

The merchandise covered by this order is PTFE Resin, filled or unfilled, from Italy. The antidumping duty order also covers PTFE Resin wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin From Italy; Final Determination of Circumvention of Antidumping Duty Order*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. The subject merchandise is classified under subheading 3904.61.00 of the

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 69891 (December 1, 2004), and ITC *Investigation Nos. 731-TA-385 and 386 (Second Review)*, 69 FR 69954 (December 1, 2004).

[2] *See Granular Polytetrafluoroethylene Resin from Italy and Japan; Five-year (''Sunset'') Reviews of Antidumping Duty Orders; Final Results*, 70 FR 38872 (July 6, 2005).

[3] *See Investigation Nos. 731-TA-385 and 386 (Second Review)*, 70 FR 73026 (December 8, 2005).

Harmonized Tariff Schedule of the United States (''HTS'').

Japan (A–588–707)

The merchandise covered by this order is PTFE Resin, filled or unfilled, from Japan. PTFE Resin dispersions in water and PTFE Resin fine powders are excluded from the order. The merchandise covered by this antidumping duty order is currently classifiable under subheading 3904.61.00 of the HTS.

Determinations

As a result of the determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping, and to material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on PTFE Resin from Italy and Japan.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this ''Notice of Continuation.'' Pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five–year reviews of these orders not later than November 2010.

These five–year (sunset) reviews and this notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: December 15, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7710 Filed 12–21–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on porcelain–on-steel cooking ware from the People's Republic of China (''PRC''). The Department has preliminarily determined that Shanghai Watex Metal Products Co. Ltd. (''Watex''), the only respondent in this review, is not entitled to a separate rate. In addition, the Department has determined to apply adverse facts available to Watex. If these preliminary results are adopted in the final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR''). Interested parties are invited to comment on these preliminary results. *See* the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: December 22, 2005.

FOR FURTHER INFORMATION CONTACT: P. Lee Smith or Scot Fullerton, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

In response to a request from Columbian Home Products, LLC (''petitioner''), the Department of Commerce (the ''Department'') initiated an administrative review of Shanghai Watex Metal Products Co., Ltd.'s (''Watex'') exports of merchandise covered by the antidumping duty order on porcelain–on-steel cooking ware from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 4818 (January 31, 2005) (''Initiation Notice'').

On February 3, 2005, the Department issued its antidumping duty questionnaire to Watex, and received the company's response to section A on February 24, 2005, and sections C and D on March 14, 2005. The Department issued additional supplemental questionnaires to Watex and received responses on April 11, May 23, July 19, September 12, and October 5, 2005.

The Department conducted verification of Watex's questionnaire responses from October 24 to October 26, 2005. *See* ''Verification Report for Shanghai Watex Metal Co., Ltd.,'' dated December 12, 2005 (''Watex Verification Report''). The Department conducted verification of Watex's questionnaire responses regarding its producer Shanghai Ping An Enamel Products Co. (''Ping An''), from October 26 to October 28, 2005. *See* ''Verification Report for Shanghai Ping An Enamel Products Co.,'' dated December 12, 2005 (''Ping An Verification Report''). On December 13, 2005, petitioner submitted comments on the Department's verification reports.

Period of Review

The POR is December 1, 2003, through November 30, 2004.

Scope of Order

The merchandise covered by this order is porcelain–on-steel cooking ware from the PRC, including tea kettles, which do not have self–contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the United States Harmonized Tariff Schedule (''USHTS'') item 7323.94.00. USHTS item numbers are provided for convenience and customs purposes. The written description of the scope remains dispositive.

Non–Market Economy

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME''). Pursuant to section 771(18)(C)(i) of 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 Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (December 7, 2004). 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

On April 15, 2005, the Department provided interested parties the opportunity to submit comments regarding the selection of a surrogate country and factor valuation in these preliminary results. On July 1, 2005, Watex submitted publicly available information for factor valuation. In its submission, Watex included publicly available Indonesian import statistics obtained from the World Trade Atlas. On May 6, 2005, petitioner submitted publicly available information for surrogate country selection. In its submission, petitioner argued that India should be selected as the surrogate country in this review because India is at a comparable level of economic development to the PRC, a significant

producer of comparable merchandise, and has better availability and quality of data to value the factors of production than Indonesia. On August 5, 2005, petitioner submitted publicly available information for factor valuation. In its submission, petitioner included the financial statements for Kishco Cutlery Ltd., an Indian producer of comparable merchandise, and publicly available Indian import statistics. On September 29, 2005, the Department issued a supplemental questionnaire requesting both petitioner and respondent to clarify their surrogate value submissions. On October 5, 2005, petitioner and respondent submitted their responses to the Department's surrogate value supplemental questionnaire. The Department received no other comments regarding surrogate country or factor valuation.

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production (''FOP''), to the extent possible, in one or more market–economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. Import Administration's Office of Policy issued a memorandum listing appropriate surrogate countries. *See* Memorandum from Ron Lorentzen to Carrie Blozy regarding the Administrative Review of Porcelain–on-Steel Cooking Ware (''Cooking Ware'') from the People's Republic of China (PRC): Request for a List of Surrogate Countries, dated April 5, 2005. The memorandum lists five countries, including India and Indonesia. In previous reviews of this order the Department has chosen Indonesia as a surrogate country for the PRC. However, during this review, information was placed on the record demonstrating that India was a more appropriate surrogate country. Based on this information, the Department has selected India as the primary surrogate country for purposes of this review. For further discussion of our surrogate country selection, *see* Memorandum from Joshua T. Pierce through Christopher Riker and James C. Doyle to the File regarding the Antidumping Duty Administrative Review of Porcelain–on-Steel Cooking Ware from the People's Republic of China: Selection of a Surrogate Country, dated December 9, 2005.

Verification

As provided in section 782(i) of the Act, the Department conducted verification of the responses of Watex. The Department verified the questionnaire responses of Watex from October 24, 2005, through October 26, 2005, and its affiliated producer, Ping An, from October 26, 2005, through October 28, 2005, using standard verification procedures, including on–site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. For more information, *see* Watex Verification Report, Ping An Verification Report, and the ''Application of Adverse Facts Available'' section below.

The verification results are on file in the main Department of Commerce building, in the Central Records Unit, Room B–099.

Separate Rates

To establish whether a company operating in an NME is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in 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 amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). 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* governmental control over export activities.

De Jure Control

Evidence supporting, though not requiring, a finding of absence of *de jure* government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

In its questionnaire responses, Watex stated that it is an independent legal entity. The business license of Watex indicates that it is permitted to engage in the exportation of porcelain–on-steel cooking ware. Evidence placed on the record provides no indication of *de jure* governmental control restricting Watex's exportation of porcelain–on-steel cooking ware. Specifically, the *Company Law of the People's Republic of China*, made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings and that the company shall be liable for its debts to the extent of all its assets. Therefore, based on the record evidence, the Department preliminarily determines that there is an absence of *de jure* control over the export activities of Watex.

De Facto Control

A determination of absence of *de facto* government control over exports is based on the following four factors: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Final Determination of Sales at Less than Fair Value: Certain Cut–to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61758 (November 19, 1997).

Watex asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. However, Watex provided the Department with information about its corporate structure and ownership that could not be verified and withheld information regarding an affiliate. *See* Memorandum from James C. Doyle to Stephen J. Claeys: Porcelain–On-Steel Cooking Ware from the People's Republic of China: Preliminary Application of Adverse Facts Available to Shanghai Watex Metal Products Co., Ltd., dated December 15, 2005 (''AFA Memo''). Because we have been unable to fully analyze Watex's corporate structure due to the respondent's uncooperativeness, and have been unable to establish who the true owners of the respondent are, the Department must conclude that the company has not satisfactorily demonstrated it has the ability to select its own management and make personnel decisions, as well as to make its own decisions on the use of its profits, independent of any governmental authority. Therefore, the Department has determined that Watex has not demonstrated that it qualifies for a separate rate. Because Watex did not

demonstrate its eligibility for a separate rate, we have preliminarily determined that it is part of the PRC–wide entity. In the initiation notice, the Department stated that if one of the companies that we initiated a review for does not qualify for a separate rate, all other exporters of porcelain–on-steel cooking ware from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC–wide entity, of which the named exporter is a part. *See Initiation Notice* at footnote 3. Watex did not demonstrate its eligibility for a separate rate; therefore, the Department finds that Watex is part of the PRC–wide entity. As a result, we determine that it is necessary to review the single PRC entity, including Watex, in this segment of the proceeding. As adverse facts available (''AFA''), the Department is assigning the rate of 66.65 percent to the PRC entity, the highest rate determined in any previous segment of this proceeding.

Application of Adverse Facts Available

Pursuant to sections 776(a)(2)(A), (C) and (D), and section 776(b) of the Act, the Department determines that the application of total AFA is warranted for the PRC–wide entity, including Watex. When an interested party withholds information that has been requested by the Department, significantly impedes the proceeding, or provides information, but that information cannot be verified, sections 776(a)(2)(A), (C) and (D) of the Act provide for the use of facts otherwise available. Specifically, the Department could not verify the information regarding Watex's corporate structure and ownership due to the company's failure to provide the Department with a complete and official version of the capital verification report or signed copies of the company's articles of association and joint venture agreement that established Watex. Watex withheld specifically requested information concerning the existence of an affiliate. Finally, Watex significantly impeded the proceeding by repeatedly making inaccurate statements concerning the interests of various owners in both their questionnaire responses and at verification. *See* Watex Verification Report. The Department finds that facts available, pursuant to sections 776(a)(2)(A), (C) and (D), is warranted.

Section 776(b) of the Act provides that if the Department determines that a party has failed to cooperate to the best of its ability, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of that party. The Department finds that by not providing accurate information regarding affiliates of Watex despite multiple opportunities to do so and by failing to provide the Department with information regarding its corporate structure and ownership that could be verified, Watex failed to cooperate to the best of its ability. For a detailed analysis of the Department's decision to apply AFA, *see* AFA Memo.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, it is the Department's practice to select, as AFA, the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003).

The Court of International Trade (''CIT'') and the Federal Circuit have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (''*Rhone Poulenc*''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (upholding a 73.55% total AFA rate, the highest available dumping margin from a different respondent in a less than fair value investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, Slip Op. 05–22, at 16 (CIT February 17, 2005) (upholding a 223.01% total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994). *See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *see also D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with the statute, court precedent, and its practice, the Department has assigned the rate of 66.65 percent, the highest rate calculated in any segment of the proceeding, to Watex as AFA. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999). As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *SAA* states that ''corroborate'' means to determine that the information used has probative value. *See SAA* at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). The *SAA* also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Preliminary*

Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627 (June 16, 2003); and *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The information upon which the AFA rate we are applying for the current review was calculated during the Less Than Fair Value Investigation. *See Porcelain–on-Steel Cooking Ware from the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 51 FR 36419 (October 10, 1986) (''*LTFV Investigation*''). Furthermore, the AFA rate we are applying for the current review was applied in reviews subsequent to the *LTFV Investigation* and the Department received no information that warranted revisiting the issue. *See, e.g., Porcelain–On-Steel Cookware from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 54825 (October 22, 1997). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. Similarly, the Department does not apply a margin that has been discredited. *See D &L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these circumstances are present here. Accordingly, we determine that the highest rate from any segment of this administrative proceeding, 66.65 percent, meets the corroboration criteria established in section 776(c) of the Act that secondary information have probative value.

Preliminary Results of the Review

The Department preliminarily finds that the following margins exist for the following exporters under review during the period December 1, 2003, through November 30, 2004:

PORCELAIN–ON-STEEL COOKING WARE FROM THE PRC

Manufacturer/Exporter	Weighted–Average Margin (Percent)
PRC–wide Rate	66.65

Case briefs from interested parties may be submitted not later than January 17, 2006, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than January 24, 2006, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited. Any interested party may request a hearing within 30 days of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should include: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, no later than 120 days after the date of publication of this notice.

Assessment of Antidumping Duties

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposits

The following cash–deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the PRC, including Watex, the cash–deposit rate will be equal to 66.65 percent; (2) the cash–deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 66.65 percent; (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate 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 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.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 15, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7703 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–866]

Antidumping Duty Order: Superalloy Degassed Chromium from Japan

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce and International Trade Commission, the Department of Commerce is issuing an antidumping duty order on superalloy degassed chromium from Japan.

EFFECTIVE DATE: December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1392, or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, we published the final determination of sales at less than fair value of superalloy degassed chromium from Japan. See *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005). On December 16, 2005, the International Trade Commission (ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less–than-fair–value imports of superalloy degassed chromium from Japan. See letter from the ITC to the Secretary of Commerce, Notification of Final Affirmative Determination of Superalloy Degassed Chromium from Japan (Investigation No. 731–TA–1090 (Final)), dated December 16, 2005. Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on the subject merchandise.

Scope of Order

The product covered by this order is all forms, sizes, and grades of superalloy degassed chromium from Japan. Superalloy degassed chromium is a high–purity form of chrome metal that generally contains at least 99.5 percent, but less than 99.95 percent, chromium. Superalloy degassed chromium contains very low levels of certain gaseous elements and other impurities (typically no more than 0.005 percent nitrogen, 0.005 percent sulphur, 0.05 percent oxygen, 0.01 percent aluminum, 0.05 percent silicon, and 0.35 percent iron). Superalloy degassed chromium is generally sold in briquetted form, as ''pellets'' or ''compacts,'' which typically are 1½ inches x 1 inch x 1 inch or smaller in size and have a smooth surface. Superalloy degassed chromium is currently classifiable under subheading 8112.21.00 of the Harmonized Tariff Schedule of the United States (HTSUS). This order covers all chromium meeting the above specifications for superalloy degassed chromium regardless of tariff classification.

Certain higher–purity and lower–purity chromium products are excluded from the scope of this order. Specifically, the order does not cover electronics–grade chromium, which contains a higher percentage of chromium (typically not less than 99.95 percent), a much lower level of iron (less than 0.05 percent), and lower levels of other impurities than superalloy degassed chromium. The order also does not cover ''vacuum melt grade'' (VMG) chromium, which normally contains at least 99.4 percent chromium and contains a higher level of one or more impurities (nitrogen, sulphur, oxygen, aluminum and/or silicon) than specified above for superalloy degassed chromium.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of superalloy degassed chromium from Japan. These antidumping duties will be assessed on (1) all entries of superalloy degassed chromium from Japan entered, or withdrawn from the warehouse, for consumption on or after August 18, 2005, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and before December 16, 2005, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation, and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Entries of superalloy degassed chromium from Japan made between December 16, 2005, and the day preceding the date of publication of the ITC's notice of final determination in the **Federal Register** are not liable for the assessment of antidumping duties.

On and after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted–average antidumping margins listed below. The all–others rate applies to all entries of the subject merchandise except for entries from the company that is identified below.

Manufacturer or exporter	Weighted–average margin (percent)
JFE Material Co., Ltd. ..	129.32
All Others	129.32

This notice constitutes the antidumping duty order with respect to superalloy degassed chromium from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 16, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7700 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120505C]

Large Coastal Shark 2005/2006 Stock Assessment Workshop

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

ACTION: Notice; public workshop.

SUMMARY: NMFS announces the time and location for the large coastal shark (LCS) stock assessment workshop, the second of three workshops for the LCS stock assessment to be conducted in 2005/2006.

DATES: The Assessment workshop will start at 1 p.m. on Monday, February 6, 2006, and will conclude at 1 p.m. on Friday, February 10, 2006.

ADDRESSES: The Assessment workshop will be held at the Doubletree Hotel Coconut Grove, 2649 South Bayshore Drive, Miami, FL 33133.

FOR FURTHER INFORMATION CONTACT: Julie Neer at (850) 234–6541; or Karyl

Brewster-Geisz at (301) 713–2347, fax (301) 713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fishery Management Plan for Atlantic Highly Migratory Species (HMS FMP) is implemented by regulations at 50 CFR part 635.

Stock assessments are periodically conducted to determine stock status relative to current management criteria. Collection of the best available scientific data and conducting stock assessments are critical to determine appropriate management measures for rebuilding stocks. Based on the last LCS stock assessment in 2002, NMFS determined that the LCS complex is overfished and overfishing is occurring. LCS are currently under a 26-year rebuilding plan. Potential changes to existing management measures will be based, in large part, on the results of this 2005/2006 stock assessment.

This assessment will be conducted in a manner similar to the Southeast Data, Assessment, and Review (SEDAR) process. SEDAR is a cooperative process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. SEDAR is organized around three workshops. The first is a Data workshop where datasets are documented, analyzed, reviewed, and complied for conducting assessment analyses. This workshop was held from October 31 through November 4, 2005, in Panama City, Florida. The second is an Assessment workshop where quantitative population analyses are developed and refined and population parameters are estimated. The third and final is a Review workshop where a panel of independent experts reviews the data and assessment and recommends the most appropriate values of critical population and management quantities. All workshops are open to the public. More information on the SEDAR process can be found at *http://www.sefsc.noaa.gov/sedar/*.

NMFS announces the Assessment workshop, the second of three workshops for the LCS 2005/2006 stock assessment, which will be held from February 6 - February 10, 2006, at the Doubletree Hotel Coconut Grove, Miami, FL (see **DATES** and **ADDRESSES**). Prospective participants and observers will be contacted with the Assessment workshop details. This workshop is open to the public. Persons interested in participating or observing the Assessment workshop should contact Julie Neer (see **FOR FURTHER INFORMATION CONTACT**). The final workshop, the Review workshop, will be announced at a later date in the **Federal Register**.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Neer at (850) 234–6541 by January 30, 2006.

Authority: 16 U.S.C. 971 *et seq.*

Dated: December 16, 2005.

Emily Menashes,

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

[FR Doc. E5–7697 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Rules for Patent Maintenance Fees

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 revision of a continuing information collection, 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 February 21, 2006.

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

- *E-mail: Susan.Brown@uspto.gov.* Include ''0651–0016 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7700; or by e-mail at *Bob.Spar@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 35 U.S.C. 41 and 37 CFR 1.20(e)–(i) and 1.362–1.378, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance fees is due at 3½, 7½, and 11½ years after the date the patent was granted. If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time as set forth in 37 CFR 1.362(g). After a patent expires, it is no longer enforceable. Maintenance fees are not required for design or plant patents, or for reissue patents if the patent being reissued did not require maintenance fees.

Payments of maintenance fees that are submitted during the six-month grace period must include the appropriate surcharge as indicated by 37 CFR 1.20(h). Submissions of maintenance fee payments and surcharges must include the relevant patent number and the corresponding United States application number in order to identify the correct patent and ensure proper crediting of the fee being paid.

If the USPTO refuses to accept and record a maintenance fee payment that was submitted prior to the expiration of a patent, the patentee may petition the Director under 37 CFR 1.377 to accept and record the maintenance fee. This petition must be accompanied by the fee indicated in 37 CFR 1.17(g), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

If a patent has expired due to nonpayment of a maintenance fee, the patentee may petition the Director to accept a delayed payment of the maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378. The Director may accept the payment of a maintenance fee after the expiration of the patent if the petitioner shows to the satisfaction of the Director that the delay in payment was unavoidable or unintentional. Petitions to accept unavoidably or unintentionally delayed payment must also be accompanied by the required maintenance fee and appropriate surcharge under 37 CFR 1.20(i). If the Director accepts the maintenance fee

payment upon petition, then the patent is reinstated. If the USPTO denies a petition to accept delayed payment of a maintenance fee in an expired patent, the patentee may petition the Director to reconsider that decision under 37 CFR 1.378(e). This petition must be accompanied by the fee indicated in 37 CFR 1.17(f), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

Customers may submit maintenance fee payments and surcharges incurred during the six-month grace period before patent expiration by using the Maintenance Fee Transmittal Form or by paying online through the USPTO Web site. However, to pay a maintenance fee after patent expiration, the maintenance fee payment and the appropriate surcharge must be filed together with a petition to accept unavoidably or unintentionally delayed payment. These delayed payments and petitions cannot be filed electronically. The USPTO accepts online maintenance fee payments by credit card, electronic funds transfer (EFT), or deposit account through the USPTO Web site. Otherwise, non-electronic payments may be made by check, credit card, or USPTO deposit account.

The rules of practice (37 CFR 1.33(d) and 1.363) permit applicants, patentees, assignees, or their representatives of record to specify a ''fee address'' for correspondence related to maintenance fees that is separate from the correspondence address associated with a patent or application. A fee address must be an address that is associated with a USPTO customer number. Customer numbers may be requested by using the Request for Customer Number form (PTO/SB/125), which is covered under OMB Control Number 0651–0035 ''Representative and Address Provisions.'' Maintaining a correct and updated address is necessary so that fee-related correspondence from the USPTO will be properly received by the applicant, patentee, assignee, or authorized representative. If a separate fee address is not specified for a patent or application, the USPTO will direct fee-related correspondence to the correspondence address of record.

The USPTO offers forms to assist the public with providing the information covered by this collection, including the information necessary to submit a patent maintenance fee payment (PTO/SB/45), to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment (PTO/SB/65 and PTO/SB/66), and to designate or change a fee address (PTO/SB/47). No forms are provided for the petitions under 37 CFR 1.377 and 1.378(e).

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO. Maintenance fee payments and surcharges for payments made during the six-month grace period before patent expiration may be submitted electronically.

III. Data

OMB Number: 0651–0016.

Form Number(s): PTO/SB/45/47/65/66.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 374,706 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to 8 hours to complete this information, depending on the form or petition. This includes time to gather the necessary information, prepare the form or petition, and submit the completed request.

Estimated Total Annual Respondent Burden Hours: 30,362 hours per year.

Estimated Total Annual Respondent Cost Burden: $3,369,522 per year. The USPTO expects that the petitions included in this collection will be prepared by attorneys. Using the professional rate of $286 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting these petitions will be approximately $1,269,840 per year. The USPTO expects that the other items in this collection will be prepared by paraprofessionals. Using the paraprofessional rate of $81 per hour, the USPTO estimates that the respondent cost burden for submitting the other items in this collection will be approximately $2,099,682 per year, for a total annual respondent cost burden of approximately $3,369,522.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Maintenance Fee Transmittal Transactions (PTO/SB/45)	5 minutes	228,487	18,279
Electronic Maintenance Fee Transactions	20 seconds	52,439	315
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/65).	8 hours	250	2,000
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66).	1 hour	1,800	1,800
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)).	4 hours	100	400
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e)).	8 hours	300	240
''Fee Address'' Indication Form (PTO/SB/47)	5 minutes	91,600	7,328
Total		374,706	30,362

Estimated Total Annual Non-hour Respondent Cost Burden: $436,485,591. There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of recordkeeping costs, postage costs, and filing costs.

The recordkeeping costs for this collection are associated with submitting electronic maintenance fee payments through the USPTO Web site. It is recommended that customers who pay maintenance fees online print and retain a copy of the updated payment statement that appears on the screen after the transaction has been completed as a receipt and proof of timely payment. The USPTO estimates that it will take 5 seconds (0.001 hours) to

print a copy of the payment statement and that approximately 52,439 maintenance fee payments per year will be submitted online, for a total of 52 hours per year for printing this receipt. Using the paraprofessional rate of $81 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be approximately $4,212 per year.

The public may submit the forms and petitions in this collection to the USPTO by mail through the United States Postal Service. If the submission is sent by first-class mail, the public may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a mailed submission will be 39 cents, and that customers filing a Maintenance Fee Transmittal Form, a ''Fee Address'' Indication Form, or any of the petitions included in this collection may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 322,267 submissions per year may be mailed to the USPTO, for a total postage cost of $125,684 per year.

This collection also has filing costs in the form of patent maintenance fees, surcharges for late payment of maintenance fees, and petition fees. Under 37 CFR 1.20(e)–(g), the patent maintenance fees due at 3½ years, 7½ years, and 11½ years after the date of grant are $900, $2,300, and $3,800 respectively ($450, $1,150, and $1,900 for small entities). The surcharge under 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the above intervals is $130 ($65 for small entities). The surcharge under 37 CFR 1.20(i) for a petition to accept a maintenance fee after the six-month grace period for these intervals has expired is $700 where the delayed payment is shown to be unavoidable and $1,640 where the delayed payment is shown to be unintentional. The filing fee listed in 37 CFR 1.17(g) for a petition to review the refusal to accept the payment of a maintenance fee filed prior to the expiration of a patent is $200. The filing fee listed in 37 CFR 1.17(f) for a petition for reconsideration of the decision on a petition refusing to accept the delayed payment of a maintenance fee in an expired patent is $400. The USPTO estimates that the total filing costs associated with this collection will be $436,355,695 per year as calculated in the accompanying table.

Fee or surcharge	Estimated annual responses	Amount of fee or surcharge	Estimated annual filing costs
Patent maintenance fee at 3½ years	104,016	$900	$93,614,400
Patent maintenance fee at 3½ years (small entity)	34,552	450	15,548,400
Patent maintenance fee at 7½ years	62,950	2,300	144,785,000
Patent maintenance fee at 7½ years (small entity)	17,061	1,150	19,620,150
Patent maintenance fee at 11½ years	37,545	3,800	142,671,000
Patent maintenance fee at 11½ years (small entity)	8,118	1,900	15,424,200
Surcharge for paying maintenance fee during the six-month grace period	6,909	130	898,170
Surcharge for paying maintenance fee during the six-month grace period (small entity)	9,775	65	635,375
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))	250	700	175,000
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))	1,800	1,640	2,952,000
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	100	200	20,000
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	30	400	12,000
''Fee Address'' Indication Form	91,600	0	0
Total	374,706	.....	436,355,695

The total non-hour respondent cost burden for this collection in the form of recordkeeping costs, postage costs, and filing costs is estimated to be $436,485,591 per year.

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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–24346 Filed 12–21–05; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 19 January 2006 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, December 16, 2005.

Thomas Luebke,

Secretary.

[FR Doc. 05–24345 Filed 12–21–05; 8:45 am]

BILLING CODE 6330–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled AmeriCorps Application Instructions: State Competitive, State Education Award Program, National Direct, National Direct Education Award Program, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, AmeriCorps, Amy Borgstrom, Associate Director of Policy, (202) 606–6930, or by e-mail at *ABorgstrom@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

Copies of the information collection request can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 21, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, Amy Borgstrom, Associate Director for Policy, 1201 New York Ave. NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930 or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

Since the President's Call to Service, many Americans have expressed a renewed desire to serve their country by volunteering in their community. Now, we have an obligation to ensure that Americans have quality opportunities to serve. The Corporation for National and Community Service (the ''Corporation'') has amended the regulations that apply to the AmeriCorps national service program to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements. The implementation of these changes through the rulemaking process includes ensuring the Corporation's information collection instruments accurately reflect these issues. In an effort to be compliant while maintaining functions essential to the operations of each State Commission and AmeriCorps program, we are submitting the enclosed request to OMB for approval of information collection activities. This submission includes application instructions for AmeriCorps State Competitive, State Education Award, National Direct, National Direct Education Award Program, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning programs.

Current Action

Type of Review: Renewal; previously granted emergency approval by OMB.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: State Competitive, State Education Award Program, National Direct, National Direct Education Award Program, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations, State, local and tribal.

Total Respondents: 2,000.

Frequency: Annually.

Average Time Per Response: 16 hours.

Estimated Total Burden Hours: 32,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 16, 2005.

Rosie Mauk,

Director, AmeriCorps.

[FR Doc. E5–7663 Filed 12–21–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Nominations for Membership on Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) is soliciting nominations for new members.

DATES: Nominations should be submitted no later than February 3, 2006.

ADDRESS: Nominations should be submitted via E-Mail to LCDR Cory Huyssoon, U.S. Navy, at *huyssoc@onr.navy.mil.*

Contact Information: Office of Naval Research, 875 North Randolph Street, Suite 1425, ATTN: ONR Code 322B Room 1075, Arlington, VA 22203–1995, telephone 703–696–4395.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval

Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4120.

SUPPLEMENTARY INFORMATION: ORRAP (originally known as the Ocean Research Advisory Panel, ORAP) is a statutorily mandated Federal advisory committee that provides senior scientific advice to the National Oceanographic Research Leadership Council (NORLC), the governing body of the National Oceanographic Partnership Program (NOPP). ORAP advises the NORLC on policies, procedures, selection of partnership projects and allocation of partnership funds, as well as other responsibilities that NORLC considers appropriate. The President's Ocean Action Plan (OAP), released December 17, 2004, created a coordinated ocean governance structure, including the Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI). The OAP mandated that an expanded version of the existing ORAP, including ocean resource management, would provide independent advice and guidance to the ICOSRMI. Since the NORLC is conducting its business through the ICOSRMI, ORRAP advises ICOSRMI to meet its legislative obligations to the NORLC as well as its OAP obligations.

Panel Member Duties and Responsibilities: Members of the panel represent the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, ocean industries, state governments, academia, and others including individuals who are eminent in the fields of marine science and technology, marine policy, or related fields, including ocean resource management and ocean-related social sciences and socio-economics. Members are appointed for not more than four years, and are not normally compensated except for travel expenses and per diem while away from their homes in performance of services for the panel.

The panel meets for at least one two-day public meeting per year, but possibly meets three times per year, on dates agreeable by the panel members; attendance at meetings is expected. Intercessional activities not involving formal decisions or recommendations may be carried out electronically, and the panel may establish sub-panels composed of less than full membership to carry out panel duties.

Nominations: Any interested person or organization may nominate qualified individuals (including one's self) for membership on the panel. Nominated individuals should have extended expertise and experience in the field of ocean science and/or ocean resource management. Nominations should be identified by name, occupation, position, address, telephone number, E-Mail address, and a brief paragraph describing their qualifications in the context of the ORRAP Charter (*http://www.nopp.org/Dev2Go.web?id=221086*). A résumé or curriculum vitae should be included in the nomination package.

Process and Deadline for Submitting Nominations: Submit nominations via E-Mail to *huyssoc@onr.navy.mil* no later than February 3, 2006. Nominations will be acknowledged and nominators will be informed of the new panel members, which are ultimately selected and approved. From the nominees identified by respondents to this **Federal Register** notice, the ORRAP Nomination Committee will down select to a short-list of available candidates (150 percent of the available open positions for consideration). These selected candidates will be required to fill-out the ''Confidential Financial Disclosure Report'' OGE form 450. This confidential form will allow Government officials to determine whether there is a statutory conflict between person's public responsibilities and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form and additional guidance may be viewed from the following URL address: (*http://www.ethics.navy.mil/forms.asp#450*).

In accordance with section 7903 of title 10, United States Code, and with DoD FACA regulations, the short-list of candidates will then be submitted for selection by the Secretary of the Navy with approval by the Secretary of Defense. In order to have the collective breadth of experience in the panel and maintain full panel membership, six to eight new candidates are expected to be selected with terms to begin in July 2006.

The selection of new panel members will be based on the nominee's qualifications to provide senior scientific and resource management advice to the NORLC/ICOSRMI; the availability of the potential panel member to fully participate in the panel meetings; absence of any conflict of interest or appearance of lack of impartiality, and lack of bias; the candidates' areas of expertise and professional qualifications; and achieving an overall balance of different perspectives and expertise on the panel.

Dated: December 12, 2005.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E5–7648 Filed 12–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

U.S. Patent No. 6,873,961: Method and Apparatus for Identifying and Tracking Project Trends//U.S. Patent No. 6,801,655: Spatial Image Processor//U.S. Patent No. 6,785,623: Business to Business Electronic Test Monitoring Information System//U.S. Patent No. 6,768,815: Color Sensor//U.S. Patent No. 6,735,579: Static Memory Processor//U.S. Patent No. 6,718,816: Monolithic I.C. Implemented Calibration Circuit//U.S. Patent No. 6,718,316: Neural Network Noise Anomaly Recognition System and Method//U.S. Patent No. 6,694,049: Multimode Invariant Processor//U.S. Patent No. 6,618,713: Neural Directors//U.S. Patent No. 6,618,324: Track Quality Indicator with Hysteresis//U.S. Patent No. 6,597,634: System and Method for Stochastic Characterization of Sparse, Four-Dimensional, Underwater-Sound Signals//U.S. Patent No. 6,594,382: Neural Sensors//U.S. Patent No. 6,590,833: Adaptive Cross Correlator//U.S. Patent No. 6,580,314: Demodulation System and Method for Recovering a Signal of Interest from a Modulated Carrier Sampled at Two Times the Phase Generated Carrier Frequency//U.S. Patent No. 6,577,268: Outboard Radio Signal Test System and Method//U.S. Patent No. 6,571,598: Calibration Circuit for Use with a Differential Input Preamplifier in a Sensor System//U.S. Patent No. 6,566,895: Unbalanced Three Phase Delta Power Measurement Apparatus and Method//U.S. Patent No. 6,560,582: Dynamic Memory Processor//U.S. Patent No. 6,546,045: Method for Communication Using Adaptive Modem//U.S. Patent No. 6,507,827: Adaptive and Intelligent Modem//U.S.

Patent No. 6,466,516: System and Apparatus for the Detection of Randomness in Three Dimensional Time Series Distributions Made up of Sparse Data Sets//U.S. Patent No. 6,430,522: Enhanced Model Identification in Signal Processing Using Arbitrary Exponential Functions// U.S. Patent No. 6,430,107: Computerized Auditory Scene Analysis Particularly Suited for Undersea Applications//U.S. Patent No. 6,421,620: Test Data Processing System//U.S. Patent No. 6,401,050: Non-Command, Visual Interaction System for Watchstations//U.S. Patent No. 6,400,647: Remote Detection System// U.S. Patent No. 6,397,234: System and Apparatus for the Detection of Randomness in Time Series Distributions Made up of Sparse Data Sets//U.S. Patent No. 6,397,202: System and Method for Monitoring Risk in a System Development Program//U.S. Patent No. 6,304,885: Digital Data Retrieving, Organizing and Display System//U.S. Patent No. 6,392,959: Contact Data Correlation with Reassessment//U.S. Patent No. 6,304,833: Hypothesis Selection for Evidential Reasoning Systems//U.S. Patent No. 6,105,015: Wavelet-Based Hybrid Neurosystem for Classifying a Signal or an Image Represented by the Signal in a Data System//U.S. Patent No. 6,765,541: Capacitively Shunted Quadrifilar Helix Antenna//U.S. Patent No. 6,714,481: System and Method for Active Sonar Signal Detection and Classification//U.S. Patent No. 6,703,917: Resettable Fuse/Circuit Interrupter with Visual Fault Indication//U.S. Patent No. 6,681,016: System for Transfer of Secure Mission Data//U.S. Patent No. 6,559,632: Method and Apparatus for Determining Linear and Angular Velocity of a Moving Body//U.S. Patent No. 6,525,990: Target Simulation System and Method//U.S. Patent No. 6,411,566: System and Method for Processing an Underwater Acoustic Signal by Identifying Nonlinearity in the Underwater Acoustic Signal//U.S. Patent No. 6,407,720: Capacitively Loaded Quadrifilar Helix Antenna//U.S. Patent No. 6,389,229: Optical FSTOP/ Resolution Apparatus and Method for Specified Depth-of-Field//U.S. Patent No. 6,344,834: Low Angle, High Angle Quadrifilar Helix Antenna//

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Technology Transfer Manager, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Newport, RI 02841–1703, telephone 401–832–8728.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: December 14, 2005.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 05–24348 Filed 12–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive license to practice worldwide under the following pending patent. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Patent application Serial Numbers 11/090,916 and PCT/US05/010061 entitled ''ANTI-MUCOLYTIC AND ANTI-ELASTASE COMPOUNDS AND METHODS OF USE THEREOF'' filed on March 24, 2005. The present inventions relate to the use of a compound containing a dithiol active site, preferably in reduced state, to induce, enhance and/or increase the liquefaction of mucus or sputum through mucolysis, and/or to inhibit elastase.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit application to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910–7500, telephone 301–319–7428 or E-Mail at: *schlagelc@nmrc.navy.mil.*

Dated: December 16, 2005.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 05–24350 Filed 12–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Tuesday, January 17, 2006, from 8:30 a.m. to 5 p.m. and Wednesday, January 18, 2006, from 8:30 a.m. to 3 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the Consortium for Oceanographic Research and Education, 1201 New York Ave, NW., Suite 420, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4120.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meeting will include discussions on ocean education, current and future NOPP activities, and other current issues in the ocean science and resource management communities.

Dated: December 14, 2005.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E5–7647 Filed 12–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Redesignation of the Naval Reserve as the Navy Reserve

AGENCY: Department of the Navy, DoD.

ACTION: Policy statement.

SUMMARY: The Department of the Navy (DON) hereby gives notice of the redesignation of the Naval Reserve as the Navy Reserve.

DATES: This policy is effective 1 January 2006.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Carretta, Office of Legislative Affairs, 1300 Navy Pentagon, Room 4C549, Washington, DC 20350–1300, 703–697–2871.

SUPPLEMENTARY INFORMATION: The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) Sec. 517, authorized the Secretary of the Navy, with approval of the President of the United States, to redesignate the Reserve Component known as the ''Naval Reserve'' to the ''Navy Reserve.'' Subsequently, the President of the United States granted approval for this redesignation on 29 April 2005. Section 517 further stated that following delivery of conforming legislation to the Armed Services Committees, the formal redesignation may occur no earlier than 180 days from that date of delivery. As the requisite conforming legislation was delivered to the Armed Services Committees on 16 June 2005, the effective date of the redesignation is 1 January 2006.

The Department of the Navy considers this policy statement to be a procedural change, which does not meet the definition of ''significant regulatory action'' for purposes of Executive Order 12866, as amended by Executive Order 13258 and does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320).

Dated: December 16, 2005.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 05–24349 Filed 12–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant an Exclusive Patent License; Immulogix, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Immulogix, LLC, a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent Number 4,959,304, entitled ''Production of Monoclonal Antibodies to Treponema Denticola by Hybridoma TDIII, IIIBB2'' issued 25 September 1990; U.S. Patent Number 5,514,553, entitled ''Production of Monoclonal Antibodies to Treponema Denticola by Hybridoma TDII, IAA11'' issued 7 May 1996; U.S. Patent Number 5,665,559, entitled ''Production of Monoclonal Antibodies to Bacteroides Gingivalis by Hybridoma BGII, VF9/2D'' issued 9 September 1997; U.S. Patent Number 5,741,659, entitled ''Rapid Microbial Protease Assay'' issued 21 April 1998 and 6,015,681, entitled ''Rapid Immunoassay for Cariogenic Bacteria'' issued 18 January 2000. The present inventions relate to the field of development of cariogenic immunodiagnostic assays.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone 301–319–7428 or e-mail at: *schlagelc@nmrc.navy.mil.*

Dated: December 14, 2005.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 05–24347 Filed 12–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 23, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 15, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Adult ESL Explicit Literacy Impact Study.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 55.

Burden Hours: 28.

Abstract: Data collection to identify adult education sites eligible to participate in the Adult ESL Explicit Literacy Impact Study. A sample of adult education program coordinators are the primary respondents.

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 2907. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kim Rudolph, Docket Manager at her e-mail address *Kim.Rudolph@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7654 Filed 12–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 23, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 15, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Evaluation of States' Monitoring and Improvement Practices Under IDEA: Site Visit Data Collection.

Frequency: Two times.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 440.

Burden Hours: 1,100.

Abstract: States' monitoring and improvement practices under the Individuals with Disabilities Education Act (IDEA) are vital to ensuring that students with disabilities receive a free appropriate public education and that infants and toddlers with disabilities and their families receive early intervention services. The purpose of this study is to evaluate states' monitoring and related improvement practices under IDEA. This study will describe the nature and scope of monitoring as implemented by the 50 states and the District of Columbia for Parts B and C of IDEA, assess the effect of the quality of states' monitoring and related improvement practices on key outcomes of Parts B and C of IDEA, and identify and develop recommendations for potential best practices in monitoring and identify areas for ongoing technical assistance.

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 2909. 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 *Kim.Rudolph@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 Kim Rudolph, Docket Manager at her e-mail address *Kim.Rudolph@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7656 Filed 12–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information, Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and Personnel Development to Improve Services and Results for Children with Disabilities—National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326T.

Dates:

Applications Available: December 22, 2005.

Deadline for Transmittal of Applications: February 10, 2006.

Deadline for Intergovernmental Review: April 11, 2006.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), public charter schools that are LEAs under State law, institutions of higher education (IHEs), other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

Estimated Available Funds: The Administration has requested $49,397,000 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program for FY 2006, of which we intend to use an estimated $1,850,000 for the National Technical Assistance and Dissemination Center for Children who are Deaf-Blind competition. The Administration has also requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program, of which we intend to use an estimated $250,000 to support the personnel training activities of the National Technical Assistance and Dissemination Center for Children who are Deaf-Blind. The actual levels of funding, if any, depend on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $2,100,000 for a single budget period of 12 months. A minimum of $250,000 must be budgeted in each budget period of 12 months for the personnel training activities described under the heading *Activity Area (3)* in the *Priority* section of this notice because the Secretary intends to support these activities of the project from funds provided under section 662 of the Individuals with Disabilities Education Act (IDEA). The Assistant Secretary for Special Education and Rehabilitative Services may change these maximum amounts through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program promotes academic achievement and improves results for children with disabilities by supporting technical assistance, model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically based research. The purposes of the Personnel Development to Improve Services and Results for Children with Disabilities program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(b)(2)(C), 663, and 681(d) of IDEA).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *National Technical Assistance and Dissemination Center for Children who are Deaf-Blind.*

Background

IDEA requires that each child with a disability be provided appropriate special education and related services that meet the child's individual educational needs. For children who are deaf and blind to receive such services, intensive technical assistance is needed to enable SEAs and LEAs to appropriately address the special needs of these children. In addition, given the low-incidence nature of the deaf-blind population, many early intervention programs and educational agencies lack personnel with the training or experience to serve the unique needs of these children.

Priority

This priority supports one center (the Center) to provide specialized technical assistance, training, dissemination, and informational services to States, families, and agencies and organizations that are responsible for the provision of early intervention, special education, and related and transitional services for children through age 26 who are deaf-blind. This priority emphasizes building capacity and the implementation of systems interventions so that quality outcomes can be achieved for all children who are deaf-blind. Under this priority, the Center's activities must address gaps in the knowledge of service providers, including knowledge of evidence-based practices to improve outcomes for the deaf-blind population. The Center must accomplish this mission through a combination of activities in the following areas: (1) Technical assistance, (2) information and dissemination, and (3) personnel training.

Activity Area (1): The Center's technical assistance activities must include, but are not limited to, the following:

(a) Identifying specific project goals, objectives, and activities for providing an array of services to States, families, and agencies and organizations that are responsible for providing services to children who are deaf-blind.

(b) Assisting SEAs and LEAs, including those receiving funds under the Projects for Children who are Deaf-Blind competition—CFDA 84.326C (State Projects), and other related agencies and organizations, in developing and implementing systemic-change goals supported by available evidence-based research for children with deaf-blindness.

(c) Providing assistance to State Projects and agencies to increase the States' capacities to improve early intervention, special education, and related and transitional services to improve outcomes for children who are deaf-blind and their families.

(d) Facilitating activities and enhancing collaborative partnerships that build the capacity of children who are deaf-blind and their families for advocacy, empowerment, and increased knowledge.

(e) Communicating, collaborating, and forming partnerships as appropriate, and as directed by the Office of Special Education Programs (OSEP), with others to improve results for children who are deaf-blind and their families.

(f) Gathering, maintaining, and analyzing demographic information of children who are deaf-blind for the purpose of developing project priorities based on data documenting the needs of these children.

(g) Convening topical meetings, at the request of OSEP, to study issues and develop recommendations for addressing challenges related to issues in the field of deaf-blindness.

(h) Assisting State Projects, agencies, and organizations to strengthen collaborative partnerships with parents and families, and developing strategies to more effectively serve families representing different cultural, ethnic, and linguistic backgrounds.

(i) Assisting State Projects in identifying effective evaluation strategies for collecting and analyzing data to improve results for children.

(j) Promoting the improvement of student achievement in language arts, science, and math for children who are deaf-blind.

Activity Area (2): The Center's information and dissemination activities must include, but are not limited to, the following:

(a) Identifying, collecting, organizing, and disseminating information related

to deaf-blindness, including research-based and other practices that are supported by evidence-based research that demonstrates their effectiveness in improving results for children who are deaf-blind.

(b) Responding to information requests from professionals, parents, students, institutions of higher education, and others, and developing and implementing appropriate strategies for disseminating information to under-represented groups, including those with limited English proficiency.

(c) Developing a broad, coordinated network of professionals, parents, related organizations and associations, mass media, and others for promoting awareness of issues related to deaf-blindness. This may include using the Internet and other cost-effective methods to share information with the international deaf-blindness community.

(d) Expanding and broadening the use of current informational resources by developing materials that synthesize evidence-based research, best practices, and emerging knowledge into easily understandable products with accessible formats.

(e) Developing and disseminating materials and products to supplement technical assistance and training, including synthesized research findings on relevant topics such as communication, assessments, accommodations, alternate assessments, and data analysis.

(f) Maintaining a Web site, with a dedicated URL, on which all ongoing, and completed products, as well as related information, are available in a format that meets a government or industry-recognized standard for accessibility. The Web site also must contain other features that facilitate communication and links to other Web sites that are appropriate and helpful to users.

Activity Area (3): The Center's personnel training activities must consist of activities authorized under section 662(b)(2)(C) of IDEA, including, but not limited to, the following:

(a) Implementing and maintaining an assessment of the needs of individual States and the overall needs of States to determine the array, type, and intensity of personnel training to be provided.

(b) Providing personnel training that focuses on the implementation of IDEA specific to children who are deaf-blind and their families.

(c) Providing personnel training that focuses on the implementation of research-based, effective practices that will result in improved capacity of SEAs and LEAs to provide appropriate assessment, planning, placement, and transitional services.

(d) Assisting personnel training programs to work collaboratively in order to assist a greater number of teachers and paraprofessionals. This includes facilitating career development activities by promoting internships, mentorships, and other strategies to address the shortage of leadership and highly qualified personnel in the field of deaf-blindness.

General Activities. The Center also must:

(a) Annually, provide OSEP with a report analyzing policies and emerging issues that are of significant national concern in the field of deaf-blindness. This report must include a narrative description that reflects important demographic characteristics, data, and trends;

(b) Annually, establish and implement a comprehensive system of evaluation to determine the impact of the Center's activities on children with deaf-blindness, identify relevant achievements, and identify strategies for improvement;

(c) Collaborate with the OSEP Project Officer in planning and conducting the annual Project Directors' Meeting in Washington, DC, and budget funds for that purpose; and

(d) Establish and maintain an advisory committee to assist in promoting project activities. The committee must include at least one individual with deaf-blindness, one parent of a child with deaf-blindness, one representative of an SEA, and at least three professionals with training and experience in serving children with deaf-blindness.

Fourth and Fifth Years of the Project

In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition:

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center.

(c) The degree to which the project promotes best practices in the area of services to children who are deaf-blind.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462(b)(2)(C), 1463, and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $49,397,000 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program for FY 2006, of which we intend to use an estimated $1,850,000 for the National Technical Assistance and Dissemination Center for Children who are Deaf-Blind competition. The Administration has also requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program, of which we intend to use an estimated $250,000 to support the personnel training activities of the National Technical Assistance and Dissemination Center for Children who are Deaf-Blind. The actual levels of funding, if any, depend on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $2,100,000 for a single budget period of 12 months. A minimum of $250,000 must be budgeted in each budget period of 12 months for the personnel training activities described under the heading *Activity Area (3)* in the *Priority* section of this notice because the Secretary intends to support these activities of the project from funds provided under section 662 of IDEA. The Assistant Secretary for Special Education and Rehabilitative Services may change these maximum amounts through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, public charter schools that are LEAs under State law, IHEs, other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.326T.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject your application if:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 22, 2005.

Deadline for Transmittal of Applications: February 10, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: April 11, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The National Technical Assistance and Dissemination Center for Children who are Deaf-Blind-CFDA Number 84.326T is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for The National Technical Assistance and Dissemination Center for Children who are Deaf-Blind at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application

deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326T), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.326T), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34

CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on: the extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

We will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Charles Freeman, U.S. Department of Education, 400 Maryland Avenue, SW., room 4097, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7347.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: December 19, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–7720 Filed 12–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Overview Information, Vocational Rehabilitation Services, Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250B.

Dates:

Applications Available: December 27, 2005.

Deadline for Transmittal of Applications: April 21, 2005.

Eligible Applicants: The governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

Estimated Available Funds: The Administration has plans to set aside $33,024,000 for the Vocational Rehabilitation Services Projects for American Indians With Disabilities program for FY 2006, of which we intend to use an estimated $2,700,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Median Amount of Awards: The estimated median amount of an award is $500,000, which means that one-half of the awards will be over $500,000 and one-half of the awards will be under $500,000, with the majority of awards in the range of approximately $350,000 to $575,000.

Maximum Award: There is no maximum award amount for the first project year. However, when preparing your submission, applicants should be aware that we anticipate an increase of about three percent in the award amounts for this program compared to FY 2005.

In addition, the Secretary may limit any proposed increases in funding for project years two through five to the annual estimated percentage change in the consumer price index for all urban consumers (CPIU). The current estimated percentage increase in the CPIU over the prior year for project years two through five is as follows: FY 2007—2.9 percent, FY 2008—2.4 percent, FY 2009—2.4 percent, and FY 2010—2.4 percent.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choices, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 121(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741).

Competitive Preference Priority: For FY 2006 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Continuation of Previously Funded Tribal Programs

In making new awards under this program, we give priority consideration to applications for the continuation of tribal programs that have been funded under this program.

Program Authority: 29 U.S.C. 741.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, and 97. (b) The regulations in 34 CFR parts 369 and 371.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has plans to set aside $33,024,000 for the Vocational Rehabilitation Services Projects for American Indians With Disabilities program for FY 2006, of which we intend to use an estimated $2,700,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Median Amount of Awards: The estimated median amount of an award is $500,000, which means that one-half of the awards will be over $500,000 and one-half of the awards will be under $500,000, with the majority of awards in the range of approximately $350,000 to $575,000.

Maximum Award: There is no maximum award amount for the first project year. However, when preparing your submission, applicants should be aware that we anticipate an increase of about three percent in the award amounts for this program compared to FY 2005.

In addition, the Secretary may limit any proposed increases in funding for project years two through five to the annual estimated percentage change in the consumer price index for all urban consumers (CPIU). The current estimated percentage increase in the CPIU over the prior year for project years two through five is as follows: FY 2007—2.9 percent, FY 2008—2.4 percent, FY 2009—2.4 percent, and FY 2010—2.4 percent.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

2. *Cost Sharing or Matching:* See 34 CFR 371.40.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is suggested that you limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the Budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

3. *Submission Dates and Times:* Applications Available: December 27, 2005. Deadline for Transmittal of Applications: April 21, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Vocational Rehabilitation Services Projects for American Indians With Disabilities—CFDA Number 84.250B is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Vocational

Rehabilitation Services Projects for American Indians With Disabilities-CFDA Number 84.250B competition at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250B), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.250B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number— and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are in the application package. The selection criteria may total 100 points, plus the 10 competitive preference priority points (see section I. *Competitive Preference Priority*).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established two performance measures for the Vocational Rehabilitation Services Projects for American Indians with Disabilities program. The measures are the percentage of individuals who leave the program with an employment outcome and the cost per employment outcome. Each grantee must annually report its performance on these measures through the Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.

In addition, this program is part of the Administration's job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are: Entered employment (percentage employed in the first quarter after program exit); retention in employment (percentage of those employed in the first quarter after exit that were still employed in the second and third quarter after program exit); earnings increase (percentage change in earnings pre-registration to post program and first quarter after exit to third quarter after exit); and efficiency (annual cost per participant). The Department is currently working toward implementation of these common measures. Each grantee will be required to collect and report data for the common measures when implemented.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Alfreda Reeves, U.S. Department of Education, 400 Maryland Avenue, SW., room 5051, Potomac Center Plaza, Washington, DC 20204–2800. Telephone: (202) 245–7485.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 19, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–7721 Filed 12–21–05; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2005–0007, FRL–8013–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response (Renewal), EPA ICR Number 1426.07, OMB Control Number 2050–0105

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved

collection. This ICR is scheduled to expire on 12/31/2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 23, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–SFUND–2005–0007, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Solid Waste and Emergency Response, 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulation Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sella M. Burchette, U.S. EPA, Environmental Response Team, MS 101, Building 18, Edison, NJ 08837; telephone number: 732–321–6726; fax number: 732–321–6724; e-mail address: *burchette.sella@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 21, 2005 (70 *FR* 61284), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). No comments were received.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–SFUND–2005–0007, which is available for public viewing at the Office of Solid Waste and Emergency Response Superfund 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 Reading Room is (202) 566–1744, and the telephone number for the Office of Solid Waste and Emergency Response Superfund Docket is (202) 566–0276. An electronic version of the public docket is available at *http://www.regulations.gov.* Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket go to *http://www.regulations.gov.*

Title: EPA Worker Protection Standards for Hazardous Waste Operation and Emergency Response (Renewal).

Abstract: Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration approved State plans. The EPA coverage, required to be identical to the OSHA standards, extends to three categories of employees: those engaged in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage and Disposal (TSD) facilities regulated under the Resource Conservation and Recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities, and employees involved in emergency response operations without regard to location. This ICR renews existing mandatory record keeping collection of ongoing activities including monitoring of any potential employee exposure at uncontrolled hazardous waste sites, maintaining records of employee training, refresher training, medical exams and reviewing emergency response plans.

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 recordkeeping burden for this collection will remain unchanged from previous estimates and is estimated to average 10.5 hours per site or event. Burden means to total time, effort, and financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments in the 27 States and 2 territories that do not have OSHA-approved plans under section 18(b) of the OSH Act. The population affected by the EPA worker protection standards includes State and local governments with employees: (1) Engaged in routine hazardous waste operations at TSD facilities regulated under RCRA; (2) engaged in clean-ups at uncontrolled hazardous waste sites, including corrective actions at RCRA TSD facilities; and (3) engaged in emergency response without regard to location.

Estimated number of respondents: Approximately 100 RCRA TSD facilities or uncontrolled hazardous waste sites and 23,900 State and local police departments, fire departments or hazardous materials teams.

Frequency of Response: Continuous maintenance of records.

Estimated Total Annual Hour Burden: 255,427.

Estimated Total Annual Cost: $3,529,000, which includes $0 annual capital/startup costs, $0 annual O&M costs and $3,529,000 annual labor costs.

Changes in the Estimates: There are no changes in the estimates currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: December 14, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–7694 Filed 12–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0037, FRL–8013–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Metal Coil Surface Coating (Renewal); EPA ICR Number 0660.09, OMB Control Number 2060–0107

AGENCY: Environmental Protection Agency.

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 January 23, 2006.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OECA–2005–0037, to (1) EPA online using *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, EPA West, 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–2005–0037, 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 Docket 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, Confidential Business Information, 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 Metal Coil Surface Coating (Renewal).

ICR Numbers: EPA ICR Number 0660.09, OMB Control Number 2060–0107.

ICR Status: This ICR is scheduled to expire on December 31, 2005. 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 metal coil surface coating facilities. The standards apply to each metal coil surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after January 5, 1981. Owners or operators of the affected facilities described must make initial reports when a source becomes subject, 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 in general, are required of all sources subject to New Source Performance Standard (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 41 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 that 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 metal coil surface coating facilities.

Estimated Number of Respondents: 158.

Frequency of Response: Initially, semiannually, on occasion.

Estimated Total Annual Hour Burden: 15,643.

Estimated Total Annual Cost: $1,594,680, which includes $0 annual capital/startup costs, $331,800 annualized O&M costs, and $1,262,880 annual labor costs.

Changes in the Estimates: There is an increase of 1,112 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: December 14, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–7724 Filed 12–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0006; FRL–8013–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports; EPA ICR Number 1884.03, OMB Number 2070–0162

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports; EPA ICR No. 1884.03, OMB No. 2070–0162. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before January 23, 2006.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2005–0006, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: 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: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA–Hotline@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 March 23, 2005 (70 FR 14677), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments during the comment period, which are addressed in the Supporting Statement of the ICR. Any comments related to 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 No. EPA–HQ–OPPT–2005–0006, which is available for online viewing at *http://www.epa.gov/edocket*, or in person inspection at the OPPT 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 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 Pollution Prevention and Toxics Docket is 202–566–0280. Use www.regulations.gov to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in 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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in www.regulations.gov. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in www.regulations.gov. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Toxic Substances Control Act (TSCA), Section 8(b), requires EPA to compile and keep current a complete list of chemical substances manufactured or processed in the United States. EPA updates this inventory of chemicals every four years by requiring manufacturers, processors and importers to provide production volume, plant site information and site-limited status information. This information allows EPA to identify what chemicals are or are not currently in commerce and to take appropriate regulatory action as necessary. EPA also uses the information for screening chemicals for risks to human health or the environment, for priority-setting efforts, and for exposure estimates.

Responses to the collection of information are mandatory (see 40 CFR 710). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 265 hours and 609 hours per response, depending upon the type(s) of chemical(s) that a respondent must report. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process or import chemical substances, mixtures or categories.

Frequency of Collection: Every four years.

Estimated total/average number of responses for each respondent: 1.

Estimated No. of Respondents: 3,026.

Estimated Total Annual Burden on Respondents: 413,575 hours.

Estimated Total Annual Costs: $28,362,706.

Changes in Burden Estimates: This request reflects a decrease of 2 hours (from 413,577 hours to 413,575 hours) in the total estimated respondent burden from that currently in the OMB inventory, reflecting a rounding error. This change is an adjustment.

Dated: December 14, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–7725 Filed 12–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[MN87; FRL–8013–2]

Notice of Issuance of Prevention of Significant Deterioration Permit to Grand Casino Mille Lacs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces that, on October 13, 2005, the Environmental Protection Agency (EPA), Region 5, issued a Prevention of Significant Deterioration (PSD) permit to Great Lakes Band Corporate Commission (Grand Casino Mille Lacs). This permit authorizes the company to change the method of operation of the three existing diesel-fired engine-generator sets (generators) to provide peak load management and back-up power to the Grand Casino Resort and Hotel (the Facility). The Facility is located on land that is held in trust for the Mille Lacs Band of Ojibwe Indians in Mille Lacs County, Minnesota.

DATES: During the public comment period, ending July 22, 2005, EPA received no comments on the draft PSD permit. Therefore, in accordance with 40 CFR 124.15, this permit became effective immediately upon permit issuance, October 13, 2005, and EPA has issued it as final.

ADDRESSES: The final signed permit is available for public inspection online at *http://www.epa.gov/region5/air/permits/epermits.htm* or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Angelbeck, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–9698, or *angelbeck.richard@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Is the Background Information?

The subject generator sets are owned by Grand Casino Mille Lacs. These generators had been used solely as back-up generators. This permit will now allow the generators to be put onto the peaking program of the local utility, as well as to continue to provide emergency power for Grand Casino Mille Lacs. The total generation capacity of the generators is 5.4 megawatts (MW). Electricity generated at the Facility is not sold for distribution.

Since the potential emissions of nitrogen oxides (NO_X) from the three generators were projected to be greater than 250 tons per year, in accordance with 40 CFR 52.21(b)(1), the Facility is considered a major stationary source and subject to the PSD permitting requirements. As required by 40 CFR part 52, Grand Casino Mille Lacs applied to EPA for a PSD permit and conducted a Best Available Control Technology (BACT) analysis, an air quality analysis, and an additional impact analyses. The federal PSD permit (No. PSD–ML–R50007–05–01) that EPA issued to Grand Casino Mille Lacs contains all applicable part 52 requirements. Among the permit's terms is a 300-hour-per-year operating limit on all generators combined, restricting the Facility's potential to emit NO_X.

In accordance with the requirements of 40 CFR 124.15, EPA provided the public with 30 days to comment on the draft permit. EPA received no comments. Consequently, EPA finalized the permit and provided copies to the applicant, pursuant to 40 CFR 124.15.

B. What Action Is EPA Taking?

EPA is notifying the public of the issuance of the PSD permit to Grand Casino Mille Lacs.

Dated December 9, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E5–7695 Filed 12–21–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 15, 2005.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 23, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your comments by email or U.S. mail. To submit your comments by email send them to *PRA@fcc.gov.* To submit your comments by U.S. mail send them to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLMENTARY INFORMATION:

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 76.1701and 73.1943, Political Files.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for-profit institutions.

Number of Respondents: 52,217.

Estimated Time per Response: 2.5 hours—104 hours per year.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 1,818,003 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.3526 and 47 CFR Section 73.3527 require that licensees and permittees of commercial and noncommercial AM, FM and TV stations maintain a file for public inspection at its main studio or at another accessible location in its community of license. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports, statements certifying compliance with filing announcements in connection with renewal applications, and a list of community issues addressed by the station's programming. These rules also specify the length of time, which varies by document type, that each record must be retained in the public file. The public and FCC use the data to evaluate information about the licensee's performance and to ensure that station is addressing issues concerning the community to which it is licensed to serve.

47 CFR 73.1943 and 47 CFR 76.1701 require licensees of broadcast stations and cable television systems, respectively, to keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests. The data is used by the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other legally qualified candidates. 47 CFR 76.1701 also requires that, when an entity sponsors origination cable casting material that concerns a political matter or a discussion of a controversial issue of public importance, a list must be maintained in the public file of the system that includes the sponsoring entity's chief executive officers, or members of its executive committee or of its board of directors.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E5–7713 Filed 12–21–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premereger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—11/21/2005			
20051562	Tata Sons Limited	TLGB Acquisition Ltd	Teleglobe International Holdings Ltd.
20060129	James Ratcliffe	BP p.l.c	Innovene LLC and other entities.
20060180	Questor Partners Fund II, L.P.	Rex S. Butler	Fish House Foods, Inc.
20060181	Questor Partners Fund II, L.P.	Ronald Jeffrey Butler & Carrie Krenzel Butler.	Fish House Foods, Inc.
20060185	American Capital Strategies, Ltd.	The Meadows of Wickenburg, L.P.	The Meadows of Wickenburg, L.P.
20060186	ABRY Partners, V, L.P.	2000 Riverside Capital Appreciation Fund, L.P.	CapRock Holdings, Inc.
20060187	Monitor Clipper Equity Partners II, L.P.	Michael Keiser	Recycled Paper Greeting, Inc., RPG Holdings, Inc.

Trans #	Acquiring	Acquired	Entities
20060188	Monitor Clipper Equity Partners II, L.P.	Philip Friedmann	Recycled Paper Greeting, Inc., RPG Holdings, Inc.
20060190	The Timberland Company	Robert A. Fox	Smartwool Corporation.
20060192	American Capital Strategies, Ltd.	Atlantic Equity Partners III, L.P.	Ranpak Holding Corporation.
20060193	Elevation Partners, L.P.	Homestore, Inc	Homestore, Inc.
20060195	Aurora Equity Partners III, L.P.	Cortec Group Fund III, L.P.	New Axia Holdings, Inc.
20060200	Trinidad Energy Services Income Trust.	Cheyenne Parent, Inc	Cheyenne Drilling, L.P.
20060202	J.W. Childs Equity Partners III, L.P.	W/S Packaging Group, Inc	W/S Packaging Group, Inc.
20060207	Occidental Petroleum Corporation	Vintage Petroleum, Inc	Vintage Petroleum, Inc.
Transactions Granted Early Termination—11/22/2005			
20060103	Livingston International Income Fund	PBB Global Logistics Income Fund	PBB Global Logistics Income Fund.
20060189	Wellspring Capital Partners III, L.P.	Sam L. Susser	Susser Holdings, L.L.C.
20060197	Provident Energy Trust	EnCana Corporation	1140102 Alberta Ltd., EnCana Kerrobert Pipelines Limited, EnCana Midstream Inc., WD Energy Services, Inc.
20060198	Houlihan Lockey Howard & Zukin Inc..	ORIX Corporation	ORIX Finance Corp., ORIX Structured Finance LLC.
20060199	ORIX Corporation	Houlihan Lokey Howard & Zukin Inc	Houlihan Lokey Howard & Zukin Inc.
Transactions Granted Early Termination—11/23/2005			
20060102	New Times Holding, LLC	NewCo LLC	NewCo LLC.
20060191	GMM Capital LLC	Goody's Family Clothing, Inc	Goody's Family Clothing, Inc.
20060213	Telefonaktiebolaget LM Ericsson	Marconi Corporation plc	Marconi Communications Federal, Inc., Marconi Communications, Inc., Marconi Intellectual Property (Ringfence) Inc., Marconi Intellectual Property (US) Inc., Metapath Software International, Inc., Metapath Software International (US), Inc.
Transactions Granted Early Termination—11/28/2005			
20060126	Asurion Corporation	DST Systems, Inc	DST Lock/Line, Inc.
20060127	DST Systems, Inc.	Asurion Corporation	Asurion Corporation.
20060154	Castlerigg International Limited	GenCorp Inc	GenCorp Inc.
20060184	American Capital Strategies, Ltd.	DelStar Holding Corp	DelStar Holding Corp.
20060203	General Motors Corporation	ProAssurance Company	MEEMIC Insurance Company, MEEMIC Insurance Services Corporation.
20060216	Astellas Pharma Inc.	Theravance, Inc	Theravance, Inc.
20060223	Marathon Fund Limited Partnership V.	Transport Corporation of America, Inc.	Transport Corporation of America, Inc.
20060225	Formosa Plastics Corporation	New Mighty U.S. Trust	Formosa Plastics Corporation, U.S.A.
20060226	New Mighty U.S. Trust	Formosa Plastics Corporation	Formosa Plastics Corporation, America.
20060227	Mr. Sumner M. Redstone	CSTV Networks, Inc.	CSTV Networks, Inc.
20060228	BD Investment Holdings Inc.	Todd A. Robinson	LPL Holdings, Inc.
20060230	Citigroup Inc.	Alcoa Inc	SGS, SGS Canada, SGS MX, SGS UK.
20060233	Robert H. Castellini	The Cincinnati Reds LLC	The Cincinnati Reds LLC.
20060234	Alan D. Schwartz	The Bear Stearns Companies, Inc	The Bear Stearns Companies, Inc.
Transactions Granted Early Termination—11/29/2005			
20051699	Alfa Laval AB	Dover Corporation	Delaware Capital Formation Inc., Tranter PHE, Inc.
20060171	Peter R. Kellogg	SIRVA, Inc	National Association of Independent Truckers, LLC (NAIT), Transguard Insurance Company of America Inc. (Transguard), Vanguard Insurance Agency, Inc. (Vanguard).
20060177	Don H. Barden	Trump Entertainment Resorts, Inc	Trump Indiana, Inc.
20060178	Icahn Partners LP	Fairmont Hotels & Resorts, Inc	Fairmont Hotels & Resorts, Inc.
20060179	Icahn Partners Master Fund LP	Fairmont Hotels & Resorts, Inc	Fairmont Hotels & Resorts, Inc.
Transactions Granted Early Termination—11/30/2005			
20060155	SanDisk Corporation	Matrix Semiconductor, Inc	Matrix Semiconductor, Inc.

Trans #	Acquiring	Acquired	Entities
20060182	ValueAct Capital Master Fund, L.P	The Reynolds and Reynolds Company.	The Reynolds and Reynolds Company.
20060201	MediaNews Group, Inc.	Gannett Co., Inc	Texas-New Mexico Newspapers Partnership.
20060221	Autonomy Corporation plc	Verity, Inc	Verity, Inc.
Transactions Granted Early Termination—12/01/2005			
20060196	Johnson & Johnson	Biovail Corporation	Biovail Laboratories International SRL.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–24357 Filed 12–21–05; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; State Annual Long-Term Care Ombudsman Report and Instructions for Older Americans Act Title VII

AGENCY: Administration on Aging, HHS.

ACTION: Notice

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to State Annual Long-Term Care Ombudsman Report and instructions for Older Americans Act Title VII.

DATES: Submit written or electronic comments on the collection of information by February 21, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *sue.wheaton@aoa.gov.*

Submit written comments on the collection of information to: Administration on Aging, Washington, DC 20201. Attention: Sue Wheaton

FOR FURTHER INFORMATION CONTACT: Sue Wheaton, by telephone: (202) 357–3587 or by e-mail: *sue.wheaton@aoa.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Under section 712(c), section 712(h)(1) and section 712(h)(B) of the Older Americans Act, as amended, states are required to provide information on ombudsmen activities to AoA, which AoA is then required to present to Congress. The reporting system, the National Ombudsman Reporting System (NORS), was developed in response to these directives and other needs pertaining to the Long Term Care Ombudsman Program and approved by the Office of Management and Budget for use for the first time in FY 1995–96; it was extended a second time with slight modifications for use in FY 1997–2001 and extended for the third time with no change for use from FY 2002–2006. This current (fourth) request is to extend, with modifications, use of the existing State Annual Long-Term Care Ombudsman Report (and Instructions) from Older Americans Act Title VII grantees. The details of these proposed changes are contained on the AoA Web site at: *http://www.aoa.gov/prof/aoaprog/elder_rights/LTCombudsman/NORS/nors_form_instructions.asp.* AoA estimates the burden of this collection of information as follows: Approximately one and one-half hour per respondent with 52 State Agencies on Aging responding annually.

Dated: December 19, 2005.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 05–24356 Filed 12–21–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0486]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration Public Health Notification (formerly known as Safety Alert/Public Health Advisory) Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA Public Health Notification (formerly known as Safety Alert/Public Health Advisory) Readership Survey.

DATES: Submit written or electronic comments on the collection of information by February 21, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed 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 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.

FDA Public Health Notification (formerly known as Safety Alert/Public Health Advisory) Readership Survey (OMB Control Number 0910–0341)—Extension

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 375(b)) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH) communicates these risks to user communities through two publications: (1) The Public Health Notification (PHN) and (2) the Preliminary Public Health Notification (PPHN). The PHN is published when CDRH has information or a message to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type, and that information may not be readily available to the affected target audience in the health care community, and CDRH can make recommendations that will help the health care practitioner mitigate or avoid the risk.

The PPHN is also published when CDRH has information to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type. However, two additional conditions exist that make the use of this type of notification preferable. First, CDRH's understanding of the problem, its cause(s), and the scope of the risk is still evolving, and in order to minimize the risk, the center believes that health care practitioners need the information they have, however incomplete, as soon as possible. Second, the problem is being actively investigated by the center, the industry, another agency or some other reliable entity, so that the center expects to be able to update the PPHN when definitive new information becomes available.

Notifications are sent to organizations affected by the risks discussed in the notification such as hospitals, nursing homes, hospices, home health care agencies, retail pharmacies, and other health care providers. Through a process for identifying and addressing postmarket safety issues related to regulated products, CDRH determines when to publish notifications.

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4) authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly notifications for reducing risk are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of information in the alert. Subjects will also be asked whether they wish to receive future notifications electronically, as well as how the PHN program might be improved.

The information collected will be used to shape FDA's editorial policy for the PHN and PPHN. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content, format, and method of dissemination.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of respondents	Annual Frequency per response	Total Annual responses	Hours per response	Total hours
308	3	924	.17	157

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the PHN program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: December 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–7642 Filed 12–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0274]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; 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 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 January 23, 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 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.

Voluntary Hazard Analysis and Critical Control Point (HACCP) Manuals for Operators and Regulators of Retail and Food Service Establishments

The draft Operator's Manual contains information and recommendations for operators of retail and foodservice establishments who wish to develop and implement a voluntary food safety management system based on HACCP principles. Operators may decide to incorporate some or all of the principles presented in the draft manual into their existing food safety management systems. The recordkeeping practices discussed in the draft manual are voluntary and may include documenting certain activities, such as monitoring and verification, which the operator may or may not deem necessary to ensure food safety. The draft manual includes optional worksheets to assist operators in developing and validating a voluntary food safety management system.

The draft Regulator's Manual contains recommendations for State, local, and tribal regulators on conducting risk-based inspections of retail and foodservice establishments, including recommendations about recordkeeping practices that can assist operators in preventing foodborne illness. These recommendations may lead to voluntary actions by operators based on consultation with regulators. For example, an operator may develop a risk control plan as an intervention strategy for controlling specific out-of-control foodborne illness risk factors identified during an inspection. Further, the draft manual contains recommendations to assist regulators when evaluating voluntary food safety management systems in retail and foodservice establishments. Such evaluations typically consist of the following two components: Validation (assessing whether the establishment's voluntary food safety management system is adequate to control food safety hazards) and verification (assessing whether the establishment is following its voluntary food safety management system). The draft manual includes a sample ''Verification Inspection Checklist'' to assist regulators when conducting verification inspections of establishments with voluntary food safety management systems.

Types of operator records discussed in the manuals and listed in the following burden estimates include: Food safety management systems (plans that delineate the formal procedures to follow to control all food safety hazards in an operation); risk control plans (HACCP-based, goal-oriented plans for achieving active managerial control over specific out-of-control foodborne illness risk factors); hazard analysis (written assessment of the significant food safety hazards associated with foods prepared in the establishment); prerequisite programs (written policies or procedures, including but not limited to, standard operating procedures, training protocols, and buyer specifications that address maintenance of basic operational and sanitation conditions); monitoring (records showing the observations or measurements that are made to help determine if critical limits are being met and maintained); corrective action (records indicating the activities that are completed whenever a critical limit is not met); ongoing verification (records showing the procedures that are followed to ensure that monitoring and other functions of the food safety management system are being implemented properly); and validation (records indicating that scientific and technical information is collected and evaluated to determine if the food safety management system, when properly implemented, effectively controls the hazards).

All recommendations in both manuals are voluntary. For simplicity and to avoid duplicate estimates for operator recordkeeping practices that are discussed in both manuals, the burden for all collection of information recommendations for retail and foodservice operators are estimated together in table 1 of this document, regardless of the manual in which they appear. Collection of information recommendations for regulators in the Regulator's Manual are listed separately in table 2 of this document.

The likely respondents to this collection of information are operators and regulators of retail and foodservice establishments.

In the **Federal Register** of July 21, 2005 (70 FR 42072), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR OPERATORS[1]

Types of Records	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Food Safety Management System	50,000[2]	1	50,000	60	3,000,000
Hazard Analysis	50,000[2]	1	50,000	20	1,000,000
Prerequisite Program Records	100,000[3]	365	36,500,000	0.1	3,650,000
Monitoring Records	100,000[3]	365	36,500,000	0.3	10,950,000
Corrective Action Records	100,000[3]	365	36,500,000	0.1	3,650,000
Ongoing Verification Records (includes calibration records)	100,000[3]	365	36,500,000	0.1	3,650,000
Validation Records	50,000[3]	1	50,000	4	200,000
Total First Year Burden[4]:					26,100,000
Annual Burden[4]:					22,100,000
Risk Control Plan	50,000	1	50,000	2	100,000
Monitoring Records	100,000	90	9,000,000	0.3	2,700,000
Corrective Action Records	100,000	90	9,000,000	0.1	900,000
Ongoing Verification Records (includes calibration records)	100,000	90	9,000,000	0.1	900,000
Annual Burden[5]					4,600,000
Total Annual Burden for Operators (Excluding First Year)					26,700,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] First year burden only.
[3] Annual burden.
[4] Burden for developing and implementing a food safety management system based on the Operator's Manual.
[5] Annual burden for developing and implementing a risk control plan based on the Regulator's Manual.

The burden for these activities may vary among retail and foodservice operators depending on the type and number of products involved, the complexity of an establishment's operation, the nature of the equipment or instruments required to monitor critical control points, and the extent to which an operator uses the Operator's Manual and/or the Regulator's Manual. The estimate does not include collections of information that are a usual and customary part of an operator's normal activities. FDA has established as a goal to have 50,000 (1/2 of 1 percent) of the approximately one million U.S. retail and foodservice operators implement the recommendations outlined in the two manuals. This target figure is used in calculating the burden in tables 1 and 2 of this document because the agency lacks data on how to base an estimate of how many retail and foodservice establishments are likely to use one or more of the manuals to voluntarily implement a comprehensive food safety management system based on HACCP principles or a risk control plan for out-of-control processes identified during an inspection. FDA's estimate of the total number of retail and foodservice establishments is based on numbers obtained from the two major trade organizations representing these industries, the Food Marketing Institute and the National Restaurant Association, respectively. FDA seeks comments on this estimate.

The hour burden estimates in table 1 of this document for operators who follow the HACCP-based recommendations in the Operator's Manual are based on the estimated average annual information collection burden for mandatory HACCP rules, including seafood HACCP (60 FR 65096 at 65178, December 18, 1995) and juice HACCP (66 FR 6138 at 6202, January 19, 2001). FDA estimates that during the first year, 20 labor hours are needed to conduct the hazard analysis and 60 labor hours are needed to develop a food safety management system (HACCP plan). Once the system is in place, the annual frequency of records is based on 365 operating days per year. Assuming there is one recordkeeper per shift of operation, the agency estimates that two recordkeepers per day would be needed to conduct monitoring, corrective action, recordkeeping, and verification outlined in the system. The agency further estimates that validation will be conducted once per year, based on menu or food list changes, changes in distributors, or changes in food preparation processes used. The validation will require a total of 4 labor hours.

The second set of estimates in table 1 of this document shows the annual burden for developing and implementing a risk control plan to control specific out-of-control foodborne illness risk factors identified during an inspection by a State, local, or tribal regulatory authority. If an operator decides to use a risk control plan as recommended in the Regulator's Manual, one person from the establishment is needed to work with the regulator to develop the written plan. FDA estimates that two recordkeepers per day (one recordkeeper for each shift) would be needed to conduct monitoring, corrective action, recordkeeping, and verification outlined in the risk control plan. The estimated duration of

implementation for a risk control plan is 90 days, which is the minimum recommended time to achieve long-term behavior change.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR REGULATORS[1]

Types of Records	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Voluntary Food Safety Management System Evaluation (includes validation, verification, and completion of verification inspection checklist)	50,000	1	50,000	16	800,000
Total Annual Burden for Regulators					800,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

It is difficult to predict the number of State, local, and tribal regulatory jurisdictions that will use the Regulator's Manual. But FDA anticipates that retail and foodservice establishments which voluntarily develop and implement a food safety management system based on the Operator's Manual will request their regulatory authorities to conduct an evaluation of their system. The estimates in table 2 of this document for the annual burden to State, local, and tribal regulators that follow the recommendations in the Regulator's Manual were calculated based on the usual time needed for one person to evaluate a voluntarily-implemented food safety management system and record the findings. The number of times an inspector may be asked by an operator to evaluate a voluntarily-implemented system is not expected to exceed once per year.

Dated: December 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–7644 Filed 12–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 2006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2006. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of the FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Internet site located at *http://www.fda.gov/oc/advisory/default.htm*. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively schedule advisory committee meeting for 2006. You may also obtain up-to-date information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area).

Committee Name	Tentative Date(s) of Meetings	Advisory Committee 10-Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Pediatric Advisory Committee	March, June, and November day(s) to be announced.	8732310001
Science Board to the Food and Drug Administration	April and November day(s) to be announced.	3014512603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	March 31, September 13.	3014512388
Blood Products Advisory Committee	March 9–10, July 13–14, October 26–27.	3014519516
Cellular, Tissue and Gene Therapies Advisory Committee	February 9–10, July 13–14, November 2–3.	3014512389
Transmissible Spongiform Encephalopathies Advisory Committee	To be announced.	3014512392

Committee Name	Tentative Date(s) of Meetings	Advisory Committee 10-Digit Information Line Code
Vaccines and Related Biological Products Advisory Committee	February 17, May 17–18, September 20–21, November 15–16.	3014512391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Anesthetic and Life Support Drugs Advisory Committee	To be announced.	3014512529
Anti-Infective Drugs Advisory Committee	To be announced.	3014512530
Antiviral Drugs Advisory Committee	To be announced.	3014512531
Arthritis Advisory Committee	To be announced.	3014512532
Cardiovascular and Renal Drugs Advisory Committee	April 25–26, July 25–26, November 1–2.	3014512533
Dermatologic and Ophthalmic Drugs Advisory Committee	To be announced.	3014512534
Drug Safety and Risk Management Advisory Committee	February 9–10, May 4–5.	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	January 23, May 3–4, August 23–24, November 8–9.	3014512536
Gastrointestinal Drugs Advisory Committee	September and November day(s) to be announced.	3014512538
Nonprescription Drugs Advisory Committee	January 23–24.	3014512541
Oncologic Drugs Advisory Committee	March 14 (Pediatric Subcommittee), March 15, June 2, September 12–13, December 6–7.	3014512542
Peripheral and Central Nervous System Drugs Advisory Committee	March 7–8.	3014512543
Pharmaceutical Science, Advisory Committee for	April 13–14 (Clinical Pharmacology Subcommittee), October 18–19 (Clinical Pharmacology Subcommittee), April, May, and October day(s) to be announced.	3014512539
Psychopharmacologic Drugs Advisory Committee	To be announced.	3014512544
Pulmonary-Allergy Drugs Advisory Committee	January 24.	3014512545
Reproductive Health Drugs, Advisory Committee for	May and June day(s) to be announced.	3014512537
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No tentative meeting scheduled.	3014512398
Medical Devices Advisory Committee (Comprised of 18 Panels)		
Anesthesiology and Respiratory Therapy Devices Panel	April 7, October 6.	3014512624
Circulatory System Devices Panel	February 16, April 21, June 16, August 18, October 20.	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	February 22–23, May 24–25, September 7–8, December 6–7.	3014512514
Dental Products Panel	February 28, July 25, October 24.	3014512518
Ear, Nose, and Throat Devices Panel	February 1–2, April 3–4, June 15–16, August 10–11, October 11–12, December 4–5.	3014512522
Gastroenterology-Urology Devices Panel	March 3, May 5, July 21, October 20.	3014512523
General and Plastic Surgery Devices Panel	April 27–28, August 24–25, December 4–5.	3014512519
General Hospital and Personal Use Devices Panel	February 9–10, June 12–13, September 28–29.	3014512520
Hematology and Pathology Devices Panel	April 28, October 20.	3014512515

Committee Name	Tentative Date(s) of Meetings	Advisory Committee 10-Digit Information Line Code
Immunology Devices Panel	July 14, November 8.	3014512516
Medical Devices Dispute Resolution Panel	Meeting scheduled as needed.	3014510232
Microbiology Devices Panel	February 23–24, September 21–22, October 26–27.	3014512517
Molecular and Clinical Genetics Panel	April 13–14, October 5–6.	3014510231
Neurological Devices Panel	March 2–4, August 3–4, June 5–6, August 28–29, November 13–14.	3014512513
Obstetrics-Gynecology Devices Panel	March 27–28, June 5–6, August 28–29, November 13–14.	3014512524
Ophthalmic Devices Panel	March 7–8, May 18, July 13–14, September 19–20, November 2–3.	3014512396
Orthopaedic and Rehabilitation Devices Panel	February 2–3, July 27–28, October 26–27, December 11–12.	3014512521
Radiological Devices Panel	February 7, May 23, September 12, November 7.	3014512526
National Mammography Quality Assurance Advisory Committee	August 28.	3014512397
Technical Electronic Product Radiation Safety Standards Committee	October 4.	3014512399
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	March 1, May 3, July 12, September 13.	3014510564
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	March 15, October 16.	3014512548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH (NCTR)		
Science Advisory Board to NCTR	April day(s) to be announced.	3014512559
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hands)	February day(s) to be announced.	3014512560

Dated: December 14, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E5–7645 Filed 12–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004P–0329]

Hand-Held, Doppler Ultrasound Prenatal Listening Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop to discuss scientific information bearing on whether hand-held Doppler ultrasound prenatal listening devices should be made available for use over-the-counter (OTC). This 1-day workshop is intended to provide members of the academic, scientific, and clinical communities; industry; consumer, and patient advocacy groups; and others with a forum for presenting their perspectives about available scientific literature and clinical studies relating to hand-held Doppler ultrasound prenatal listening devices. Written comments submitted to the docket before the workshop and information gathered at the workshop will be used by FDA to further identify and evaluate the risks and benefits associated with possible OTC availability of hand-held prenatal Doppler ultrasound listening devices.

Date and Time: The public workshop will be held on Wednesday, March 29, 2006, from 9 a.m. to 3:30 p.m. The deadline for registration is Friday, March 10, 2006. Requests to make presentations at the public workshop and written or electronic comments will be accepted until Friday, March 10, 2006.

Addresses: The public workshop will be held at the Hilton Washington DC North, 620 Perry Pkwy., Gaithersburg, MD, 20877. Additional information about and directions to the facility are available on the Internet at *http://www.hilton.com/en/hi/hotels/index.jhtml?ctyhocn=GAIGHHF*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852.

Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

Contact: Domini Cassis, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *domini.cassis@fda.hhs.gov*, 240–276–2342.

Agenda: At the workshop, FDA will hear presentations and oral comments from interested members of the public regarding Doppler ultrasound technology as used in hand-held prenatal listening devices. FDA anticipates that presenters may include representatives from the academic, scientific, and clinical communities; device, drug, and biological product manufacturers; consumer and patient advocacy groups; and others.

Registration and Requests for Presentations: There is no fee to attend this public workshop; however, registration is required. The deadline for registration is Friday, March 10, 2006. Early registration is recommended, as seats are limited. Space will be filled in order of receipt of registration. There will be no on-site registration. Please submit registration information (including name, title, firm name, address, e-mail address, telephone number, and fax number) by March 10, 2006 (see *Contact*). Interested persons who are unable to attend the workshop are encouraged to submit written comments (see *Request for Comments*).

Those who wish to make presentations during the public workshop should submit written notification including the following: (1) The specific issue(s) you intend to address; (2) the names and addresses of all individuals that will participate in your presentation; (3) the approximate amount of time your presentation will require; and (4) two copies of all presentation materials to Domini Cassis by March 10, 2006. Presentations will be limited to the topics outlined in the **SUPPLEMENTARY INFORMATION** section of this document and, depending on the number of speakers, FDA may limit the time allotted for each presentation. If you need special accommodations due to a disability, please contact Anne Marie Williams at 301–594–1283 at least 7 days in advance of the workshop.

Request for Comments: Interested persons may submit to the Division of Dockets Management (see *Addresses*) written or electronic comments regarding this document. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Transcripts: Following the workshop, transcripts will be available for review at the Division of Dockets Management (see *Addresses*).

SUPPLEMENTARY INFORMATION:

I. Background

Since July 2002, FDA has received three citizen petitions requesting that it grant OTC status to hand-held prenatal listening devices that produce no more than 20 mW/cm2 of Doppler ultrasound intensity (FDA Docket Nos. 2002P–0338, 2003P–0438, and 2004P–0329.) Currently, these products are class II devices that are legally available only by prescription. FDA denied petitions 2002P–0338 and 2003P–0438, citing its concern over the safety of exposing a developing fetus to Doppler ultrasound without the order or instruction of a physician, and referencing the following studies:

1. ''Sinistrality—A Side-Effect of Prenatal Sonography: A Comparative Study of Young Men.'' Keiler, H., et al.; *Epidemiology*; 12:618–623 (2001).

2. ''Acceleration of Fresh Fracture Repair Using the Sonic Accelerated Fracture Healing System (SAFHS): A Review.'' Warden, S.J., et al.; *Calcified Tissue International*; 66:157–163 (2000).

3. ''Acceleration of Tibial Fracture-Healing by Non-Invasive, Low Intensity Pulsed Ultrasound.'' Heckman, J., et al.; *Journal of Bone and Joint Surgery*; 76A:26–34 (1994).

4. ''Accelerated Healing of Distal Radial Fractures With the Use of Specific, Low-Intensity Ultrasound. A Multicenter, Prospective, Randomized, Double-Blind, Placebo-Controlled Study.'' Kristiansen, T., et al.; *Journal of Bone and Joint Surgery*, 79A:961–973 (1997).

5. ''Routine Ultrasound Screening in Pregnancy and the Children's Subsequent Handedness.'' Kieler, H., et al.; *Early Human Development*; 50:233–245 (1998).

FDA reiterated its concerns in response to the most recent petition, 2004P–0329, but agreed to hold a public workshop in which relevant issues surrounding the proposal for OTC sales, distribution, and unsupervised use of these devices could be discussed. This public workshop is not intended to address legal or regulatory issues. Rather, FDA intends to collect information from outside experts and stakeholders that could help the agency better identify and evaluate the risks and benefits of uncontrolled exposure to Doppler ultrasound energy introduced through hand-held prenatal listening devices.

II. References

The above references have been placed on display in the Division of Dockets Management (see *Addresses*) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 16, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–7643 Filed 12–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: December 29, 2005.

Open: 12 p.m. to 1 p.m.

Agenda: The agenda includes Opening Remarks by Director, NCCAM, and a Small Business Innovative Research (SBIR) concept.

Place: 6707 Democracy Boulevard, Two Democracy, Room 401, Bethesda, Maryland 20892. (Telephone Conference Call).

Contact Person: Jane F. Kinsel, PhD., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. (301) 496–6701.

The meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–496–6701, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

Dated: December 16, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 05–24379 Filed 12–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Clinical Scientist (K08) Award.

Date: December 20, 2005.

Time: 10 am to 12 pm

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38A, 8600 Rockville Pike, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Roy L. White, PhD., Division of Extramural Affairs, Review Branch, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924. 301/435–0310. *whiterl@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Heath, HHS).

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24378 Filed 12–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Program Project (P01).

Date: January 12, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Irina Gordienko, PhD, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, 301–435–0725, *gordieni@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24381 Filed 12–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: January 25, 2006.

Open: 8 a.m. to 12 p.m.

Agenda: Report from the Institute Director and other Institute Staff.

Place: Bethesda North Hotel and Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Closed: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Hotel and Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Anthony Demsey, Ph.D., Director, Office of Extramural Policy, National Institute of Biomedical Imaging and Bioengineering, 6701 Democracy Blvd., Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: December 15, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24376 Filed 12–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: January 31–February 2, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Quirijn Vos, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2666. *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbioloby and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 15, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24377 Filed 12–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 24–25, 2006.

Open: January 24, 2006, 1 p.m. to 5 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: January 25, 2006, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, PhD, Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892–2178, 301/496–8230, *kerrme@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nih.gov/ninr/a_advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24382 Filed 12–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, R21.

Date: February 16, 2006.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zoe E. Huang, MD, Health Science Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–5937, *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, Scholarly Works (G13's).

Date: March 3, 2006.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zoe E. Huang, MD, Health Science Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–5937, *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, IAIMS.

Date: March 10, 2006.

Time: 12 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Arthur A Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, Small Grants (R03s).

Date: March 15, 2006.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Health Science Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301,

Bethesda, MD 20892–7968, 301–594–5937, *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, K22/G08.

Date: March 22, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Health Science Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–5937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24383 Filed 12–21–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One Public Collection of Information; Port Security Training Exercise Program (PortSTEP)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice to withdraw and supersede previous notice.

SUMMARY: This notice serves to withdraw the previous **Federal Register** notice on this subject, published May 25, 2005 (70 FR 30132), and supersedes all information contained in that notice. TSA is coordinating the collection of information concerning surface transportation modes within the nation's public and private port terminals and facilities, in order to develop a full understanding of critical links and dependences to maritime transportation modes within each port. TSA invites public comment on the new information collection requirements abstracted below that will be submitted to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act.

DATES: Send your comments by February 21, 2006.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Purpose of Data Collection

The Department of Homeland Security (DHS) directed the Transportation Security Administration (TSA) to develop and implement a security response training exercise program that addresses security measures across all transportation modes. Unlike existing response exercise programs, this security exercise program will address the unique aspects of prevention and the measures needed to counter credible security threats pre-incident, in coordination with on-going response efforts. TSA, in collaboration with the U.S. Coast Guard (USCG), has chosen the maritime transportation modes as the prototype sector to develop such a program. The USCG holds lead responsibility for regulating security in maritime transportation, exercised substantially through the Area Maritime Security Committees and Plans. TSA supports USCG in this mission, contributing particular expertise in security across all transportation modes. As part of this effort, TSA and the USCG have identified a need for information regarding the type, amount, and complexity of surface transportation assets (for example: Rail, truck, etc.) and infrastructure located within the nation's ports.

The ports of the United States are unique entities in that they form a nexus between maritime and surface transportation modes of the Nation's transportation network. TSA is focusing efforts on the areas where surface transportation modes intersect at the Nation's ports, while the Coast Guard is focused on the waterside and maritime transportation aspects of the ports. TSA and USCG are interested in learning more about the inter-dependence and economic importance of these modal assets as they come together in the port environment. TSA was able to locate several sources of data. However, most available data did not include information or assessments specific to the surface transportation modes and their inter-dependence with the maritime transportation modes. Although some information exists for public port authorities, information is not readily available for private terminals. A Port Security Training Exercise Program (PortSTEP) Internet Web site is being developed as part of this program. Data will be collected from registered users as described further below.

Description of Data Collection

TSA will conduct the information collection via the Internet, using a web-based survey. The information collection will target public and private ports and terminals nationwide to capture data concerning the interdependency and importance of linkages between the maritime and surface transportation modes, in and around the port environment. This is a voluntary collection of information. Port directors and managers may choose to obtain input from relevant port stakeholders in the area, including USCG Area Maritime Security Committees, State and local transportation security managers, emergency managers and emergency responders, private port service providers, and industry and labor associations. However, this is not required. TSA estimates the total number of respondents for the PortSTEP survey to be 360, and the estimated annual reporting burden to be 150 hours annually.

TSA and USCG PortSTEP Project Officers may need to re-administer this survey periodically after 2007 to refine and refresh data collections. However, this requirement is not certain. PortSTEP Project Officers will provide an Internet Web site for registered and non-registered users to share data and provide releasable information to the public. Users include members of the maritime community, such as Federal,

State, and local agency representatives and industry individuals. User registrations will be required for access to certain data shared and collected, which may be sensitive in nature. Also, users must submit personal information so that TSA can verify an individual's identity and establish the access accounts to the registered user's site.

Use of Results

TSA will compile data from the survey results and assign weights to produce a score that TSA and USCG PortSTEP Project Officers will use to determine the appropriate level of TSA involvement in the management, conduct, and oversight of training response exercises conducted with surface transportation in the port area. TSA will also use the information collected to group ports based on their similarities, characteristics, and the degree of surface transportation exposure, in order to help focus the design, conduct, and evaluation of PortSTEP responses on the surface transportation issues. Much can be learned about the interactions and coordination between the surface and maritime transportation modes if the series of response exercises in PortSTEP are designed, conducted, and evaluated with this in mind. TSA and USCG will use the findings to refine and customize future PortSTEP iterations to the needs of the transportation mode being exercised. TSA and USCG plan to share and discuss this data with other agencies within the Federal Government.

Data collected from registered Web site users will be retained to verify account status and access permissions. TSA will assign users an account to determine access to certain information, and group users for administrative purposes. All data will be stored securely.

Issued in Arlington, Virginia, on December 16, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. E5–7684 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–52–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Florida Scrub-jays Resulting From the Proposed Construction of a Combination Single-Family Home Subdivision and Commercial Facilities in the City of Melbourne, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Riverside Development Group, Inc. (Applicant) requests an incidental take permit (ITP) for a duration of two years, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) as amended (U.S.C. 1531 *et seq.*). The Applicant anticipates the loss of about 1.57 acres of occupied Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) habitat in Section 8, Township 27 South, Range 37 East, in the City of Melbourne, Brevard County, Florida. Habitat loss would occur as a result of vegetation clearing and the subsequent construction of a 126 unit single-family home subdivision and commercial facilities on the 36-acre project site. The loss of one scrub-jay family could occur as a result of the Applicant's proposed project.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the project on the Florida scrub-jay. These measures are also outlined in the Service's Environmental Assessment (EA) and in the **SUPPLEMENTARY INFORMATION** section below. The Service announces the availability of the ITP application, HCP, and EA. Copies of the application, HCP, and EA may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before February 21, 2006.

ADDRESSES: Persons wishing to review the application, EA, and HCP may obtain a copy by writing the Service's Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30030 (Attn: Endangered Species Permits). Please reference permit number TE102635–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at either the Southeast Regional Office or at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Michael Jennings, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES** above), telephone: 904/232–2580, ext. 113.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE102635–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please submit comments over the Internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed above (see **ADDRESSES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. 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 inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in

peninsular Florida and is restricted to xeric uplands (well-drained, sandy soil habitats supporting a growth of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by agricultural land conversions and urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils that previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded, due to interruption of natural fire regime that is needed to maintain xeric uplands in conditions suitable for scrub-jays.

From 2000 through 2002, one family of scrub-jays was found using 7.22 acres within the project site. Scrub-jays using the project site are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of central and south Brevard County. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely further reduce the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat, as the lack of naturally occurring fires slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays are unlikely to persist in urban settings, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization. The retention of small patches of habitat similar to the onsite mitigation proposed by the Applicant, however, could provide benefits to scrub-jays by creating ''stepping stones'' used by scrub-jays dispersing between larger parcels of conservation lands in Brevard County.

Construction of the project's infrastructure and facilities would result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Specifically, habitat alteration associated with the proposed residential and commercial construction and associated infrastructure would reduce the availability of foraging, sheltering, and possible nesting habitat for one family of scrub-jays.

The Applicant proposes to minimize impacts to scrub-jays by reducing the project's footprint and avoiding active nest sites during the breeding season. The Applicant proposes to mitigate the take of scrub-jays by removing 5.65 acres of occupied scrub-jay habitat from the project's development footprint. In addition, the Applicant proposes to set aside and manage an additional 0.77 acres of unoccupied, but restorable onsite habitat as a buffer to the adjacent occupied habitat. Fee title to the entire onsite mitigation area would be transferred to Brevard County, and its Environmentally Endangered Lands Program would subsequently assume management responsibilities for the mitigation property. The Applicant proposes to establish an escrow account in the amount of $7,704 to pay for the costs of initial land restoration and management activities that would be undertaken prior to fee title transfer to Brevard County.

The Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP would be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: December 1, 2005.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E5–7664 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Cordova Oil Spill Response Facility, Cordova, AL

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for a proposed oil spill response facility at Shepard Point, near Cordova, Alaska, and that the DEIS is now available for public review. The purpose of the proposed project is to provide a deepwater staging facility for the rapid deployment of equipment to the site of an oil spill. This notice also announces a hearing for the public to provide comments on the DEIS.

DATES: Written comments on the DEIS must arrive by February 6, 2006.

Public hearings will be held on the following dates and times:

1. January 11, 2006, 5:30 p.m. to 9 p.m., Anchorage, Alaska.

2. January 12, 2006, 5:30 p.m. to 9 p.m., Cordova, Alaska.

ADDRESSES: You may mail written comments to Kristin K'eit, Bureau of Indian Affairs, Alaska Regional Office, Division of Environmental and Cultural Resource Management, P.O. Box 25520, Juneau, Alaska 99802–5520. You may also fax your comments to (907) 586–7044, or submit them electronically at the project Web site, *http://www.cordovarf@urscorp.com.*

Note: BIA cannot receive electronic comments directly via e-mail at this time.

Please include your name, return address, and the caption, ''DEIS Comments, Proposed Cordova Oil Spill Response Facility, Cordova, Alaska,'' on the first page of your written comments. To obtain a copy of the DEIS, please contact Kristen K'eit by mail at the above mailing address or by telephone at the number provided below. Copies of the DEIS are available for public review at the above mailing address. Copies of the DEIS have also been sent to agencies and individuals who participated in the scoping process and to all others who have previously requested copies of the document.

The locations of the public hearings are as follows:

1. Anchorage—Alaska Pacific University, Carr Gottstein Building, 4101 University Drive, Room 102, Anchorage, Alaska.

2. Cordova—Mt. Eccles Elementary School, 201 Adams Street, Cordova, Alaska.

FOR FURTHER INFORMATION CONTACT: Kristin K'eit, (907) 586–7423.

SUPPLEMENTARY INFORMATION: On behalf of the Native Village of Eyak, in accordance with the Agreement and Consent Decree in the Exxon Valdez Case (Case No. A89–095 CI [consolidated] and Case No. A92–175 CI [Ex. A]) and as mandated by the State of Alaska in the 1993, Alyeska settlement (HB 165), the BIA proposes to design and build a deep-water port and oil spill response facility at Shepard Point near Cordova, Alaska.

The BIA's preferred alternative is Alternative 4, a new oil spill response facility at Shepard Point near Cordova, Alaska. The proposed facility would consist of (1) a dedicated deepwater port, (2) additional staging and storage area; and (3) an access road to the Cordova road system. The facility would allow all-tide transfer of out-of-region supplies such as boom, skimmer, sorbents, anchors, tools, and personal protective equipment from the all-weather airport at Cordova to a wider variety of response vessels than can currently use Cordova's port. The NEPA document is required due to the potential effects of the project.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. 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.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: December 16, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–7662 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Compact taking effect.

SUMMARY: Notice is given that the Tribal-State compact between the Wyandotte Nation and the State of Oklahoma is considered to have been approved and is in effect.

DATES: *Effective Date:* December 22, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary-Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 (d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal-State compacts that are approved, or considered to have been approved for the purpose of engaging in class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove this compact before the date that is 45 days after the date this compact was submitted. This compact authorizes this Indian tribe to engage in certain class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), this compact is considered to have been approved, but only to the extent it is consistent with IGRA.

Dated: December 7, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–7698 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–MJ; HAG 06–0043]

Notice of Public Meetings—John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Prineville District.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below:

The John Day/Snake Resource Advisory Council is scheduled to meet on February 7, 2006, at the Oxford Suites, 2400 SW., Court Place in Pendleton, OR 97801. The meeting time will be from approximately 8 a.m. to 4 p.m. A public comment will begin at 1 p.m. and end at 1:15 p.m. (Pacific Time). The meeting may include such topics as OHV, Noxious Weeds, Planning, Sage Grouse, and other matters as may reasonably come before the council. Potential updates specific to this scheduled meeting include salmon recovery, BLM Vegetation Management Environmental Impact Statement the John Day Snake Resource Management Plan.

Meeting Procedures: The meeting is open to the public. The public may present written comments to the Council. Depending on the number of persons wishing to provide oral comments and agenda topics to be covered, the time to do so may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM representative indicated below. For a copy of the information to be distributed to the Council members, please submit a written request to the Prineville District Office 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the John Day/Snake Resource Advisory Council may be obtained from Virginia Gibbons, Public Affairs Specialist, Prineville District Office, 3050 NE.,

Third Street, Prineville, Oregon 97754, (541) 416–6647 or e-mail *vgibbons@or.blm.gov.*

Dated: December 15, 2005.

Stephen R. Robertson,

Associate District Manager.

[FR Doc. 05–24351 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–912–06–1990–PO–241A–006F]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting Locations and Times for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), two meetings of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at the meetings will include, but are not limited to: Manager's reports of current field office activities; RAC subcommittee reports on a variety of issues; Carson City Field Office Energy RMP Amendment/DEIS; North Valleys Rights-of-Way Projects FEIS; Pine Nut Mountain RMP Amendment/DEIS; Denton-Rawhide Mining RMP Amendment/Sale; Alpine County RMP Amendment; Sand Mountain Conservation Strategy; Granite-Fox Power Plant Project; Coer-Rochester Mine Plan/DEIS; Winnemucca RMP/DEIS; and additional topics the council may raise during the meetings.

DATES: The RAC will meet on Thursday–Friday, March 2–3, 2006, at the BLM—Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada; and on Wednesday–Thursday, June 28–29, 2006, at the BLM—Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada. All meetings are open to the public. A general public comment period, where the public may submit oral or written comments to the RAC, will be held on the first day of each two-day meeting at 4 p.m. (March 2 & June 28).

Final agendas, with any additions/corrections to agenda topics, the starting and ending times of each meeting, and details of any planned field trips, will be determined/posted at least two weeks before each two-day meeting on the BLM—Nevada State Office Web site at *http://www.nv.blm.gov/rac;* hard copies of the agendas can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or those who wish a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107, no later than two weeks before each two-day meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov*

Dated: December 16, 2005.

Donald T. Hicks,

Field Office Manager, BLM—Carson City Field Office.

[FR Doc. 05–24354 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–100–05–1020–AL]

Notice of Public Meetings, Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC meetings will be held February 9, 2006; May 11, 2006; August 10, 2006; and November 9, 2006.

ADDRESSES: The Northwest Colorado RAC meetings will be held February 9, 2006, at the BLM Grand Junction Field Office, located at 2815 H Rd., Grand Junction, CO; May 11, 2006, at the Colorado State University Cooperative Extension Service Office located on the Grand County Fairgrounds, Kremmling, CO; August 10, 2006, at the Holiday Inn located at 300 S. Colorado Hwy. 13 in Craig, CO; and November 9, 2006, at the Glenwood Springs Community Center located at 100 Wulfsohn Rd. in Glenwood Springs, CO.

All Northwest Colorado RAC meetings will begin at 8 a.m. and adjourn at approximately 3 p.m., and public comment periods regarding matters on the agenda will be held at 9:30 a.m. and 2 p.m. during each meeting.

FOR FURTHER INFORMATION CONTACT: Jamie Connell, BLM Glenwood Springs Field Manager, 50629 Hwy. 6&24, Glenwood Springs, CO; telephone 970–947–2800; or Melodie Lloyd, Public Affairs Specialist, 2815 H Rd., Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate. These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: December 12, 2005.

Jamie Connell,

Glenwood Springs Field Manager, Lead Designated Federal Officer for the Northwest Colorado RAC.

[FR Doc. 05–24355 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease CACA 38084

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Section 371(a) of the Energy Policy Act of 2005, the lessee, North American

Civil Recoveries Arbitrage Corporation (NACRA) timely filed a petition for reinstatement of oil and gas lease CACA 38084 in (Santa Barbara *and* Ventura County, California. The lessee paid the required rental accruing from the date of termination, June 1, 2002.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $5 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of the lease and $155 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5 per acre;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $155 cost of publishing this Notice

FOR FURTHER INFORMATION CONTACT: Bonnie J. Edgerly, Land Law Examiner, Branch of Adjudication, Division of Energy & Minerals, BLM California State Office, 2800 Cottage Way, STE W–1834, Sacramento, California 95825, (Ph: 916–978–4370).

Dated: December 13, 2005.

Debra Marsh,

Supervisor, Branch of Adjudication, Division of Energy and Minerals.

[FR Doc. E5–7651 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Humboldt County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, catalogue records, and associated documents relevant to the human remains was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California.

In 1926, human remains representing at least five individuals were recovered from site CA-Hum-NL–3, Humboldt County, CA, by Dr. Herbert H. Stuart. Dr. Stuart donated the human remains to the Phoebe A. Hearst Museum of Anthropology that same year. No known individuals were identified. No associated funerary objects are present.

Based on the consultation, geographic, linguistic, and archeological evidence, including the presence of a site-specific artifact indicative of the Gunther Pattern (A.D. 1500–1850), which is not in the possession of Phoebe A. Hearst Museum, the site CA-Hum-NL–3 has been identified as a Yurok site. Archeological evidence indicates that the Yurok cultural continuity began by at least A.D. 500.

In 1930, human remains representing at least seven individuals were removed from site CA-Hum-NL–7, Trinidad, Humboldt County, CA, by Dr. Stuart. In 1931, Dr. Stuart donated the human remains to the Phoebe A. Hearst Museum. No known individuals were identified. The 22 associated funerary objects are 22 disk shell beads.

Based on consultation, geographic, linguistic, archeological, and ethnographic evidence, site CA-Hum-NL–7 has been identified as a Yurok site. The presence of Class J and Class K beads are indicative of the Protohistoric Period (post A.D. 1500). Archeological evidence indicates that the Yurok cultural continuity began by at least A.D. 500.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 12 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum, also have determined that, pursuant to 25 U.S.C. 3001 (2), the 22 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum, have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and the associated funerary objects should contact Douglas Sharon, Director, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720–3712, telephone (510) 643–0585, before January 23, 2006. Repatriation of the human remains and associated funerary objects to the the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California may proceed after that date if no additional claimants come forward.

Phoebe A. Hearst Museum of Anthropology, is reponsible for notifying the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: November 30, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E5–7680 Filed 12–21–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Pick-Sloan Missouri Basin Program (P–SMBP), Eastern and Western Division Proposed Project Use Power Rate

AGENCY: Bureau of Reclamation, Interior.

ACTION: Approval of new rate for Pick-Sloan Missouri Basin Program, Eastern and Western Division Project Use Power

SUMMARY: The Bureau of Reclamation (Reclamation) determined, after public input, that the proposed P–SMBP project use power rate of 12.55 mills per kilowatt-hour (kWh) is approved and will become effective 30 days after this notice is published.

DATES: *Effective Date:* The P–SMBP project use power rate of 12.55 mills/kWh will become effective 30 days after this notice is published.

Explanation of Public Comment Format: Reclamation, by **Federal Register** Notice (FRN) dated April 29, 2005, stated its intent to adjust the project use power rate with a 30-day written comment period which would end on June 6, 2005. Reclamation published another FRN on June 26, 2005, that extended the comment period to July 31, 2005. A total of 7 letters with written comments were received during the comment period. All booklets, studies, comments/letters that were utilized to develop the rate for project use power are available for inspection and copying at the Great Plains Regional Office, located at 316 North 26th Street, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Mike Ferguson, Bureau of Reclamation, Great Plains Regional Office, at (406) 247–7705 or by e-mail at *mferguson@gp.usbr.gov.*

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP are established pursuant to the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Flood Control Act of 1944 (58 Stat. 887).

The project use power rate will be reviewed by Reclamation each time Western Area Power Administration (Western) adjusts the P–SMBP firm power rate. Western will conduct the necessary studies and will use the same Reclamation established methodology that was used to develop the 12.55 mills/kWh rate to calculate any new rate. The P–SMBP project use rate will be adjusted by Reclamation when Western adjusts the P–SMBP firm power rate.

Project Use Power Rate Adjustment Comments: The following comments were received during the public comment period. Reclamation paraphrased and combined comments when it did not affect the meaning. Reclamation's response follows each comment.

Comment: Would like to discuss 100-year average of OM&R from the Fiscal Year 2005 Proposed Project Use Power Rate Adjustment Project Use Power Study (PUPRS) with wheeling costs in P–SMBP.

Response: The PUPRS is a 100-year study. The 100-year term is consistent with planning requirements and with the assumption that the projects will have a 100-year life (for example Buffalo Bill Dam in Wyoming is approaching 100-years now). However, in Western's Power Repayment Study (PRS) to establish the firm power rate, it is the critical maximum repayment requirement in a given year (known as the pinch point) that drives the rate solution. There is no such pinch point in a strictly operation, maintenance, and replacement (OM&R) based study since maintenance and replacement expenditures can and have been moved (deferred) over time. Therefore, we are looking at what the average revenue requirement will be to meet OM&R expenses over the project life. Furthermore, as in most rate studies, the first 5 years are based on projected OM&R requirements from actual budget documents. Beyond 5 years, the operation and maintenance is levelized and the replacements come from standard equipment life expectancy data.

Comment: Question inclusion of wheeling costs in project use power rate especially when firm power customers get benefit of ultimate cost allocation and sub-allocation percentage.

Response: Questions relating to relative benefits received by various project beneficiaries are not relevant to the current determination of the appropriate cost components of the project use power rate. Wheeling expenses paid by the government for the delivery of project use power are an appropriate cost to include in this cost based rate study.

Comment: Should Reclamation and Western revisit wheeling costs associated with irrigation pumping when it exceeds construction of transmission line?

Response: Possibly. However, the effect of revisiting wheeling costs is problematic. If wheeling rates are postage-stamp rates and the wheeling agent is charging everyone the same, it may not be possible to justify constructing a separate transmission line. Maybe the cost differential, if it exists, could be used in some formal way to demonstrate that the wheeling charges are unreasonable and should be lowered. It is doubtful that Reclamation would construct a parallel transmission line. Reclamation has no transmission line maintenance capability and would probably contract with the same coop that is now wheeling that power.

Comment: Western recently issued a **Federal Register** Notice announcing a proposed power rate increase based on the FY2004 Rate Study. Why is the project use power rate based on a FY2003 PRS?

Response: When Reclamation began the process for updating the OM&R rate basis for project use power, Western and Reclamation felt that it would be best to key it off of the most current rate-setting PRS that had been through the review process and had been accepted by Federal Energy Regulatory Commission. The 2004 PRS is just going through that process now. If and when the new rate is approved, we will do a new project use study that keys off of the 2004 PRS.

Comment: Western held informal meetings with their customers in May 2005. Is there any reason why Reclamation didn't have similar discussions with their contractors to discuss criteria and changes and study results?

Response: All of the existing project use power contractors are notified of the upcoming rate increase and are allowed sufficient time to comment. Western has over 200 customers which have effective representation in a few larger organizations. Reclamation has a little over 30 contractors and they are widely scattered across the region. Project use power contractors will not see their rate increase unless their ability to pay for such an increase has gone up. Based on ongoing studies dealing with project payment capacity and ability to pay, we have not seen any evidence that the agricultural economy is improving. Absent such evidence, it seemed an unnecessary expense to hold such informal meetings. However, based on other comments and one informal meeting, Reclamation is evaluating such a process for future rate increases.

Comment: Would like to understand the basis for statements one through five of the brochure and how they relate to the legislation authorizing the P–SMBP. Would like to discuss past practices and legislation history and what has changed.

Response: Reclamation looked at increasing the project use rate periodically over time. In the late 1970's and thereafter, the OM&R costs of the system began to diverge from the original rate significantly. Also, project evaluation standards for reauthorization were now under Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies which required the use of appropriate

economic and financial measures of project feasibility. That means using the actual opportunity cost of power in the evaluation of new projects. It was appropriate at that time to begin a sustained effort to bring the project power charges into alignment with actual costs.

For statements 1–3 of the brochure, these rules of application primarily stem from legal review which states that the Bureau of Reclamation can increase the rate to keep pace with OM&R of the power system but that such increases for existing contractors are subject to ability to pay. Congress did not intend to limit the pumping power rate to 2.5 mills. Rather, the 2.5 mill rate was intended to be the initial rate and subject to increases. The Flood Control Act of 1944 requires that increases in the rate be subject to the user's ability to pay. This application can result in different districts paying different rates as determined by their ability to pay.

For statement 4 of the brochure, certain tribal interests elected not to do an ability-to-pay determination.

For statement 5 of the brochure, see the introductory discussion.

Comment: Would like to discuss repayment of power investment and assistance to irrigation as envisioned and incorporated in the Report on Financial Position Missouri River Basin Project dated December, 1963 which was the basis for Oahe, Mid-State, and Garrison Unit authorizations in 1965 and 1966.

Response: Reclamation, Western and the U.S. Army Corps of Engineers (Corps) are following the repayment rules set forth in the 1963 report. Nothing in those rules impacts the project use power rate. Rather, they primarily impact the repayment of irrigation costs that were beyond irrigation's ability to pay and assigned to power for repayment and when those costs will be repaid.

Comments Regarding Contract Rate of Delivery (CROD): Would like to discuss rationale and authority for penalties for exceeding the CROD as it relates to project use pumping power? Second part of this question relates to billing for increased capacity and transmission charges incurred as a result of exceeding CROD.

The rate adjustment study includes the establishment of severe penalties for exceeding the CROD. It seems unreasonable to establish a penalty to the irrigation use when it is first priority power and inappropriate to include this special condition in the rate setting exercise. It should be included as an individual contract item with the user rather than a general rate setting component.

The rate adjustment study includes the establishment of penalties for exceeding the CROD. It does not seem appropriate that a rate study be used for this purpose. This subject seems to be a backlash from a recent incident. In our case, the CROD was exceeded for one month out of the 50 plus years that project use power has been delivered. This should be a power contract matter between Reclamation and the project use power recipient rather than an element of rate adjustment.

Following our detailed review of the reason for including the penalty clause in the firm power contracts in the 1970's, we were encouraged to hear that it wasn't Reclamation's plan or intent to penalize the P–SMBP project use power pumpers with a rate of 10 times the project use power rate unless they haven't worked with Reclamation on possible changes in pumping needs caused by things like a change out of a pump. Before our discussion, it was hard to understand how the penalty clause would apply to project use pumping. The main purpose of the P–SMBP legislation was to develop irrigation and then have first use of the hydropower. All the firm power contracts have withdrawal clauses to cover project use pumping power needs.

Response: Reclamation has and will continue to work with its irrigation contractors to set a CROD that accurately reflects the project use power demand requirements of the project. These rates of delivery are used to determine capacity and wheeling purchases. Rates are set to recover actual costs so when an irrigation district exceeds their CROD, it often requires purchasing additional capacity and wheeling on the spot market. These costs can be extremely high and will be passed on to the districts or power contractors. Irrigation districts should never exceed their CROD if they are operating within their water and electric service contracts. In order to ensure this, Reclamation believes a penalty is necessary. Section 9(c) of the Reclamation Project Act of 1939 and the Flood Control Act of 1944 authorizes Reclamation to set electric power rates on Reclamation projects. In the specific case mentioned in comment 3 above, the CROD was exceeded following the district increasing the pump size without approval from Reclamation. This was in violation of the water service contract between the district and Reclamation. The district was notified that the larger pump would likely cause them to overrun their CROD. The rate schedule, MRB–P12, becomes part of each project use power contract when it becomes effective.

Comment: Would like to know how Western and Reclamation plan to handle depletions on future irrigation? Would like to discuss effects on revenues and repayment?

Response: Depletions are still being handled on the basis of ultimate development since that is our mandate under the ultimate development concept. To assume no depletions or different depletions assumes no ultimate development which has implications for cost allocations, National Environmental Policy Act, etc. At this time, the depletions are tied to the assumed irrigation development following the ultimate development concept.

Comment: Would like to discuss original basis for sub-allocation and ultimate cost allocation concept in P–SMBP. Basis for changes in that seem to be occurring and the reason for changes.

Response: The only present-day changes in the sub-allocation and ultimate cost allocation concepts were authorized by the Garrison Reformulation Act of 1986 where almost 900,000 acres of development were removed from the development total and the Act explicitly provided for the reallocation of costs associated with the deleted acreage.

Comments regarding the Project Use Power Study: The project use power study seems to focus on a $500,000 wheeling charge and separates wheeling from other operation and maintenance costs. In 1999 the Commissioner of Reclamation confirmed that the project use power rate includes the delivery costs (wheeling) to the pumps. This should be stated in the report and be a basic premise of the study.

The study seems to focus on non-federal wheeling costs as P–SMBP costs. In 1999 the Commissioner, after a considerable amount of study, confirmed that the project use power rate includes the delivery costs to the pumps. The report attempts to justify this but makes no mention of this confirmation. Instead, it focuses on a $500,000 wheeling cost and separates wheeling cost from other operation and maintenance costs. This is evident on page 5, in Appendix B, and on page 2 of Appendix F. Wheeling cost for project use power is listed as an assumption on page 5.

The study eludes in Appendix F that non-federal wheeling cost is a basis for adjusting the rate. A $500,000 cost is the only cost increase mentioned. This cost seems insignificant if compared to the total P–S Program cost that determines

the rate, and we question whether it should be a reason for rate adjustment.

Response: Wheeling costs are annual expenses paid by the government for delivery of project use power. Reclamation and Western treat them as such in their rate studies. The current study appropriately includes those costs as one of the many expenses in the study.

Comment: The study infers in Appendix F that the action to adjust the rate is due to dramatic increases in non-federal wheeling costs to irrigation projects. This increase seems to be $500,000 and is insignificant compared to the total P–S Program costs that determine the power rate. We question whether costs are part of the P–S total annual costs and should not be portrayed as the basis for adjusting the rate.

Response: Appendix F of the study is a general background on project use power on P–SMBP. Historical information on wheeling is included in that section. The reason for the rate increase is stated on the first page of the study: ''The major factor contributing to the need for an upward rate adjustment is increased OM&R expenses on the P–SMBP system.''

Comment: The study includes the establishment of a new rule concerning application of ability-to-pay for new irrigation development. The purpose of P–SMBP has not changed; why is there a new classification made for new irrigation in this rate setting process?

Response: The study creates a new minimum level for ''ability to pay''. Most P–SMBP contractors pay 2.5 mills/kWh for project use power based on the original project use power rate. This rate was never intended to stay at this level in perpetuity but was intended to increase to recover costs. As new irrigation is developed it is sound business practice to consider current O&M costs when determining the feasibility of that development. The rule is not new as it coincides with the original intent of periodically increasing the project use power rate to recover cost and the same philosophy was applied to the last rate increase.

Comments regarding wheeling: Several specific study parameters deserve discussion. For example, while non-federal wheeling to irrigation may not be a significant impact to overall rate adjustment, the specific manner in which these costs (one of numerous costs) are counted, does have an impact. It is important that the commitment to delivery be reinforced through a study of transmission procedure and at least cost analysis in order to remain consistent with the intent of the enabling P–SMBP legislation.

As indicated at our meeting, we are still concerned about the wheeling costs being included in the project use pumping power rate especially when 15.8% of the total power investment is set aside for project use pumping. It seems like the power investment set aside in an interest-free account for irrigation should be used to build the transmission to the project pumps as originally planned in the P–SMBP legislation. We think this is especially true when the cost of wheeling to the pumps exceeds the cost of constructing the transmission facilities to serve the pumps. From a purely economic standpoint, the government should at least renegotiate the wheeling arrangements or construct the transmission facilities.

Response: We assume that the first comment is asking if it is more economical for the Federal government to construct distribution lines to some P–SMBP irrigation district pumps rather than pay wheeling charges. The initial cost of constructing the distribution lines is, in some cases, lower than the annual wheeling charge. However, after the line is constructed, the government would maintain the line, through a contract. Also, the cost of purchasing rights-of-way may further increase the initial construction cost. Reclamation agrees that extraordinarily high wheeling charges should be investigated. The 15.8% of construction costs ''set aside'' represent a cost obligation for already constructed features to be repaid in the future, not a revolving fund for future construction.

Comment: It appears that cost analysis continues to be based on the assumption that flood irrigation is the norm. Considering the shift from flood to sprinkler irrigation over the last twenty years, it may be appropriate that analysis reflect such change. It is also reasonable to assume that new development will be completed consistent with these technologies.

Response: Reclamation delivers project use power for gravity irrigation unless project specific legislation states otherwise.

Comment: New development should be an important premise with regards to rate adjustment analysis. It is a contention of the Upper Missouri States that the promise and intent of the P–SMBP legislation is far from being met. While it is off the direct subject of a power rate adjustment it is appropriate at this point to reinforce our commitment to further P–SMBP development and suggest that it is a priority. It is also our position that P–SMBP development not be restricted to federal project status and that P–SMBP project use power be made available to non-federal projects.

Response: Reclamation agrees that the development envisioned under P–SMBP has not occurred. Reclamation also supports further development when it is economically feasible under current Federal feasibility standards. Current legislation does not provide for delivery of P–SMBP project use power to private irrigation districts.

Comment: Page 2 of Appendix F discusses only wheeling cost and the ability to pay adjustment. It would be appropriate to discuss other costs that are included and also excluded in the project use power rate. In other words the study reflects that there is insecurity in the irrigation wheeling responsibility. We hope that this enigma can be overcome.

Response: Appendix F is intended to give the reader a background on project use power on P–SMBP. The treatment of ability to pay and wheeling costs are key to understanding this. The other costs included in the project use power rate are shown in appendixes A and B.

Comment: It is interesting to note the assumptions used for the FY2003 Rate Setting PRS by Western. We understand from our discussions that Western continues to use the Corps Main Stem Reservoir, Series 8–83, dated April 1984 adjusted for the Garrison Diversion Unit Reformulation Act of 1986. By continuing to assume the massive depletions for irrigation that were used in the 1984 Study, the long-term power generation and revenues are substantially understated. Probably a more realistic approach would be to project generation and revenues at the 2010 levels to the end of the PRS. It would be interesting to see how this might affect the need for the rate increase. For example, the power revenues go from $312 million in 2010 to $272 million in 2100 a reduction of $40 million per year. This is basically due to huge depletions for future irrigation. The statement was made that no changes could be made in the depletions or cost allocations because of the McGovern Amendment, which was a part of the 1977 DOE Act. It was pointed out that Reclamation and Western had made changes in the early 1980's regarding the future power developments and sub-allocation percentages without Congressional Approval.

Response: Aside from the reductions in depletions and costs stemming from the Garrison Diversion Unit Reformulation Act of 1986, Reclamation, Western and the Corps are

still constrained to follow the ultimate development concept in rate setting. The primary driver of the P–SMBP firm rate is construction repayment which is due on critical dates and near-term generation which is currently being affected by drought. Construction repayment is not a factor in the project use power rate.

Comment: Based on the PUPRS and discussions, we had a feeling that Reclamation was getting away from the ability to pay concept. We hope this is not the case. Congressional Directives in the Flood Control Act of 1944 and subsequent P–SMBP legislation were to develop irrigation in the Basin to stop the out migration of people. This would compensate the states for the rich farmlands that were flooded by the reservoirs.

Response: Reclamation is not getting away from the ability to pay concept.

Comment: As discussed at the meeting, we expressed a concern that the repayment criteria and payout dates established in the 1963 report on Financial Position Missouri River Basin Project were not being followed on repayment of the June 30, 1964 power investment which was completed or under construction on that date. As pointed out this has an adverse effect on repayment of the interest-free power investment.

Response: The rules adopted in the 1963 report are being followed. All projects completed or under construction as of June 30, 1964 were to have their irrigation aid repaid as soon as practically possible after the completion of firm power repayment. All projects authorized after that date are to have their irrigation aid paid within 50 years plus up to a 10-year development period but only after the pre-1964 project aid was paid. Since firm power investments have continually been made, the pre-1964 project repayment was continually pushed out. However, with the completion of North Loup Block 1 with an irrigation aid repayment date of 2046, all prior irrigation aid and the irrigation aid for the first block of North Loup is due in 2046. Reclamation does not believe that repayment of irrigation aid 60 years in the future without interest constitutes an adverse impact.

Comment: We would like to see Reclamation hold an annual meeting with the P–SMBP project use power pumpers to discuss project use power rates and other items of interest to the group.

Response: Reclamation will take this into consideration based on other written comments and comments at an informal meeting held with some of the project use power contractors.

Comment: In making its calculations, Reclamation is spreading the wheeling costs associated with delivery of project use power across all P–SMBP generation. Wheeling costs of project use power are a component only of irrigation sales, not all power sales. Wheeling costs associated with project use power are not relevant to P–SMBP generation serving P–SMBP firm power customers of Western. By spreading these costs across all P–SMBP generation, Reclamation is understating the real cost of project use power. At the time Reclamation made its unilateral decision to include third party wheeling costs as part of power's aid-to-irrigation, Mid-West objected to Reclamation's decision. Mid-West continues to disagree with Reclamation's legal analysis of the issue. Mid-West also continues to object to the Reclamation's unilateral action without a public process fully airing the issue. Mid-West understands that applying wheeling costs for project use power only to generation association with project use power would raise the project use power rate above Reclamation's current proposal. Nevertheless, Reclamation should adopt the methodology that properly classifies wheeling of project use power as a component of irrigation sales, not all P–SMBP sales.

Response: The rate includes all wheeling costs including those for firm power delivery as well as project use power delivery. The firm power wheeling costs are much more than the project use power wheeling costs.

Comment: Reclamation's proposed rate adjustment is based upon the Western's 2003 PRS. That PRS is no longer the rate-setting PRS. The 2004 PRS has indicated the need for another rate increase for P–SMBP firm power customers. Rather than initiating a new process for adjusting the project use power rate or lagging behind in establishing the project use power rate, Mid-West asks Reclamation to incorporate data from the 2004 PRS to recalculate what the project use power rate should be in this proceeding.

Response: Reclamation started the analysis of this project use power rate increase following Western's 2003 PRS. Reclamation in consultation with Western made the decision to complete the rate adjustment using the 2003 PRS. Once Western makes another rate increase, Reclamation will revisit the project use power rate to determine if another rate adjustment is necessary.

Comment: Reclamation notes in PUPRS that the application of the new project use rate may be mitigated by application of the ''ability-to-pay'' test to P–SMBP irrigation projects. Reclamation goes on to state that ''[A]bility-to-pay studies will be conducted *periodically* [emphasis added] * * *.'' Mid-West believes that these studies should be conducted on a regular basis—every five years.

Response: Reclamation has a process for 5-year rate reviews on its water contracts. If a district has increased ability to pay at that time, the first priority for that ability is to increase the project use power pumping rate paid by that district up to the full ability to pay.

Comment: Mid-West agrees with Reclamation that the new project use power rate will be the ''floor'' for new irrigation development under the P–SMBP, and that the ''ability-to-pay'' test will not result in a project use power rate lower than that noted in these proceedings.

Response: No response required.

Comment: Mid-West commends Reclamation for establishing penalties for exceeding the CROD. This will help ensure proper application of the project use power rate.

Response: No response required.

National Environmental Policy Act (NEPA): In compliance with NEPA, Reclamation has determined that this action is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement.

Power Rate Schedules: The existing rate schedule MRB–P11 placed into effect on March 22, 2002, will be replaced by rate schedule MRB–P12. Rate Schedule MRP–P12 is as follows:

Effective: 30 days after being published in FRN.

Affected Parties: All current Pick-Sloan Missouri Basin Program project use power recipients.

Location: In the areas generally described as central and eastern Montana, North and South Dakota, Nebraska, eastern Colorado, Wyoming, Kansas, western Iowa, and western Minnesota.

Applicable: For use in the operation of congressionally authorized irrigation and drainage pumping plants on irrigation projects for power service supplied through metering at specified points of delivery.

Character and Conditions of Service: Alternating current, 60 hertz, three phase, delivered and metered at the point identified in the contract upon demand during the summer irrigation season.

Availability: Available at 60 hertz at the pumping plant upon demand during the summer irrigation season.

Monthly Rate:

Demand Charge: None.

Energy Charge: 12.55 mills per kilowatt-hour for all energy use; subject to ability-to-pay but not less than 2.5 mills per kilowatt-hour.

Seasonal Minimum Bill: $2.75 per kilowatt of the maximum 30-minute integrated demand established during service months of each year specified in the contract.

Adjustments:

For Power Factor: The customer will normally be required to maintain a power factor at a point of delivery of not less than 95 percent lagging or leading.

Penalties for Exceeding the Contract Rate of Delivery (CROD): Energy usage in excess of the CROD will be billed at a rate 10 times the current project use power rate. This will be calculated on a prorated basis. The customer will also be billed for any increased capacity and transmission charges incurred as a result of exceeding the CROD.

Approval of Project Use Power Rate by Commissioner of Bureau of Reclamation: The Commissioner approved the rate of 12.55 mills/kWh by memorandum dated December 5, 2005.

Dated: December 16, 2005.

Michael J. Ryan,

Regional Director.

[FR Doc. 05–24352 Filed 12–21–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–639 and 640 (Second Review)]

Forged Stainless Steel Flanges from India and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 2005 (70 FR 38195) and determined on October 4, 2005, that it would conduct expedited reviews (70 FR 60558, October 18, 2005).

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 16, 2005. The views of the Commission are contained in USITC Publication 3827 (December 2005), entitled *Forged Stainless Steel Flanges from India and Taiwan: Investigation Nos. 731–TA–639 and 640 (Second Review).*

Issued: December 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7678 Filed 12–21–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson dissenting with respect to forged stainless steel flanges from Taiwan.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–523]

Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices II; Notice of Commission Decision To Review Portions of an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930; Grant of Motion To File Corrected Petition for Review; Denial of Motion To File Reply Brief; Extension of Target Date for Completion of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has also granted a motion for leave to file a corrected petition, denied a motion for leave to file a reply brief, and has extended the target date for completion of the investigation by 30 days, *i.e.,* until March 1, 2006.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 31, 2004, based on a complaint filed on behalf of MediaTek Corporation (''complainant'') of Hsin-Chu City, Taiwan. 69 FR 53089 (Aug. 31, 2004). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain optical disk controller chips and chipsets by reason of infringement of claims 1, 3–6, 8–9, and 10 of U.S. Patent No. 5,970,031 (''the '031 patent'') and claims 1–4 of U.S. Patent No. 6,229,773 (''the '773 patent''). *Id.* The notice of investigation named two respondents: Zoran Corporation (''Zoran'') of Sunnyvale, CA and Oak Technology, Inc. (''Oak'') of Sunnyvale, CA. *Id.*

On October 7, 2004, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add Sunext Technology Co., Ltd. (''Sunext'') of Hsin-Chu City, Taiwan, as a respondent and to add another patent, *viz.,* claims 1–2, 5–6, 15–19, 21, and 22 of U.S. Patent No. 6,170,043 (''the '043 patent'') to the scope of the investigation. 69 FR 64588. That ID was not reviewed by the Commission. *Id.*

A tutorial was held on June 24, 2005, and an eight-day evidentiary hearing was held from June 27, 2005, through July 7, 2005.

On September 30, 2005, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJ concluded that there was no violation of section 337. Although he found that respondent Oak infringes claims 1, 2, and 3 of the '773 patent, he found that those claims are invalid as anticipated by Japanese patent application number 08–015834 (RX–518) (''the Okuda prior art reference''). He found no infringement of claim 4 of the '773 patent, and no infringement of any asserted claim of the '031 or '043 patents. The ALJ concluded that the

asserted claims of the '031 patent are invalid for lack of enablement, the asserted claims of the '043 patent are not invalid, and the asserted claims of the '043 patent are not unenforceable. He also found that complainants did not establish the technical or economic prong of the domestic industry requirement for any of the three patents in issue.

On October 12, 2005, complainant MediaTek, the Commission investigative attorney (''IA''), respondent Sunext, and respondents Oak and Zoran petitioned for review of portions of the final ID. On October 14, 2005, complainant MediaTek moved for leave to file a corrected petition with attached petition. Also on October 14, 2005, respondents Zoran and Oak filed a letter requesting a two-day extension of time for filing their response in the event that the Commission accepted MediaTek's corrected petition. On October 18, 2005, the Chairman granted respondents' October 14, 2005, request for a two-day extension, and extended the due date for all responses to all petitions for review by two days, or until Friday, October 21, 2005.

On October 21, 2005, all parties filed responses to the petitions for review.

On November 17, 2005, complainant MediaTek filed a motion for leave to reply in support of its petition for review with an attached reply. On November 18, 2005, respondent Sunext filed an opposition to MediaTek's motion, and on November 21, 2005, respondents Zoran and Oak filed an opposition to MediaTek's motion. On November 22, 2005, MediaTek filed a response to Sunext's opposition. On November 23, 2005, the IA filed a response opposing MediaTek's motion, and on December 5, 2005, MediaTek filed a reply to the IA's response.

The Commission has granted complainant MediaTek's October 14, 2005, motion for leave to file a corrected petition, and denied complainant MediaTek's November 17, 2005, motion for leave to file a reply in support of its petition for review.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part:

(1) The Commission has determined to review the ALJ's analysis of the technical and economic prongs of the domestic industry requirement in its entirety.

(2) With respect to the '773 patent, the Commission has determined to review the following portions of the ALJ's infringement analysis: (a) The findings and analysis under the doctrine of equivalents concerning the SC series chips relating to the ''radio frequency (RF) amplifier chip'' limitation of claims 1 and 3 of the '773 patent (ID at 89–93, 97); (b) the finding that Sunext's reference designs incorporating the SC series controller chips do not infringe claim 4 under the doctrine of equivalents (ID at 99–100); (c) the finding that the ''working optical drives'' of Sunext's customers that incorporate the accused OTI–9510 and SC series controller chips infringe claims 1–3 of the '773 patent (ID at 79, 89,100); and (d) the finding that Sunext does not indirectly infringe the asserted claims of the '773 patent (ID at 102–04). As to invalidity, the Commission has determined to review the ALJ's finding that the Okuda reference anticipates claims 1, 2, and 3 of the '773 patent (ID at 104–06), and his conclusion that respondents failed to establish that claims 1, 2, or 3 of the '773 patent are made obvious by certain prior art (ID at 109–111).

(3) With respect to the '043 patent, the Commission has determined to review the ALJ's finding that PCT Publication No. W097/38367 (Hagiwara) does not anticipate claims 15, 16, 17, 19, 21, or 22 of the '043 patent. The Commission has also determined to review portions of the ALJ's determination that the '043 patent is not unenforceable for inequitable conduct before the PTO, specifically sections X.E.1 and X.E.2 of the ID (ID at 154–56).

The Commission has determined not to review the remainder of the ID.

On review, the Commission requests briefing based on the evidentiary record on all issues under review. Specific briefing questions that refer to confidential business information under the protective order issued in this investigation have been provided to the parties.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's September 30, 2005, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on January 9, 2006. Reply submissions must be filed no later than the close of business on January 16, 2006. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The Commission has extended the target date for completion of this investigation by 30 days, *i.e.,* until March 1, 2006.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 and section 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46, 51).

Issued: December 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7714 Filed 12–21–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–287 (Review)]

Raw In-Shell Pistachios From Iran

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on raw in-shell pistachios from Iran would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 1, 2005,[2] and determined on June 6, 2005, that it would conduct a full review.[3] Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 30, 2005.[4] The hearing was held in Washington, DC, on October 11, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on December 15, 2005. The views of the Commission are contained in USITC Publication 3824 (December 2005), entitled *Raw In-Shell Pistachios from Iran: Investigation No. 731–TA–287 (Review).*

Issued: December 19, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7719 Filed 12–21–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–510 (Advisory Opinion Proceedings)]

Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same; Notice of Commission Determination to Institute Advisory Opinion Proceedings

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute advisory opinion proceedings in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: This investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), was instituted by the Commission on June 3, 2004, based on a complaint filed by Trend Micro Inc. (''Trend Micro'') of Cupertino, California. 69 FR 32044–45 (June 8, 2004). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain systems for detecting and removing computer viruses or worms, components thereof, and products containing same by reason of infringement of claims 1–22 of U.S. Patent No. 5,623,600 (''the '600 patent''). The notice of investigation named Fortinet of Sunnyvale, California as the sole respondent.

On May 9, 2005, the ALJ issued his final initial determination (''ID'') finding a violation of section 337 based on his findings that claims 4, 7, 8, and 11–15 of the '600 patent are not invalid or unenforceable, and are infringed by respondent's products. The ALJ also found that claims 1 and 3 of the '600 patent are invalid as anticipated by prior art and that a domestic industry exists. He also issued a recommended determination on remedy and bonding.

On July 8, 2005, the Commission issued notice that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of Section 337. 70 FR 40731 (July 14, 2005). The Commission also requested briefing on the issues of remedy, the public interest, and bonding. Id. Submissions on the issues of remedy, the public interest, and bonding were filed on July 18, 2005, by all parties. All parties filed response submissions on July 25, 2005. On August 8, 2005, the Commission terminated the investigation, and issued a limited exclusion order and a cease and desist order covering respondent's systems for detecting and removing viruses or worms, components thereof, and products containing same covered by claims 4, 7, 8, and 11–15 of the '600 patent.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] 70 FR 9976.

[3] 70 FR 35116, June 16, 2005 (Chairman Koplan, Commissioner Miller, and Commissioner Hillman dissenting).

[4] 70 FR 37867.

On September 13, 2005, complainant Trend Micro filed a complaint for enforcement proceedings of the Commission's remedial orders. On October 7, 2005, the Commission determined to institute formal enforcement proceedings based on the complaint to determine whether Fortinet is in violation of the Commission's cease and desist order issued in the investigation, and what if any enforcement measures are appropriate.

On October 26, 2005, Fortinet filed a request for an advisory opinion under Commission Rule 210.79 (19 CFR 210.79) that would declare that Fortinet's FortiGate products incorporating Fortinet's newly redesigned anti-virus software do not infringe claims 4, 7, 8, and 11–15 of the '600 patent and, therefore, are not covered by the Commission's cease and desist order and limited exclusion order, issued on August 8, 2005.

The Commission has examined Fortinet's request for an advisory opinion and has determined that the request complies with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79(a). Accordingly, the Commission has determined to institute an advisory opinion proceeding and has referred Fortinet's request to the presiding ALJ for issuance of an initial advisory opinion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rules 210.75(a) and 210.79(a), 19 CFR 210.75(a), 210.79(a).

Issued: December 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7715 Filed 12–21–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–047]

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: U.S. International Trade Commission.

TIME AND DATE: January 4, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–663 (Second Review) (Paper Clips from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 18, 2006.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 20, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–24443 Filed 12–20–05; 3:17 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Third Round De Minimis Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 2, 2005, a proposed Third Round De Minimis Consent Decree in *United States* v. *Airco Co., et al.* Civil Action No. 05–1671, was lodged with the United States District Court for the Western District of Pennsylvania. This Consent Decree relates to three other matters before the same Court: *United States* v. *Allegheny Ludlum Corp., et al.,* C.A. No. 97–1863, *United States* v. *Aetna, Inc., et al.* No. 05–15, and *United States* v. *Chevy Chase Cars, et al.,* C.A. No. 05–1222. All four matters are Superfund cost recovery actions commenced by the United States against potentially responsible parties relating to the Breslube Penn Superfund Site in Coraopolis, Moon Township, Pennsylvania.

In the *Airco Co., et al.* action, the United States seeks the recovery of response costs incurred in connection with the Breslube Penn Superfund Site. The complaint alleges that each of the named defendants arranged for the treatment and/or disposal of wastes containing hazardous substances at the Site, within the meaning of 42 U.S.C. 9607(a)(3). The complaint names 20 defendants, each of which have signed the proposed Third Round De Minimis Consent Decree. Under the *Airco Co., et al.* Decree, each of the named defendants would pay a proportionate share of all past and future response costs incurred and to be incurred at the Site, plus a premium. In return for these payments, each defendant would receive a covenant not to sue by the United States, subject to certain reservations of rights, and contribution protection from suit by other potentially responsible parties. The total recovery under this Consent Decree should be approximately $412,000.

The Department of Justice will receive comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, attention: Lisa A. Cherup, and should refer to *United States* v. *Airco Co., et al.,* D.J. Ref. 90–11–3–1762/3.

The *Airco Co., et al.* Consent Decree may be examined at the Office of the United States Attorney for Western District of Pennsylvania, at 700 Grant Street, Suite 400, Pittsburgh, PA 15219 (ask for Robert Eberhardt), and at U.S. EPA Region III's Office, 1650 Arch Street, Philadelphia, PA (ask for Mary Rugala). During the public comment period, the *United States* v. *Airco Co., et al.* consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) for a full copy of the consent decree, or $6.50, for a copy without signature pages, payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–24324 Filed 12–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Pursuant to Section 122(d) of CERCLA, 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on December 12, 2005, a proposed Consent Decree (''Decree'') in *United States* v. *Atlas Tack Corp., et al.,* No. 03–CV–11601 WGY, *Atlas Tack Corp.* v. *Town of Fairhaven*, No. 01–CV–10501 WGY, and *United States* v. *Atlas Tack Corp., et al.*, No. 04 CV 11880 WGY, was lodged with the United States District Court for the District of Massachusetts.

In these actions, the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought to recover from the Atlas Tack Corporation (''Atlas'') and from its President, M. Leonard Lewis, the costs incurred or to be incurred by the United States in connection with the Atlas Tack Corporation Superfund Site located in Fairhaven, Massachusetts. In related litigation (which was consolidated with the United States' action), Atlas brought a contribution claim against the Town of Fairhaven (''Town''). Both Atlas and M. Leonard Lewis filed contribution counterclaims against the United States Army Corps of Engineers (''Corps''). The United States also filed a separate action against Atlas and M. Leonard Lewis seeking access to the Site and penalties for their failure to provide access to the Site.

The proposed Decree settles all the claims brought by the United States against Atlas and M. Leonard Lewis and also settles the contribution claims filed by Atlas against the Town and by Atlas and M. Leonard Lewis against the Corps. Pursuant to the Decree, Atlas and M. Leonard Lewis will pay the United States $2,335,000 in installments over a two-year period. In addition, Atlas has agreed to sell the property that it owns at the Site (the ''Property'') and to pay the United States 95% of the net proceeds from the sale. Alternatively, Atlas can retain ownership of the Property and pay to the United States 95% of its fair market value. The Town has agreed to pay to the United States unpaid real estate taxes it collects with respect to the Property that are in excess of $80,000. The Corps has agreed to pay $50,000 to the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Post Office Box 7611, United States Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Atlas Tack Corporation*, DOJ Ref. #90–11–3–06890. A copy of the comments should be sent to Donald G. Frankel, Department of Justice, Suite 616, One Gateway Center, Newton, MA 02458.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Massachusetts, Office of the United States Attorney, 1 Courthouse Way, John Joseph Moakley Courthouse, Boston, Massachusetts, 02210 (contact Bunker Henderson), and at the United States Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100, Boston, Massachusetts, 02114–2023 (contact Ronald Gonzalez). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may be also be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood at *tonia.fleetwood@usdoj.gov* or fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Decree from the Consent Decree Library, please enclose a check in the amount of $33.00 (25 cents per page reproduction costs) payable to the United States Treasury (or in the amount of $14.75 for the Decree without the Appendices).

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–24327 Filed 12–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy in 28 CFR 50.7, notice is hereby given that on December 2, 2005, a proposed Consent Decree in *United States* v. *Chemclene Corporation, Inc, et al.,* Consolidated Civil Action Nos. 99–3715, 02–8964, 03–3231, 05–5938, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action, the United States sought recovery of environmental response costs incurred by the United States, all in connection with the Malvern Superfund Site, located in Chester County, PA. The consent Decree requires settling Defendants Chemclene Corporation, Inc., Springridge Management Corporation, Inc., W. Llyod Balderston, and the Estate of Ruth Balderston to pay the United States the sum of $1,417,200, plus interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Chemclene et at.,* D.J. Ref. #90–11–3–1731. The Consent Decree may also be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, c/o Marilyn May, Assistant United States Attorney, 615 Chestnut Street, Philadelphia, PA 19106; and at U.S. EPA Region III, c/o Joan A. Johnson, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may be examined on the Department of Justice website: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, Please enclose a check in the amount of $20.50 for the Consent Decree (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–24328 Filed 12–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 9, 2005, a proposed Consent Decree in *United States* v. *Holly*

Corporation, No. 1:05–cv–00503 (LMB), was lodged with the United States District Court for the District of Idaho.

This Consent Decree resolves claims of the United States against Holly Corporation (''Holly'') under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), as amended, for recovery of response costs incurred in connection with removal actions at the Cinnabar Mine Site (''Site''), located near Yellow Pine, Idaho, in the Payette National Forest. The Consent Decree requires Holly to pay the United States a total of $450,000 in past response costs.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Holly Corporation,* D.J. Ref. #90–11–3–07536.

The Consent Decree may be examined at the Office of the United States Attorney for District of Idaho, at 800 Park Blvd., Suite 600, Boise, ID 83712–9903, and at the offices of U.S. E.P.A. Region 10, 1200 Sixth Avenue, Seattle, WA 98101. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. 202–514–0097, phone confirmation number 202–514–1547. When requesting a copy, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''U.S. Treasury'' in the amount of $3.75, and please reference *United States* v. *Holly Corporation,* D.J. Ref. #90–11–3–07536.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–24326 Filed 12–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Jimenez Landscaping, et al.*, Case No. 04 C 2806, was lodged with the United States District Court for the Northern District of Illinois on December 14, 2005. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands without a permit.

The proposed Consent Decree requires the defendants to: (1) Pay a civil penalty, (2) permit the U.S. Army Corps of Engineers to conduct a wetland delineation of the subject site; and (3) hire a professional surveyor to survey the wetland boundary on their property within 14 days of completion of the wetland delineation and serve a copy of the survey on the United States Attorney's Office for the Northern District of Illinois and the Corps of Engineers. Restoration of the impacted wetlands has been completed. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Daniel M. Tardiff, Assistant United States Attorney, United States Attorney's Office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States* v. *Jimenez Landscaping, et al.*, case No. 04 C 2806, including the USAO #2004V00779.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd.open.html.*

Daniel M. Tardiff,

Assistant United States Attorney.

[FR Doc. 05–24325 Filed 12–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Industrial Truck Standards Development Foundation, Inc.

Notice is hereby given that, on November 23, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Industrial Truck Standards Development Foundation, Inc. (''ITSDF''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Industrial Truck Standards Development Foundation, Inc., Washington, DC. The nature and scope of ITSDF's standards development activities are: To develop, adopt, amend, publish and distribute voluntary national consensus standards for industrial trucks, including forklift trucks, and related components, attachments and equipment.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–24332 Filed 12–21–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Enterprise Alliance, Inc.

Notice is hereby given that, on December 5, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Enterprise Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were

filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intellisync Corporation, San Jose, CA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Enterprise Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On June 24, 2004, Mobile Enterprise Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 23, 2004 (69 FR 44062).

The last notification was filed with the Department on September 9, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 6, 2005 (70 FR 58472).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–24331 Filed 12–22–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—SWRI Biodiesel Fuel/Water Separation Cooperative R&D Program

Notice is hereby given that, on December 6, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), SwRI Biodesel Fuel/Water Separation Cooperative R&D Program (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Champion Laboratories, Albion, IL; Donaldson Company, Inc., Minneapolis, MN; Fleetguard, Inc., Cookeville, TN; Lydall Filtration/Separation Inc., Rochester, NH; and RACOR, Modesto, CA. In addition, SwRI wishes to disclose that the Department of Energy is providing financial assistance to the research project through its award of Contract No. SP0600–05–D–5502; Delivery Order No. 0003.

The general area of SwRI's planned activity will be to evaluate the filtration performance of fuel filters composed of water repellent cellulose media, water repellant synthetic media, and water coalescer. The biodiesel diesel fuels used for this study will be produced from methyl soyate, yellow grease, and repeseed. Each test filter will be evaluated using the SAE J1488 emulsified test method at 0, 5, 12.5, and 20% biodiesel fuel concentrations in ultra low sulfur diesel fuel. A Design of Experiment will be generated to ensure randomized testing.

Membership in this group research project remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–24330 Filed 12–21–05; 8:45 am]

BILLING CODE 4410–11–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334, 50–412, 50–346 and 50–440; License Nos. DPR–66 and NPF–73, NPF–3 and NPF–58]

Pennsylvania Power Company, Ohio Edison Company, OES Nuclear, Inc., The Cleveland Electric, Illuminating Company, The Toledo Edison Company, Firstenergy Nuclear Operating Company, (Beaver Valley Power Station, Units 1 and 2), (Davis-Besse Nuclear Power Station, Unit 1), (Perry Nuclear Power Plant, Unit 1); Order Superceding Order of November 15, 2005 Approving Transfer of Licenses and Conforming Amendments

FirstEnergy Nuclear Operating Company (FENOC) and Pennsylvania Power Company (Penn Power), Ohio Edison Company (Ohio Edison), OES Nuclear, Inc. (OES Nuclear), the Cleveland Electric Illuminating Company (Cleveland Electric), and the Toledo Edison Company (Toledo Edison), are holders of Facility Operating Licenses Nos. DPR–66, NPF–73, NPF–3 and NPF–58, which authorize the possession, use, and operation of Beaver Valley Power Station, Units 1 (BVPS 1) and 2 (BVPS 2; together with BVPS 1, BVPS), Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), and Perry Nuclear Power Plant, Unit 1 (Perry), respectively. FENOC is licensed by the U.S. Nuclear Regulatory Commission (NRC, the Commission) to operate BVPS, Davis-Besse, and Perry (the facilities). The facilities are located at the licensees' sites in Beaver County, Pennsylvania, Ottawa County, Ohio, and Lake County, Ohio, respectively.

By letter dated May 18, 2005, FENOC submitted an application requesting approval of direct license transfers that would be necessary in connection with the following proposed transfers to FirstEnergy Nuclear Generation Corporation (FENGenCo), a new nuclear generation subsidiary of FirstEnergy: Penn Power's 65-percent undivided ownership interest in BVPS 1, 13.74-percent undivided ownership interest in BVPS 2, and 5.24-percent undivided ownership interest in Perry.

By letter dated June 1, 2005, FENOC submitted a second application requesting approval of direct license transfers that would be necessary in connection with the following proposed transfers to FENGenCo: Ohio Edison's 35-percent undivided ownership interest in BVPS 1 and 20.22-percent undivided ownership interest in BVPS 2; OES Nuclear's 17.42-percent undivided ownership interest in Perry; Cleveland Electric's 24.47-percent undivided ownership interest in BVPS 2, 44.85-percent undivided ownership interest in Perry, and 51.38-percent undivided ownership interest in Davis-Besse; and, Toledo Edison's 1.65-percent undivided ownership interest in BVPS 2, 19.91-percent undivided ownership interest in Perry, and 48.62-percent undivided ownership interest in Davis-Besse.

Supplemental information was provided by letters dated July 15 and October 31, 2005, (hereinafter, the May 18 and June 1, 2005, applications and supplemental information will be referred to collectively as the ''applications''). FENOC also requested approval of conforming license amendments that would reflect the proposed transfer of ownership of Penn Power's interests in BVPS and Perry to FENGenCo; delete the references to Penn Power in the licenses; authorize FENGenCo to possess the respective ownership interests in BVPS and Perry; reflect the proposed transfer of ownership interests in BVPS, Davis-Besse, and Perry from Ohio Edison, OES Nuclear, Cleveland Electric, and Toledo Edison (Ohio Companies) to FENGenCo; delete the Ohio Companies from the licenses except those continuing to hold

leased interests; and, authorize FENGenCo to possess the respective ownership interests in BVPS, Davis-Besse, and Perry being transferred by the Ohio Companies. Ohio Edison's 21.66-percent leased interest in BVPS 2, Toledo Edison's 18.26-percent leased interest in BVPS 2, and Ohio Edison's 12.58-percent leased interest in Perry would not be changed. No physical changes to the facilities or operational changes were proposed in the applications. After completion of the proposed transfers, the role of FENOC would be unchanged.

Approval of the transfer of the facility operating licenses and conforming license amendments is requested by FENOC pursuant to §§ 50.80 and 50.90 of Title 10 of the Code of Federal Regulations (10 CFR). Notices of the requests for approval and opportunity for a hearing were published in the **Federal Register** on August 2, 2005 (70 FR 44390–44395). No comments were received. Two petitions for leave to intervene pursuant to 10 CFR 2.309 were received on August 22, 2005, from the City of Cleveland, Ohio, and American Municipal Power-Ohio, Inc. A joint motion to lodge by the City of Cleveland, Ohio and Municipal Power Ohio, Inc., was received on September 12, 2005. The petitions and motion are under consideration by the Commission.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that FENGenCo is qualified to hold the ownership interests in the facilities previously held by Penn Power and the Ohio Companies, and that the transfers of undivided ownership interests in the facilities to FENGenCo described in the applications are otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the applications for the proposed license amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facilities will operate in conformity with the applications, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

On November 15, 2005, the Commission issued, ''Order Approving Transfer of Licenses and Conforming Amendments Relating to Beaver Valley Power Station, Units 1 and 2, Davis-Besse Nuclear Power Station, Unit 1, and Perry Nuclear Power Plant, Unit 1.'' Subsequently, the NRC staff determined that corrections were needed to the cover letter, Order, conforming amendments and safety evaluations. This Order contains the correction and supercedes the Order issued on November 15, 2005.

The findings set forth above are supported by a corrected NRC safety evaluation dated December 16, 2005.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Act, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the direct transfers of the licenses, as described herein, to FENGenCo are approved, subject to the following conditions:

(1) On the closing date(s) of the transfers to FENGenCo of their interests in BVPS 1, BVPS 2, Davis-Besse, and Perry, Penn Power, Cleveland Electric, Ohio Edison, OES Nuclear, and Toledo Edison shall transfer to FENGenCo all of each transferor's respective accumulated decommissioning funds for BVPS 1, BVPS 2, Davis-Besse, and Perry, except for funds associated with the leased portions of Perry and BVPS 2, and tender to FENGenCo additional amounts equal to remaining funds expected to be collected in 2005, as represented in the application dated June 1, 2005, but not yet collected by the time of closing. All of the funds shall be deposited in separate external trust funds for each of these four reactors in the same amounts as received with respect to each unit; to be segregated from other assets of FENGenCo and outside its administrative control, as required by NRC regulations, and FENGenCo shall take all necessary steps to ensure that these external trust funds are maintained in accordance with the requirements of this Order approving the transfer of the licenses and consistent with the safety evaluation supporting the order and in accordance with the requirements of 10 CFR 50.75, ''Reporting and recordkeeping for decommissioning planning.''

(2) By the date of closing of the transfer of the ownership interests in BVPS 1, BVPS 2, and Perry, from Penn Power to FENGenCo, FENGenCo shall obtain a parent company guarantee from FirstEnergy in an initial amount of at least $80 million (in 2005 dollars) to provide additional decommissioning funding assurance regarding such ownership interests. Required funding levels shall be recalculated annually and, as necessary, FENGenCo shall either obtain appropriate adjustments to the parent company guarantee or otherwise provide any additional decommissioning funding assurance necessary for FENGenCo to meet NRC requirements under 10 CFR 50.75.

(3) The Support Agreements described in the applications dated May 18, 2005 (up to $80 million), and June 1, 2005 (up to $400 million), shall be effective consistent with the representations contained in the applications. FENGenCo shall take no action to cause FirstEnergy, or its successors and assigns, to void, cancel, or modify the Support Agreements without the prior written consent of the NRC staff, except, however, the $80 million Support Agreement in connection with the transfer of the Penn Power interests may be revoked or rescinded if and when the $400 million support agreement described in the June 1, 2005 application becomes effective. FENGenCo shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, no later than 10 days after any funds are provided to FENGenCo by FirstEnergy under either Support Agreement.

(4) Prior to completion of the transfers of the licenses, FENGenCo shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosures 2 through 5 to the cover letter forwarding this Order, to conform the licenses to reflect the subject direct license transfers are approved. FirstEnergy has indicated that the Pennsylvania transfers described in the May 18, 2005, application and the Ohio transfers described in the June 1, 2005, application, will take place at the

same time. The amendments shall be issued and made effective at the time the proposed direct license transfers are completed.

It is further ordered that FENOC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the transfer of the Penn Power, Cleveland Electric, Ohio Edison, OES Nuclear, and Toledo Edison interests in BVPS 1, BVPS 2, Davis-Besse, and Perry no later than 5 business days prior to closing. Should the transfer of the licenses not be completed by December 31, 2006, this Order shall become null and void, provided; however, that upon written application and for good cause shown, such date may be extended by order.

This Order supercedes the Order issued on November 15, 2005, and is effective as of December 16, 2005.

For further details with respect to this Order, see the initial applications dated May 18 and June 1, 2005, as supplemented by letters dated July 15 and October 31, 2005, and the revised non-proprietary safety evaluation dated December 16, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 16th day of December 2005.

For The Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7723 Filed 12–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), Part 50, section 50.55a(b)(2)(ix)(G), for Facility Operating License Nos. DRP–57 and NPF–5, issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2 (Hatch), located in Appling County, Georgia. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.55a(b)(2)(ix)(G) and allow the licensee to perform a general visual examination of the accessible surface areas of the containment vessel pressure retaining vent system, in lieu of the VT–3 examination required by 10 CFR.

The proposed action is in accordance with the licensee's application dated March 30, 2005, as supplemented by letters dated August 2 and 24, 2005.

The Need for the Proposed Action

During the 3rd 10-year inservice inspection (ISI) interval, which ends December 31, 2005, the licensee's code of record, the 1992 American Society of Mechanical Engineers, Boiler and Pressure Vessel Code (ASME Code), including the 1992 addenda, required a VT–3 examination of the accessible surface areas of the boiling water reactor (BWR) vent system. For the 3rd 10-year ISI interval, by letter dated July 19, 2000, the licensee requested in Relief Request RR–MC–9 to perform a general visual examination in lieu of the VT–3 examination. The licensee explained that the proposed alternative was sufficient to detect the types of corrosion expected in the BWR vent system. This request was approved by the NRC by letter dated October 4, 2000.

For the 4th 10-year ISI interval, the licensee's code of record will be the 2001 edition through the 2003 addenda of the ASME Code. Modifications to the ASME Code and 10 CFR 50.55a have relocated the requirement to perform the VT–3 examination from the ASME Code to 10 CFR 50.55a(b)(2)(ix)(G). The licensee believes that the examination provisions previously authorized through Relief Request RR–MC–9 have proven to be sufficient to maintain the structural integrity and leak-tightness of the containment surfaces, and, therefore, serve the underlying purpose of the rule. The licensee is requesting to continue the use of similar provisions during the 4th ISI interval through an exemption.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that performing a general visual examination as part of maintaining the integrity of the coating system will ensure the integrity of the coated vent system components, providing an acceptable level of quality and safety.

The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption from the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those

previously considered in the ''Final Environmental Statement Related to the Operation of the Edwin I. Hatch Nuclear Plant, Unit 1 and Unit 2,'' dated October 1972, and NUREG–0417, ''Final Environmental Statement Related to the Operation of the Edwin I. Hatch Nuclear Plant, Unit 2,'' dated March 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on November 30, 2005, the staff consulted with the Georgia State official, James Hardeman, of the Department of Natural Resources, regarding the environmental impact of the proposed action for Hatch. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 30, 2005, as supplemented by letters dated August 2 and 24, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of December 2004.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7704 Filed 12–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication Post-Fire Safe-Shutdown Circuit Analysis Spurious Actuations

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment. Reopening of comment period.

SUMMARY: On October 19, 2005 (70 FR 60859), the NRC published for public comment a generic letter (GL) to:

(1) Request addressees to review their fire protection program to confirm compliance with existing applicable regulatory requirements regarding their assumptions of the phrase ''one-at-a-time'' in light of the information provided in this GL and, if appropriate, take additional actions to return to compliance. Specifically, although some licensees have performed their post-fire, safe-shutdown circuit analyses based on an assumption of only a single spurious actuation per fire event or that spurious actuations will occur ''one-at-a-time,'' recent industry cable fire test results demonstrated that these assumptions are not valid.

(2) Require addressees to submit a written response to the NRC in accordance with NRC regulations in Title 10 of the Code of Federal Regulations (10 CFR) Section 50.54(f).

The Nuclear Energy Institute (NEI) has requested a 45-day extension of the comment period. NEI believes that additional time will be needed to provide appropriate comments on the draft GL. NEI based its request on the time needed to perform an assessment of the safety significance of multiple sequential and cumulative failures; an evaluation of the industry test results and interviews with the industry project team; an evaluation of the NUREG/CR–6776, and an assessment of the NRC/licensee documentation associated with the prior NRC staff positions and practices related to safe-shutdown circuit analysis. The NRC has decided to reopen the comment period for an additional 45 days.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML051650017.

DATES: The comment period has been extended and now expires February 6, 2006. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Robert Wolfgang at 301–415–1624 or by e-mail: *rjw1@nrc.gov.*

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this Friday the 16th day of December 2005.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7702 Filed 12–21–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12f–1; SEC File No. 270–139; OMB Control No. 3235–0128.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of

Management and Budget for extension and approval.

• Applications for Permission To Reinstate Unlisted Trading Privileges

Rule 12f–1 (the ''Rule''), originally adopted in 1934 pursuant to sections 12(f) and 23(a) of the Act and as modified in 1995, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning such security is reported pursuant to an effective transaction reporting plan contemplated by Rule 601 under the Act, the date of the Commission's suspension of unlisted trading privileges in the security on the exchange, and any other pertinent information. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as eight responses annually and that each respondent's related cost of compliance with Rule 12f–1 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $428.40 (8 responses × $53.55/response).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission'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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7671 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12f–3; SEC File No. 270–141; OMB Control No. 3235–0249.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

• Termination or Suspension of Unlisted Trading Privileges

Rule 12f–3 (the ''Rule''), which was originally adopted in 1934 pursuant to sections 12(f) and 23(a) of the Act, as modified in 1995, prescribes the information which must be included in applications for and notices of termination or suspension of unlisted trading privileges for a security as contemplated in section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as ten responses annually and that each respondent's related cost of compliance with Rule 12f–3 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $535.50 (10 responses × $53.55/response).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission'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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7672 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52957; File No. SR–CBOE–2005–102]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

December 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] 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 CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the ''Rule''), which relates to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System (''Hybrid''), through March 14, 2006. No other substantive changes are being made to the Rule. The text of the proposed rule change is available on the CBOE's Internet Web site (*http://www.cboe.com*), at the CBOE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[6] Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit its duration until September 14, 2005, unless otherwise extended. The duration of the Rule was thereafter extended until December 14, 2005.[7] As the duration period expires on December 14, 2005, the Exchange proposes to extend the effectiveness of the Rule through March 14, 2006.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any

[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] The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.

[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[7] *See* Securities Exchange Act Release No. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (SR–CBOE–2005–76).

[8] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange issued a regulatory circular to members informing them of the applicability of these Section 11(a)(1) requirements when the duration of the Rule was extended until December 14, 2005. *See* CBOE Regulatory Circular RG05–103 (November 2, 2005). The Exchange has represented that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change. Telephone conversation between Jennifer Lamie, Managing Senior Attorney, CBOE, and Edward Cho, Attorney, Division of Market Regulation, Commission (December 15, 2005).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

significant burden on competition; and (3) does not become operative for thirty 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) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.[13]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[14] normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–102 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7665 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52913A; File No. SR–CBOE–2005–97]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Revisions to the Series 4 Examination Program

December 15, 2005.

Correction

FR Doc. E5–7338, issued on December 14, 2005,[1] incorrectly identified the exchange in the first sentence of the first paragraph of Release No. 34–52913. The corrected sentence reads as follows:

''Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 15, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7666 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52914A; File No. SR–CBOE–2005–98]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Revisions to the Series 9/10 Examination Program

December 15, 2005.

Correction

FR Doc. E5–7337, issued on December 14, 2005,[1] incorrectly identified the exchange in the first sentence of the first paragraph of Release No. 34–52914. The corrected sentence reads as follows:

[1] *See* Securities Exchange Act Release No. 52913 (December 7, 2005), 70 FR 74068.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release No. 52914 (December 7, 2005), 70 FR 74067.

''Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 16, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7667 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52952; File No. SR–CBOE–2005–101]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Membership Rules

December 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise a CBOE membership rule that relates to CBOE's investigation of membership applicants. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at CBOE's Office of the Secretary, and at the Commission's public reference room.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposal 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. CBOE 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 is proposing to revise CBOE Rule 3.9(f), which currently provides that the Membership Department shall investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to CBOE Rule 3.6(b),[3] and each applicant applying to be an individual member (collectively, ''Membership Applicants''). As part of the current application process, Membership Applicants are required to submit fingerprints to the Exchange, which then forwards the fingerprints to the Federal Bureau of Investigation.

To conduct its investigation, CBOE's Membership Department currently accepts fingerprints from Membership Applicants in two forms: Electronic fingerprints that are taken at the Exchange and fingerprints that are taken manually on Exchange hardcopy fingerprints cards at a location other than the Exchange. The Exchange currently requires Membership Applicants to submit new fingerprints to the Exchange for processing pursuant to the investigation process under Rule 3.9(f) even if the Membership Applicant was recently fingerprinted at another self-regulatory organization (''SRO'').

The proposed rule change would permit the Exchange to accept the results of a fingerprint-based criminal records check of the Membership Applicant conducted by another SRO within the prior year pursuant to that investigation process. The Exchange believes that the proposed rule change will lessen the administrative burden imposed on Membership Applicants having to obtain fingerprints on multiple occasions within a relatively short time period, while still preserving the Exchange's ability to conduct a thorough investigation of the Membership Applicant.

The Exchange notes that, in addition to a fingerprint-based criminal records check, a Form U–4 (Uniform Application for Securities Industry Registration or Transfer) is required to be submitted to the Exchange by Membership Applicants as part of the application process solely for informational purposes. Form U–4 contains disclosure questions that ask whether the Membership Applicant is subject to events that would constitute a statutory disqualification. Since the Exchange obtains this information as part of the application process, and since CBOE Rule 3.9(d)[4] requires Membership Applicants to promptly update membership application materials if the information provided in the materials becomes inaccurate or incomplete after the date of submission, the Exchange believes that the Membership Department would still receive notice if a Membership Applicant became subject to a statutory disqualification subsequent to the date of the results of the fingerprint-based criminal records check conducted by another SRO.

2. Statutory Basis

The Exchange believes that the proposed rule change improves the Exchange's investigation process by streamlining the fingerprinting portion of the process, and therefore reducing the administrative burdens on Membership Applicants, while still allowing for the Exchange to obtain the information it needs to determine whether the Exchange's qualification criteria under its membership rules are satisfied. Therefore, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just

[3] Pursuant to CBOE Rule 3.6(b), the Membership Committee generally investigates all persons who are listed on Form BD as a direct owner or executive officer of a CBOE member organization.

[4] CBOE Rule 3.9(d) states as follows: ''Each applicant shall promptly update the application materials submitted to the Membership Department if any of the information provided in these materials becomes inaccurate or incomplete after the date of submission of the application to the Membership Department and prior to any approval of the application.''

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–101 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7669 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52953; File No. SR–CHX–2005–36]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Stock Exchange, Inc. and Amendment No. 1 Thereto Regarding Trading in Sub-Penny Increments

December 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2005, the Chicago Stock Exchange, Inc. (the ''CHX'' or the ''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. On December 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Through this filing, the Exchange proposes to amend its rules to permit Exchange participants to execute orders in sub-penny increments. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm*, at the Exchange's principal office, and in 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

Under the Exchange's existing trading rules, the Exchange's participants may not bid or offer in increments below $0.01.[4] Through this filing, the Exchange seeks to permit its participants to execute trades in sub-penny increments and to establish rules that regulate the instances when a specialist may trade in sub-penny increments against incoming orders

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated December 7, 2005. (''Amendment No. 1''). In Amendment No. 1, the Exchange: (1) Deleted any references to customer orders to make clear that a specialist must not ''step ahead'' of any order in the book (not just customer orders) by less than $0.01; (2) deleted a proposed sentence relating to a specialist's trading in other markets; (3) revised the rule text to confirm the smallest increment ($0.0001) in which an order may be executed on the Exchange; and (4) made clear that this proposal relates only to the Exchange's current trading model.

[4] The Exchange does not currently have a rule that sets a minimum increment at which trades can occur. Its rule relating to minimum variations specifically refers to variations at which bids or offers may be made on the Exchange. *See* Article XX, Rule 22.

when there are orders in the specialist's book.[5]

As an initial matter, the proposed rule change would provide that Exchange participants may execute transactions in sub-penny increments.[6] As noted above, there is not currently an Exchange rule that prohibits this practice, but the Exchange believes it is appropriate to establish that trading in sub-penny increments is specifically permitted. The Exchange believes that it is appropriate to allow its participants to execute transactions in sub-penny increments because other markets permit trading in these increments and the Exchange and its participants would be at a competitive disadvantage if this trading were not permitted.[7]

Additionally, the proposed rule change would provide that an Exchange specialist (or a market maker holding a customer order) may not execute an incoming order in a sub-penny increment that is less than $0.01 better than a limit order in the specialist's (or market maker's) book. This prohibition on ''stepping ahead'' of a resting limit order for less than a penny would be expanded from its current scope, which applies only to the trading of Nasdaq/NM securities, to apply to the trading of all securities on the Exchange.[8] The Exchange believes that this rule, which provides protection to orders in a specialist's book, should be extended to orders in listed securities before an Exchange specialist is permitted to.

This proposed rule change would apply only in the Exchange's current trading model. Within the current model, an Exchange specialist (or any market maker handling a customer order) typically would provide sub-penny price improvement to an order either on a manual basis or through an automated pricing mechanism used by specialist firms to process orders that are not automatically executed within the Exchange's systems. The Exchange will re-address issues associated with sub-penny trading as part of the filing the Exchange will make to qualify as an ''Automated Trading Center'' under Regulation NMS.[9]

2. Statutory Basis

The CHX believes 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).[10] The Exchange believes that the proposed changes are consistent with Section 6(b)(5) of the Act,[11] because they would promote just and equitable principles of trade; remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and, in general, protect investors and the public interest by permitting trading to occur in sub-penny increments on the Exchange while providing protection to customer orders that are accepted or displayed in penny increments.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule changes would 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CHX–2005–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–CHX–2005–36. 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

[5] The Exchange intends to file a separate proposal to permit its participants and customers, beginning with the compliance date of Rule 612, to bid or offer in sub-penny increments in Nasdaq/NM securities, when those bids or offers are priced less than $1.00 per share.

[6] *See* proposed Article XX, Rule 22(b).

[7] In addition, although Rule 612 of Regulation NMS specifically prohibits the display, ranking, or acceptance of a bid, offer, or order in sub-penny increments where the bid, offer, or order is priced at or above $1.00, it does not prohibit trading in sub-penny increments. *See* 17 CFR 242.612(a). Indeed, the Commission, in the release of the final rules associated with Regulation NMS, noted that ''Rule 612 will not prohibit a sub-penny execution resulting from * * * price improvement * * * so long as the execution did not result from an impermissible sub-penny order or quotation.'' Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37556 (June 29, 2005).

[8] The Exchange's rule relating to sub-penny trading in Nasdaq/NM securities was first approved in 2001 and has been extended many times. *See* Securities Exchange Act Release Nos. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001); 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003); 47951 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending the pilot through December 1, 2003); 48871 (December 3, 2003), 68 FR 69097 (December 11, 2003) (extending pilot through June 30, 2004); 49994 (July 9, 2004), 69 FR 42486 (July 15, 2004) (extending pilot through June 30, 2005); and 52326 (August 23, 2005), 70 FR 51394 (August 30, 2005).

improvement to an inbound order.

[9] *See* 17 CFR 242.600(b)(4).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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–2005–36 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7670 Filed 12–21–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52960; File No. SR–ISE–2005–59]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand its $2.50 Strike Price Program

December 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by ISE. 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

ISE proposes to amend ISE Rule 504 pertaining to the $2.50 Strike Price Program (''Program''). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 504. Series of Options Contracts Open for Trading

(a) through (f)—No change.

(g) *Pursuant to a program initially approved by the SEC in 1995*, [T]*t*he options exchanges may select up to 200 options classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50 (*the ''$2.50 Strike Price Program''*). *On any option class that has been selected as part of this $2.50 Strike Price Program, $2.50 strike prices between $50 and $75 may be listed, provided that $2.50 strike prices between $50 and $75 are no more than $10 from the closing price of the underlying stock in its primary market on the preceding day. For example, if an options class has been selected as part of the $2.50 Strike Price Program, and the underlying stock closes at $48.50 in its primary market, the Exchange may list the $52.50 strike price and the $57.50 strike price on the next business day. If an underlying security closes at $54, the Exchange may list the $52.50 strike price, the $57.50 strike price and the $62.50 strike price on the next business day.* [The 200 options classes may be selected by the various options exchanges pursuant to any agreement mutually agreed to by the individual exchanges. In addition to those options selected by the Exchange, t]*T*he Exchange may list a strike price interval [may be] of $2.50 in any multiply-traded option once [another exchange trading that option selects such option as part of this program] *an exchange selects an option as part of the $2.50 Price Program.* [The Exchange and any of the other exchanges may also list strike prices of $2.50 on any options class that was previously selected by the NYSE.]

(h) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE 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 Exchange proposes to amend ISE Rule 504 to allow the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $75 on those option classes that have been selected as part of the Program, provided the $2.50 strike price intervals between $50 and $75 are no more than $10 from the closing price of the underlying stock in its primary market on the preceding day. For example, if an options class has been selected as part of the Program, and the underlying stock closes at $48.50 in its primary market, the Exchange may list options with strike prices of $52.50 and $57.50 on the next business day. If an underlying security closes at $54, the Exchange may list options with strike prices of $52.50, $57.50, and $62.50 on the next business day.

The Program was initially adopted in 1995 as a joint pilot program of the options exchanges, whereby the options exchanges were permitted to list options with $2.50 strike price intervals up to $50 on a total of up to 100 option classes.[5] The Program was later expanded and permanently approved in 1998 to allow the options exchanges to select up to 200 classes on which to list options with $2.50 strike price intervals up to $50.[6] Of these 200 options classes eligible for the Program, 60 classes were allocated to the Chicago Board Options Exchange (''CBOE'') and 51 classes were allocated to the American Stock Exchange (''Amex''), all pursuant to a formulae approved by the SEC. Each options exchange, however, is permitted to list options with $2.50 strike price intervals on any option class that another exchange selects as part of the Program.[7]

The Exchange believes that its experiences over the years with the Program have produced positive results.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12).

[6] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[7] The ISE does not select any option classes for inclusion in the Program. The Exchange lists options with $2.50 strike price intervals on those classes selected by the other options exchanges. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission, on December 15, 2005.

Specifically, the Program has stimulated customer interest by creating additional trading opportunities, by providing more flexibility in trading decisions, and by affording customers the ability to more closely tailor investment strategies to the precise movement of the underlying security. The Exchange's proposal to expand the Program as described in the proposed rule change is intended to provide customers with greater flexibility in their investment choices for those stocks priced between $50 and $75 that have a low volatility and thus trade in a narrow range. The Exchange represents that the Options Price Reporting Authority has the capacity to accommodate the increase in the number of series added pursuant to this rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objective of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of change as well as to protect investors and the public interest, by increasing trading opportunities which should, in turn, increase the depth and liquidity of the marketplace.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[15] The Exchange has requested that the Commission waive the 30-day pre-operative delay, and the Commission hereby grants that request.[16] The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. This action will allow the Exchange to immediately expand its Program to list options with $2.50 strike price intervals for options with strike prices between $50 and $75. The Commission notes that it recently approved similar expansions to the $2.50 Strike Price Programs of CBOE and Amex.[17] These proposals were subject to a full notice-and-comment period, and no negative comments were submitted. The Commission does not believe that ISE's proposal raises any novel issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–ISE–2005–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2005–59 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7676 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that the statutory basis section of Exhibit 1 to the proposed rule change states the incorrect rule amended by the proposal.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] In addition, Rule 19b–4(f)(6)(iii) requires that the Exchange give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has decided to waive the five-day pre-filing notice requirement.

[16] For the purposes only of waiving the 30-day pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See* Securities Exchange Act Release Nos. 52892 (December 5, 2005), 70 FR 73492 (December 12, 2005) (approving SR–CBOE–2005–39) and 52893 (December 5, 2005), 70 FR 73488 (December 12, 2005) (approving SR–Amex–2005–067).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52967; File No. SR–MSRB–2005–16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to MSRB Rule G–14 RTRS Procedures, Paragraph (a)(ii)(C) To Extend the Expiration Date of the Three Hour Exception

December 16, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change to paragraph (a)(ii)(C) of Rule G–14 RTRS Procedures under Rule G–14 Reports of Sales or Purchases, to extend the expiration date of the three hour exception to the 15 minute reporting deadline. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement Of The Purpose Of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of, and statutory 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MSRB Rule G–14 trade reporting procedures require that transactions effected with a time of trade during the hours of the Real-Time Transaction Reporting System (''RTRS'') business day be reported within 15 minutes of the time of trade to an RTRS Portal. Under MSRB Rule G–14, there are three exceptions to this 15 minute reporting requirement. The exception addressed by the proposed rule change allows a dealer three hours to report a security that the dealer has not traded in the previous year.[3] This exception is not available to a managing underwriter or syndicate member. The MSRB included a sunset date of January 31, 2006 for the three hour exception in order to provide incentive for information vendors and the industry to move to real-time techniques for securities master updates. This exception was designed to give a dealer time to add a security to its securities master file so that a trade can be reported through the dealer's automated processing systems.

Historically, dealers have not been able to maintain a database of formatted municipal securities information for the full universe of approximately 1.5 million municipal securities due to the cost of mainframe storage. A securities master file contains the information about a municipal security issue that is necessary for a dealer to be able to process transactions in the issue. It includes such items as interest rate, dated date, interest payment cycle, put and call schedules. This data is stored in the dealer's trade processing system in a database commonly called the ''securities master file.''[4] The dealer's securities master file sometimes contains information only for securities held in custody for customers and for securities that have been recently traded. In that case, if a dealer trades a secondary market security that is not in its securities master file, the relevant securities information must be obtained from a vendor by the dealer before the trade can be processed.

Since implementation of real-time transaction reporting on January 31, 2005, the municipal securities industry has made some progress in improving timely access to information on municipal securities. Some dealers and service bureaus have elected to store the full universe of municipal securities in their securities master files. In addition, some links have been set up so that dealers are able to obtain a real-time update from a vendor upon request after an issue is traded for the first time. Notwithstanding some progress, dealers have indicated that difficulty continues to exist in ensuring adequate real-time access to securities data for the 1.5 million outstanding municipal securities and are concerned about the upcoming expiration of the three hour exception. This delay in obtaining relevant security information can cause the dealer's trade to be reported as late. The Bond Market Association (''TBMA'') has requested that MSRB extend the three hour exception to provide additional time for the industry to develop solutions to the problems of disseminating municipal securities information.

The MSRB believes that the industry can complete the necessary systems changes to address access to securities information in the secondary market by December 29, 2006. The MSRB does not intend to provide any additional extensions beyond this date. This date will allow the municipal securities industry to work on solutions for dealers to obtain municipal securities information in a timely manner from information vendors in order to process trades not in the dealer's securities master file.

For new issue transactions, a dealer's access to necessary securities information depends not only on its link with the information vendor but also on whether that vendor itself has the information on the new issue. Vendors currently obtain much of their new issue information through voluntary cooperation from underwriters. This process does not always result in all the vendors having the necessary securities information by the time of formal award when trade executions begin. Dealers trading a new issue for the first time need the three hour exception from the 15 minute trade reporting for their first trades in a new issue because the securities information is not available at

[3] The other two exceptions to the 15 minute reporting rule are: (1) that syndicate managers, syndicate members and selling group members that effect trades in new issues on the first day of trading at the list offering price are permitted to report these trades by the end of the day on which they were executed; and (2) that a dealer effecting a trade in a short-term instrument under nine months in effective maturity (including variable rate instruments, auction rate products, and commercial paper) shall report such trades by the end of the business day on which the trades were executed. *See* MSRB Rule G–14 RTRS Procedures (a)(ii)(A), (B).

[4] Many dealers use service bureaus for various trade processing functions, including the maintenance of securities master files. Securities master file update procedures for service bureaus and the challenges in moving to a real-time environment for service bureaus are the same as those described for dealers.

the time the trade is executed.[5] The industry has expressed concern that it needs more time to work on the current infrastructure for the collection and dissemination of securities information in order to move towards real-time techniques to update securities master files and thereby allow dealers to report trades within 15 minutes. Accordingly, the MSRB is proposing an extension of the three hour exception for when, as and if issued transactions to December 31, 2007.

In addition, in order to expedite the process of moving to real-time techniques for securities master updates by vendors and the industry with a particular emphasis on newly issued securities, TBMA and The Depository Trust Company (''DTC'') are currently working on a project that will address inefficiencies in the collection of new information securities data. As proposed, DTC will act as a central collection point for standardized electronic files of new issue information provided by underwriters. DTC then would provide the information in real-time to information vendors. Underwriters would provide the information to DTC on a specific timeframe. This project is scheduled for implementation in the last half of 2007. It will make it possible for dealers to report new issue trades earlier and will eliminate the need for the three hour exception for new issue trades. An extension of the three hour exception for when, as and if issued transactions to December 31, 2007, will also allow time for this project to be implemented and for initial operational details to be addressed before the 15 minute reporting requirement becomes effective for trades that currently qualify for the three hour exception.

The proposed rule would revise MSRB Rule G–14 RTRS Procedures (a)(ii)(C) by deleting the language regarding the expiration of the three hour exception on January 31, 2006 and replacing the language to state that for when, as and if issued transactions, the three hour exception to the 15 minute reporting rule will expire on December 31, 2007; and for all other transactions, the exception will expire on December 29, 2006.

[5] In the new issue market, information vendors seek to collect information on each issue and deliver it to customers in time for trade reporting in the new issue. There are several challenges for vendors and dealers to meet the reporting deadlines. For example, there are approximately 15,000 new municipal issues that must be set up in databases each month. Another problem for the industry is the fact that approximately 85 different information fields for each issue must be successfully gathered, which in large part depends on the timely cooperation of the underwriters.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[6] which requires that the rules of the MSRB shall ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.* * * ''[7]

The MSRB believes that the proposed rule change is consistent with the Act because it will allow for the municipal securities industry to produce increased accurate trade reporting and transparency, and will enhance surveillance data used by enforcement agencies. This proposed rule change will foster cooperation and coordination within the municipal securities industry with the ultimate goal of disseminating accurate real-time pricing data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on this proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[8] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.[9] Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10]

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that (i) the three hour exception to the 15-minute transaction reporting will automatically expire on January 31, 2006; and (ii) the industry needs more time to correct the inadequacies in the current industry infrastructure for collecting and disseminating securities information so as to implement real-time techniques for securities master updates. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[11] to approve the proposed change on an accelerated basis.

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–MSRB–2005–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–MSRB–2005–16. 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

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] *Id.*

[8] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–4(b)(2)(C).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

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 MSRB. 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–MSRB–2005–16 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7692 Filed 12–21–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52958; File No. SR–NYSE–2005–73]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Rule 600, Relating To Arbitration

December 15, 2005.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 20, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the rescission of Exchange Rule 600(g), a pilot rule relating to the waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitrations.

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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

On July 1, 2002, the Exchange suspended the appointment of arbitrators for cases pending in California as a result of the purported application of the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the ''California Standards'') to Exchange arbitrations and arbitrators. The Exchange proposed Rule 600(g) in response to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission.[4] Under Rule 600(g), the Exchange implemented a pilot rule whereby parties to an arbitration could in certain circumstances request that a hearing be held outside California or waive application of the California Standards and hold the hearing in California. The Exchange and NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') became involved in a number of legal actions challenging the California Standards. On March 1, 2005, the United States Court of Appeals for the Ninth Circuit issued a decision in *Credit Suisse First Boston Corp.* v *Grunwald*[5] in which it held that the provisions of the Act preempt application of the California Standards to NASD Dispute Resolution arbitrations. On May 23, 2005, the Supreme Court of California issued a decision in *Jevne* v. *The Superior Court of Los Angeles County*[6] in which it also held that the provisions of the Act preempt application of the California Standards to NASD Dispute Resolution arbitrations. Accordingly, the Exchange believes that it can once again appoint arbitrators and hold hearings in California without requiring a waiver of the California Standards.

The proposed rule change is intended to rescind Rule 600(g), which expired on September 30, 2005, as it is no longer necessary, in light of the court decisions referenced above.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)[7] of the Act in general and section 6(b)(5) of the Act[8] in particular in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has determined to approve the proposed rule change on an accelerated basis, thereby permitting the Exchange to rescind Rule 600(g) promptly.[9] The Commission finds that the proposed rule change is consistent with the requirements of section 6(b)[10] of the Act in general and section 6(b)(5) of the Act[11] in particular. Specifically,

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 46816 (November 12, 2002); 67 FR 69793 (November 19, 2002) (SR–NYSE–2002–56).

[5] 400 F.3d 1119 (9th Cir. 2005).

[6] S121532 (35 Cal. 4th 935) (CA Sup. Ct. May 23, 2005).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange requested accelerated approval of the proposed rule change. Conversation between Daniel Beyda, Chief Administrative Officer of NYSE Arbitration, NYSE, and Elizabeth MacDonald, Special Counsel, Division of Market Regulation, on December 15, 2005.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on

the Commission believes that permitting the Exchange to rescind Rule 600(g) will alleviate any confusion by California claimants as to whether the California Standards are applicable to their claims. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. Although California claimants are no longer required to waive the California Standards, Rule 600(g) might lead California claimants to believe that the California Standards conflict with the NASD Code of Arbitration. Accordingly, the Commission believes that it is consistent with sections 6(b)(5) [12] and 19(b)(2) [13] of the Act to approve the proposed rule change on an accelerated basis.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–73. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–73 and should be submitted on or before January 12, 2006.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act [14] that the proposed rule change (SR–NYSE–2005–73) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7674 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52961; File No. SR–Phlx–2005–77]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand Its $2.50 Strike Price Program

December 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to allow the Exchange to list options with $2.50 strike price intervals for options with strike prices between $50 and $75. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 1012. Series of Options Open for Trading

(a)—(d) No Change.

Commentary:

.01 through .04—No Change.

.05

(a)—No Change.

(b) *Pursuant to a program initially approved by the SEC in 1995*, [T]*t*he Exchange may select up to [a specified number of its listed] *46* options *classes* on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50 (*the ''$2.50 Strike Price Program''*). In addition to those options selected by the Exchange, the strike price interval may be $2.50 in any multiply-traded option once another exchange trading that option selects such option, as part of this program.

(i) In addition, on any option class that has been selected as part of the $2.50 Strike Price Program pursuant to paragraph (b) above, the Exchange may list $2.50 strike prices between $50 and $75, provided the $2.50 strike prices between $50 and $75 are no more than $10 from the closing price of the underlying stock in its primary market on the preceding day. For example, if an option class has been selected as part of the $2.50 Strike Price Program, and the underlying stock closes at $48.50 in its primary market, the Exchange may list the $52.50 strike price and the $57.50 strike price on the next business day. If an underlying security closes at $54, the Exchange may list the $52.50 strike price, the $57.50 strike price and the $62.50 strike price on the next business day.

(ii) An option class shall remain in the $2.50 Strike Price Program until otherwise designated by the Exchange and a decertification notice is sent to the Options Clearing Corporation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to amend Commentary .05 to Phlx Rule 1012 to expand the current $2.50 Strike Price Program (''Program'') for individual equity options to permit the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $75, provided the $2.50 strike price intervals are no more than $10 from the closing price of the underlying stock in its primary market [5] on the preceding day. In addition, the proposed rule change clarifies that an option class will remain in the Program until the Exchange otherwise designates and sends a decertification notice to the Options Clearing Corporation.

Pursuant to the proposed rule change, for example, if an option class has been selected as part of the Program, and the underlying stock closed at $48.50 in its primary market, the Exchange may list options with strike prices of $52.50 and $57.50 on the next business day; and if an underlying security closed at $54, the Exchange may list options with strike prices of $52.50, $57.50, and $62.50 on the next business day.

The current Program is set forth in Commentary .05 to Phlx Rule 1012. The Program permits the Exchange to list options with $2.50 strike price intervals for selected options trading at strike prices greater than $25 but less than $50, excluding LEAPS. Initially adopted in 1995 as a pilot program, the options exchanges at that time were permitted to list options with $2.50 strike price intervals up to $50 on a total of up to 100 option classes.[6] In 1998, the pilot program was expanded and permanently approved to allow the options exchanges collectively to select up to 200 option classes on which to list options with $2.50 strike price intervals up to $50.[7] Of the current 200 options classes eligible for the Program, 46 have been allocated to Phlx.[8] In addition, each options exchange is permitted to list options with $2.50 strike price intervals on any option class that another options exchange selects under its Program.

The Exchange believes that the Program has created additional trading opportunities for customers benefiting the marketplace. The existence of $2.50 strike price intervals affords customers the ability to more closely tailor investment strategies to the precise movement of the underlying security. Accordingly, Phlx believes that the proposal to expand the Program to allow the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $75 should further benefit customers and the market by providing greater trading opportunities for those underlying stocks that have low volatility and thus trade in a narrow range.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[9] in general, and furthers the objective of section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[15] The Exchange has requested that the Commission waive the 30-day pre-operative delay, and the Commission hereby grants that request.[16] The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. This action will allow the Exchange to immediately expand its Program to list options with $2.50 strike price intervals for options with strike prices between $50 and $75. The Commission notes that it recently approved similar expansions to the $2.50 Strike Price Programs of the Chicago Board Options Exchange (''CBOE'') and the American Stock Exchange (''Amex'').[17] These proposals were subject to a full notice-and-

[5] The term ''primary market'' is defined in Phlx Rule 1000 in respect of an underlying stock or exchange-traded fund share as the principal market in which the underlying stock or exchange-traded fund share is traded.

[6] *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12).

[7] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[8] The Exchange notes that the allocation is not changed by this proposal.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] In addition, Rule 19b–4(f)(6)(iii) requires that the Exchange give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has decided to waive the five-day pre-filing notice requirement.

[16] For the purposes only of waiving the 30-day pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See* Securities Exchange Act Release Nos. 52892 (December 5, 2005), 70 FR 73492 (December 12, 2005) (approving SR–CBOE–2005–39) and 52893 (December 5, 2005), 70 FR 73488 (December 12, 2005) (approving SR–Amex–2005–067).

comment period, and no negative comments were submitted. The Commission does not believe that Phlx's proposal raises any novel issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2005–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–Phlx–2005–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–005–77 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7691 Filed 12–21–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5253]

Bureau of Educational and Cultural Affairs; Request for Grant Proposals: Summer Institute for English as a Foreign Language Administrator from Francophone and Lusophone Sub-Saharan Africa

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/AF–06–01.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: June 1, 2006–December 15, 2006.

Application Deadline: February 13, 2006.

SUMMARY: The African Programs Branch (ECA/A/E/AF), Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the 2006 Summer Institute for English as a Foreign Language (EFL) Administrators from Francophone and Lusophone Sub-Saharan Africa.

Accredited, post-secondary U.S. educational institutions may submit proposals to administer a U.S.-based six-week program in educational management, teacher-training, materials development and organizational skills for 16 secondary school EFL supervisors/inspectors and school administrators with strong EFL backgrounds selected from French and Portuguese-speaking countries of Sub-Saharan Africa. The Bureau anticipates providing one assistance award to support this program.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The general objective of the Institute is to support and encourage the upgrading of English language programs in secondary schools in French and Portuguese-speaking African countries by enhancing participants' educational management, teacher-training, EFL materials development and organizational skills as well as broadening their understanding of U.S. institutions and culture. American institutions of higher education having experience in the field of English as a Second Language (ESL) or English as a Foreign Language (EFL), ESL/EFL materials development and teacher training/assessment may apply to develop, administer, and provide follow-up to the six-week summer program.

Guidelines: The proposal should be designed to support the following specific activities:

(a) A five-week academic program with emphasis on developing the capacities of 16 Sub-Saharan African secondary school supervisors/inspectors/administrators to strengthen EFL programs through the design and delivery of more effective teacher-training, use of technology to access and develop teaching materials, and conducting teacher assessment.

(b) Structured cultural activities planned within the five-week academic program to facilitate interaction among the African participants, American students, faculty, administrators, and the local community to promote mutual understanding between the people of the United States and the people of African countries.

(c) One-week of escorted, cultural and educational meetings and site visits in Washington, DC, complementing and reinforcing the academic program. The site visits will include a meeting at the Bureau of Educational and Cultural Affairs.

(d) The creation of a website and a listserv to facilitate follow-on mentoring/participant networking concerning final project implementation and to continue a dialog on ideas developed during the Institute.

[18] 17 CFR 200.30–3(a)(12).

(e) Assistance to participants to select, purchase and ship professional materials to use in follow-on activities and training projects in their home countries.

(f) One post-Institute visit to the region by the Institute director or an Institute faculty member to visit one to three participant home workplace(s). The purpose of the visit will be to observe final project follow-on and implementation, and to identify appropriate adjustments to future Institute curricula to better meet participant needs.

The five-week academic program should include a variety of formats such as discussion sessions, lectures, group work, workshops that may include practice with peers, field trips, and professional shadowing. Lectures and presentations on educational management/organization theory should be kept to a minimum. The emphasis should be on developing practical skills and approaches/solutions to real problems/conditions identified by the participants. A successful program design would create an atmosphere where both participants and facilitators are recognized for their expertise and work together toward the overarching goal of improving English language programs in participants' countries. Five specific areas to address in the academic program follow:

1. Training EFL teaching staff: Supporting, motivating teachers and assessing teachers; designing and conducting in-service training programs; building staff cohesiveness.

2. Classroom culture: Creating a school culture conducive to learning, setting behavioral/learning standards, nurturing active student participation, evaluating student progress, fostering parental involvement.

3. Identifying, creating and managing resources: Conducting resource inventories, allocating/tracking resources, budgeting, optimizing limited resources, accessing outside resources.

4. Education Technology: Introduction and/or enrichment of computer-based word processing and appropriate software for participants who lack these skills, introduction to computer networks for EFL professionals, introduction to/enrichment of knowledge of e-mail and the Internet as pedagogic and research tools.

5. Cultural Activity: The cultural activity program should take advantage of the diversity of the people, places, and events in the local community and/or in nearby cities to enhance participants' experience of American life and culture.

The Washington, DC, educational site visit should be planned, arranged, and conducted by the grantee organization Summer Institute Program Director. The visit is an integral part of the program, complementing and reinforcing the academic portion. Programming in Washington should begin with a briefing session at the Bureau of Educational and Cultural Affairs. ECA/A/E/AF suggests visits with ESL administrators and/or ESL teachers in the greater Washington, DC, vicinity and the national TESOL headquarters located in Alexandria, Virginia. The Washington visit offers an opportunity to explore local museums and attend at least one evening cultural event.

Pending availability of FY 2006 funds, the Institute activities should begin on or about June 12, 2006 with follow-up activities to end before December 15, 2006. Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Program Administration: All Summer Institute programming and administrative logistics, management of the academic program and the educational tour, and on-site arrangements will be the responsibility of the grantee organization. The ECA program officer will serve as a resource for Washington, DC, lodging, activities, and transportation options. The grantee organization is responsible for arrangements for lodging, food, maintenance and local travel for participants while in the U.S. The grantee organization should balance cost-effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites, which offer privacy, are preferable.

The project will provide each participant with a supplemental book allowance of $150 per person. The grantee organization should assist participants in selection, acquisition and shipment of materials to their home countries. The grantee organization should also arrange for institutional or publishers' discounts for participants, as possible.

Proposals should describe the available health care system and the plan to provide health care access to Institute participants. The Department of State will provide limited health insurance coverage to all participants.

Participant Selection: Participants will be selected by the Bureau based on nominations from U.S. Embassies. Minimum qualifications for all participants will be: (1) Adequate proficiency in English to allow full participation in and benefit from the program; (2) the equivalent of BA/BS degrees from their national education systems; (3) three years EFL teaching experience; and (4) job responsibilities related to teacher training and school/program administration. Participants will enter the United States on J-visas, using DS–2019 forms issued by ECA.

Orientation: The grantee organization will provide general pre-departure orientation materials for all participants prior to their travel to the United States. This material should include a tentative program outline with suggested goals and objectives for participants, relevant background information about the grantee organization and individuals involved in the project, and information concerning arrival in the host city, local housing, climate, and available services at the host institution.

Needs Assessment: The U.S. institution should conduct an initial needs assessment of participants upon arrival and be prepared to adjust program emphasis as necessary to respond to participants' concerns in the area of EFL education.

Cooperative Agreement: In a cooperative agreement, ECA/A/E/AF is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/AF activities and responsibilities for this program are as follows:

- Participants will be selected by the Bureau based on nominations from U.S. Embassies.
- Participants will enter the United States on J-visas, using DS–2019 forms issued by ECA.
- ECA/A/E/AF will arrange participants' international travel. Air travel to Washington, DC from the host city can be included in the international ticket of each participant if air travel for this leg of the program is appropriate.
- ECA/A/E/AF will facilitate sending pre-arrival orientation materials electronically to participants via U.S. embassy staff.

ECA/A/E/AF will provide the host institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute. Staff of the Bureau of Educational and Cultural Affairs will brief the participants during their visit to Washington, DC.

Proposal Contents: Applicants should submit a complete and thorough proposal describing the program in a convincing and comprehensive manner. Since there is no opportunity for applicants to meet with reviewing officials, the proposal should respond to the criteria set forth in the solicitation

and other guidelines as clearly as possible.

The proposal should address succinctly, but completely, the elements described below and must follow all format requirements. The proposal should include the following items:

TAB A—SF–424, ''Application for Federal Assistance''

TAB B—Executive Summary

In one double-spaced page, provide the following information about the project:

1. Name of organization/participating institutions.
2. Beginning and ending dates of the program.
3. Proposed theme.
4. Nature of activity.
5. Funding level requested from the Bureau, total program cost, total cost-sharing from the applicant and other sources.
6. Scope and goals: Include (a) the number and description of participants; (b) describe the wider audience benefiting from the program (overall impact); (c) Geographic diversity of program, both in the U.S. and overseas; (d) fields covered; (e) anticipated results (short and long term).

TAB C—Narrative and Calendar of Activities

Provide a detailed description of the project addressing the areas listed below.

1. Vision (statement of need, objectives, goals, benefits).
2. Participating Organizations.
3. Program Activities (orientation, academic component, cultural program, participant monitoring).
4. Program Evaluation.
5. Follow-on activities and visit to home work site(s) of selected participants.
6. Project Management.
7. Work Plan/Time Frame.

Please refer to the Proposal Submission Instruction (PSI) document for technical format and instructions.

TAB D—Budget Submission

The cost to the Bureau for the Summer Institute for English as a Foreign Language Administrators from Francophone and Lusophone Sub-Saharan Africa should not exceed $145,000. The budget should be developed for 16 participants.

Please see Section IV.3e and the Guidelines for Assistance Award Proposals and Budget Guidelines in Proposal Submission Instructions (PSI) in regard to a Summary Budget and a detailed Line-Item Budget. Use notes where further explanation of line items is required to clarify how the figures were derived.

TAB E—Letters of Endorsement and Resumés

Resumés of all program staff should be included in the submission. No resumé should exceed two pages.

TAB F—SF–424B ''Assurances-Nonconstruction Programs''

First time applicant organizations and organizations which have not received an assistance award (grant or cooperative agreement) from the Bureau during the past three (3) years, must submit as an attachment to this form the following: (a) One copy of their Charter or Articles of Incorporation; (b) A list of the current Board of Directors; and (c) current financial statements.

Include other attachments, if applicable.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2006.

Approximate Total Funding: $145,000.

Approximate Number of Awards: 1.

Approximate Average Award: $145,000.

Anticipated Award Date: June 1, 2006.

Anticipated Project Completion Date: December 15, 2006.

Additional Information:

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $145,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Bureau of Educational and Cultural Affairs, ECA/A/E/AF, Room 232, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 453–8118 and fax number (202) 453–8121, or email *kepetsdm@state.gov* to request a Solicitation Package. Please specify Dawn Kepets and refer to the Funding Opportunity Number ECA/A/E/AF–06–01 located at the top of this announcement when making your request or on all other inquiries or correspondence.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document that consists of required application forms, and standard guidelines for proposal preparation.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the

Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be sent per the instructions under IV.3f. Application Deadline and Methods of Submission below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing The J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between

participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe Your Plans for Overall Program Management, Staffing and Coordination with ECA/A/E/AF

ECA/A/E/AF considers program management, staffing and coordination with the Department of State essential elements of your program. Please give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements in the Solicitation package for specific quidelines.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $145,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Proposals should maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and availability of U.S. government funding.

IV.3e.2. Allowable costs for the program include the following:

1. Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

2. Lodging, meals, and incidentals for participants;

3. Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

4. Administrative costs as necessary;

5. U.S. ground transportation costs to U.S. appointments, meetings and to/from airports.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3e.3. Divide the line-item budget into *Program* and *Administration* sections. The line-item budget should include and elaborate on the categories listed below.

Program Costs: The Institution may choose to itemize academic program costs or set a fee per participant.

The following may be included as itemized instruction costs:

a. Instructors' salaries as appropriate. Salaries, benefits, and services for instructors' salaries for the Institute classes. Identify each position and provide position title, role in the Institute, and, as appropriate, annual salary and percent of effort used for the Institute. Benefits costs should be stated separately from salary costs. Identify how benefits and services were computed.

b. Honoraria and per diem for outside speakers, if any. List names and amounts.

c. Film and video rentals, educational materials, curricular needs (i.e., texts, course packs for classes) as needed.

If the institution chooses to budget instruction costs as a fee per participant, please state what services are provided within that fee, and only actual costs incurred are chargeable to the award.

Clearly indicate the unit cost for each item listed below:

1. Lodging. Housing may be in graduate dormitories, faculty residence, or other, as appropriate. Single rooms are preferred.

2. Meals. Meals may be provided through cash subsistence payments to participants, cafeteria meal plans, or a combination of both. If using a meal plan exclusively, show clearly how the cost of meals will be covered if participants travel away from campus or campus cafeterias are closed.

3. Incidentals allowance. Include an incidentals allowance of $15 per person per day for the full number of days of the summer Institute at the host institution.

4. Supplemental book allowance of $150 per person.

5. Return shipping allowance $150 per person.

6. Lodging, meals and incidentals allowances for participants who must arrive before the Institute formally begins and/or depart after the Institute formally ends, due to airline schedules in their home countries. To estimate costs, multiply daily cost per grantee (include housing, meals and incidentals allowance) by 4 days each by 4 participants.

Note: Per diem rate for lodging and meals may not exceed published U.S. government allowance rates for the site of the Institute. Applicants may use per diem rates that are lower than official government rates.

Cultural activities and other program costs may include the following:

1. Cultural activities: Entrance fees, overnight lodging, and meals not previously listed.

2. Costs for Washington cultural and educational tour: Include participant lodging (double rooms are acceptable); meals for participants; incidentals allowance for participants ($15 per person per day incidentals allowance for full number of days in Washington). Include $130 for incidental expenses for Bureau of Educational and Cultural Affairs meeting in Washington, DC.

3. Transportation: Ground transportation for group cultural and educational activities; ground transportation for airport arrivals and departures.

Note: The Bureau will provide round-trip international air tickets (from home country to Institute site, to Washington, DC., if appropriate, and return to home country) for participants. The cost of airline travel for participants is not needed in the budget.

4. Per diem (or lodging and subsistence) and travel for grantee escort staff for overnight cultural activities and Washington, DC, visit.

Note: Per diem rate for lodging and meals may not exceed published U.S. government allowance rates for the site of the Institute. Institutions may use per diem rates that are lower than official government rates.

5. Costs associated with post-institute implementation/evaluation site visit to Africa.

Administration Costs should include the following:

A. Staff requirements.

B. Benefits.

C. Other directly administrative expenses.

D. Indirect expenses.

Please review carefully the Guidelines for Assistance Award Proposals and Budget Guidelines in Proposal Submission Instructions (PSI) for descriptions and limitations for each type of administrative cost.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: February 13, 2006.

Reference Number: ECA/A/E/AF–06–01.

Methods of Submission:

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/AF–06–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire applications have been uploaded to the grants.gov site. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program conceptualization and planning: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission of mutual understanding as well as adherence to all guidelines, goals and objectives described in the RFGP. The proposal should demonstrate effective use of community and regional resources to enhance the educational and cultural experiences of the participants. A relevant work plan and detailed calendar should demonstrate substantive undertakings and logistical capacity.

2. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with Francophone and Lusophone African participants. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants. The proposal should show evidence of the applicant's strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Program administrators should strive for diversity among Institute staff, university students, the host community who interact with participants, and the cultural component of the program.

5. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

6. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the conclusion of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to

original project objectives are recommended.

7. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants.*

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Dawn Kepets, African Programs Branch, ECA/A/E/AF, Room 232, ECA/A/E/AF–06–01, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–453–8118 or fax: 202–453–8121 or email: *kepetsdm@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/AF–06–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 15, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E5–7718 Filed 12–21–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 11, 2005, and comments were due by December 12, 2005. No comments were received.

DATES: Comments must be submitted on or before January 23, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Christensen, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590. Telephone: 202–366–5909; FAX: 202–493–2180; or e-mail: *tom.christensen@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Effective U.S. Control (EUSC)/ Parent Company.

OMB Control Number: 2133–0511.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own foreign-registered vessels.

Forms: None.

Abstract: The Effective U.S. Control (EUSC) Parent Company collection consists of an inventory of foreign-registered vessels owned by U.S. citizens. Specifically, the collection consists of responses from vessel owners verifying or correcting vessel ownership data and characteristics found in commercial publications. The information obtained could be vital in a national or international emergency, and is essential to the logistical support planning operations conducted by MARAD officials. The information is used in contingency planning and provides data related to potential sealift capacity to support movement of fuel and military equipment to crisis zones.

Annual Estimated Burden Hours: 40 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street Northwest, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on December 16, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E5–7727 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2005–23383]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 21, 2006.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Sean H. McLaurin, NHTSA, 400 Seventh Street, SW., Room 6124A, NPO–122, Washington, DC 20590. Mr. McLaurin's telephone number is (202) 366–4800. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Extension of Clearance.

OMB Control Number: 2127–0001.

Affected Public: State, Local, or Tribal Government.

Form Number: This collection of information uses no standard form.

Abstract: The purpose of the NDR is to assist States and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing purposes. Other users obtain the information for transportation safety purposes.

Estimated Annual Burden: 2633.

Number of Respondents: 51 State driver licensing agencies, including the District of Columbia.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: December 14, 2005.

Joseph S. Carra,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. E5–7716 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2005–23389]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek extension of an existing OMB approval.

Comments must be received on or before February 21, 2006.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Samuel Daniel, Jr., NHTSA 400 Seventh Street, SW., Room 5313 G, NVS–122,Washington, DC 20590. Mr. Daniel's telephone number is (202) 366–4921. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Phase-in Production Reporting Requirements for Tire Pressure Monitoring Systems.

OMB Control Number: 2127–0631.

Type of Approval: Extension of existing collection of information.

Affected Public: Approximately 21 motor vehicle manufacturers.

Form Number: No standard forms will be used in this collection.

Abstract: The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act mandates in Section 13, that the National Highway Traffic Safety Administration (NHTSA) complete ''a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated.''

NHTSA issued a final rule on April 8, 2005, establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 138, Tire Pressure Monitoring Systems, in response to Section 13 of the TREAD ACT. FMVSS No. 138 specifies that compliance be phased in over a 2-year period beginning on October 5, 2005 as follows: between October 5, 2005 and August 31, 2006, 20 percent of new vehicles produced must comply with FMVSS No. 138; 70 percent of vehicles produced between September 1, 2006 and August 31, 2007 must comply with the Standard; and all vehicles produced after August 31, 2007 must comply with FMVSS No. 138. The agency decided to include both carry-forward and carry-back credit features in FMVSS No. 138, which provide vehicle manufacturers the opportunity to count compliant vehicles manufactured in a given year toward the phase-in percentage requirements for one of the subsequent phase-in years (carry-forward), or to count compliant vehicles manufactured in a given year toward the phase-in percentage requirements for the previous phase-in year. This information collection request would provide the agency with vehicle manufacturers' production data to verify that the manufacturers have met the production requirements of the phase-in as detailed in Section S7 of the Standard.

Estimated Annual Burden: 42 hours.

Number of Respondents: 21 motor vehicle manufacturers.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: December 19, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E5–7717 Filed 12–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–297 (Sub-No. 102X)]

Columbus and Greenville Railway Company—Abandonment Exemption—in Leflore County, MS

Columbus and Greenville Railway Company (C&G) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.18-mile line of railroad between milepost 112.67 and milepost 113.85, in the City of Greenwood (City), in Leflore County, MS. The line traverses United States Postal Service Zip Code 38930.[1]

C&G has certified that: (1) No local traffic has moved over the line for at

[1] C&G indicated in an earlier filing that it would seek abandonment of the above-described rail line. *See Columbus and Greenville Railway Company—Acquisition and Operation Exemption—Line of City of Greenwood, MS*, STB Finance Docket No. 34666 (STB served Apr. 22, 2005).

least 2 years; (2) any overhead traffic on the line can be and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 21, 2006,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 30, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 11, 2006,[5] with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to C&G's representative: H. Lynn Gibson, 201 19th Street North, Columbus, MS 39703.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

C&G has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 27, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), C&G shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by C&G's filing of a notice of consummation by December 22, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E5–7711 Filed 12–21–05; 8:45 am]

BILLING CODE 4915–01–P

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. In its verified notice, applicant did not indicate a consummation date as required. Based on a subsequent conversation with the applicant's representative, it was confirmed that consummation would not occur before January 21, 2006, 50 days after the December 2, 2005 filing of the verified notice.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

[5] The City filed a request for issuance of a public use condition under 49 U.S.C. 10905. The Board will address the City's public use request, along with any others that may be filed, in a subsequent decision.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8902

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8902, Alternative Tax on Qualifying Shipping Activities.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Alternative Tax on Qualified Shipping Activities.

OMB Number: 1545–1968.

Form Number: Form 8902.

Abstract: Form 8902 is used to elect the alternative tax on national income from qualifying shipping activities and to figure the alternative tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 hr., 17 min.

Estimated Total Annual Burden Hours: 3,056.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 14, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7649 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209823–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209823–96 (TD 8791), Guidance regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests and Trusts.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests and Trusts.

OMB Number: 1545–1536.

Regulation Project Number: REG–209823–96.

Abstract: This regulation provides guidance relating to charitable remainder trusts and to special valuation rules for transfers of interests in trusts. Section 1.664–1(a)(7) of the regulation provides that either an independent trustee or qualified appraiser using a qualified appraisal must value a charitable remainder trust's assets that do not have an objective, ascertainable value.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 12, 2005.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E5–7652 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–CE, Certificate of Payment of Foreign Death Tax.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Current Actions: There are no changes being made to Form 706–CE at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households.

Estimated Number of Responses: 2,250.

Estimated Time Per Response: 1 hr., 44 min.

Estimated Total Annual Burden Hours: 3,870.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7653 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–106486–98 (Final)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–106486–98 (Final), Guidance Regarding the Treatment of Certain Contingent Payment Debt Instructions with one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Guidance Regarding the Treatment of Certain Contingent Payment Debt Instructions with one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.

OMB Number: 1545–1831.

Form Number: REG–106486–98.

Abstract: The IRS needs the information from the holder of certain debt instruments in order to alert the agency that the computation of interest income/expense by the holder and issuer will not be consistent. The respondents will be holders of contingent payment debt instruments which require payments to be made in or by reference to foreign currency. The respondents will probably be investment banks, however, may also include others who hold these debt instruments for investment.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7655 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8883

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8883, Asset Allocation Statement Under Section 338.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Asset Allocation Statement Under Section 338.

OMB Number: 1545–1806.

Form Number: 8883.

Abstract: Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 201.

Estimated Time Per Respondent: 24 hours, 31 minutes.

Estimated Total Annual Burden Hours: 4,929.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7657 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–7–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–7–88 (TD 8379), Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail (§§ 155.6011–1, 155.6001–1, 155.6081–1, and 155.6161–1).

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail.

OMB Number: 1545–1049.

Regulation Project Number: IA–7–88.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 4.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: December 15, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7658 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–124069–02, REG–118966–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–124069–02, Section 6038—Returns Required with Respect to Controlled Foreign Partnerships; and existing final regulation, REG–118966–97, Information reporting with Respect to Certain Foreign Partnerships and Certain Foreign Corporations.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 6038—Returns Required with Respect to Controlled Foreign Partnerships, and Information reporting with Respect to Certain Foreign Partnerships and Certain Foreign Corporations.

OMB Number: 1545–1617.

Regulation Project Number: REG–124069–02, REG–118966–97.

Abstract: REG–124069–02: Treasury Regulation § 1.6038–3 requires certain United States persons who own interests in controlled foreign partnerships to annually report information to the IRS on Form 8865. This regulation amends the reporting rules under Treasury Regulation section § 1.6038-e to provide that a U.S. person must follow the filing requirements that are specified in the instructions for Form 8865 when the U.S. person must file Form 8865 and the foreign partnership completes and files Form 1065 or Form 1065–B. REG–118966–97: Section 6038 requires certain U.S. persons who own interest in controlled foreign partnerships or certain foreign corporations to annually report information to the IRS. This regulation provides reporting rules to identify foreign partnerships and foreign corporations which are controlled by U.S. persons.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit institutions and individuals or households.

Estimated Number of Respondents: 500.

Estimated Total Burden Hours: 250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7659 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–39, Form 941 e-file program.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Form 941 e-file Program.

OMB Number: 1545–1557.

Revenue Procedure Number: Revenue Procedure 99–39.

Abstract: Revenue Procedure 99–39 provides the requirements of the 941 e-file Program, which combines the Form 941 Electronic Filing (ELF) Program with an on-line filing program that allows a taxpayer to electronically file a Form 941, Employer's Quarterly Federal Tax Return, using a personal computer, modem, and commercial tax preparation software.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 390,200.

Estimated Time Per Respondent: 37 minutes.

Estimated Total Annual Burden Hours: 238,863.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7660 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120X, Amended U.S. Corporation Income Tax Return.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Amended U.S. Corporation Income Tax Return.

OMB Number: 1545–0132.

Form Number: 1120X.

Abstract: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120–A. The data is used to determine if the correct tax liability has been reported.

Current Actions: There is a change in the total taxpayer burden due to the net decrease of 2 lines and an increase of 1 Code reference.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 16,699.

Estimated Time Per Respondent: 18 hrs.

Estimated Total Annual Burden Hours: 300,582.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7661 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Revenue Procedure 96–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–52, Acceptance Agents (IRB 1996–48).

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Acceptance Agents.

OMB Number: 1545–1499.

Revenue Procedure Number: Revenue Procedures 96–52.

Abstract: Revenue Procedure 96–52 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 8,000.

Estimated Time Per Respondent: 3 hrs., 12 minutes.

Estimated Total Annual Burden Hours: 24,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7668 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5310 and 6088

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5310, Application for Determination for Terminating Plan, and Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 5310, Application for Determination for Terminating Plan, and Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

OMB Number: 1545–0202.

Form Number: Forms 5310 and 6088.

Abstract: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. Form 5310 is used to request an IRS determination letter about the plan's qualification status (qualified or non-qualified) under Internal Revenue Code section 401(a). Form 6088 is used to show the amounts of distributable benefits to participants in the plan.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 30,000.

Estimated Time Per Response: 60 hours, 46 minutes.

Estimated Total Annual Burden Hours: 1,813,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 14, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7673 Filed 12–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–68–87; CO–69–87; CO–18–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO–68–87 and CO–69–87 (TD 8352), Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes, and CO–18–90 (TD 8531), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards (§§ 1.382–4 and 1.382–2T).

DATES: Written comments should be received on or before February 21, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* CO–68–87 and CO–69–87 (TD 8352), Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes, and CO–18–90 (TD 8531), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1120.

Regulation Project Number: CO–68–87; CO–69–87; CO–18–90.

Abstract: (CO–68–87 and CO–69–87) These regulations require reporting by a corporation after it undergoes an ''ownership change'' under Code sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO–18–90) These regulations provide rules for the treatment of options under Code section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 75,150.

Estimated Time Per Respondent: 2 hours, 56 minutes.

Estimated Total Annual Burden Hours: 220,575.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 14, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7675 Filed 12–21–05; 8:45 am]

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Federal Register

Thursday,
December 22, 2005

Part II

Securities and Exchange Commission

17 CFR Part 240
Amendments to the Tender Offer Best-Price Rule; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–52968; IC–27193; File No. S7–11–05]

RIN 3235–AJ50

Amendments to the Tender Offer Best-Price Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the tender offer best-price rule to clarify that the rule applies only with respect to the consideration offered and paid for securities tendered in an issuer or third-party tender offer and should not apply to consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with employees or directors of the subject company. The proposed rule also would provide a safe harbor in the context of third-party tender offers that would allow the compensation committee or a committee performing similar functions of the subject company's or bidder's board of directors, depending on whether the subject company or the bidder is the party to the arrangement, to approve an employment compensation, severance or other employee benefit arrangement and thereby deem it to be such an arrangement within the meaning of the proposed exemption.

DATES: Comments should be received on or before February 21, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–11–05 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 Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–11–05. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Brian V. Breheny, Chief, or Mara L. Ransom, Special Counsel, Office of Mergers & Acquisitions, Division of Corporation Finance, at (202) 551–3440.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 13e–4 [1] and Rule 14d–10 [2] under the Securities Exchange Act of 1934.[3]

I. Executive Summary and Background

A. Reasons for the Proposed Amendments to the Best-Price Rule

The tender offer best-price rule [4] was adopted, as discussed in more detail below, to assure fair and equal treatment of all security holders of the class of securities that are the subject of a tender offer by requiring that the consideration paid to any security holder is the highest paid to any other security holder in the tender offer.[5] We are proposing amendments to the best-price rule for three reasons. First, we want to make it clear that compensatory arrangements between subject company employees or directors and the bidder [6] or subject company [7] are not captured by the application of the best-price rule. Second, we would like to alleviate the uncertainty that the various interpretations of the best-price rule by courts have produced. Finally, we want to remove any unwarranted incentive to structure transactions as statutory mergers, to which the best-price rule does not apply, instead of tender offers, to which it does apply.

Briefly, we propose to:

- Amend the language of Rules 13e–4(f)(8)(ii) and 14d–10(a)(2) to clarify that the best-price rule applies only with respect to the consideration offered and paid for securities tendered in a tender offer;
- Add a new provision to Rule 14d–10(c) to provide an exemption from the third-party best-price rule for the negotiation,[8] execution or amendment of payments made or to be made or benefits granted or to be granted according to employment compensation, severance or other employee benefit arrangements that are entered into by the bidder or the subject company with current or future employees or directors of the subject company; and
- For purposes of the exemption, add a new provision to Rule 14d–10(c) to include a safe harbor provision that provides that the compensation committee of the board of directors (or a committee performing similar functions) comprised solely of independent directors of the bidder or subject company, depending on which entity is party to the arrangement, may approve the employment compensation, severance or employee benefit arrangement and thereby deem it to be such an arrangement for purposes of the exemption.

B. History of the Adoption of the Best-Price Rule

Congress adopted the Williams Act in 1968 to address potentially abusive tactics such as ''Saturday Night Specials'' and ''First-Come, First Served'' offers.[9] The Williams Act amended the Exchange Act by adding the requirement for beneficial ownership reporting (Section 13(d)),[10] the procedural and disclosure requirements for purchases of securities by the issuer thereof (Section 13(e)),[11] and the procedural and disclosure requirements for third-party tender offers (Sections 14(d)–(f)).[12] With respect to tender offers, the Williams

[1] 17 CFR 240.13e–4.

[2] 17 CFR 240.14d–10.

[3] 15 U.S.C. 78a *et seq.*

[4] For purposes of this release, unless otherwise indicated, our references to the ''tender offer best-price rule'' or the ''best-price rule'' are intended to refer to both Exchange Act Rule 13e–4(f)(8)(ii) and Exchange Act Rule 14d–10(a)(2).

[5] *See* Amendments to Tender Offer Rules: All-Holders and Best-Price, Release No. 34–23421 (July 11, 1986) [51 FR 25873] (the ''Rule 14d–10 Adopting Release'').

[6] The term ''bidder'' is used throughout this release to refer to the offeror or purchaser in a tender offer.

[7] The term ''subject company'' is used throughout this release to refer to the company to be acquired in a business combination transaction or the company whose securities are the subject of the transaction, whether the transaction is agreed upon or unsolicited.

[8] We do not believe that an analogous exemption is needed in the issuer best-price rule, Rule 13e–4(f)(8), although we solicit comment on whether that rule should be changed as well in this respect. *See* Section II.B. below.

[9] Hearings, Subcommittee on Securities, 90th Congress, First Session on S.510, March 21, 1967 at page 17.

[10] 15 U.S.C. 78m(d).

[11] 15 U.S.C. 78m(e).

[12] 15 U.S.C. 78n(d)–(f).

Act was designed to achieve two main purposes: assure that public security holders of the target company are provided with adequate disclosure, and eliminate practices in connection with tender offers that may result in unfair discrimination among, and pressure on, tendering security holders.[13] The second purpose was achieved through Congress's adoption of the substantive provisions of Section 14(d) of the Exchange Act[14] and the Commission's adoption of Regulation 14D.[15]

Based on the objectives of the Williams Act and the substantive protections afforded by Section 14(d)(7) of the Exchange Act,[16] which requires equal treatment of security holders, the staff of the Commission had taken the position that there were implicit requirements that a bidder make a tender offer to all holders of the subject securities and that the bidder make the offer to all holders on the same terms.[17] After questions arose regarding the applicability of this implicit all-holders requirement to issuer tender offers,[18] we adopted Rule 13e–4(f)(8) and Rule 14d–10 to codify the position that both an issuer tender offer and a third-party tender offer must be open to all holders of the class of securities subject to the tender offer (commonly referred to as the ''all-holders rule''), and that all security holders must be paid the highest consideration paid to any security holder (commonly referred to as the ''best-price rule''). The rules provide that no bidder shall ''make a tender offer unless: (1) [t]he tender offer is open to all security holders of the class of securities subject to the tender offer; and (2) [t]he consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.'' [19]

C. History of the Various Interpretations of the Best-Price Rule

Since the adoption of the best-price and all-holders rules, the best-price rule has been the basis for litigation brought in connection with tender offers in which it is claimed that the best-price rule was violated as a result of the bidder entering into new agreements or arrangements, or adopting the subject company's pre-existing agreements or arrangements, with security holders of the subject company.[20] The agreements or arrangements with security holders that most frequently are the subject of best-price rule litigation have involved employment compensation, severance or other employee benefit arrangements with employees or directors of the subject company—although certain commercial agreements also have been the basis for these actions.[21] When ruling on these best-price rule claims, courts generally have interpreted the best-price rule in two different ways—employing either an ''integral-part test'' or a ''bright-line test'' to determine whether the arrangement violates the best-price rule.

1. The integral-part test

The integral-part test states that the best-price rule applies to all integral elements of a tender offer, including employment compensation, severance and other employee benefit arrangements or commercial arrangements that are deemed to be part of the tender offer, regardless of whether the arrangements are executed and performed outside of the time that the tender offer formally commences and expires.[22] In 1995, in *Epstein* v. *MCA Inc.,*[23] the United States Court of Appeals for the Ninth Circuit was the first court to apply the integral-part test to an action brought pursuant to, *inter alia,* the best-price rule. The *Epstein* court rejected the defendants' argument that no liability existed pursuant to the best-price rule because a transaction between the bidder and one of the security holders of the subject company in a tender offer closed after the tender offer period expired. Instead, the Court held that ''[a]n inquiry more in keeping with the language and purposes of Rule 14d–10 focuses not on when [the individual shareholder] was paid but on whether the [individual shareholder transaction] was an integral part of [the bidder's] tender offer.'' [24] Analyzing the transaction based on this test, the *Epstein* court held that ''[b]ecause the terms of the [individual shareholder transaction] were in several material respects conditioned on the terms of the public tender offer, we can only conclude that the [individual shareholder transaction] was an integral part of the offer and subject to Rule 14d–10's requirements.'' [25] Courts following the integral-part test have ruled that agreements or arrangements made with security holders that constituted what they determined to be an integral part of the tender offer violate the best-price rule.[26]

2. The Bright-Line Test

The bright-line test, on the other hand, states that the best-price rule applies only to agreements and arrangements executed and performed between the time a tender offer formally commences [27] and expires.[28] Both before and after the *Epstein* decision, jurisdictions following the bright-line test have held that agreements or arrangements with security holders of the subject company do not violate the best-price rule if they are not executed and performed ''during the tender

[13] Hearings, Subcommittee on Securities, 90th Congress, First Session on S.510, April 4, 1967 at page 203.

[14] Hearings, Subcommittee on Securities, 90th Congress, First Session on S.510, March 21, 1967 at page 36.

[15] *See* the Rule 14d–10 Adopting Release.

[16] 15 U.S.C. 78n(d)(7).

[17] *See* Proposed Amendments to Tender Offer Rules, Release No. 34–22198 (July 1, 1985) [50 FR 27976] (stating that ''* * * implicit in these provisions, and necessary for the functioning of the Williams Act, are the requirements that a bidder make a tender offer to all security holders of the class of securities which is the subject of the offer and that the offer be made to all holders on the same terms.'').

[18] *Id.* at 27977 (''* * * questions have arisen recently regarding the applicability of the all-holders requirement * * *'' in referring to *Unocal Corp.* v. *Pickens,* 608 F. Supp. 1081 (C.D. Cal. 1985), in which the court held that a defensive issuer tender offer that excluded the hostile bidder who was also a shareholder of the issuer was lawful).

[19] Exchange Act Rule 13e–4(f)(8) (17 CFR 240.13e–4(f)(8)) and Exchange Act Rule 14d–10(a) (17 CFR 240.14d–10(a)).

[20] *See, e.g., Epstein* v. *MCA,* 50 F.3d 644 (9th Cir. 1995), *rev'd on other grounds sub nom. Matsushita Electrical Industrial Co.* v. *Epstein,* 516 U.S. 367 (1996); *Lerro* v. *Quaker Oats,* 84 F.3d 239 (7th Cir. 1996); *Walker* v. *Shield Acquisition Corp.,* 145 F. Supp.2d 1360 (N.D. GA 2001).

[21] *Id.*

[22] *See Epstein,* 50 F.3d 644; *Perera* v. *Chiron Corp.,* 1996 U.S. Dist. LEXIS 22503 (N.D. CA 1996); *Padilla* v. *MedPartners,* 1998 U.S. Dist. LEXIS 22839 (C.D. CA 1998); *Millionerrors Investment Club* v. *General Electric,* 2000 U.S. Dist. LEXIS 4778 (W.D. PA 2000); *Maxick* v. *Cadence Design Systems,* 2000 U.S. Dist. LEXIS 14099 (N.D. CA 2000); *McMichael* v. *United States Filter Corp.,* 2001 U.S. Dist. LEXIS 3918 (C.D. CA 2001); *Karlin* v. *Alcatel, S.A.*, 2001 U.S. Dist. LEXIS 12349 (C.D. CA 2001); *Harris* v. *Intel Corp.,* 2002 WL 1759817 (N.D. CA 2002); *Cummings* v. *Koninklijke Philips Electronics, N.V.,* 2002 U.S. Dist. LEXIS 23383 (N.D. CA 2002); *In re: Luxottica Group S.p.A.,* 2003 U.S. Dist. LEXIS 21389 (E.D. N.Y. 2003).

[23] 50 F.3d 644.

[24] *Id.* at 655.

[25] *Id.*

[26] Although originally adopted by the Ninth Circuit in the *Epstein* case, decisions rendered by district courts in the Second and Third Circuits also have applied the integral-part test when addressing best-price rule claims. *See, e.g., Millionerrors,* 2000 U.S. Dist. LEXIS 4778; *Luxottica,* 2003 U.S. Dist. LEXIS 21389.

[27] *See* Exchange Act Rule 13e–4(a)(4) (17 CFR 240.13e–4(a)(4)) and Exchange Act Rule 14d–2 (17 CFR 240.14d–2) (relating to procedures for formal commencement of tender offers).

[28] *Kramer* v. *Time Warner Inc.,* 937 F.2d 767 (2d Cir. 1991); *Lerro,* 84 F.3d 239; *Gerber* v. *Computer Associates Int'l,* 303 F.3d 126 (2d Cir. 2002); *In re Digital Island Securities Litigation,* 357 F.3d 322 (3d Cir. 2004); *Walker* v. *Shield Acquisition Corp.,* 145 F. Supp.2d 1360 (N.D. GA 2001); *Susquehanna Capital Group* v. *Rite Aid Corp.,* 2002 U.S. Dist. LEXIS 18290 (E.D. PA 2002); *Katt* v. *Titan Acquisitions, Inc.,* 244 F. Supp.2d 841 (M.D. TN 2003).

offer.''[29] In this regard, the United States Court of Appeals for the Seventh Circuit stated in *Lerro* v. *Quaker Oats Company*[30] that ''[b]efore the offer is not 'during' the offer,'' ''[t]he difference between 'during' and 'before' (or 'after') is not just linguistic'' and ''* * * the point of Rules 10b–13, 14d–10, and their cousins is to demark clearly the periods during which the special Williams Act rules apply.''[31]

3. Impact of Split in Court Interpretations

The resulting uncertainty regarding the interpretation of the best-price rule has made parties that are considering commencing a tender offer and intend to enter into or amend any agreements or arrangements with employees or directors of the subject company reluctant to engage in a tender offer.[32] We understand that this reluctance is present even if the negotiation, execution or amendment of any agreement or arrangement, or related payments, has no relation to the securities tendered by such employees or directors in a tender offer. Because the retention of key employees or directors, or the execution of definitive severance arrangements, can be such an important aspect of a merger or acquisition, the bidder and subject company are not likely to forgo entering into or modifying employment compensation, severance or other employee benefit arrangements in favor of retaining the tender offer structure. Instead, even where a tender offer may be the most attractive method of acquiring another company, the resulting uncertainty and the drastic consequences of a violation (payment of the per share value of the other arrangements to all security holders) have caused bidders to refrain from conducting tender offers, in favor of structuring extraordinary transactions as statutory mergers[33] where the best-price rule is inapplicable.[34] This disfavoring of tender offers in favor of statutory mergers is contrary to our goals articulated in the adoption of Regulation M–A.[35]

D. Proposed Approach to Addressing Split in Court Interpretations

We do not believe that the best-price rule should be subject to a strict temporal test. We also do not believe that all payments that are conditioned on or otherwise somehow related to a tender offer, including payments under compensatory or commercial arrangements that are made to persons who happen to be security holders, whether made before, during or after the tender offer period, should be subject to the best-price rule. Accordingly, we are proposing amendments to the best-price rule that do not follow the approach of either the integral-part or the bright-line test. Instead, the proposed amendments would refocus the determination as to potential violations of the best-price rule on whether any consideration paid to security holders for securities tendered into an offer is the highest consideration paid to any other security holder for securities tendered into the tender offer.

The proposed amendments are premised on the view that the best-price rule was not intended to apply to consideration paid pursuant to arrangements, including employment compensation, severance or other employee benefit arrangements, entered into by the bidder or the subject company with the employees or directors of the subject company, so long as the consideration paid pursuant to such arrangements to persons that happen to be security holders was not to acquire their securities. As such, we are proposing amendments that establish that the best-price rule applies only to consideration paid for securities tendered. In light of the particular difficulties that have arisen under the existing rules regarding compensatory arrangements, we also are proposing an exemption and safe harbor regarding these arrangements in the context of third-party tender offers. The fact that we are proposing a safe harbor for compensatory arrangements in third-party tender offers would not affect the impact of the proposed rule change on payments made pursuant to other arrangements, such as commercial arrangements, provided that the consideration paid is not for securities tendered.

The commercial realities of merger and acquisition transactions are that key employees (without any regard to their holdings of securities) may represent a significant portion of the value that inheres in a continuing business enterprise. Alternatively, it may be advantageous for those employees (again, without any regard to their holdings of securities) to be replaced or otherwise terminated after the transaction. To ensure that key employees remain with the subject company, or to ensure a smooth transition for employees who will not remain with the subject company after the transaction is complete, critical personnel decisions often are required to be made concurrently with decisions regarding whether to pursue a transaction with the subject company. While these decisions may be an ''integral part'' of the transaction of which the tender offer is a part, they also may have nothing to do with the consideration paid for securities tendered in the tender offer. Indeed, we believe that the fact that most recipients of such payments are security holders is pure happenstance insofar as these payments are concerned and that such payments would be made to the recipients whether or not they were security holders. We therefore believe that the proposed specific exemption from the third-party best-price rule for employment compensation, severance or other employee benefit arrangements strikes the proper balance between these realities and the statutory purpose of the best-price rule.

II. The Current Proposals

A. Proposed Amendments to Rules 13e–4(f)(8)(ii) and 14d–10(a)(2)

The premise of the best-price rule is that bidders must pay consideration of equal value to all security holders for the securities that they tender in a tender offer.[36] Accordingly, an analysis of the best-price rule must include a consideration of whether any security

[29] *Kramer,* 937 F.2d 767; *Gerber,* 303 F.3d 126; *Priddy* v. *Edelman,* 679 F. Supp. 1425 (E.D. Mich. 1988), *aff'd on other grounds,* 833 F.2d 438 (6th Cir. 1989).

[30] *Lerro,* 84 F.3d 239.

[31] *Id.* at 242.

[32] *See, e.g.,* Dennis J. Block and Jonathan M. Hoff, *Developments Concerning SEC All Holders, Best Price Rules,* N.Y. L.J., June 28, 2001, at 5; Clifford E. Neimeth, *Inconsistent Application of the SEC's ''All Holders-Best Price'' Rule Continues to Chill Tender Offers,* The Journal of Investment Compliance, Winter 2002/2003, at 43.

[33] Statutory mergers are also known as ''long-form'' or ''unitary'' mergers, the requirements of which generally are governed by applicable state law.

[34] *See, e.g.,* Stephen I. Glover, *Applying the Best Price Rule to Employee Retention Bonuses,* The M & A Lawyer, April 2001, at 26.

[35] 17 CFR 229.1000—229.1016. *See* Regulation of Takeovers and Security Holder Communications, Release No. 34–42055 (Oct. 22, 1999) [64 FR 61408](''We also noted unnecessary differences in regulatory requirements between tender offers and other types of extraordinary transactions, such as mergers * * *. Our goals in proposing and adopting these changes are to * * * harmonize inconsistent disclosure requirements and alleviate unnecessary burdens associated with the compliance process * * *.''). We acknowledge, however, that other factors, including the adoption of poison pills and staggered boards by companies and the passage of anti-takeover legislation by states, may otherwise have caused, and may continue to cause, bidders to refrain from conducting tender offers.

[36] ''The objective of the * * * best-price provision is to make explicit the requirements that issuers and bidders alike * * * must pay every tendering security holder the highest consideration paid to any other security holder.'' *See* the Rule 14d–10 Adopting Release at 25881.

holders have been paid additional or different consideration for the securities they tendered in the offer.[37]

Our proposed amendments recognize that if purchases of securities are deemed to be made as part of a tender offer, then the consideration paid for all securities tendered in the offer must satisfy the best-price rule. We propose to amend the best-price rule to establish clearly that it applies with respect to the consideration offered and paid for securities tendered in the tender offer. Specifically, we propose to revise the best-price rule to state that a bidder shall not make a tender offer unless ''[t]he consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.'' In doing so, the clause ''for securities tendered in the tender offer'' would replace the current clauses ''pursuant to the tender offer'' and ''during such tender offer'' to clarify the intent of the best-price rule.

Congress and the Commission[38] have declined to define the term ''tender offer'' in consideration of the complex structure of acquisitions, the constant changes affecting tender offers and, most importantly, to avoid compromising substantive protections as a result of a narrowly construed definition.[39] The best-price rule was not intended to presuppose a bright-line standard such that a tender offer is always deemed to commence and expire as of a formal stated date.[40] The flexible concept of a tender offer is consistent with the purpose of the best-price rule, in that it prevents bidders from impermissibly circumventing the rule. We do not intend to change this approach, and the elimination of the words ''during the tender offer'' would not do so.

The proposed revisions also would remove the potentially expansive concept of consideration paid ''pursuant to'' the tender offer in order to focus the analysis as to whether the consideration to which the best-price rule would apply was paid ''for securities tendered in'' the tender offer. While we believe that the best-price rule was not intended in all cases to be limited to formal stated dates, we also believe that the best-price rule was not intended to apply to all payments made to persons who happen to be security holders of a subject company, whether made before, during or after the formal tender offer period. After concluding that a tender offer exists, a proper analysis of whether the best-price rule has been violated must address whether each security holder was paid consideration equal to the consideration paid to all other security holders for securities tendered in the offer. The proposed language ''for securities tendered in'' would result in a narrower scope of consideration falling within the best-price rule than would potentially be the case if the integral-part test were applied.[41] Consideration paid under other arrangements, including compensatory and commercial arrangements, that is not consideration for securities tendered in the tender offer, also would fall outside the scope of the best-price rule.

It has been suggested that it would be appropriate to adopt a specific time frame during which the best-price rule would apply.[42] Certain of the Commission's rules include such specific time frames during which those rules apply. For instance, the prohibitions contained in Rule 14e–5 apply ''from the time of public announcement of the tender offer until the tender offer expires,''[43] and Rule 10b–18's safe harbor generally is not available for purchases ''[e]ffected during the period from the time of public announcement * * * of a merger, acquisition, or similar transaction involving a recapitalization, until the earlier of the completion of such transaction or the completion of the vote by target shareholders.''[44] We believe, however, that it would be inappropriate to limit the application of the best-price rule to a specific time frame, as the abuses at which the best-price rule is aimed are not triggered by particular time frames.

Request for comment:

- What effect would the removal of ''during'' from the best-price rule have on the bright-line case law precedent? Would the change in this language broaden the scope of potential future claims to include allegations that payments made at any time violate the best-price rule?
- If the ''for securities tendered'' language is added to the best-price rule, would employees and directors who enter into arrangements with the bidder or subject company, and who do not tender their securities into a tender offer, avoid the strictures of the best-price rule? Is this the appropriate outcome of the proposed amendment? Would a similar outcome result under the current language of the best-price rule? If this outcome is a possibility, should we revise the proposed language of the best-price rule so that the best-price rule would apply to arrangements entered into by employees and directors with the bidder or subject company regardless of whether they tender their securities in the offer?
- If officers or directors recommend that security holders tender into the transaction but, in order to avoid

[37] This analysis assumes, of course, that the transaction is a tender offer. For purposes of this release, we assume the presence of a tender offer and, therefore, the application of the best-price rule.

[38] Although the Commission proposed to define the term ''tender offer'' in 1979, no such definition has been adopted. *See* Proposing Release Regarding Amendments to Tender Offer Rules, Release No. 34–16385 (Nov. 29, 1979) [44 FR 70349].

[39] *Id.* at page 70349 (''This position has been premised upon the dynamic nature of these transactions and the need for the Williams Act to be interpreted flexibly in a manner consistent with its purposes to protect investors. Consequently, the Commission specifically declined to define the term * * *'').

[40] We recognize that certain courts have wrestled with the concept of ''whether'' a tender offer exists as opposed to ''when'' a tender offer begins and ends. *See, e.g., Epstein,* 50 F.3d at 656 (''Rule 14d–10 does not prohibit transactions entered into or effected before, or after, a tender offer—provided that all material terms of the transaction stand independent of the tender offer.'') Often, however, these questions cannot be determined independently of each other. Depending on the facts, multiple purchases of a subject company's securities over an extended period of time may be determined to be private transactions or open market purchases or, alternatively, multiple purchases may be deemed to be a tender offer. If the purchases are deemed a tender offer, then, beginning with the first purchase, the security holders who sold their securities should have had the procedural protections of Regulation 14E and, if the securities are registered pursuant to section 12 of the Exchange Act, Regulation 14D or, if the issuer has a class of equity securities registered pursuant to section 12 of the Exchange Act, or is required to file periodic reports pursuant to section 15(d) of the Exchange Act, or which is a closed-end investment company registered under the Investment Company Act of 1940, Rule 13e–4, including the best-price rule.

[41] We recognize that neither the integral-part test nor the bright-line test precedent specifically relies on the ''pursuant to'' provisions of Rule 13e–4(f)(8)(ii) or Rule 14d–10(a)(2) when deciding best-price rule actions. Most bright-line opinions focus on the ''during'' such tender offer provisions. We are proposing this amendment and providing this interpretive guidance to clarify for practitioners and the courts the proposed rule's application.

[42] *See, e.g.,* American Bar Association comment letter in response to changes to the regulations governing tender offers, mergers, going-private transactions and security holder communications proposed in Regulation of Takeovers and Security Holder Communications, Release No. 33–7607 (Nov. 3, 1998) in File No. S7–28–98, Apr. 30, 1999, which states ''[i]t is important that there be a ''bright line'' test to measure the time period during which the restrictions under Rule 14e–5 (as well as Rule 14d–10) are applicable;'' Michael D. Ebert, *''During the Tender Offer'' (or some other time near it): Insider Transactions Under the All Holders/Best Price Rule,* 47 Vill. L. Rev. 677 (2002); Jason K. Zachary, Love Me Tender, *Love Me True: Compensating Management and Shareholders under the ''All-Holders/Best-Price'' Rule,* 31 Sec. Reg. L.J. 81 (2003).

[43] Exchange Act Rule 14e–5(a) (17 CFR 240.14e–5(a)).

[44] Exchange Act Rule 10b–18(a)(13) (17 CFR 240.10b–18(a)(13)). *See* Purchases of Certain Equity Securities by the Issuer and Others, Release No. 34–48766 (Nov. 17, 2003) [68 FR 64952].

implicating the best-price rule, the same officers or directors opted to withhold tendering their own securities, what would be the outcome? Could this result in an alleged breach of fiduciary duty? What effect or impact is this type of behavior likely to have on tender offers? Would it discourage officers or directors from recommending that security holders tender into the offer?

B. Proposed Amendments to Rule 14d–10(c)

We propose to revise Rule 14d–10 to include not only the general provision that the best-price rule applies solely to payments in consideration for securities tendered in a tender offer, but also a specific exemption from the third-party best-price rule for the following:

> The negotiation, execution or amendment of an employment compensation, severance or other employee benefit arrangement, or payments made or to be made or benefits granted or to be granted according to such arrangements, with respect to employees and directors of the subject company, where the amount payable under the arrangement: (i) Relates solely to past services performed or future services to be performed or refrained from performing, by the employee or director (and matters incidental thereto), and (ii) is not based on the number of securities the employee or director owns or tenders.[45]

We believe that amounts paid pursuant to employment compensation, severance or other employee benefit arrangements should not be considered when calculating the price paid for tendered securities. These payments are made for a different purpose.

We are not proposing an analogous exemption to the issuer best-price rule. We do not believe that issuers generally have the same need to negotiate, execute or amend compensatory arrangements when they structure and commence tender offers and, thus, the additional clarification afforded by such an exemption is unnecessary. We solicit comment, however, on whether adopting a similar exemption from the issuer best-price rule is necessary or would be practical.

1. Requirements of the Exemption

For purposes of the exemption included in proposed Rule 14d–10(c), the amounts to be paid pursuant to such an arrangement must:

- Relate solely to past services performed or future services to be performed or refrained from performing (*e.g.*, covenants not to compete), by the employee or director, and matters incidental thereto; and
- Not be based on the number of securities the employee or director owns in the subject company.[46]

We have included these additional requirements to ensure that the amounts paid pursuant to employment compensation, severance or other employee benefit arrangements are based on legitimate compensatory reasons. Under our proposed amendments to the third-party best-price rule, part of the consideration required for the exemption must be past or future services, or refraining from performing such services.

The requirement in the proposed amendments to the third-party best-price rule that the amounts payable under the employment compensation, severance or other employee benefit arrangement must not be based on the number of securities the employee or director owns is intended to exclude from the exemption those types of arrangements to which the best-price rule is intended to apply. Specifically, if the payments to be made pursuant to an arrangement are proportional to or otherwise based on the number of securities held by the employee or director, then this relationship between the payment and the securities would defeat the purpose of the exemption and would, accordingly, subject the payments to the application of the third-party best-price rule.

While the exemption that we have proposed specifically covers employment compensation, severance and other employee benefit arrangements and thus does not specifically extend to other arrangements, such as commercial arrangements, the fact that an arrangement does not fall within the exemption would not raise any inference that the arrangement constitutes consideration paid for securities tendered in a tender offer. We have proposed a new instruction to Rule 14d–10 to that effect.

Request for comment:

- The proposed rule does not specifically define or refer to examples of employment compensation, severance or other employee benefit arrangements that would be captured in the exemption. Should we define these arrangements? If so, would a definition similar to Instruction 7(ii) to Item 402(a)(3) of Regulation S–K[47] be helpful? Alternatively, or perhaps in addition to providing a definition, would it be more helpful if we gave examples? If so, what examples of employment compensation, severance and employee benefit arrangements should be included? Are we risking making the exemption too broad by providing a list of examples (*e.g.*, would parties simply call the arrangement something in the list, even where it is some other arrangement entirely, in the hopes of triggering application of the exemption)?
- Should we include a list of non-exclusive factors in our proposed amendments to Rule 14d–10(c) to assist bidders and subject companies in making a determination as to whether an employment compensation, severance or employee benefit arrangement falls within the exemption? Such factors could include: Timing of the execution of the arrangements; timing of payments to be made pursuant to the arrangements; the reasonable and customary nature of the arrangements; endorsement or recommendation of the tender offer; and whether the arrangement is conditioned on tendering into the tender offer. Should we include additional factors or modify or exclude some of these proposed factors? Is there a certain factor or combination of factors that should always be present to conclude that an arrangement falls within the exemption? Should a certain factor or combination of factors be deemed dispositive as to whether an arrangement falls within the exemption? Would the inclusion of the non-exclusive factors be helpful in determining what arrangements fall within the exemption? Would some or all of these factors currently be considered by boards of directors and courts when deciding whether an arrangement falls within the exemption? If the non-exclusive factors were not included in the proposed rule, would it be helpful if a discussion of certain non-exclusive factors were included in the adopting release?
- What would be the impact on the proposed rule if an exemption for commercial arrangements also was included in the best-price rule? Should we expand the proposed amendment to Rule 14d–10(c) to cover any commercial arrangement (*e.g.* distribution rights arrangements) where the party received an economic benefit beyond the price

[45] *See* proposed Exchange Act Rule 14d–10(c)(2).

[46] Our proposals do not address whether the employment compensation, severance or other employee benefit arrangements need always be for the purpose of incentivizing an individual with respect to future performance. We recognize that there are instances in which the issuance of additional consideration may be necessary to serve a contrary purpose, such as to persuade departing employees to relinquish or renegotiate long-term employment contracts, golden parachutes and other arrangements that the bidder would prefer not to honor upon successful consummation of the tender offer. These arrangements also can fall within the exemption under the proposed amendments.

[47] 17 CFR 229.402(a)(3).

paid for the securities? Some commenters have raised this issue in their analysis of the judicial precedent to date. Are the proposed amendments to Rule 14d–10(a)(2) broad enough to provide commercial arrangements protection from the potential application of the best-price rule?

• The proposed exemption would require that the arrangement relate to past or future services and matters incidental thereto. We solicit comment on the appropriateness of this requirement. Specifically, should we give guidance as to what evidence would be necessary to prove that the agreement or arrangement relates to past or future services? Is it clear what the clause ''matters incidental thereto'' would capture? Should we give guidance as to what this was intended to cover?

• The proposed exemption would require that the payments made pursuant to an arrangement not be based on the number of securities the employee or director owns or tenders. We solicit comment on the appropriateness of this requirement. For example, would it be helpful if we included the word ''specifically'' in front of the requirement ''based on the number of securities the employee or director owns or tenders?'' Should we give guidance as to what standard would be applied to avoid having payments be based on the number of securities owned or tendered?

• The proposed exemption would cover arrangements or agreements entered into with employees and directors of the subject company. Should the exemption be restricted to only such employees and directors? Is it possible that these types of arrangements or agreements would be entered into with employees and directors of the bidder?

• Would the proposed exemption help alleviate the litigation risk currently posed by the best-price rule? Would it make it less likely that cases involving a violation of the best-price rule survive a summary judgment motion, and, if so, is this preferable?

• Should we amend the issuer tender offer rules contained in Rule 13e–4 to provide a similar exemption? Are similar issues present in issuer tender offers, particularly where a going-private transaction is involved? Would the failure to include a similar exemption with respect to the issuer tender offer rules contained in Rule 13e–4 create a negative implication that employment compensation, severance and other employee benefit arrangements would or should be covered by the issuer best-price rule?

2. The Compensation Committee Safe Harbor

To provide increased certainty to bidders and subject companies in connection with the application of the third-party best-price rule to employment compensation, severance and other employee benefit arrangements, we propose to amend Rule 14d–10(c) to include a non-exclusive safe harbor provision. The safe harbor provision would allow the compensation committee or a committee performing similar functions of the subject company's or bidder's board of directors, depending on whether the subject company or the bidder is the party to the arrangement, to approve an employment compensation, severance or other employee benefit arrangement and thus have it deemed to be an arrangement within the exemption of the proposed rule.[48] The proposed safe harbor would require that the compensation committee or the committee performing similar functions be comprised solely of independent directors. Specifically, the proposals would add the following sentence to new proposed Rule 14d–10(c)(3):

> For purposes of paragraph (c)(2) of this section, pursuant to this non-exclusive safe harbor, an arrangement shall be deemed an employment compensation, severance or other employee benefit arrangement if it is approved as meeting the requirements of paragraphs (c)(2)(i) and (ii) of this section by the compensation committee of the subject company's or bidder's (depending on whether the subject company or bidder is a party to the arrangement) board of directors. If that company's board of directors does not have a compensation committee, the arrangement shall be deemed an employment compensation, severance or other employee benefit arrangement if it is so approved by the committee of that board of directors that performs functions similar to a compensation committee. In each circumstance, the arrangement shall be deemed an employment compensation, severance or other employee benefit arrangement only if the approving compensation committee or the committee performing similar functions is comprised solely of independent directors.[49]

We believe that this proposed non-exclusive safe harbor provision strikes a proper balance between the need for certainty in planning and structuring proposed acquisitions and the statutory purposes of the third-party best-price rule. The fiduciary duty requirements of board committee members, coupled with significant advances in the independence requirements for compensation committee members[50] and recent advances in corporate governance, suggest that independent compensation committee members and groups of independent board members provide the necessary safeguards to approve as employment compensation, severance or other employee benefit arrangements only arrangements that fall within those categories, and would be thus subject to the exemption.

Any action by a compensation committee or other group of directors that violates a fiduciary duty generally would be an issue of state law.[51] An approval in accordance with the proposed rule that comprised such a violation would, as a result, be subject to state law remedies but would not necessarily result in a violation of the third-party best-price rule.

We recognize that, under certain circumstances, security holders of the subject company may not be able to make a successful claim of a breach of fiduciary duty for actions taken by the bidder's compensation committee or other group of directors because fiduciary duties generally are not owed to prospective security holders.[52] We do not believe that this eliminates the utility of the safe harbor because the bidder's directors are obligated to act in the best interests of the security holders of the bidder, who likely will remain security holders of the combined company. Further, security holders of the subject company may have breach of fiduciary duty remedies available where members of the subject company board of directors recommend that security

[48] Where the bidder or subject company does not have an established compensation committee, one or more directors who have been selected to form a committee that conducts similar functions as a compensation committee may be used for purposes of this safe harbor.

[49] *See* proposed Exchange Act Rule 14d–10(c)(3).

[50] See *e.g.*, Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc. Order Approving Proposed Rule Changes, Release No. 34–48745 (Nov. 4, 2003) [68 FR 64154]. *See* also 303A.05 of the New York Stock Exchange's Listed Company Manual (requiring the compensation committee to be comprised solely of independent directors); Rule 4350(c) of the NASDAQ's Marketplace Rules for Listed Companies (requiring compensation to be approved by independent directors). While the NASD listing standards do not mandate the establishment of a compensation committee, they do require that the compensation of the CEO of a listed company be determined or recommended to the board by either a majority of the independent directors or a compensation committee comprised solely of independent directors.

[51] *See e.g., Aronson* v. *Lewis,* 473 A.2d 805 (Del. 1984); *Smith* v. *Van Gorkom,* 488 A.2d 858 (Del. 1985); *Ivanhoe Partners* v. *Newmont Mining Corp.,* 535 A.2d 1334 (Del. 1987); *In re The Walt Disney Co. Derivative Litig.,* 825 A.2d 275 (Del. Ch. 2003). *See generally,* Dennis J. Block, Stephen A. Radin and Nancy E. Barton, *The Business Judgment Rule: Fiduciary Duties of Corporate Directors* (5th ed.).

[52] *See e.g., Anadarko Petroleum Corp.* v. *Panhandle E. Corp.,* 545 A. 2d 1171 (Del. 1988), *Sanders* v. *Devine,* 1997 Del. Ch. LEXIS 131 (Del. Ch. Sept. 24, 1997).

holders tender into a tender offer that contemplates employment compensation, severance or other employee benefit arrangements to be granted to employees or directors.

For purposes of determining whether the members of the bidder's or the subject company's compensation committee or the committee performing similar functions are independent, we propose to include an instruction to Rule 14d–10(c)(3) providing that if the bidder or the subject company, as the case may be, is a listed issuer whose securities are listed on a registered national securities exchange or in an automated inter-dealer quotation system of a national securities association that has independence requirements for compensation committee members, the independence standards for compensation committee members as defined in the listing standards applicable to listed issuers should be used. Alternatively, if the bidder or the subject company is not a listed issuer, in determining whether a member of the compensation committee is independent, the bidder or subject company would use a definition of independence of a national securities exchange or a national securities association, so long as whatever definition is chosen is used consistently for all members of the compensation committee.[53]

Request for comment:

• We have proposed that either the bidder's or the subject company's (depending which entity is a party) compensation committee or similar committee would be allowed to approve the arrangement. Will the respective state law fiduciary duties protect security holders' interests in these arrangements? For example, is it clear that the compensation committee members of the entity approving an arrangement will owe fiduciary duties to the security holders of that entity? If the compensation committee of the bidder does not owe fiduciary duties to subject company shareholders, are there alternative remedies available to protect their interests? What if the arrangement that is entered into between the subject company and the employee or director provides for payment over an extended period of time? Would that implicate a fiduciary duty of the bidder to its security holders for future obligations? Are there other state law protections apart from those arising from fiduciary duties? Can the safe harbor be modified to work better with state law protections?

• Could the proposed safe harbor be relied on in both negotiated or ''friendly'' tender offers and unsolicited or ''hostile'' tender offers? Should changes be made to the language of the proposed safe harbor to make it clear that the safe harbor can or cannot be relied on in hostile transactions? Would the hostile nature of a takeover preclude the ability to negotiate arrangements that would involve additional consideration that would violate the best-price rule?

• For those companies, such as small business issuers, that may not have established a compensation committee or a committee performing similar functions, would full board approval provide an equally useful standard in establishing that the arrangement falls within the safe harbor? If so, would it matter whether or not the full board was comprised of at least a majority of independent directors, utilizing the independence standard provided in the instruction to the proposed safe harbor?

• The proposed safe harbor benefits are available only if the arrangements are approved by the compensation committee or a committee performing similar functions. Should the language of the safe harbor require, as a basis for reliance on the safe harbor, approval of specific arrangements? Are there circumstances under which approval for entire plans or arrangements would be sufficient? Do bidders in a tender offer enter into employment compensation, severance or other employee benefit arrangements with officers or directors of the subject company without first obtaining compensation committee approval? Do compensation committees generally set broad parameters that the officers of the company use when negotiating and entering into compensation arrangements?

• Should we address specifically the timing of the approval of the compensation committee (or the committee performing similar functions) of arrangements for purposes of the safe harbor? Should benefits granted or to be granted to an employee or director in connection with a tender offer pursuant to existing employment compensation, severance or other employee benefit arrangements that were approved by the compensation committee or the full board of directors when adopted be eligible for the safe harbor protections? If the proposal is adopted, should the safe harbor have retroactive applicability? If so, should the safe harbor be available for arrangements approved not sooner than, for example, the date the changes to the listing standards of the New York Stock Exchange requiring that the compensation committee be comprised solely of independent directors were adopted, or is some other date appropriate?

• If a member of the compensation committee or a committee performing similar functions is a party to the employment compensation, severance or other employee benefit arrangement, should the safe harbor still be available? Should the safe harbor address recusal or leave it to the committee members to determine how to handle this or similar situations that may arise?

• Is the independence test that is tied to the listing standards sufficient? Should we define ''independent'' by some other standard? Should the subject company directors also be independent from the bidder? Should we consider using the Non-Employee Director standard used in Rule 16b–3(d)?[54]

• How would the independence test affect bidders that are foreign private issuers? Should we consider an alternative standard for foreign private issuers? Will the fiduciary duties of the members of the compensation committee of a foreign private issuer adequately serve to ensure that the agreement or arrangement falls within the exemption?

• Should we consider allowing the compensation committee or the committee performing similar functions to rely exclusively on the opinion of a compensation consultant in making its determination that an agreement or arrangement falls within the exemption for purposes of the proposed best-price rule amendments?

• If a bidder or subject company intended to rely on the proposed safe harbor, is it clear, based on existing rules and regulations, whether such reliance would be required to be disclosed in the tender offer documents? If not, should a specific requirement be adopted to ensure that adequate disclosure would be made to the security holders? Should reliance on the safe harbor be conditioned on corresponding disclosure by the bidder or subject company, as appropriate, about how the safe harbor was satisfied, including what factors were used in determining that the arrangement was deemed an employment compensation, severance or other employee benefit arrangement?

• If we were to include a list of non-exclusive factors in our proposed amendments to Rule 14d–10(c) to assist bidders and subject companies in making a determination as to whether

[53] This approach is consistent with the disclosure requirements regarding nominating committee member independence contained in Item 7 of Schedule 14A (17 CFR 240.14a–101).

[54] 17 CFR 240.16b–3(d).

an employee compensation, severance or employee benefit arrangement falls within the exemption, should we require that the compensation committee, or a committee performing similar functions, examine the non-exclusive factors in connection with its determination as to what arrangements fall within the exemption for purposes of the safe harbor?

• To what extent would the proposed safe harbor provide bidders and subject companies with an adequate means to avoid implicating the best-price rule when it comes to employment compensation, severance and other employee benefit arrangements? Is there a risk that the proposed safe harbor would merely shift scrutiny by the courts to the determination as to whether the compensation committee has properly exercised its duties? Is that an appropriate outcome? Should approval that a court determines violates a fiduciary duty result in loss of the safe harbor? Will the fiduciary duties of the members of the compensation committee or a committee performing similar functions adequately serve to ensure that the agreement or arrangement falls within the exemption? Are there impediments to seeking judicial review of a determination that the agreement or arrangement falls within the exemption? Will the bidder's incentive to consummate a transaction impede the compensation committee members' exercise of their fiduciary duties? Will the fact that the members of the subject company's compensation committee may not be part of the ongoing business operation after the consummation of the transaction impede the exercise of their fiduciary duties?

General request for comment:

• Would the proposed amendments accomplish the goal of clarifying the scope of Rule 14d–10? If not, what other or additional language would accomplish this goal more effectively?

• Should we amend the issuer best-price rules as well as the third-party best-price rules? Are there issues that differ in issuer tender offers such that we should not consider making uniform changes to both sets of best-price rules? Would the failure to make uniform changes to both sets of best-price rules create any implication that employment compensation, severance and other employee benefit arrangements, as well as other commercial arrangements, would or should be covered by the issuer best-price rule? How should we address any such implication?

• Would it be appropriate to also include a *de minimis* exclusion to the best-price rule? For example, would it be appropriate to carve out of the application of Rule 14d–10 the negotiation or execution of any employment compensation, severance or other employee benefit arrangement with an employee or director of the subject company who, together with any affiliates, beneficially owns less than a nominal threshold amount (*e.g.*, 1% of the class of securities that is the subject of the tender offer)?

III. Request for Comment

Any interested persons wishing to submit written comments on the proposals, as well as on other matters that might have an impact on the proposals, are requested to do so. We solicit comments from the point of view of bidders, subject companies, other participants in transactions, security holders of bidders and subject companies and other investors.

IV. Paperwork Reduction Act

We have not prepared a submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995 because the proposals do not impose recordkeeping or information collection requirements, or other collections of information requiring the approval of the Office of Management and Budget.

V. Cost-Benefit Analysis

The overall objective of the proposed reforms is to make it clear that employment compensation, severance and other employee benefit arrangements between subject company employees or directors and the subject company or bidder are not captured by the application of the best-price rule. We also seek to alleviate the uncertainty bidders and subject companies face in planning and structuring third-party and issuer tender offers due to varying judicial interpretations of the best-price rule. Finally, we want to remove any unwarranted incentive to structure transactions as statutory mergers, to which the best-price rule does not apply, instead of tender offers, to which it does apply.

A. Benefits

We believe that the proposed rules would benefit bidders because the amendments would have the effect of correcting unintended consequences of the present regulatory scheme, which has been interpreted by certain courts to include compensation merely due to the time in which the compensation was offered or paid. Further, the proposed safe harbor would provide bidders and subject companies with the ability to ensure that the compensation being awarded to employees and directors of the subject company does not run afoul of the best-price rule by providing greater certainty as to the situations in which the compensation being granted is outside the rule. Finally, these amendments also would provide parties that are in the process of negotiating mergers and acquisitions with greater flexibility in determining which structure they choose to effectuate the transaction.

Presently, a split by courts in their interpretation of the best-price rule has left bidders with uncertainty as to the application of the best-price rule. Because the proposed amendments to the best-price rule are intended to clarify the application of the best-price rule, thereby mitigating the uncertainty of potential litigation risk, the costs of litigation being avoided could be significant. We believe that this serves as the primary benefit of the proposed amendment as the costs of litigation borne by security holders of bidders choosing to engage in tender offers where the best-price rule is applicable could be avoided.

The proposed amendments also would benefit security holders in that the proposed changes accomplish the aforementioned purposes without undermining the statutory objective of ensuring that all tendering security holders are paid the highest consideration paid to any other security holder tendering into the offer. Without the proposed amendments, bidders, subject companies and security holders may have difficulty determining what constitutes the ''highest consideration'' when bidders conduct a tender offer at the same time employees or directors of the subject company enter into employment compensation, severance or other employee benefit arrangements with the bidder or subject company.

We do not believe that clarification of the best-price rule by virtue of the proposed amendments is likely to result in a modification of behavior on the part of bidders or subject companies in entering into employment compensation, severance or other employee benefit arrangements with employees or directors. We do, however, believe that the proposed amendments may provide bidders and subject companies with more options when they are determining a means to accomplish mergers and acquisitions. Absent the changes being proposed to the best-price rule, we understand that some bidders have avoided engaging in tender offers for fear of being subject to litigation regarding the application of the best-price rule.

We solicit quantitative data to assist our assessment of the benefits of the amendments to the best-price rule.

B. Costs

We note that the conduct the proposed rule prohibits already is prohibited by the existing rule and related statute. Therefore, the amended best-price rule does not add any additional requirements. Rather, it more clearly prohibits certain conduct by clarifying the language of the best-price rule and adds a means by which bidders can ensure, via a safe harbor, that they are complying with the rule. In that regard, compliance with the best-price rule could be achieved in the same manner and by the same persons responsible for compliance under the current rule. We understand that, to take advantage of the safe harbor, bidders and subject companies may need to take extra steps to ensure compliance with the rule, but such compliance could entail a relatively small burden. Most bidders and subject companies already are required to have a compensation committee or a committee performing similar functions, so the cost of forming, organizing and convening a committee should be a cost that already is being incurred by the bidder or subject company. Further, it may be likely that many bidders or subject companies already ensure that their compensation committee or a committee performing similar functions approve employment compensation, severance or other employee benefit arrangements. Such bidders or subject companies likely would not incur additional costs to comply with the best-price rule and, for those that are not already engaging their compensation committee to perform this function, the cost should be limited to the time and expense associated with reviewing the specific arrangement and holding a meeting of the committee.

While we believe that the proposed changes to the best-price rule and, more specifically, the safe harbor, would provide increased certainty to bidders and subject companies in structuring tender offers, the proposed rule does not eliminate the potential costs of litigation entirely, including those that arise under state law. Security holders may claim that members of the compensation committee or a committee performing similar functions have breached their state fiduciary duties owed to security holders in approving employment compensation, severance or employee benefit arrangements entered in connection with a tender offer. Whether such behavior will be identifiable on the part of potential plaintiffs such that a successful claim can be made against members of the board of directors for breach of their fiduciary duties in approving the arrangement is uncertain. As a result, the potential costs associated with identifying the alleged illegal behavior and bringing a claim of liability could be imposed on potential plaintiffs. However, such costs currently would exist to the extent transactions are structured not to be tender offers.

Overall, we believe that the proposed amendments to the rule would impose minimal costs, if any, on bidders and subject companies and would support investor protection.

- What are the direct and indirect costs associated with the proposed rules?
- Would there be increased costs for compliance with the best-price rule in order to take advantage of the proposed safe harbor or are companies already implementing the steps necessary to take advantage of the proposed safe harbor, such that no additional costs would be applicable to the proposed amendment to the rule?
- Would there be increased costs associated with shifting the litigation from claims of violations of the best-price rule under federal law as compared to claims of breach of fiduciary duties under state law? What is the implication for such costs given that such litigation currently arises under state law for transactions that are structured not to be tender offers?
- We solicit quantitative data to assist our assessment of the costs associated with compliance with the best-price rule.

C. Small Business Issuers

Although the proposed rules apply to small business issuers, we do not anticipate any disproportionate impact on small business issuers. Like other issuers, small business issuers should incur relatively minor compliance costs, and should find it unnecessary to hire extra personnel. The issues of equal treatment among security holders in the context of tender offers affect small companies as much as they affect large companies. Thus, we do not believe that applying the proposed rules to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [55] and Section 2(c) [56] of the Investment Company Act of 1940 [57] require the Commission, whenever it engages in rulemaking, to consider or determine if an action is necessary or appropriate in the public interest and to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[58] Exchange Act Section 23(a)(2) prohibits the Commission 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 proposed amendments to the best-price rule are intended to improve on market efficiency by providing greater clarity to bidders, subject companies and security holders as to the situations in which compliance with the best-price rule has been met. This would facilitate the planning and negotiation of tender offers by clarifying the application of the best-price rule when an employment compensation, severance or other employee benefit arrangement is expected to be entered into.

As to the impact on competition, the proposed amendments to the best-price rule are intended to have a positive impact on competition for the same reasons that the proposed amendments would have a positive impact on market efficiency—companies desiring to merge with or acquire another company by conducting a tender offer would have the benefit of the amendments to the best-price rule that more clearly delineate the instances in which the negotiation or execution of employment compensation, severance or other employee benefit arrangements would not run afoul of the requirements of the best-price rule. It is possible, however, that because bidders and subject companies may desire to take advantage of the amendment to the best-price rule that provides for a safe harbor where the compensation committee, or committee performing similar functions, approves the arrangement, bidders and subject companies may need to reevaluate whether they have adequate policies and procedures in place for their compensation committee. Bidders and subject companies that do not consider using the safe harbor may be at a competitive disadvantage as compared to those bidders and subject companies that do because, absent the safe harbor, bidders and subject companies are

[55] 15 U.S.C. 78c(f).

[56] 5 U.S.C. 80a–2(c).

[57] 15 U.S.C. 80a–1 *et. seq.*

[58] 15 U.S.C. 78w(a)(2).

potentially subject to lawsuits alleging a violation of the best-price rule if they negotiate or execute employment compensation, severance or other employee benefit arrangements that are outside the terms of the safe harbor.

In this regard, we request comment regarding the degree to which our proposed changes to the best-price rule would create competitively harmful effects on public companies, and how to minimize those effects.

The proposed amendments should promote capital formation since the amendments seek to eliminate the uncertainty caused by the varying judicial interpretations of the best-price rule, which would remove any disincentive to the use of tender offers as a means to accomplish mergers and acquisitions. The clarifications to the best-price rule would have the added effect of leveling the regulatory playing field between statutory mergers and tenders offers, which we understand has been disfavored recently in favor of statutory mergers because the best-price rule is not applicable to statutory mergers. Further, for similar reasons, these proposed amendments would promote investor confidence in the tender offer context, as well as in the market as a whole, which would further contribute to capital formation. Nevertheless, it is possible that the safe harbor exclusion from the amended best-price rule may serve to impede capital formation because of the additional time that may need to be spent in ensuring that the compensation committee or committee performing similar functions approves the employment compensation, severance or employee benefit arrangement. We believe, however, that any additional time and effort that may be expended in order to take advantage of the safe harbor from the best-price rule would be appropriate in order to ensure that the best-price rule continues to serve its purpose in ensuring equal treatment among security holders.

The possibility of these effects, their magnitude, if they were to occur, and the extent to which they would be offset by the costs of the proposals are difficult to quantify, and we request comment on how the proposed amendments to the best-price rule, if adopted, would affect efficiency and capital formation. Where empirical data or other factual support is available, we encourage commenters to provide it.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the best-price rule under the Exchange Act to clarify that the rule applies only with respect to the consideration offered and paid for securities tendered in an issuer or third-party tender offer and should not apply to consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with employees or directors of the subject company.

A. Reasons for the Proposed Action

The best-price rule was adopted originally to assure fair and equal treatment of all security holders of the class of securities that are the subject of a tender offer by requiring that the consideration paid to any security holder is the highest paid to any other security holder in the tender offer. We are proposing amendments to the best-price rule for three reasons.

First, we want to make it clear that compensatory arrangements between employees and directors and the subject company or bidder are not captured by the application of the best-price rule. We believe that amounts paid pursuant to employment compensation, severance or other employee benefit arrangements should not be deemed included in the consideration paid for tendered securities. These payments are made for a different purpose that is compensatory in nature in exchange for services rendered or that is related to severance or similar events.

Second, since the adoption of the best-price rule, it has been the basis for litigation brought in connection with tender offers in which it is claimed that the best-price rule was violated as a result of the bidder in a tender offer entering into new, or adopting the subject company's pre-existing, employment compensation, severance or other employee benefit arrangements with security holders of the subject company. In the process of resolving these claims, courts have interpreted the best-price rule in different ways. We are proposing changes to the rule to alleviate the uncertainty that the various interpretations of the best-price rule by courts have produced.

Finally, we want to reduce any unwarranted incentive to structure transactions as statutory mergers, to which the best-price rule does not apply, instead of tender offers, to which it does apply. We understand that the uncertainty regarding the application of the best-price rule has made parties reluctant to utilize tender offers as a means to accomplish extraordinary transactions, and we believe the proposed changes to the rule would alleviate the need for this reluctance.

B. Objectives

The overall objective of the proposed reforms is to make it clear that employment compensation, severance or other employee benefit arrangements between employees and directors of the subject company or bidder are not captured by the application of the best-price rule. We also seek to alleviate the uncertainty bidders and subject companies face in planning and structuring third-party and issuer tender offers due to varying judicial interpretations of the best-price rule. Finally, we want to remove any unwarranted incentive to structure transactions as statutory mergers, to which the best-price rule does not apply, instead of tender offers, to which it does apply.

First, we propose to clarify that the best-price rule applies only with respect to the consideration offered and paid for securities tendered in a tender offer. Second, we propose amending the rule in the context of third-party tender offers to make it clear that the negotiation, execution or amendment of payments made or to be made or benefits granted or to be granted according to employment compensation, severance or other employee benefit arrangements that are entered into by the bidder or the subject company with current or future employees or directors of the subject company were never intended to trigger the best-price rule. Lastly, to give additional comfort to parties entering into employment compensation, severance or other employee benefit arrangements, we propose to add a safe harbor to assist parties in the determination of whether such arrangements are outside the best-price rule. These modifications to the best-price rule would provide greater certainty to the parties in structuring the terms of tender offers and would also give security holders greater confidence that the best-price rule is continuing to ensure equal treatment among security holders.

C. Legal Basis

We are proposing amendments to the best-price rule under Sections 3(b), 10, 13, 14, 23(a) and 36 of the Exchange Act, as amended, and Section 23(c) of the Investment Company Act of 1940, as amended.

D. Small Entities Subject to the Proposed Rules

The proposed changes to the best-price rule would affect issuers that are

small entities. Exchange Act Rule 0–10(a) [59] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. An investment company is considered to be a ''small business'' or ''small organization'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[60] We estimate that there were approximately 3,500 public issuers, other than investment companies, that may be considered small entities. We estimate that there are approximately 240 investment companies that may be considered small entities. Of these 240 investment companies that may be considered small entities, we estimate that 97 are closed-end investment companies, including closed-end investment companies electing to be treated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act of 1940,[61] that may be affected by these proposed amendments.

The Commission received a total of 362 issuer and 110 third-party tender offer schedules in its 2005 fiscal year. We estimate that 13 of the issuer tender offer schedules were issuer tender offers that were filed by subject companies that were small entities, including investment companies. We further estimate that 41 of those tender offer schedules were third-party tender offers where the subject companies were small entities, including investment companies. Therefore, as discussed below, we believe that the proposals would affect a limited number of small entities that are reporting companies. However, we request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed changes to the best-price rule are expected to result in minimal additional costs to all bidders and subject companies, large or small. Because the current best-price rule already requires bidders to ensure that the consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer, the proposed changes to the best-price rule should not impose significant additional costs, if any, and should not require any additional professional skills. Thus, the task of complying with the proposed changes could be performed by the same person or group of persons responsible for compliance under the current rules at a minimal incremental cost.

We understand that one aspect of the proposed changes, the safe harbor, may impose extra steps on the bidder and/or subject company to ensure compliance with the safe harbor, and such compliance could entail new costs. Most bidders and subject companies already are required to have a compensation committee or a committee performing similar functions, so the cost of forming and organizing a committee should be a cost that is already being incurred by the bidder or subject company. This is particularly the case where the bidder or subject company either has a class of securities listed on a registered national securities exchange or on an automated inter-dealer quotation system of a national securities association because the listing standards of each generally impose certain requirements regarding the formation and composition of the members of the board of directors and its committees.

Small entities or organizations might be less likely to have a class of securities listed on a registered national securities exchange or on an automated inter-dealer quotation system of a national securities association. As a result, it is possible that small entities or organizations would be less likely to have the pre-existing infrastructure in place for compensation committees or a committee performing similar functions to approve employment compensation, severance or other employee benefit arrangements. Such small entities or organizations would likely incur additional costs to take advantage of the safe harbor. The cost, however, should be limited to the expense of organizing a committee, reviewing the specific arrangement and holding a meeting of the committee. Further, bidders and subject companies that are small entities or organizations would not be required to take advantage of the safe harbor, so any additional expenses that may be incurred, if any, would be optional on the part of the small entity or organization. Therefore, the proposed rule would likely have virtually no adverse impact upon small entities.

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or completely duplicate the proposed changes to the best-price rule.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

1. Establishing different compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of the compliance or reporting requirements for small entities;

3. The use of performance rather than design standards; and

4. An exemption for small entities from coverage of the best-price rule, or any part thereof, for small entities.

We have considered a variety of reforms to achieve our regulatory objectives. However, we believe that the original intent of the best-price rule, to require equal treatment of security holders, would not be served by a best-price rule that applied only to bidders and subject companies of a certain size. Further, we believe that in order to alleviate the uncertainty that the parties to tender offers face, uniform rules applicable to all bidders and subject companies, regardless of size, is necessary. Therefore, the establishment of different requirements for small entities would not be practicable, nor would it be in the public interest. For similar reasons, the clarification, consolidation or simplification of the compliance and reporting requirements for small entities also would not be practicable.

Although the best-price rule generally employs performance standards rather than design standards, the proposed changes to the rule would implement certain design standards in order to clarify that the rule should not apply where employment compensation, severance or other employee benefit arrangements are made or will be made or have been granted or will be granted. The implementation of design standards in this case, however, would be more useful to bidders and subject companies because the circumstances in which the

[59] 17 CFR 240.0–10(a).

[60] 17 CFR 270.0–10.

[61] 15 U.S.C. 80a–2(a)(48).

best-price rule is applicable would be delineated more clearly. This would provide greater certainty in the application of the rule and the enforcement of the application of the rule. Therefore, implementing design rather than performance standards in the application of the rule appears to be more effective in ensuring compliance with the proposed rule.

The majority of bidders and subject companies that engage in tender offers and are subject to the best-price rule are not small entities. Further, where small entities are bidders and/or subject companies in the tender offer, the proposed changes to the best-price rule, in general, and the invocation of the safe harbor, in particular, impose minimal additional costs or burdens so exempting small entities from the best-price rule altogether would not be justified in this context.

H. Solicitation of comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

1. The number of small entities that may be affected by the proposals;

2. The existence or nature of the potential impact of the proposed changes on small entities discussed in the analysis; and

3. How to quantify the impact of the proposed revisions.

Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, or in the alternative, a certification under Section 605(b) of the Regulatory Flexibility Act, if the proposed changes are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or (SBREFA),[62] we must advise the Office of Management and Budget as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

[62] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

We request comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Statutory Basis

The amendments to the best-price rule are proposed pursuant to Sections 3(b), 10, 13, 14, 23(a) and 36 of the Exchange Act, as amended, and Section 23(c) of the Investment Company Act of 1940, as amended.

X. Text of the Proposed Amendments

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations 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. Amend § 240.13e–4 by revising paragraph (f)(8)(ii) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(f) * * *

(8) * * *

(ii) The consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.

* * * * *

3. Amend § 240.14d–10 by revising paragraphs (a)(2), (c) and (d)(2) to read as follows:

§ 240.14d–10 Equal treatment of security holders.

(a) * * *

(2) The consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.

* * * * *

(c) Paragraph (a)(2) of this section shall not prohibit:

(1) The offer of more than one type of consideration in a tender offer, where:

(i) Security holders are afforded equal right to elect among each of the types of consideration offered; and

(ii) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(2) The negotiation, execution or amendment of an employment compensation, severance or other employee benefit arrangement, or payments made or to be made or benefits granted or to be granted according to such arrangements, with respect to employees and directors of the subject company, where the amount payable under the arrangement:

(i) Relates solely to past services performed or future services to be performed or refrained from performing, by the employee or director (and matters incidental thereto); and

(ii) Is not based on the number of securities the employee or director owns or tenders.

Instruction to paragraph (c)(2): The fact that the exemption in paragraph (c)(2) of this section extends only to employment compensation, severance and other employee benefit arrangements and not to other arrangements, such as commercial arrangements, does not raise any inference that a payment under any such other arrangement constitutes consideration paid for securities in a tender offer.

(3) For purposes of paragraph (c)(2) of this section, pursuant to this non-exclusive safe harbor, an arrangement shall be deemed an employment compensation, severance or other employee benefit arrangement if it is approved as meeting the requirements of paragraphs (c)(2)(i) and (ii) of this section by the compensation committee of the subject company's or bidder's (depending on whether the subject company or bidder is a party to the arrangement) board of directors. If that company's board of directors does not have a compensation committee, the arrangement shall be deemed an employment compensation, severance or other employee benefit arrangement if it is so approved by the committee of that board of directors that performs functions similar to a compensation committee. In each circumstance, the arrangement shall be deemed an employment compensation, severance or other employee benefit arrangement only if the approving compensation committee or the committee performing

similar functions is comprised solely of independent directors.

Instruction to paragraph (c)(3): For purposes of determining whether the members of the bidder's or subject company's compensation committee or the committee performing similar functions are independent, the following provisions shall apply:

1. If the bidder or subject company, as applicable, is a listed issuer (as defined in § 240.10A–3) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Act that has independence requirements for compensation committee members, apply the independence standards for compensation committee members as defined in the listing standards applicable to listed issuers; or

2. If the bidder or subject company, as applicable, is not a listed issuer (as defined in § 240.10A–3), in determining whether a member of the compensation committee is independent, the bidder or subject company, as applicable, shall use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Act or a national securities association registered pursuant to section 15A(a) of the Act that has been approved by the Commission (as that definition may be modified or supplemented). Whatever definition the bidder or subject company, as applicable, chooses, it must apply that definition consistently to all members of the compensation committee or the committee performing similar functions.

(d) * * *

(2) Paragraph (c)(1) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

* * * * *

Dated: December 16, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24359 Filed 12–21–05; 8:45 am]

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H.R. 2520/P.L. 109–129
Stem Cell Therapeutic and Research Act of 2005 (Dec. 20, 2005; 119 Stat. 2550)

S. 52/P.L. 109–130
To direct the Secretary of the Interior to convey a parcel of real property to Beaver County, Utah. (Dec. 20, 2005; 119 Stat. 2564)

S. 136/P.L. 109–131
To authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing educational services for students attending schools located within Yosemite National Park, to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area, to adjust the boundaries of Redwood National Park, and for other purpo (Dec. 20, 2005; 119 Stat. 2566)

S. 212/P.L. 109–132

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S. 279/P.L. 109–133

To amend the Act of June 7, 1924, to provide for the exercise of criminal jurisdiction. (Dec. 20, 2005; 119 Stat. 2573)

S. 1886/P.L. 109–134

Naval Vessels Transfer Act of 2005 (Dec. 20, 2005; 119 Stat. 2575)

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