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WHEN: Tuesday, February 7, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

Rules and Regulations

Federal Register
Vol. 71, No. 25
Tuesday, February 7, 2006

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20440; Directorate Identifier 2005–CE–05–AD; Amendment 39–14472; AD 2006–03–08]

RIN 2120–AA64

Airworthiness Directives; Aero Advantage ADV200 Series (Part Numbers ADV211CC and ADV212CW) Vacuum Pumps

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all airplanes equipped with Aero Advantage ADV200 series (part numbers ADV211CC and ADV212CW) vacuum pumps installed under supplemental type certificate number SA10126SC, through field approval, or other methods. This AD requires you to remove from service any affected vacuum pump and install an FAA-approved vacuum pump other than the affected part numbers. This AD results from several reports of pump chamber failure. We are issuing this AD to prevent vacuum pump failure or malfunction during instrument flight rules (IFR) flight that could lead to loss of flight instruments critical for flight. The loss of flight instruments could cause pilot disorientation and loss of control of the aircraft.

DATES: This AD becomes effective on March 10, 2006.

As of March 10, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–20440; Directorate Identifier 2005–CE–05–AD.

FOR FURTHER INFORMATION CONTACT: Peter Hakala, Aerospace Engineer, Special Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190; telephone: (817) 222–5145; facsimile: (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? For the Aero Advantage ADV200 series (part numbers (P/Ns) ADV211CC and ADV212CW) vacuum pumps, FAA has received reports of 14 single-shaft failures and 11 dual-shaft failures in a population of 285 pumps. Nine of the failures occurred with less than 100 hours time-in-service.

In May 2004, Aero Advantage reported to FAA that they had stopped production and sales of the pumps, and they were quitting the business.

The Aero Advantage ADV200 series vacuum pumps are installed under supplemental type certificate number SA10126SC, through field approval, or other methods. The installation of the vacuum pump includes a monitor system, AFMS, and a placard.

What is the potential impact if FAA took no action? Failure or malfunction of the vacuum pump during IFR flight could lead to loss of flight instruments critical for flight. The loss of flight instruments could cause pilot disorientation and loss of control of the aircraft.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all airplanes equipped with Aero Advantage ADV200 series (part numbers ADV211CC and ADV212CW) vacuum pumps installed under supplemental type certificate number SA10126SC, through field approval, or other methods. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 11, 2005 (70 FR 24731). The NPRM proposed to require you to remove any affected vacuum pump and related monitor system, remove the applicable AFMS and placard, and install an FAA-approved vacuum pump other than the affected part numbers.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Allow the Vacuum Pump Monitoring System To Remain Installed

What is the commenter's concern? Forty commenters recommend that the vacuum pump monitoring system be allowed to remain in their airplanes. Several of the commenters point out that the vacuum pump warning system can easily be adapted to operate with a replacement FAA-approved vacuum pump. In general, the commenters feel that the vacuum pump monitoring system enhanced safety by letting the pilot know if the vacuum pump was not working.

What is FAA's response to the concern? The FAA agrees with the commenters that the vacuum pump monitoring system enhances safety. However, the pump monitoring system is optional equipment and its installation does not address the unsafe condition. Phoenix Group Service Bulletin Number 05–01, dated November 22, 2005, gives instructions to operators for the hook-up and usage of the vacuum monitoring system now installed.

We will change the final rule to eliminate the mandatory removal of the vacuum pump monitoring system and allow the optional use of the existing monitoring system.

Comment Issue No. 2: Limit the Effectivity of the Final Rule to Airplanes With Installation of the Lycoming Engines (Lycoming) IO–540 Series Engines

What is the commenter's concern? Eleven commenters state that the final rule should only apply to airplanes with installation of the Lycoming IO–540 series reciprocating engines. We infer from the comments received that the commenters conclude that failures of the vacuum pump system occur only on airplanes with installation of the Lycoming IO–540 series engines.

What is FAA's response to the concern? We disagree with the comments that the final rule should only apply to airplanes with installation of the Lycoming IO–540 series engines. The Aero Advantage vacuum pumps, part numbers ADV211CC and ADV212CW, use the same internal components and could be installed on a six-cylinder or a four-cylinder engine. The only difference in the two models is that one runs clockwise, while the other runs counterclockwise. Failures of the Aero Advantage vacuum pumps have been reported in both four-cylinder and six-cylinder engine installations. Therefore, a chance of a vacuum pump failure also exists with the four-cylinder installations.

We are not changing the final rule as a result of these comments.

Comment Issue No. 3: Estimated Work Hours Required for the Removal and Replacement of the Aero Advantage Vacuum Pump

What is the commenter's concern? One commenter, an owner of an airplane with a Continental E185–8 engine installation, comments that 5 work hours should be allotted for the removal of the existing pump and warning system and the replacement with another FAA-approved vacuum pump.

What is FAA's response to the concern? The FAA is not revising the Cost Impact section based on the clarification in the final rule that the current monitoring system is optional equipment and its installation does not cause or contribute to the unsafe condition. Therefore, we believe that our original estimate of three work hours is realistic.

We are not changing the final rule as a result of this comment.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains information relating to this subject in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 285 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do this removal and replacement. We have no way of determining the exact number of airplanes that will need this removal and replacement:

Labor cost	Average parts cost	Total cost per airplane
3 work hours × $65 = $195	$400	$595

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20440; Directorate Identifier 2005–CE–05–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2006–03–08 Aero Advantage: Amendment 39–14472; Docket No. FAA–2005–20440; Directorate Identifier 2005–CE–05–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on March 10, 2006.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects ADV200 series (part numbers (P/Ns)

ADV211CC and ADV212CW) vacuum pumps installed on, but not limited to, the following aircraft that are certificated in any category. These vacuum pumps can be installed under supplemental type certificate number SA10126SC, through field approval, or other methods:

Make	Model
Alexandria Aircraft, LLC	14–19, 14–19–2, 14–19–3, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, and 17–31ATC.
Alliance Aircraft Group, LLC	H–295 (USAF U10D).
American Champion Aircraft Corp.	7AC, 7ECA, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBC, 7HC, 7KC, 7KCAB, 8GCBC, and 8KCAB.
Cessna Aircraft Company, The	172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, R182, T182, TR182, 172RG, R172E, R172F, R172H, R172J, 152, A152, 210, 210–5 (205), 210–5A (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, P210N, T210G, T210H, T210M, T210N, T210R, 185, 185A, 185B, 185C, 185D, 185E, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 120, 140, 170, 170A, 170B, 177, 177A, 177B, 207, 207A, T207, T207A, 177RG, 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, 188, 188A, 188B, A188, A188A, and A188B.
Commander Aircraft Company	112, 112B, 112TC, 114, and 114A.
Dynac Aerospace Corporation	Aero Commander 100.
Global Amphibians, LLC	Lake LA–4–200, Lake Model 250.
Maule Aerospace Technology, Inc.	M–4–210, M–4–220, M–5–180C, M–5–200, M–5–235C, M–6–180, and M–6–235.
Mooney Aircraft Corporation	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20M, and M22.
Navion Aircraft Company, Ltd.	Navion G and Navion H.
Piper Aircraft, Inc., The New	PA–23, PA–23–160, PA–23–235, PA–23–250 (Navy UO–1), PA–E23–250, PA–24, PA–24–250, PA–24–260, PA–18, PA–18–105 (Special), PA–18–135, PA–18–150, PA–20–115, PA–20–135, PA–22–108, PA–22–135, PA–22–150, PA–22–160, PA–25, PA–25–235, PA–25–260, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–181, PA–28–201T, PA–28–235, PA–28–236, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–25, PA–25–235, PA–25–260, J5A–80, J5A (Army L–4F), J5B (Army L–4G), J5C, PA–12, PA–36–285, PA–36–300, PA–36–375, PA–38–112, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–32–260, PA–32–300, PA–32–301, PA–32–301T, PA–32R–300, PA–32R–301 (HP), PA–32R–301T, PA–32RT–300T, PA–31P, and PA–36–300.
Raytheon Aircraft Company	35–33, 35–A33, 35–B33, 35–C33, 35–C33A, 36, A36, A36TC, B36TC, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, V35, V35A, V35B, D45 (Military T–34B), 35, 35R, A35, B35, C35, D35, E35, F35, G35, 19A, 23, A23, A23A, A24, A24R, B19, B23, B24R, C23, and C24R.
Rogers, Burl A.	15AC and S15AC.
SOCATA—Groupe Aerospatiale	MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, Rallye 150 ST, Rallye 150 T, TB 10, TB 20, and TB 9
Tiger Aircraft LLC	AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, and AA–5B.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of several reports of pump chamber failure. The actions specified in this AD are intended to prevent the vacuum pump failure or malfunction during instrument flight rules (IFR) flight that could lead to loss of flight instruments critical for flight. The loss of flight instruments could cause pilot disorientation and loss of control of the aircraft.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Remove from service any Areo Advantage ADV200 series (P/Ns ADV211CC and ADV212CW) vacuum pump.	Within 100 hours time-in-service (TIS) or the next 12 calendar months after March 10, 2006 (the effective date of this AD), whichever occurs first, unless already done.	Not Applicable.
(2) Install an FAA-approved vacuum pump that is not an Aero Advantage ADV200 series vacuum pump.	Prior to further flight after removing any Aero Advantage ADV200 series vacuum pump.	Not Applicable.

Actions	Compliance	Procedures
(3) If you choose not to utilize the Aero Advantage vacuum pump monitoring system per STC SA10126SC, then do the following: (i) Remove the Airplane Flight Manual Supplement (AFMS) for STC SA10126SC and the placard for the vacuum pump monitoring system. (ii) Complete the appropriate logbook entry and Form 337 to show that the airplane is no longer equipped with STC SA10126SC.	Prior to further flight after removing any Aero Advantage ADV200 series vacuum pump.	Not Applicable.
(4) If you choose to utilize the Aero Advantage vacuum pump monitoring system per STC SA10126SC, then do the following: (i) Connect the replacement vacuum pump to the vacuum pump monitoring system. (ii) Make the following notation to the front of the AFMS for STC SA10126SC: ''The Aero Advantage vacuum pump was removed to comply with AD 2005–**–**, and this AFMS now gives instructions for the operation of the vacuum pump monitoring system with a replacement vacuum pump.'' (iii) Attach a copy of the Phoenix Group Service Bulletin No. 05–01, dated November 22, 2005, to the AFMS for STC SA10126SC.	Prior to further flight after removing any Aero Advantage ADV200 series vacuum pump.	Connect the vacuum pump monitoring system with the procedures in Phoenix Group, Service Bulletin No. 05–01, dated November 22, 2005.
(5) Do not install any Aero Advantage ADV200 series (P/Ns ADV211CC and ADV212CW) vacuum pump.	As of March 10, 2006 (the effective date of this AD).	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) The Manager, Special Certification Office, Rotorcraft Directorate, FAA, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19. For information on any already approved alternative methods of compliance, contact Peter Hakala, Aerospace Engineer, Special Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190; telephone: (817) 222–5145; facsimile: (817) 222–5785.

May I Get Copies of the Document Referenced in This AD?

(g) If you choose to utilize the vacuum pump monitoring system, you must connect the replacement vacuum pump with the instructions in Phoenix Group, Service Bulletin No. 05–01, dated November 22, 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Phoenix Group, 9608 Taxiway Dr., Granbury, TX 76049; e-mail: *phoenixgroup2@yahoo.com.* To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–200520440; Directorate Identifier 2005–CE–05–AD.

Issued in Kansas City, Missouri, on January 26, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–957 Filed 2–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22875; Directorate Identifier 2005–NM–179–AD; Amendment 39–14469; AD 2006–03–05]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA, SD3–SHERPA, and SD3–60 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Short Brothers Model SD3–60 and SD3-SHERPA airplanes. That AD currently requires an inspection of the fork end of the rear pintle pin on each main landing gear (MLG) to verify that sealant is properly applied and is undamaged, and related investigative/corrective actions if necessary. This new AD requires an additional inspection for correctly applied sealant on the MLG rear pintle pin assemblies, and related investigative/corrective actions if necessary. This AD also expands the applicability of the existing AD. This AD results from a new report of a cracked pintle pin fork end. We are issuing this AD to prevent stress-corrosion cracking and subsequent failure of the MLG.

DATES: This AD becomes effective March 14, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 14, 2006.

On March 18, 1993 (58 FR 7983, February 11, 1993), the Director of the Federal Register approved the incorporation by reference of Shorts SD3–60 Service Bulletin SD360–32–33, dated August 7, 1992.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street,

SW., Nassif Building, room PL–401, Washington, DC.

Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 93–02–03, amendment 39–8485 (58 FR 7983, February 11, 1993).

The existing AD applies to all Short Brothers Model SD3–60 and SD3–SHERPA airplanes. That NPRM was published in the **Federal Register** on November 9, 2005 (70 FR 67949). That NPRM proposed to continue to require an inspection of the fork end of the rear pintle pin on each main landing gear (MLG) to verify that sealant is properly applied and is undamaged, and related investigative/corrective actions if necessary. That NPRM also proposed to require an inspection for correctly applied sealant on the MLG rear pintle pin assemblies, and related investigative/corrective actions if necessary; it also proposed to expand the applicability of the existing AD.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S. pregistered airplanes	Fleet cost
Inspection—(required by AD 93–02–03)	1	$65	None	$65	42	$2,730
Inspection—(new action)	1	65	None	65	42	2,730

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–8485 (58 FR 7983, February 11, 1993) and by adding the following new airworthiness directive (AD):

2006–03–05 Short Brothers PLC: Amendment 39–14469. Docket No. FAA–2005–22875; Directorate Identifier 2005–NM–179–AD.

Effective Date

(a) This AD becomes effective March 14, 2006.

Affected ADs

(b) This AD supersedes AD 93–02–03.

Applicability

(c) This AD applies to all Shorts Model SD3–60 SHERPA, SD3–SHERPA, and SD3–60 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a new report of a cracked pintle pin fork end. We are issuing this AD to prevent stress-corrosion cracking

and subsequent failure of the main landing gear (MLG).

Compliance

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

Restatement of Requirements of AD 93–02–03

Inspection

(f) For Model SD3–60 and SD3–SHERPA airplanes: Within 300 hours' time-in-service or 30 days after March 18, 1993 (the effective date of AD 93–02–03), whichever occurs first, perform a visual inspection of the fork end of the rear pintle pin on each MLG to verify that an undamaged fillet of sealant is properly applied around the flanges of the bronze bushings, in accordance with Shorts SD3–60 Service Bulletin SD360–32–33, dated August 7, 1992.

(1) If an undamaged fillet of properly applied sealant is found: No further action is required by this AD.

(2) If no fillet of sealant is found at the joint line, or if a damaged fillet of sealant is found: Prior to the accumulation of 1,200 hours' time-in-service or 120 days after accomplishing the inspection required by paragraph (f) of this AD, whichever occurs first, remove the bushings and perform a magnetic non-destructive testing (NDT) inspection to detect faults of the bores in the fork end, in accordance with the service bulletin. If faults are found as a result of the NDT inspection, prior to further flight, repair the fork end of the rear pintle pin in a manner approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

New Requirements of This AD

Inspection

(g) For all airplanes: Within 3 months after the effective date of this AD, do a general visual inspection of the MLG rear pintle pin assemblies for correctly applied sealant, in accordance with Shorts Service Bulletin SD360–32–37, SD3 Sherpa–32–5, or SD360 Sherpa–32–4, all dated July 2004, as applicable.

(1) If the sealant is applied correctly: This AD requires no further work.

(2) If the sealant is applied incorrectly: Within 12 months after the effective date of this AD, do a magnetic flaw detection inspection to detect cracks of the rear pintle pin fork ends, in accordance with the service bulletin. If any cracked pintle pin fork end is found: Replace it before further flight with a serviceable part that has been inspected in accordance with the requirements of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 2: The service bulletins identified in paragraph (g) of this AD refer to Messier Dowty Special Inspection Service Bulletin 32–70SD, Revision 1, dated July 3, 1995, as an additional source of service information for the inspection and corrective actions.

(h) If any crack is detected during any inspection required by this AD and the service information specifies to contact the manufacturer for repair instructions: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) British airworthiness directive G–2004–0022, dated August 25, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Shorts service bulletin	Date
SD3 Sherpa–32–5, including Messier Dowty Special Inspection Service Bulletin 32–70SD, Revision 1, dated July 3, 1995	July 2004
SD360 Sherpa–32–4, including Messier Dowty Special Inspection Service Bulletin 32–70SD, Revision 1, dated July 3, 1995 ..	July 2004.
SD360–32–33	August 7, 1992.
SD360–32–37, including Messier Dowty Special Inspection Service Bulletin 32–70SD, Revision 1, dated July 3, 1995	July 2004.

(1) The Director of the Federal Register approved the incorporation by reference of the documents identified in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

Shorts service bulletin	Date
SD3 Sherpa–32–5, including Messier Dowty Special Inspection Service Bulletin 32–70SD, Revision 1, dated July 3, 1995	July 2004.
SD360 Sherpa–32–4, including Messier Dowty Special Inspection Service Bulletin 32–70SD, Revision 1, dated July 3, 1995 ..	July 2004.
SD360–32–37, including Messier Dowty Special Inspection Service Bulletin 32–70SD, Revision 1, dated July 3, 1995	July 2004.

(2) On March 18, 1993 (58 FR 7983, February 11, 1993), the Director of the Federal Register approved the incorporation by reference of Shorts SD3–60 Service Bulletin SD360–32–33, dated August 7, 1992.

(3) Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–992 Filed 2–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9249]

RIN 1545–AR82

Escrow Funds and Other Similar Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the taxation and reporting of income earned on qualified settlement funds and certain other escrow accounts, trusts, and funds, and other related rules. The final regulations affect qualified settlement funds, escrow accounts established in connection with sales of property, disputed ownership funds, and the parties to these escrow accounts, trusts, and funds.

DATES: *Effective Date:* These regulations are effective February 3, 2006.

Applicability Dates: For dates of applicability, see §§ 1.468B–5(c), 1.468B–7(f), and 1.468B–9(j).

FOR FURTHER INFORMATION CONTACT: Richard Shevak or A. Katharine Jacob Kiss, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1545–1631. The collections of information in §§ 1.468B–1(k)(2) and 1.468B–9(c)(2)(ii) are to obtain benefits and the collection of information in § 1.468B–9(g) is mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent is .40 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 468B of the Internal Revenue Code (Code). This document does not adopt § 1.468B–6 of a notice of proposed rulemaking (REG–209619–93) published in the **Federal Register** on February 1, 1999 (64 FR 4801), relating to the current taxation and reporting of income earned on qualified settlement funds and certain other escrow accounts, trusts, and funds, which is withdrawn and reproposed by a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. This document also does not adopt § 1.468B–8 of the notice of proposed rulemaking, which is reserved.

Section 468B was added to the Code by section 1807(a)(7)(A) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2814), and was amended by section 1018(f) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3582). Section 468B(g) provides that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income taxation, and that the Secretary shall prescribe regulations providing for the taxation of such accounts or funds, whether as a grantor trust or otherwise.

On December 23, 1992, final regulations (TD 8459) under section 468B(g) concerning the taxation of qualified settlement funds (QSF) were published in the **Federal Register** (57 FR 60983) (the QSF regulations). The QSF regulations do not address the taxation of other types of escrow accounts, trusts, or funds. The preamble to the QSF regulations states that future regulations would address the income tax treatment of accounts, trusts, or funds other than QSFs, specifically, escrow accounts used in the sale of property and section 1031 qualified escrow accounts.

On February 1, 1999, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–209619–93) in the **Federal Register** (64 FR 4801) regarding the proposed income tax treatment of these other funds. The proposed regulations provide rules for taxing income earned by (1) qualified escrow accounts and qualified trusts used in deferred like-kind exchanges under section 1031, (2) pre-closing escrows used in sales or exchanges of real or personal property, (3) contingent-at-closing escrows established on account of contingencies existing at the closing of certain sales of business or investment property, and (4) disputed ownership funds established under the jurisdiction of a court to hold money or property subject to disputed claims of ownership. Additionally, the proposed regulations provide rules permitting a transferor to a QSF to elect taxation of the QSF as a grantor trust.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was held on May 12, 1999. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Summary of Comments

1. Election To Treat a Qualified Settlement Fund as a Grantor Trust Under § 1.468B–1(k)

The proposed regulations provide that, if there is only one transferor to a qualified settlement fund, the transferor may make an election to treat the qualified settlement fund as a grantor trust, all of which is treated as owned by the transferor (a grantor trust election). The election may be revoked only for compelling circumstances upon consent of the Commissioner by private letter ruling.

Commentators recommended expanding the scope of the grantor trust election by allowing the election even if there are multiple transferors to a qualified settlement fund. Certain commentators suggested that this rule could be limited to situations in which all of the grantors are members of the same consolidated group. These comments were not adopted because they would result in undue complexity. For example, extending the grantor trust election to multiple-transferor trusts would require the allocation of items of income, deduction and credit (including capital gains and losses) among the various transferors. Although § 1.671–3 of the Income Tax Regulations contains

rules for making such allocations, the IRS and the Treasury Department do not believe that these rules address the complex sharing arrangements that may arise in a qualified settlement fund. Moreover, if some, but not all, of the transferors elected grantor trust treatment, another allocation method would be necessary to allocate the items of income, deduction, and credit (including capital gains and losses) between the grantor trust portion of the fund and the qualified settlement fund portion of the fund.

Commentators recommended allowing transferors to make the grantor trust election in taxable years after the taxable year in which the fund is established. This comment was not adopted because allowing a grantor trust election for a taxable year other than the taxable year in which the fund is established gives rise to complex issues regarding the tax treatment of the fund upon conversion to a grantor trust. For example, any deduction claimed by the transferor for amounts contributed to the qualified settlement fund would need to be recaptured. Further, adjustments would be necessary to take into account income previously taxed to the qualified settlement fund and differences in the accounting methods used by the transferor and the fund.

However, the final regulations allow a transferor to a qualified settlement fund to elect grantor trust treatment for the fund's first taxable year and all subsequent years if the fund was established on or before February 3, 2006, and the applicable period of limitations for filing an amended return has not expired for the qualified settlement fund's first and all subsequent taxable years, and for the transferor's corresponding taxable years. To make the grantor trust election, the qualified settlement fund and the transferor must amend all affected income tax returns.

2. Treatment of Section 1031 Qualified Escrow Accounts and Qualified Trusts Under § 1.468B–6

Section 1.468B–6 of the proposed regulations provides rules for the current taxation of income of a qualified escrow account or qualified trust used in a deferred exchange under section 1031. The proposed regulations provide that, in general, the taxpayer (the transferor of the property) is the owner of the assets in a qualified escrow account or qualified trust and must take into account all items of income, deduction, and credit (including capital gains and losses) of the qualified escrow account or qualified trust. However, if, under the facts and circumstances, a qualified intermediary or the transferee has the beneficial use and enjoyment of the assets, then the qualified intermediary or transferee is the owner of the assets in the qualified escrow account or qualified trust and must take into account all items of income, deduction, and credit (including capital gains and losses) of the qualified escrow account or qualified trust. In addition to other relevant facts and circumstances, the proposed regulations list three factors that will be considered in determining whether the qualified intermediary or transferee, rather than the taxpayer, has the beneficial use and enjoyment of assets of a qualified escrow account or qualified trust. The proposed regulations further provide that, if a qualified intermediary or transferee is the owner of the assets transferred, section 7872 may apply if the deferred exchange involves a below-market loan from the taxpayer to the owner.

The comments reflected substantial disagreement on the proper rules for taxing these arrangements. For example, some commentators recommended that the facts and circumstances test be replaced by a per se rule requiring transferors to take into account the trust's or account's income in all cases. Other commentators urged that the ownership factors should apply in all circumstances. Commentators suggested that the rules of § 1.468B–6 should apply to all funds held by qualified intermediaries as well as to funds held in a qualified escrow account or qualified trust, while other commentators argued that the rules should apply only to qualified escrow accounts and qualified trusts. Some commentators agreed that certain of these transactions create below-market loans, and other commentators asserted that the transactions do not create below-market loans.

The IRS and the Treasury Department have concluded that these issues merit further consideration. Therefore, a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** withdraws that portion of the notice of proposed rulemaking that relates to the current taxation of income of a qualified escrow account or qualified trust used in a deferred exchange under section 1031. This section has been omitted from the final regulations and is published as proposed regulations elsewhere in this issue of the **Federal Register**. The preamble to those proposed regulations more fully discusses the comments received.

3. Pre-Closing Escrows Under § 1.468B–7

Section 1.468B–7 provides rules for the taxation of income earned on certain escrows established in connection with the sale of property, or pre-closing escrows. The proposed regulations require the purchaser to take into account all items of income, deduction, and credit (including capital gains and losses) of the pre-closing escrow. The only comments received with respect to this section relate to reporting obligations of the escrow holder or trustee. Those comments are addressed later in this preamble. The final regulations adopt § 1.468B–7 as proposed with minor changes to improve clarity.

4. Contingent-at-Closing Escrows Under § 1.468B–8

Section 1.468B–8 of the proposed regulations provides rules for taxing the income of a contingent-at-closing escrow, which is an escrow account, trust, or fund established in connection with the sale or exchange of real or personal property to account for contingencies existing at closing. The proposed regulations provide that, in computing taxable income, the purchaser must take into account all items of income, deduction, and credit (including capital gains and losses) of the escrow until the date on which specified events occur or fail to occur (the determination date). Beginning on the determination date, the purchaser and seller must each take into account the income, deductions, and credits of the escrow that correspond to their respective ownership interests in each asset of the escrow.

The IRS and the Treasury Department have concluded that this section requires further consideration. Therefore, this section has been omitted from the final regulations and will be published as separate regulations.

5. Disputed Ownership Funds Under § 1.468B–9

Section 1.468B–9 provides rules for the taxation of a disputed ownership fund (DOF). Under the proposed regulations, a DOF is an escrow account, trust, or fund that is not a QSF and that (1) is established to hold money or property subject to conflicting claims of ownership, (2) is subject to the continuing jurisdiction of a court, and (3) requires approval of the court to pay or distribute money or property to, or on behalf of, a claimant or transferor.

The final regulations specifically exclude bankruptcy estates under title 11 of the United States Code from the

definition of disputed ownership funds to avoid conflict with section 1398, which provides rules for the taxation of bankruptcy estates in cases under chapters 7 and 11 of title 11 involving individual debtors, and section 1399, which provides that no separate taxable entity results from the commencement of a case under title 11 except in a case to which section 1398 applies.

The final regulations also exclude liquidating trusts from the definition of disputed ownership fund, although they may have a similar purpose, because liquidating trusts are taxed as grantor trusts. See § 301.7701–4(d), which provides that a liquidating trust is organized for the primary purpose of liquidating and distributing assets. However, in the case of certain liquidating trusts established in connection with bankruptcy proceedings, it is uncertain who is properly taxable on income earned with respect to assets set aside to satisfy disputed claims of creditors. Therefore, the trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in its first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. The trustee makes an election to treat this portion of the liquidating trust as a DOF by attaching an election statement to a timely filed Federal income tax return of the DOF for the taxable year for which the election becomes effective. The trustee may revoke the election only with the Commissioner's consent by private letter ruling. The regulations do not otherwise affect the rules for the taxation of liquidating trusts.

Under the proposed and final regulations, a DOF generally is taxable (1) as a QSF under § 1.468B–2 if all the assets transferred to the fund are passive assets, or (2) as a C corporation in all other cases. The claimants to a DOF also may request a private letter ruling proposing an alternative method of taxation. These final regulations clarify that a DOF holding exclusively passive assets is taxable under § 1.468B–2 as if it were a qualified settlement fund, but is not subject to all of the rules applicable to qualified settlement funds. Additionally, because the final regulations include certain rules that differ from, and apply in lieu of, the rules in § 1.468B–2, the final regulations expressly identify the provisions of § 1.468B–2 that do not apply.

The final regulations generally follow the substantive rules of the proposed regulations, but have been restructured for greater clarity. For example, the final regulations provide separate paragraphs for rules applicable to a transferor that is not a claimant to the DOF as well as rules applicable to a transferor that is a claimant (transferor-claimant).

Unless a grantor trust election is made, the transfer of money or property to a qualified settlement fund generally gives rise to economic performance. In contrast, under both the proposed regulations and the final regulations, the transfer of money or property to a DOF gives rise to economic performance only if the transferor does not claim ownership of any part of the property that is transferred to the DOF (the transferor is not a transferor-claimant). The transfer of property to the DOF is not treated as a transfer to the claimants for economic performance purposes if the transferor continues to claim ownership of some or all of the transferred property. Consistent with this approach, the proposed regulations provide that, if the transferor claims ownership of the transferred property after the transfer to the fund, then the transfer of property to the DOF is not treated as a sale or exchange under section 1001 and the transferor is not taxed on distributions that the transferor receives from the DOF.

The final regulations further provide that a distribution from the DOF to a transferor-claimant is not treated as a sale or exchange under section 1001(a). Distributions from the DOF to claimants other than the transferor-claimant are deemed to be made first to the transferor-claimant and then from the transferor-claimant to another claimant. These rules are intended to put the transferor-claimant in the same position for purposes of determining whether a deduction is allowable with respect to the transfer as it would have been in if the money or property had not been transferred first to a DOF.

A commentator requested that the final regulations exempt court registry funds from the rules for DOFs. The commentator asserted that complying with the DOF rules would impose an undue burden on courts. This comment was not adopted because an exemption for court registry funds would be inconsistent with section 468B(g), which requires current income taxation of escrow accounts, settlement funds, and similar funds. Because court registry funds are similar to escrow accounts and settlement funds, they fall within the plain meaning of the statute. The commentator also requested clarification of whether bail bonds or appellate bonds filed with a court are DOFs. The final regulations include an example to clarify that these types of surety bonds do not create DOFs.

6. Information Reporting Requirements

Generally, §§ 1.468B–6 through 1.468B–8 of the proposed regulations state that an escrow holder (escrow agent, trustee or other person responsible for administering the escrow) must report the income of an escrow account, trust, or fund on a Form 1099 ''in accordance with'' subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Code (currently, sections 6041 through 6050T). Several commentators expressed concern that these provisions expand the existing information reporting obligations in sections 6041 through 6050T.

The proposed regulations were not intended to create new information reporting requirements but merely to alert escrow holders and other responsible persons of the potential obligation to report. To clarify this intent, the final regulations provide that a payor must report to the extent required by sections 6041 through 6050T and these regulations .

Effect on Other Documents

Rev. Rul. 77–230 (1977–2 C.B. 214) is obsolete as of February 3, 2006.

Effective Date

The regulations apply to qualified settlement funds, pre-closing escrows, and disputed ownership funds created after February 3, 2006. A transferor to a qualified settlement fund, however, may make a grantor trust election for a qualified settlement fund created on or before February 3, 2006, if the applicable period of limitations on filing an amended return has not expired for the qualified settlement fund's first taxable year and all subsequent taxable years and for the transferor's corresponding taxable year or years. Additionally, for pre-closing escrows and disputed ownership funds established after August 16, 1986, but before February 3, 2006, the IRS will not challenge a reasonable, consistently applied method of taxation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Final Regulatory Flexibility Act Analysis

This final regulatory flexibility analysis has been prepared for this Treasury decision under 5 U.S.C. 604. The objective of the regulations is to ensure that the income of certain escrow accounts, trusts, and funds is subject to current taxation by identifying the proper party or parties subject to tax. Section 468B(g) provides the legal basis for the requirements of the regulations. The IRS and the Treasury Department are not aware of any Federal rules that may duplicate, overlap, or conflict with the regulations. An explanation is provided below of the burdens on small entities resulting from the requirements of the regulations. A description also is provided of alternative rules that were considered by the IRS and the Treasury Department but rejected as too burdensome.

1. Grantor Trust Election

Under § 1.468B–1(k), a transferor to a qualified settlement fund may elect to have the qualified settlement fund treated as a grantor trust all of which is owned by the transferor (grantor trust election). The election is available only to a qualified settlement fund established after February 3, 2006. However, a transferor may make a grantor trust election under § 1.468B–1(k) for a qualified settlement fund that was established on or before February 3, 2006, if the applicable period of limitations on filing an amended return has not expired for both the qualified settlement fund's first taxable year and all subsequent taxable years and the transferor's corresponding taxable year or years.

To make a grantor trust election, a transferor must attach a statement to a timely filed (including extensions) Form 1041, ''U.S. Income Tax Return for Estates and Trusts.'' The statement must include the transferor's name, address, taxpayer identification number, and the legend, ''§ 1.468B–1(k) Election.''

Approximately 900 qualified settlement fund returns are filed each year. Only a small number of these returns are filed for newly created qualified settlement funds. Because a grantor trust election may be made only for a qualified settlement fund that has one transferor, the IRS and the Treasury Department believe that a very small number of grantor trust elections will be made each year.

Similarly, the IRS and the Treasury Department believe that a very small number of grantor trust elections will be made for past years. A retroactive grantor trust election may impose an additional burden on a taxpayer because the taxpayer may be required to file amended returns. However, this election is voluntary.

The alternatives to the regulations are (1) to limit the grantor trust election by permitting the elections only for QSFs established on or after the date the final regulations are published, or (2) to eliminate the opportunity to make a grantor trust election by retaining the current rules, which do not permit the election. These alternatives were rejected because they might result in a greater burden on small entities than that imposed by these regulations.

2. Disputed Ownership Funds

Section 1.468B–9(c)(1) provides that a disputed ownership fund is a separate taxable entity.

Section 1.468B–9(g) requires that a transferor provide to the IRS and the administrator of a disputed ownership fund a statement that itemizes the property other than cash transferred to the disputed ownership fund during the calendar year. The statement must indicate the basis and holding period of the property. This information is required to substantiate the transfer and to determine the proper tax consequences of the transfer to the fund and of a transfer of property from the fund to a claimant. To minimize the burden, no statement is required for transfers of cash and any two or more transferors may provide a combined statement. There are no known alternatives to these rules that are less burdensome to small entities and accomplish the purpose of the regulations.

The trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in the liquidating trust's first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. The trustee makes an election by attaching an election statement to a timely filed Federal income tax return of the disputed ownership fund for the taxable year for which the election becomes effective. This election is voluntary. There are no known alternatives to this requirement that are less burdensome and accomplish the purpose of the regulations.

The IRS and the Treasury Department estimate that there are approximately 5,000 disputed ownership funds created annually. Many of these funds do not involve small entities.

Drafting Information

The principal authors of these regulations are Richard Shevak and A. Katharine Jacob Kiss of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by:

■ a. Removing the entries for ''Section 1.468B'' and ''Sections 1.468B–0 through 1.468B–5.''

■ b. Adding entries for §§ 1.468B–1 through 1.468B–9.

The additions read as follows:

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

Section 1.468B–1 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–2 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–3 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–4 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–5 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–7 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–9 also issued under 26 U.S.C. 461(h) and 468B(g). * * *

■ **Par. 2.** Section 1.468B–0 is amended by:

■ a. Revising the introductory text of § 1.468B–0.

■ b. Revising the entries for § 1.468B–1, paragraph (k).

■ c. Adding an entry for § 1.468B–1, paragraph (l).

■ d. Revising the entry for the section heading for § 1.468B–5.

■ e. Adding an entry for § 1.468B–5, paragraph (c).

■ f. Adding entries for §§ 1.468B–6 through 1.468B–9.

The additions and revisions read as follows:

§ 1.468B–0 Table of contents.

This section lists the table of contents for §§ 1.468B–1 through 1.468B–9.

■ **Par. 3.** Section 1.468B–1 is amended by redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k) to read as follows:

§ 1.468B–1 Qualified settlement funds.
* * * * *

(k) *Election to treat a qualified settlement fund as a subpart E trust*—(1) *In general.* If a qualified settlement fund has only one transferor (as defined in paragraph (d)(1) of this section), the transferor may make an election (grantor trust election) to treat the qualified settlement fund as a trust all of which is owned by the transferor under section 671 and the regulations thereunder. A grantor trust election may be made whether or not the qualified settlement fund would be classified, in the absence of paragraph (b) of this section, as a trust all of which is treated as owned by the transferor under section 671 and the regulations thereunder. A grantor trust election may be revoked only for compelling circumstances upon consent of the Commissioner by private letter ruling.

(2) *Manner of making grantor trust election*—(i) *In general.* To make a grantor trust election, a transferor must attach an election statement satisfying the requirements of paragraph (k)(2)(ii) of this section to a timely filed (including extensions) Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' that the administrator files on behalf of the qualified settlement fund for the taxable year in which the qualified settlement fund is established. However, if a Form 1041 is not otherwise required to be filed (for example, because the provisions of § 1.671–4(b) apply), then the transferor makes a grantor trust election by attaching an election statement satisfying the requirements of paragraph (k)(2)(ii) of this section to a timely filed (including extensions) income tax return of the transferor for the taxable year in which the qualified settlement fund is established. See § 1.468B–5(c)(2) for transition rules.

(ii) *Requirements for election statement.* The election statement must include a statement by the transferor that the transferor will treat the qualified settlement fund as a grantor trust. The election statement must include the transferor's name, address, taxpayer identification number, and the legend, ''§ 1.468B–1(k) Election.'' The election statement and the statement described in § 1.671–4(a) may be combined into a single statement.

(3) *Effect of making the election.* If a grantor trust election is made—

(i) Paragraph (b) of this section, and §§ 1.468B–2, 1.468B–3, and 1.468B–5(a) and (b) do not apply to the qualified settlement fund. However, this section (except for paragraph (b) of this section) and § 1.468B–4 apply to the qualified settlement fund;

(ii) The qualified settlement fund is treated, for Federal income tax purposes, as a trust all of which is treated as owned by the transferor under section 671 and the regulations thereunder;

(iii) The transferor must take into account in computing the transferor's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the qualified settlement fund in accordance with § 1.671–3(a)(1); and

(iv) The reporting obligations imposed by § 1.671–4 on the trustee of a trust apply to the administrator.

* * * * *

■ **Par. 4.** Section 1.468B–5 is amended by revising the section heading and adding paragraph (c) to read as follows:

§ 1.468B–5 Effective dates and transition rules applicable to qualified settlement funds.
* * * * *

(c) *Grantor trust elections under § 1.468B–1(k)*—(1) *In general.* A transferor may make a grantor trust election under § 1.468B–1(k) if the qualified settlement fund is established after February 3, 2006.

(2) *Transition rules.* A transferor may make a grantor trust election under § 1.468B–1(k) for a qualified settlement fund that was established on or before

February 3, 2006, if the applicable period of limitation on filing an amended return has not expired for both the qualified settlement fund's first taxable year and all subsequent taxable years and the transferor's corresponding taxable year or years. A grantor trust election under this paragraph (c)(2) requires that the returns of the qualified settlement fund and the transferor for all affected taxable years are consistent with the grantor trust election. This requirement may be satisfied by timely filed original returns or amended returns filed before the applicable period of limitation expires.

(3) *Qualified settlement funds established by the U.S. government on or before* February 3, 2006. If the U.S. government, or any agency or instrumentality thereof, established a qualified settlement fund on or before February 3, 2006, and the fund would have been classified as a trust all of which is treated as owned by the U.S. government under section 671 and the regulations thereunder without regard to the regulations under section 468B, then the U.S. government is deemed to have made a grantor trust election under § 1.468B–1(k), and the election is applicable for all taxable years of the fund.

■ **Par. 5.** Section 1.468B–6 is added and reserved to read as follows:

§ 1.468B–6 Escrow accounts, trusts, and other funds used in deferred exchanges of like-kind property under section 1031(a)(3). [Reserved]

■ **Par. 6.** Section 1.468B–7 is added to read as follows:

§ 1.468B–7 Pre-closing escrows.

(a) *Scope.* This section provides rules under section 468B(g) for the current taxation of income of a pre-closing escrow.

(b) *Definitions.* For purposes of this section—

(1) A *pre-closing escrow* is an escrow account, trust, or fund—

(i) Established in connection with the sale or exchange of real or personal property;

(ii) Funded with a down payment, earnest money, or similar payment that is deposited into the escrow prior to the sale or exchange of the property;

(iii) Used to secure the obligation of the purchaser to pay the purchase price for the property;

(iv) The assets of which, including any income earned thereon, will be paid to the purchaser or otherwise distributed for the purchaser's benefit when the property is sold or exchanged (for example, by being distributed to the seller as a credit against the purchase price); and

(v) Which is not an escrow account or trust established in connection with a deferred exchange under section 1031(a)(3).

(2) *Purchaser* means, in the case of an exchange, the intended transferee of the property whose obligation to pay the purchase price is secured by the pre-closing escrow;

(3) *Purchase price* means, in the case of an exchange, the required consideration for the property; and

(4) *Administrator* means the escrow agent, escrow holder, trustee, or other person responsible for administering the pre-closing escrow.

(c) *Taxation of pre-closing escrows.* The purchaser must take into account in computing the purchaser's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the pre-closing escrow. In the case of an exchange with a single pre-closing escrow funded by two or more purchasers, each purchaser must take into account in computing the purchaser's income tax liability all items of income, deduction, and credit (including capital gains and losses) earned by the pre-closing escrow with respect to the money or property deposited in the pre-closing escrow by or on behalf of that purchaser.

(d) *Reporting obligations of the administrator.* For each calendar year (or portion thereof) that a pre-closing escrow is in existence, the administrator must report the income of the pre-closing escrow on Form 1099 to the extent required by the information reporting provisions of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code and the regulations thereunder. See § 1.6041–1(f) for rules relating to the amount to be reported when fees, expenses, or commissions owed by a payee to a third party are deducted from a payment.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. P enters into a contract with S for the purchase of residential property owned by S for the price of $200,000. P is required to deposit $10,000 of earnest money into an escrow. At closing, the $10,000 and the interest earned thereon will be credited against the purchase price of the property. The escrow is a pre-closing escrow. P is taxable on the interest earned on the pre-closing escrow prior to closing.

Example 2. X and Y enter into a contract in which X agrees to exchange certain construction equipment for residential property owned by Y. The contract requires X and Y to each deposit $10,000 of earnest money into an escrow. At closing, $10,000 and the interest earned thereon will be paid to X and $10,000 and the interest earned thereon will be paid to Y. The escrow is a pre-closing escrow. X is taxable on the interest earned prior to closing on the $10,000 of funds X deposited in the pre-closing escrow. Similarly, Y is taxable on the interest earned prior to closing on the $10,000 of funds Y deposited in the pre-closing escrow.

(f) *Effective dates*—(1) *In general.* This section applies to pre-closing escrows established after February 3, 2006.

(2) *Transition rule.* With respect to a pre-closing escrow established after August 16, 1986, but on or before February 3, 2006, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the escrow or a reasonable, consistently applied method for reporting the income.

■ **Par. 7.** Section 1.468B–8 is added and reserved to read as follows:

§ 1.468B–8 Contingent-at-closing escrows. [Reserved]

■ **Par. 8.** Section 1.468B–9 is added to read as follows:

§ 1.468B–9 Disputed ownership funds.

(a) *Scope.* This section provides rules under section 468B(g) relating to the current taxation of income of a disputed ownership fund.

(b) *Definitions.* For purposes of this section—

(1) *Disputed ownership fund* means an escrow account, trust, or fund that—

(i) Is established to hold money or property subject to conflicting claims of ownership;

(ii) Is subject to the continuing jurisdiction of a court;

(iii) Requires the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor-claimant; and

(iv) Is not a qualified settlement fund under § 1.468B–1, a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, or a liquidating trust under § 301.7701–4(d) of this chapter (except as provided in paragraph (c)(2)(ii) of this section);

(2) *Administrator* means a person designated as such by a court having jurisdiction over a disputed ownership fund, however, if no person is designated, the administrator is the escrow agent, escrow holder, trustee, receiver, or other person responsible for administering the fund;

(3) *Claimant* means a person who claims ownership of, in whole or in part, or a legal or equitable interest in, money or property immediately before and immediately after that property is transferred to a disputed ownership fund;

(4) *Court* means a court of law or equity of the United States or of any state (including the District of Columbia), territory, possession, or political subdivision thereof;

(5) *Disputed property* means money or property held in a disputed ownership fund subject to the claimants' conflicting claims of ownership;

(6) *Related person* means any person that is related to a transferor within the meaning of section 267(b) or 707(b)(1);

(7) *Transferor* means, in general, a person that transfers disputed property to a disputed ownership fund, except that—

(i) If disputed property is transferred by an agent, fiduciary, or other person acting in a similar capacity, the transferor is the person on whose behalf the agent, fiduciary, or other person acts; and

(ii) A payor of interest or other income earned by a disputed ownership fund is not a transferor within the meaning of this section (unless the payor is also a claimant);

(8) *Transferor-claimant* means a transferor that claims ownership of, in whole or in part, or a legal or equitable interest in, the disputed property immediately before and immediately after that property is transferred to the disputed ownership fund. Because a transferor-claimant is both a transferor and a claimant, generally the terms *transferor* and *claimant* also include a transferor-claimant. See paragraph (d) of this section for rules applicable only to transferors that are not transferor-claimants and paragraph (e) of this section for rules applicable only to transferors that are also transferor-claimants.

(c) *Taxation of a disputed ownership fund*—(1) *In general.* For Federal income tax purposes, a disputed ownership fund is treated as the owner of all assets that it holds. A disputed ownership fund is treated as a C corporation for purposes of subtitle F of the Internal Revenue Code, and the administrator of the fund must obtain an employer identification number for the fund, make all required income tax and information returns, and deposit all tax payments. Except as otherwise provided in this section, a disputed ownership fund is taxable as—

(i) A C corporation, unless all the assets transferred to the fund by or on behalf of transferors are passive investment assets. For purposes of this section, passive investment assets are assets of the type that generate portfolio income within the meaning of § 1.469–2T(c)(3)(i); or

(ii) A qualified settlement fund, if all the assets transferred to the fund by or on behalf of transferors are passive investment assets. A disputed ownership fund taxable as a qualified settlement fund under this section is subject to all the provisions contained in § 1.468B–2, except that the rules contained in paragraphs (c)(3), (4), and (c)(5)(i) of this section apply in lieu of the rules in § 1.468B–2(b)(1), (d), (e), (f) and (j).

(2) *Exceptions.* (i) The claimants to a disputed ownership fund may submit a private letter ruling request proposing a method of taxation different than the method provided in paragraph (c)(1) of this section.

(ii) The trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in the liquidating trust's first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. Pursuant to this election, creditors holding disputed claims are not treated as transferors of the money or property transferred to the disputed ownership fund. A trustee makes the election by attaching a statement to the timely filed Federal income tax return of the disputed ownership fund for the taxable year for which the election becomes effective. The election statement must include a statement that the trustee will treat the escrow account, trust, or fund as a disputed ownership fund and must include a legend, ''§ 1.468B–9(c) Election,'' at the top of the page. The election may be revoked only upon consent of the Commissioner by private letter ruling.

(3) *Property received by the disputed ownership fund*—(i) *Generally excluded from income.* In general, a disputed ownership fund does not include an amount in income on account of a transfer of disputed property to the disputed ownership fund. However, the accrual or receipt of income from the disputed property in a disputed ownership fund is not a transfer of disputed property to the fund. Therefore, a disputed ownership fund must include in income all income received or accrued from the disputed property, including items such as—

(A) Payments to a disputed ownership fund made in compensation for late or delayed transfers of money or property;

(B) Dividends on stock of a transferor (or a related person) held by the fund; and

(C) Interest on debt of a transferor (or a related person) held by the fund.

(ii) *Basis and holding period.* In general, the initial basis of property transferred by, or on behalf of, a transferor to a disputed ownership fund is the fair market value of the property on the date of transfer to the fund, and the fund's holding period begins on the date of the transfer. However, if the transferor is a transferor-claimant, the fund's initial basis in the property is the same as the basis of the transferor-claimant immediately before the transfer to the fund, and the fund=s holding period for the property is determined under section 1223(2).

(4) *Property distributed by the disputed ownership fund*—(i) *Computing gain or loss.* Except in the case of a distribution or deemed distribution described in paragraph (e)(3) of this section, a disputed ownership fund must treat a distribution of disputed property as a sale or exchange of that property for purposes of section 1001(a). In computing gain or loss, the amount realized by the disputed ownership fund is the fair market value of that property on the date of distribution.

(ii) *Denial of deduction.* A disputed ownership fund is not allowed a deduction for a distribution of disputed property or of the net after-tax income earned by the disputed ownership fund made to or on behalf of a transferor or claimant.

(5) *Taxable year and accounting method.* (i) A disputed ownership fund taxable as a C corporation under paragraph (c)(1)(i) of this section may compute taxable income under any accounting method allowable under section 446 and is not subject to the limitations contained in section 448. A disputed ownership fund taxable as a C corporation may use any taxable year allowable under section 441.

(ii) A disputed ownership fund taxable as a qualified settlement fund under paragraph (c)(1)(ii) of this section may compute taxable income under any accounting method allowable under section 446 and may use any taxable year allowable under section 441.

(iii) Appropriate adjustments must be made by a disputed ownership fund or transferors to the fund to prevent the fund and the transferors from taking into account the same item of income, deduction, gain, loss, or credit (including capital gains and losses) more than once or from omitting such items. For example, if a transferor that is not a transferor-claimant uses the cash receipts and disbursements method of accounting and transfers an account receivable to a disputed ownership fund that uses an accrual method of accounting, at the time of the transfer of the account receivable to the disputed ownership fund, the transferor must

include in its gross income the value of the account receivable because, under paragraph (c)(3)(ii) of this section, the disputed ownership fund will take a fair market value basis in the receivable and will not include the fair market value in its income when received from the transferor or when paid by the customer. If the account receivable were transferred to the disputed ownership fund by a transferor-claimant using the cash receipts and disbursements method, however, the disputed ownership fund would take a basis in the receivable equal to the transferor's basis, or $0, and would be required to report the income upon collection of the account.

(6) *Unused carryovers.* Upon the termination of a disputed ownership fund, if the fund has an unused net operating loss carryover under section 172, an unused capital loss carryover under section 1212, or an unused tax credit carryover, or if the fund has, for its last taxable year, deductions in excess of gross income, the claimant to which the fund's net assets are distributable will succeed to and take into account the fund's unused net operating loss carryover, unused capital loss carryover, unused tax credit carryover, or excess of deductions over gross income for the last taxable year of the fund. If the fund's net assets are distributable to more than one claimant, the unused net operating loss carryover, unused capital loss carryover, unused tax credit carryover, or excess of deductions over gross income for the last taxable year must be allocated among the claimants in proportion to the value of the assets distributable to each claimant from the fund. Unused carryovers described in this paragraph (c)(6) are not money or other property for purposes of paragraph (e)(3)(ii) of this section and thus are not deemed transferred to a transferor-claimant before being transferred to the claimants described in this paragraph (c)(6).

(d) *Rules applicable to transferors that are not transferor-claimants.* The rules in this paragraph (d) apply to transferors (as defined in paragraph (b)(7) of this section) that are not transferor-claimants (as defined in paragraph (b)(8) of this section).

(1) *Transfer of property.* A transferor must treat a transfer of property to a disputed ownership fund as a sale or other disposition of that property for purposes of section 1001(a). In computing the gain or loss on the disposition, the amount realized by the transferor is the fair market value of the property on the date the transfer is made to the disputed ownership fund.

(2) *Economic performance*—(i) *In general.* For purposes of section 461(h), if a transferor using an accrual method of accounting has a liability for which economic performance would otherwise occur under § 1.461–4(g) when the transferor makes payment to the claimant or claimants, economic performance occurs with respect to the liability when and to the extent that the transferor makes a transfer to a disputed ownership fund to resolve or satisfy that liability.

(ii) *Obligations of the transferor.* Economic performance does not occur when a transferor using an accrual method of accounting issues to a disputed ownership fund its debt (or provides the debt of a related person). Instead, economic performance occurs as the transferor (or related person) makes principal payments on the debt. Economic performance does not occur when the transferor provides to a disputed ownership fund its obligation (or the obligation of a related person) to provide property or services in the future or to make a payment described in § 1.461–4(g)(1)(ii)(A). Instead, economic performance occurs with respect to such an obligation as property or services are provided or payments are made to the disputed ownership fund or a claimant. With regard to interest on a debt issued or provided to a disputed ownership fund, economic performance occurs as determined under § 1.461–4(e).

(3) *Distributions to transferors*—(i) *In general.* Except as provided in section 111(a) and paragraph (d)(3)(ii) of this section, the transferor must include in gross income any distribution to the transferor (including a deemed distribution described in paragraph (d)(3)(iii) of this section) from the disputed ownership fund. If property is distributed, the amount includible in gross income and the basis in that property are generally the fair market value of the property on the date of distribution.

(ii) *Exception.* A transferor is not required to include in gross income a distribution of money or property that it previously transferred to the disputed ownership fund if the transferor did not take into account, for example, by deduction or capitalization, an amount with respect to the transfer either at the time of the transfer to, or while the money or property was held by, the disputed ownership fund. The transferor's gross income does not include a distribution of money from the disputed ownership fund equal to the net after-tax income earned on money or property transferred to the disputed ownership fund by the transferor while that money or property was held by the fund. Money distributed to a transferor by a disputed ownership fund will be deemed to be distributed first from the money or property transferred to the disputed ownership fund by that transferor, then from the net after-tax income of any money or property transferred to the disputed ownership fund by that transferor, and then from other sources.

(iii) *Deemed distributions.* If a disputed ownership fund makes a distribution of money or property on behalf of a transferor to a person that is not a claimant, the distribution is deemed made by the fund to the transferor. The transferor, in turn, is deemed to make a payment to the actual recipient.

(e) *Rules applicable to transferor-claimants.* The rules in this paragraph (e) apply to transferor-claimants (as defined in paragraph (b)(8) of this section).

(1) *Transfer of property.* A transfer of property by a transferor-claimant to a disputed ownership fund is not a sale or other disposition of the property for purposes of section 1001(a).

(2) *Economic performance*—(i) *In general.* For purposes of section 461(h), if a transferor-claimant using an accrual method of accounting has a liability for which economic performance would otherwise occur under § 1.461–4(g) when the transferor-claimant makes payment to another claimant, economic performance occurs with respect to the liability when and to the extent that the disputed ownership fund transfers money or property to the other claimant to resolve or satisfy that liability.

(ii) *Obligations of the transferor-claimant.* Economic performance does not occur when a disputed ownership fund transfers the debt of a transferor-claimant (or of a person related to the transferor-claimant) to another claimant. Instead, economic performance occurs as principal payments on the debt are made to the other claimant. Economic performance does not occur when a disputed ownership fund transfers to another claimant the obligation of a transferor-claimant (or of a person related to the transferor-claimant) to provide property or services in the future or to make a payment described in § 1.461–4(g)(1)(ii)(A). Instead, economic performance occurs with respect to such an obligation as property or services are provided or payments are made to the other claimant. With regard to interest on a debt issued or provided to a disputed ownership fund, economic performance occurs as determined under § 1.461–4(e).

(3) *Distributions to transferor-claimants*—(i) *In general.* The gross income of a transferor-claimant does not include a distribution to the transferor-claimant (including a deemed distribution described in paragraph (e)(3)(ii) of this section) of money or property from a disputed ownership fund that the transferor-claimant previously transferred to the fund, or the net after-tax income earned on that money or property while it was held by the fund. If such property is distributed to the transferor-claimant by the disputed ownership fund, then the transferor-claimant's basis in the property is the same as the disputed ownership fund's basis in the property immediately before the distribution.

(ii) *Deemed distributions.* If a disputed ownership fund makes a distribution of money or property to a claimant or makes a distribution of money or property on behalf of a transferor-claimant to a person that is not a claimant, the distribution is deemed made by the fund to the transferor-claimant. The transferor-claimant, in turn, is deemed to make a payment to the actual recipient.

(f) *Distributions to claimants other than transferor-claimants.* Whether a claimant other than a transferor-claimant must include in gross income a distribution of money or property from a disputed ownership fund generally is determined by reference to the claim in respect of which the distribution is made.

(g) *Statement to the disputed ownership fund and the Internal Revenue Service with respect to transfers of property other than cash*—(1) *In general.* By February 15 of the year following each calendar year in which a transferor (or other person acting on behalf of a transferor) makes a transfer of property other than cash to a disputed ownership fund, the transferor must provide a statement to the administrator of the fund setting forth the information described in paragraph (g)(3) of this section. The transferor must attach a copy of this statement to its return for the taxable year of transfer.

(2) *Combined statements.* If a disputed ownership fund has more than one transferor, any two or more transferors may provide a combined statement to the administrator. If a combined statement is used, each transferor must attach a copy of the combined statement to its return and maintain with its books and records a schedule describing each asset that the transferor transferred to the disputed ownership fund.

(3) *Information required on the statement.* The statement required by paragraph (g)(1) of this section must include the following information—

(i) A legend, ''§ 1.468B–9 Statement,'' at the top of the first page;

(ii) The transferor's name, address, and taxpayer identification number;

(iii) The disputed ownership fund's name, address, and employer identification number;

(iv) A statement declaring whether the transferor is a transferor-claimant;

(v) The date of each transfer;

(vi) A description of the property (other than cash) transferred; and

(vii) The disputed ownership fund's basis in the property and holding period on the date of transfer as determined under paragraph (c)(3)(ii) of this section.

(h) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) X Corporation petitions the United States Tax Court in 2006 for a redetermination of its tax liability for the 2003 taxable year. In 2006, the Tax Court determines that X Corporation is liable for an income tax deficiency for the 2003 taxable year. X Corporation files an appellate bond in accordance with section 7485(a) and files a notice of appeal with the appropriate United States Court of Appeals. In 2006, the Court of Appeals affirms the decision of the Tax Court and the United States Supreme Court denies X Corporation's petition for a writ of certiorari.

(ii) The appellate bond that X Corporation files with the court for the purpose of staying assessment and collection of deficiencies pending appeal is not an escrow account, trust or fund established to hold property subject to conflicting claims of ownership. Although X Corporation was found liable for an income tax deficiency, ownership of the appellate bond is not disputed. Rather, the bond serves as security for a disputed liability. Therefore, the bond is not a disputed ownership fund.

Example 2. (i) The facts are the same as *Example 1*, except that X Corporation deposits United States Treasury bonds with the Tax Court in accordance with section 7845(c)(2) and 31 U.S.C. 9303.

(ii) The deposit of United States Treasury bonds with the court for the purpose of staying assessment and collection of deficiencies while X Corporation prosecutes an appeal does not create a disputed ownership fund because ownership of the bonds is not disputed.

Example 3. (i) Prior to A's death, A was the insured under a life insurance policy issued by X, an insurance company. X uses an accrual method of accounting. Both A's current spouse and A's former spouse claim to be the beneficiary under the policy and entitled to the policy proceeds ($1 million). In 2005, X files an interpleader action and deposits $1 million into the registry of the court. On June 1, 2006, a final determination is made that A's current spouse is the beneficiary under the policy and entitled to the money held in the registry of the court. The interest earned on the registry account is $12,000. The money in the registry account is distributed to A's current spouse.

(ii) The money held in the registry of the court consisting of the policy proceeds and the earnings thereon are a disputed ownership fund taxable as if it were a qualified settlement fund. See paragraphs (b)(1) and (c)(1)(ii) of this section. The fund's gross income does not include the $1 million transferred to the fund by X, however, the $12,000 interest is included in the fund's gross income in accordance with its method of accounting. See paragraph (c)(3)(i) of this section. Under paragraph (c)(4)(ii) of this section, the fund is not allowed a deduction for a distribution to A's current spouse of the $1 million or the interest income earned by the fund.

(iii) X is a transferor that is not a transferor-claimant. See paragraphs (b)(7) and (b)(8) of this section.

(iv) Whether A's current spouse must include in income the $1 million insurance proceeds and the interest received from the fund is determined under other provisions of the Internal Revenue Code. See paragraph (f) of this section.

Example 4. (i) Corporation B and unrelated individual C claim ownership of certain rental property. B uses an accrual method of accounting. The rental property is property used in a trade or business. B claims to have purchased the property from C's father. However, C asserts that the purported sale to B was ineffective and that C acquired ownership of the property through intestate succession upon the death of C's father. For several years, B has maintained and received the rent from the property.

(ii) Pending the resolution of the title dispute between B and C, the title to the rental property is transferred to a court-supervised registry account on February 1, 2005. On that date the court appoints R as receiver for the property. R collects the rent earned on the property and hires employees necessary for the maintenance of the property. The rents paid to R cannot be distributed to B or C without the court's approval.

(iii) On June 1, 2006, the court makes a final determination that the rental property is owned by C. The court orders C to refund to B the purchase price paid by B to C's father plus interest on that amount from February 1, 2005. The court also orders that a distribution be made to C of all funds held in the court registry consisting of the rent collected by R and the income earned thereon. C takes title to the rental property.

(iv) The rental property and the funds held by the court registry are a disputed ownership fund under paragraph (b)(1) of this section. The fund is taxable as if it were a C corporation because the rental property is not a passive investment asset within the meaning of paragraph (c)(1)(i) of this section.

(v) The fund's gross income does not include the value of the rental property transferred to the fund by B. See paragraph (c)(3)(i) of this section. Under paragraph (c)(3)(ii) of this section, the fund's initial basis in the property is the same as B's adjusted basis immediately before the transfer to the fund and the fund's holding

period is determined under section 1223(2). The fund's gross income includes the rents collected by R and any income earned thereon. For the period between February 1, 2005, and June 1, 2006, the fund may be allowed deductions for depreciation and for the costs of maintenance of the property because the fund is treated as owning the property during this period. See sections 162, 167, and 168. Under paragraph (c)(4)(ii) of this section, the fund may not deduct the distribution to C of the property, or the rents (or any income earned thereon) collected from the property while the fund holds the property. No gain or loss is recognized by the fund from this distribution or from the fund's transfer of the rental property to C pursuant to the court's determination that C owns the property. See paragraphs (c)(4)(i) and (e)(3) of this section.

(vi) B is the transferor to the fund. Under paragraphs (b)(8) and (e)(1) of this section, B is a transferor-claimant and does not recognize gain or loss under section 1001(a) on transfer of the property to the disputed ownership fund. The money and property distributed from the fund to C is deemed to be distributed first to B and then transferred from B to C. See paragraph (e)(3)(ii) of this section. Under paragraph (e)(2)(i) of this section, economic performance occurs when the disputed ownership fund transfers the property and any earnings thereon to C. The income tax consequences of the deemed transfer from B to C as well as the income tax consequences of C's refund to B of the purchase price paid to C's father and interest thereon are determined under other provisions of the Internal Revenue Code.

(i) [Reserved]

(j) *Effective dates*—(1) *In general.* This section applies to disputed ownership funds established after February 3, 2006.

(2) *Transition rule.* With respect to a disputed ownership fund established after August 16, 1986, but on or before February 3, 2006, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the fund, transfers to the fund, and distributions made by the fund.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding entries in numerical order to read, in part, as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described			Current OMB control No.
*	*	*	*
1.468B–1			1545–1631
1.468B–9			1545–1631
*	*	*	*

Approved: January 30, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–1037 Filed 2–3–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 2800–2006]

Organization; Office of the Deputy Attorney General, Office of the Associate Attorney General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations that describe the structure, functions, and responsibilities of the Offices of the Deputy Attorney General and Associate Attorney General, United States Department of Justice.

EFFECTIVE DATE: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Louis DeFalaise, Director, Office of Attorney Recruitment and Management, U.S. Department of Justice, Washington, DC 20530, (202) 514–8900.

SUPPLEMENTARY INFORMATION: This rule expands and clarifies the list of personnel- and recruitment-related responsibilities vested in the Deputy Attorney General, expands and clarifies which of these responsibilities he may redelegate to officials within the Department of Justice, and deletes an outdated reference to General Schedule grades 16 through 18. The rule also clarifies the list of personnel-related responsibilities vested in the Associate Attorney General and updates the title of the Department official to whom he may redelegate this authority. In addition, the rule reserves certain personnel administration authorities to the Attorney General.

Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 § 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1571.

Small Business Regulatory Enforcement Fairness Act of 1996

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

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' for purposes of the reporting requirement of 5 U.S.C. 801.

Congressional Review Act

The Department has determined that this action pertains to agency management or personnel and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. In § 0.15, revise paragraph (b)(1)(i), paragraph (b)(1)(v), paragraph (b)(2), and paragraph (c), and add a new paragraph (h) to read as follows:

§ 0.15 Deputy Attorney General.

* * * * *

(b) * * *

(1) * * *

(i) The appointment, employment, pay, separation, and general administration of personnel, including attorneys, in the Senior Executive Service or the equivalent; Senior-Level and Scientific and Professional positions; and of attorneys and law students regardless of grade or pay in the Department.

* * * * *

(v) The appointment, employment, separation, and general administration of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and the fixing of their salaries.

* * * * *

(2) Administer the Department's recruitment programs for law graduates and law students.

* * * * *

(c) The Deputy Attorney General may redelegate the authority provided in paragraphs (b)(1)(i), (ii), (iii), (v), and paragraph (b)(2) of this section to take final action in matters pertaining to the:

(1) Appointment, employment, pay, separation, and general administration of personnel, including attorneys, in the Senior Executive Service or the equivalent, and Senior-Level and Scientific and Professional positions;

(2) Appointment, employment, pay, separation, and general administration of attorneys and law students regardless of grade or pay;

(3) Appointment of special attorneys and special assistants to the Attorney General pursuant to 28 U.S.C. 515(b);

(4) Appointment of Assistant United States Trustees and the fixing of their compensation;

(5) Appointment, employment, separation, and general administration of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and the fixing of their salaries; and

(6) Administration of the Department's recruitment programs for law graduates and law students.

* * * * *

(h) Notwithstanding paragraphs (a) and (b) of this section, authority to take final action in matters pertaining to the appointment, employment, pay, separation, and general administration of the following Department employees is reserved to the Attorney General:

(1) Employees in the Offices of the Attorney General and the Deputy Attorney General;

(2) Employees appointed to a Schedule C position established under 5 CFR part 213, or to a position that meets the same criteria as a Schedule C position; and

(3) Any Senior Executive Service position in which the incumbent serves under other than a career appointment.

■ 3. In § 0.19, revise paragraphs (a)(1) and (b), and add a new paragraph (d) to read as follows:

§ 0.19 Associate Attorney General.

(a) * * *

(1) Exercise the power and the authority vested in the Attorney General to take final action in matters pertaining to the appointment, employment, pay, separation, and general administration of attorneys and law students in pay grades GS–15 and below in organizational units subject to his direction.

* * * * *

(b) The Associate Attorney General may redelegate the authority provided in paragraph (a)(1) of this section to the Director, Office of Attorney Recruitment and Management.

* * * * *

(d) Notwithstanding paragraph (b) of this section, authority to take final action in matters pertaining to the appointment, employment, pay, separation, and general administration of the following Department employees is reserved to the Attorney General:

(1) Employees in the Office of the Associate Attorney General;

(2) Employees appointed to a Schedule C position established under 5 CFR part 213, or to a position that meets the same criteria as a Schedule C position; and

(3) Any Senior Executive Service position in which the incumbent serves under other than a career appointment.

Dated: January 31, 2006.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 06–1084 Filed 2–6–06; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–005]

RIN 1625–AA–09

Drawbridge Operation Regulations; Shark River (South Channel), Avon, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule; notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the New Jersey Transit Railroad

Drawbridge, at mile 0.9, across the South Channel of the Shark River at Belmar, New Jersey, south of Avon. To facilitate electrical repairs, this deviation allows the drawbridge to remain closed-to-navigation from 11 p.m. on February 10, 2006, until 12 p.m. (noon) on February 11, 2006, and from 11 p.m. on February 24, 2006, until 12 p.m. (noon) on February 25, 2006. If required, a rain date has been set from 11 p.m. on March 10, 2006, until 12 p.m. (noon) on March 11, 2006.

DATES: This deviation is effective from 11 p.m. on February 10, 2006, to 12 p.m. (noon) on March 11, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6587. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587.

SUPPLEMENTARY INFORMATION: The New Jersey Transit Railroad Bridge (at mile 0.9) across the South Channel of Shark River, a lift-type drawbridge, has a vertical clearance in the closed position to vessels of 10 feet, at mean high water.

The bridge owner, New Jersey Transit Rail Operations, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.751, to effect electrical repairs on the draw span.

To facilitate the repairs, the drawbridge will be closed to navigation from 11 p.m. on February 10, 2006, until 12 p.m. (noon) on February 11, 2006, and from 11 p.m. on February 24, 2006, until 12 p.m. (noon) on February 25, 2006. If required, a rain date has been set from 11 p.m. on March 10, 2006, until 12 p.m. (noon) on March 11, 2006. During these periods, the repairs require immobilizing the operation of the lift span in the closed-to-navigation position. At all other times, the drawbridge will operate in accordance with the current operating regulations outlined in 33 CFR 117.751.

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

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

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 25, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 06–1086 Filed 2–6–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

Designation of Areas for Air Quality Planning Purposes

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 81 to 85, revised as of July 1, 2005, in § 81.339, on page 343, in the table ''Pennsylvania—TSP'', under ''V. Southwest Pennsylvania Intrastate AQCR'', revise the entry for ''Allegheny County Air Basin'' to read as follows:

§ 81.339 Pennsylvania.

* * * * *

Pennsylvania—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *.				
(B) Allegheny County Air Basin:				
(1) A three mile wide strip which is within a perpendicular distance two miles north and east and one mile south and west of the river center line with terminus points as follows:				
(a) The Beaver County line to the I–79 Bridge on the Ohio River	.....	.....	.....	X
(b) I–79 to the McKees Rocks Bridge on the Ohio River	.....	.....	.....	X
(c) McKees Rocks Bridge to the Birmingham Bridge on the Ohio and Monongahela Rivers	.....	X	.....	.....
(d) Birmingham Bridge to the Glenwood Bridge on the Monongahela River	X	.....	.....	.....
(e) Glenwood Bridge to the Mansfield Bridge (Dravosburg) on the Monongahela River	X	.....	.....	.....
(f) Mansfield Bridge to the Westmoreland County line on the Monongahela River	X	.....	.....	.....
(2) The area within a half-mile radius of the Greater Pittsburgh Airport monitor	.....	X	.....	.....
(3) The one mile wide strip centered on Turtle Creek running from area (V)(B)(1)(e) above to the Westmoreland County line	X	.....	.....	.....
(4) The Area #9 within Allegheny County within a radius of 2 miles of the Springdale Monitor	.....	.....	.....	X
(5) The remaining portions of the Allegheny County Air Basin	.....	.....	.....	X
* * * * *.				

* * * * *

[FR Doc. 06–55505 Filed 2–6–06; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–8027–6; EPA–HQ–RCRA–2005–0015]

Site-Specific Variance From the Land Disposal Restrictions Treatment Standard for 1,3-Phenylenediamine (1,3-PDA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to revise the waste treatment standard for 1,3-phenylenediamine (1,3-PDA) for a biosludge generated at DuPont's Chambers Works facility in Deepwater, New Jersey. This variance is necessary because the facility is unable to measure compliance with the 1,3-PDA land disposal restrictions treatment standard in its multisource leachate treatment biosludge matrix. As a practical matter, therefore, the facility cannot fully document compliance with the requirements of the treatment standard. For the same reason, EPA cannot ascertain compliance for this constituent. Furthermore, faced with the inability to demonstrate treatment residual content through analytical testing for this constituent, this facility faces potential curtailment of 1,3-PDA production operations. This site-specific variance will provide alternative technology treatment standards for 1,3-PDA in multisource leachate that do not require analysis of the biosludge matrix to determine whether the numerical treatment standard is being met, thus ensuring that treatment reflecting performance of the Best Demonstrated Available Technology occurs and that threats to human health and the environment from land disposal of the waste are minimized.

DATES: This final rule is effective April 10, 2006, unless the Agency receives adverse comment by March 9, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2005–0015. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This 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 RCRA docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Rhonda Minnick, Hazardous Waste Minimization and Management Division, Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308–8771; fax (703) 308–8433; or *minnick.rhonda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA is publishing this rule without prior proposal because we view the site-specific treatment standard as noncontroversial. We anticipate no adverse comments because it is site-specific and the alternative treatment standard that it establishes is based on performance of the Best Demonstrated Available Technology (BDAT) that ensures treatment of constituents with similar structure and physical form. We believe that this treatment will minimize threats to human health and the environment posed by land disposal of the waste. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant this site-specific treatment variance, if adverse comments are filed. This direct final rule will be effective on April 10, 2006 without further notice unless we receive adverse comment by March 9, 2006. If EPA receives adverse comment on this site-specific treatment variance, we will publish a timely withdrawal in the **Federal Register** indicating which aspects of the variance will become effective and which are being withdrawn due to adverse comment. Any of the provisions in today's direct final rulemaking for which we do not receive adverse comment will become effective on the date set above. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this site-specific variance must do so at this time.

A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' We interpret this language to authorize treatment standards based on the performance of the Best Demonstrated Available Technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355 (D.C. Cir. 1989).

We recognize that there may be wastes that cannot be treated to levels specified in the regulations (*see* 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes we evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (*see* 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current 1,3-PDA Treatment Standard?

The treatment standard for 1,3-PDA was promulgated in the Dyes and Pigments (K181) hazardous waste listing on February 24, 2005 (70 FR 9138) and it became effective on August 23, 2005. The 1,3-PDA treatment standard was placed in the Table of Treatment Standards (see 40 CFR 268.40) under ''K181'' (the waste code for the Dyes and Pigments listing) and under ''F039'' (the waste code for multisource leachate). It is the F039 treatment standard for 1,3-PDA that is addressed in this site-specific variance. We also added this constituent to the Universal Treatment Standard Table (see 40 CFR 268.48), which means that when 1,3-PDA is reasonably expected to be present in a characteristic waste at point of generation it must be considered an underlying hazardous constituent requiring treatment.

In the final rule, we set a numerical nonwastewater treatment standard of

0.66 mg/kg for 1,3-PDA, based on use of the best demonstrated available technology (BDAT) of combustion. For purposes of establishing the treatment standard, we grouped 1,3-PDA with other waste constituents (notably 1,2-PDA, but also including o-Anisidine, p-Cresidine, 2,4-dimethylaniline, aniline and 4-chloroaniline). No actual treatment data were available for 1,3-PDA. However, the 0.66 mg/kg treatment standard was based on: (1) The thermal stability index ranking system and incinerability index (if the most difficult to treat constituents can be destroyed via incineration, then all less stable constituents can also be destroyed); and (2) similar chemical structures and chemical and physical properties that are exhibited by the constituents in each treatability group (incineration should be able to destabilize and destroy each of the compounds in a similar fashion). See the ''Best Demonstrated Available Technology (BDAT) Background Document for Dyes and Pigments Production Wastes,'' December 2004, section 2.2.3.

II. What Is the Basis for Today's Determination?

A. What Criteria Govern a Treatment Variance?

Facilities can apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or a delegated representative, for a site-specific variance from a treatment standard. One of the demonstrations that an applicant for a site-specific variance may make is that it is not physically possible to treat the waste to the level specified in the treatment standard (40 CFR 268.44(h)(1)). This is the criteria pertinent to today's variance, in that it is not technically possible to measure the constituent in DuPont's biosludge treatment residual, as explained below.

B. What Does DuPont Request?

DuPont contacted EPA about an analytical problem it is having with 1,3-PDA in their multisource leachate (F039) treatment biosludge. The facility produces 1,3-PDA in their plant and then pipes the wastewaters from manufacturing 1,3-PDA to an onsite biological wastewater treatment plant. DuPont ultimately disposes of the biosolids containing 1,3-PDA into their hazardous waste landfill. The mass loading levels of the waste 1,3-PDA do not trigger the K181 listing, so such placement is not considered land disposal of a hazardous waste. However, the landfill is permitted to accept biosolids with several listed hazardous wastes and, as a result, generates F039 (a hazardous waste), which is reasonably expected to contain 1,3-PDA. The F039 is introduced by pipeline into DuPont's biological treatment system, a two-step biological process that includes the use of activated carbon. Biodegradation reduces organics in this system by approximately 99%. The treatment residual is a F039 biosludge that is high in carbon. It is this biosludge that is the basis of the requested treatability variance.

DuPont has sent the biosludge to several commercial laboratories for analysis to see if it met the treatment standard and could be legally land disposed. The laboratories have consistently been unable to detect 1,3-PDA in this high carbon matrix. When asked if they could develop a new detection method for this constituent, only one laboratory was interested in attempting to do so, but indicated that it could take a year to develop and it likely would have a detection limit around 13 mg/kg (the detection limit for a similar compound, 1,4-PDA). This detection limit is much higher than the 1,3-PDA treatment standard of 0.66 mg/kg.

DuPont pointed out that when the treatment standard for a similar compound, 1,2-PDA (1,2-phenylenediamine, o-phenylenediamine), was promulgated in the dyes and pigments listing rule, we set a treatment standard expressed as specified technologies because of method detection problems: We specified that combustion (CMBST), or chemical oxidation (CHOXD) followed by biodegradation (BIODG) or carbon adsorption (CARBN), or a treatment train of BIODG followed by CARBN are the treatment standard. DuPont requested that we provide a variance that would set specified technologies as the treatment standard for 1,3-PDA at their Chambers Works facility, as we did for 1,2-PDA. We believe that this is a reasonable request because when we evaluated the waste constituents to determine the original treatment standards, we grouped 1,3-PDA with 1,2-PDA (and other constituents) because they are similar in chemical structure and physical properties.

C. New Treatment Standard for 1,3-PDA

We are granting DuPont's request in today's site-specific variance. Under one of the criteria for a variance from the treatment standard, the applicant must demonstrate that it is not physically possible to treat the waste to the level specified in the treatment standard. We believe that today's variance falls into this category, in that it is technically impossible for DuPont to demonstrate that it complies with a treatment level when laboratories have not been able to detect the waste in DuPont's particular, site-specific biosludge matrix.[1] Therefore, certification that this constituent has been treated in the F039 biosludge matrix is not possible, and without the certification, disposal of the F039 biosludge cannot legally occur. This situation may impede production of 1,3-PDA at the facility, because legal disposal of this waste would no longer be available. See *Steel Manufacturers Association* v. *EPA.*, 27 F.3d 642, 646–47 (D.C. Cir. 1994) (absence of a treatment standard providing a legal means of disposing of wastes from a process is equivalent to shutting down that process).

The alternative treatment standard established by today's site-specific variance is: Combustion (CMBST), or chemical oxidation (CHOXD) followed by biodegradation (BIODG) or carbon adsorption (CARBN), or a treatment train of BIODG followed by CARBN, the same treatment standard we set in the K181 listing rule for a similar constituent, 1,2-PDA. By altering the treatment standard for 1,3-PDA to allow certification of compliance based on the use of specified treatment technologies without constituent-specific testing, we can ensure that effective treatment occurs without delay and can also assure that threats to human health and the environment are minimized. We believe that DuPont's two-step biological treatment system that includes the use of activated carbon effectively treats 1,3-PDA in the F039 multisource leachate waste.[2] And, as mentioned in footnote 1, we made a similar finding that treatment of other carbamate waste constituents would adequately treat 1,2-PDA, when we withdrew it as a constituent of concern in 1998. Likewise, we believe that treatment of the other constituents of

[1] This finding is similar to a previous LDR determination. We originally promulgated a numerical treatment standard for 1,2-PDA (o-phenylenediamine) on April 8, 1996 (61 FR 15583). However, we subsequently withdrew the treatment standard because of poor method performance on September 4, 1998. We stated at that time that treatment of other constituents would provide adequate treatment for o-phenylenediamine (63 FR 47409).

[2] When we originally promulgated treatment standards for F039, we stated that constituents on the BDAT list serve as surrogates for those constituents that may be present in the multisource leachate that cannot be adequately analyzed (55 FR 22622, June 1, 1990).

concern in DuPont's F039 multisource leachate waste will serve as a surrogate for 1,3-PDA.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this action creates no new regulatory requirements, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action is a site-specific variance to the LDR treatment standards, which allows a specified BDAT treatment technology to be used for treating one facility's hazardous waste prior to land disposal. The facility remains subject to the unchanged Land Disposal Restrictions paperwork requirements found at 40 CFR 268.7.

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

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

C. Regulatory Flexibility Act

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

This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a specific waste stream that replaces a standard already in effect, and it applies to only one facility. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This action is a site-specific variance that allows a different treatment standard to be met for treating one constituent in one facility's hazardous waste prior to land disposal.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action is a site-specific variance for one facility. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This action is a site-specific variance that applies to only one facility, which is not a tribal facility. Thus, Executive Order 13175 does not apply to this rule.

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

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

Today's final rule is not subject to Executive Order 13045 because it does not meet either of these criteria. The waste described in this site-specific treatment standard variance will be treated and then disposed of in existing, permitted RCRA Subtitle C landfills, ensuring that there will be no risks that may disproportionately affect children.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The Agency uses established technical standards when determining the best demonstrated available technologies upon which land disposal restrictions treatment standards are based. Therefore, there is no need to provide Congress an explanation because consensus standards were used in establishing this alternative treatment standard for 1,3-PDA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's variance applies to waste that is treated in an existing, permitted RCRA Subtitle C facility, ensuring protection to human health and the environment. Therefore, today's rule will not result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

K. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a specific waste type at one facility under particular circumstances.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2), however, this rule will be effective April 10, 2006.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 27, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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

PART 268—LAND DISPOSAL RESTRICTIONS

■ 1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 2. Section 268.44, the table in paragraph (o) is amended by adding in alphabetical order an additional entry for ''DuPont Environmental Treatment Chambers Works, Deepwater, NJ'' and adding a new footnote 13 to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE.—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* *		*	*	*		*	*
DuPont Environmental Treatment Chambers Works, Deepwater, NJ.	F039	Standards under § 268.40.	1,3-phenylenediamine 1,3-PDA.	NA	NA	CMBST; CHOXD fb BIODG or CARBN; or BIODG fb CARBN.	(13)
* *		*	*	*		*	*

(1) A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

* * * * * * * * *

(13) This treatment standard applies to 1,3-PDA in biosludge from treatment of F039.

Note: NA means Not Applicable.

[FR Doc. 06–1073 Filed 2–6–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AB24

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans; Correction

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Correcting Amendment.

SUMMARY: This document contains a correction to the Office of Federal Contract Compliance Programs (OFCCP) final regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), which were published in the **Federal Register** on December 1, 2005. Those final regulations, among other things, incorporate the changes to VEVRAA that were made by the Veterans Employment Opportunities Act of 1998 and the Veterans Benefits and Health Care Improvement Act of 2000.

EFFECTIVE DATE: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: James C. Pierce, Acting Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

Background

Prior to the 1998 and 2000 statutory amendments, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (''Section 4212'' or ''VEVRAA'') required parties holding Government contracts or subcontracts of $10,000 or more to ''take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.'' The Veterans Employment Opportunities Act of 1998 (VEOA) amended section 4212(a) in two ways. First, section 7 of VEOA raised the amount of a contract required to establish VEVRAA coverage from $10,000 or more to $25,000 or more. Second, section 7 of VEOA granted VEVRAA protection to veterans who have served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

The Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA) amended VEVRAA by extending VEVRAA protection to ''recently separated veterans'' '' those veterans ''during the one-year period beginning on the date of such veteran's discharge or release from active duty.'' The final rule regulations published on December 1, 2005, incorporate the changes made by VEOA and VBHCIA to the contract coverage threshold and the categories of protected veterans under VEVRAA.

Need for Correction

Section 60–250.2 in the final regulations published on December 1, 2005, contains definitions of terms used in the part 60–250 regulations. A final rule published on June 22, 2005, (70 FR 36262), added a new paragraph (v) to § 60–250.2, which set forth a definition for the term ''compliance evaluation.'' However, the definition for the term ''compliance evaluation'' was inadvertently omitted from § 60–250.2 in the final regulations published on December 1, 2005. To correct the error, this document adds the definition for the term ''compliance evaluation'' to § 60–250.2.

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, and Veterans.

Signed at Washington, DC, this 31st day of January, 2006.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

■ Accordingly, for the reason set forth above, 41 CFR part 60–250 is corrected by making the following correcting amendment:

PART 60–250—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, RECENTLY SEPARATED VETERANS, AND OTHER PROTECTED VETERANS

■ 1. The authority citation for Part 60–250 continues to read as follows:

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 (2001) (amended 2002); 38 U.S.C. 4212 (2001) (amended 2002); E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

■ 2. Section 60–250.2 is corrected by adding a paragraph (x) to read as follows:

§ 60–250.2 Definitions.

* * * * *

(x) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of the Vietnam Era Veterans' Readjustment Assistance Act.

[FR Doc. 06–1092 Filed 2–6–06; 8:45 am]

BILLING CODE 4510–CM–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[WT Docket No. 05–211; FCC 06–4]

Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts several modifications to the Federal Communications Commission's competitive bidding rules. Some of the changes are necessitated by the Commercial Spectrum Enhancement Act and others are designed to enhance the Commission's competitive bidding program.

DATES: Effective April 10, 2006.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Audrey Bashkin or Erik Salovaara, Auctions Spectrum and Access Division, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures Report and Order* (*Report and Order*), released on January 24, 2006. The complete text of this Report and Order including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday and from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Report and Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, and e-mail *fcc@bcpiweb.com.* BCPI's Web site is *http://www.bcpiweb.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 06–xx. The *Report and Order* and related documents are also available on the Internet at the Commission's Web's site is: *http://wireless.fcc.gov/auctions* or on *http://fcc.gov/ecfs.*

I. Introduction and Background

1. The Federal Communications Commission (Commission) adopts several modifications to the Commission's competitive bidding rules. The Commission sought comment on these changes in the recent *Notice of Proposed Rule Making (NPRM),* 70 FR 43372 (July 27, 2005), which, in combination with a *Declaratory Ruling*, 70 FR 43322 (July 27, 2005), began this proceeding. Some of the changes are required by the Commercial Spectrum Enhancement Act (CSEA); others are intended to enhance the effectiveness of the Commission's auctions program.

II. Implementation of CSEA

A. Background

2. CSEA establishes a mechanism for reimbursing federal agencies out of spectrum auction proceeds for the cost of relocating their operations from certain eligible frequencies that have been reallocated from federal to non-federal use. Under CSEA, the total cash proceeds from any auction of eligible frequencies must equal at least 110 percent of estimated relocation costs of eligible federal entities. CSEA prohibits the Commission from concluding any auction of eligible frequencies that falls short of this revenue requirement. Instead, if the auction does not raise the required revenue, it must be canceled.

3. As explained in the *NPRM*, implementing CSEA necessitates that the Commission modify its tribal land bidding credit rules. In the *Declaratory Ruling*, the Commission determined that total cash proceeds for purposes of meeting CSEA's revenue requirement means winning bids net of any applicable bidding credit discounts. Accordingly, to determine whether CSEA's revenue requirements have been met at the end of a CSEA auction, the Commission will have to determine whether winning bids net of any applicable bidding credit discounts equal at least 110 percent of estimated relocation costs. However, under the Commission's current rules, the Commission may not know for at least 180 days after the end of the auction the amount of tribal land bidding credits that will be awarded with respect to those winning bids. Consequently, being able to determine promptly after the close of bidding whether or not CSEA's revenue requirement has been met requires revision of the Commission's tribal land bidding credit rules.

B. CSEA's Reserve Price Requirement

4. In the *NPRM*, the Commission sought comment on a proposed revision to its current reserve price rule. CSEA directs the Commission to revise its reserve price regulations to ensure that an auction of eligible frequencies raises at least 110 percent of the estimated relocation costs for federal users as determined pursuant to CSEA. The Commission's competitive bidding rules have, since their inception, allowed for the use of reserve prices, and, since 1997, section 309(j) of the Communications Act has required the Commission to prescribe methods by which a reasonable reserve price will be required, or a minimum bid will be established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest. Section 1.2104(c) of the Commission's rules, 47 CFR 1.2104(c), gives the Commission the discretion to employ a reserve price. This rule, however, does not satisfy the CSEA mandate that the reserve price rule ensure that an auction of eligible frequencies raises the revenue required by the statute. Accordingly, the Commission proposed a rule that conforms to the CSEA requirement.

5. No commenter addressed this issue. Given the statutory mandate and the absence of opposition from commenters, the Commission will adopt the rule proposed in the *NPRM.*

C. Tribal Land Bidding Credits in CSEA Auctions

6. In the *NPRM*, the Commission sought comment on three alternative methods of ensuring that, in auctions subject to CSEA, the Commission will be able to calculate total cash proceeds promptly after the completion of bidding, while still preserving its ability to award tribal land bidding credits to qualified license winners at some point after such proceeds have been

determined. The need for revision of the rules arises because the Commission allows applicants seeking tribal land bidding credits 180 days after the long-form filing deadline in which to demonstrate their eligibility for such credits. To qualify for a tribal land bidding credit, a license winner must indicate on its long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within a particular market. The applicant must then amend its long-form application within the 180-day period by attaching a certification from the tribal government authorizing the applicant to provide service on its tribal land, certifying that the area to be served by the winning bidder is indeed qualifying tribal land, and assuring that it has not and will not enter into an exclusive contract with the applicant and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land. The applicant must also attach its own certification that it will comply with construction requirements for tribal land and consult with the tribal government regarding the siting of facilities and service deployment.

7. The Commission clarifies that when a deadline for final payment of a winning bid occurs before an applicant's eligibility for a tribal land bidding credit is determined, the Commission requires the applicant to make full payment of the balance of its winning bid by that deadline. In other words, such an applicant receives no reduction in the balance due by the final payment deadline for any as yet un-awarded tribal land bidding credit the applicant is seeking. When an applicant's eligibility for a tribal land bidding credit is established after final payment has been made, the Commission will refund the amount of the credit.

8. As soon as the long-form applications have been submitted, the Commission can calculate the maximum amount of tribal land bidding credits for which auction winners could be eligible assuming full compliance with the certification requirements. However, because the deadline for submitting the required certifications is not until 180 days after the filing deadline for long-form applications, the Commission may not know for 180 days or longer to what extent tribal land bidding credit applicants have actually qualified for such credits. Thus, when an auction that has a reserve price or prices includes licenses covering qualifying tribal lands, the Commission may not know for at least 180 days after the long-form deadline how much of a discount on the auction's winning bids it will have to allow for tribal land bidding credits. In auctions subject to CSEA, this situation could lead to a potentially substantial post-auction delay in calculating whether total cash proceeds meet the 110 percent revenue requirement. Thus, the Commission's current tribal land bidding credit procedures could prevent the Commission from concluding the auction expeditiously after the cessation of bidding and, should the award of the credits reduce the auction's net winning bids to below the 110 percent revenue requirement, might even lead to cancellation of the auction long after the bidding has ended. Accordingly, the Commission sought comment on which of three possible modifications to the Commission's tribal land bidding credit rules would best enable it to meet the its dual objectives of facilitating CSEA compliance and continuing to encourage service on tribal lands. The Commission also invited commenters to propose other methods of accomplishing these objectives.

9. The only commenter to address this issue supports either of the first two options on which the Commission sought comment. Under the first option, the Commission would award pro rata tribal land bidding credits out of the amount by which net winning bids at the close of bidding exceeded the reserve price(s) applicable to that auction. If this amount were insufficient to pay all of the tribal land bidding credits for which auction winners were eligible, then each eligible tribal land bidding credit applicant would receive a pro rata credit based on the credit the applicant would have received had the auction not been subject to a reserve price.

10. The commenter also likes the second option, pursuant to which the Commission would award tribal land bidding credits on a first-come, first-served basis in auctions subject to CSEA. Winning bidders would, under this alternative, still have to file the certifications for a tribal land bidding credit no later than 180 days after the filing deadline for long-form applications. However, bidding credits up to the full amount determined by the existing formula would be awarded to eligible applicants in the order in which they had filed the certifications for such credits, to the extent that funds remained available. As with the first alternative, the money available for tribal land bidding credits would be limited to the net winning bids exceeding 110 percent of the total estimated relocation costs. The commenter believes that this option, by allowing early and final determination of outstanding tribal land bidding credit valuations, has an advantage over the pro rata option.

11. Under the third option, the Commission would require applicants to specify on their short-form applications the licenses, if any, for which they intended to seek a tribal land bidding credit, should they win. The Commission would determine whether the CSEA reserve price had been met, insofar as tribal land bidding credits were concerned, by deducting the maximum amount of tribal land bidding credits for which winning bidders that had indicated on their short-form applications an interest in receiving such credits could be eligible. The commenter opines that neither adopting this option nor leaving the rules unchanged would serve the public interest.

12. The Commission will adopt the first option, *i.e.*, the pro rata approach. The time at which winning bidders are able to file their suitably amended long-forms is not completely within their control, given that applicants for tribal land bidding credits must depend on tribal governments to provide them with some of the required certifications. In light of these circumstances, the Commission believes that the pro rata option, rather than the first-come, first-served option, is the preferable method of equitably apportioning tribal land bidding credits among the largest number of qualified applicants, while still allowing a speedy determination of whether the reserve price has been met in auctions of eligible frequencies. The Commission agrees with the commenter that neither the third option, *i.e.*, requiring advance notification on the short-form, nor the status quo would adequately serve the interests of the public.

13. Under the pro rata approach, if the reserve price limits the funds available for tribal land bidding credits to less than the full amount for which auction winners seeking tribal land bidding credits might qualify, each applicant eligible for a tribal land bidding credit will receive a pro rata portion of the available funds. The funds available equal the amount by which winning bids for licenses subject to the reserve price, net of discounts the Commission takes into account when reporting net bids in the public notice closing the auction, exceed the reserve price. For purposes of calculating pro-rata tribal land bidding credits, any repayments of tribal land bidding credit amounts pursuant to 47 CFR 1.2110(f)(3)(C)(viii), as amended, are not funds available for granting other pro-rata tribal land

bidding credits. The ratio of (a) each applicant's pro rata credit to (b) the total funds available for tribal land bidding credits will equal the ratio of (a) the applicant's full credit (the tribal land bidding credit for which that applicant would have qualified absent limitations resulting from the reserve price) to (b) the aggregate maximum amount of tribal land bidding credits for which all applicants might have qualified absent limitations resulting from the reserve price. In order to assure that funds are available for all applicants seeking tribal land bidding credits, the Commission will calculate the aggregate maximum amount of tribal land bidding credits for which all applicants might have qualified by assuming that any applicant seeking a tribal land bidding credit on its long-form application will be eligible for the largest tribal land bidding credit possible for its bid for its license, absent limitations resulting from the reserve price. The Commission will use this ratio to determine the pro rata credit awarded when it grants the license. When making any necessary refunds of already-made license payments, the Commission will continue to follow the usual Commission procedures, as set forth in the procedures public notice for the relevant auction.

14. The Commission may be able to award each applicant proving eligibility for a pro rata tribal land bidding credit a larger amount in the event that any other applicant ultimately proves to be eligible for less than the largest possible tribal land bidding credit. Funds available for an applicant that proves to be eligible for less than the largest possible credit can be used to increase pro rata credits for other applicants. However, the Commission can determine the largest possible pro rata credit for an applicant only after all applications seeking a tribal land bidding credit with respect to licenses covered by a reserve price have been finally resolved. Accordingly, the Commission will recalculate pro rata tribal land bidding credits once all such applications have been finally resolved.

15. Final resolution of all applications occurs only after any review or reconsideration of any such credit has been concluded and no opportunity remains for further review or reconsideration. The Commission notes that it is possible that final resolution of less than all applications seeking tribal land bidding credits may make it apparent that funds available for tribal land bidding credits equal or exceed the full amount for which all other applications seeking tribal land bidding credits might qualify. For example, the funds available may have been just short of the full amount for which all applicants might qualify. If one applicant withdraws its application for a tribal land bidding credit, the funds available subsequently may exceed the full amount for which all other applicants might qualify, even though it may be some time before all other applications are finally resolved. In light of this possibility, the Commission reserves the power to award full credits when available information makes it clear that funds available exceed the full amount for which all applicants might qualify, even though all applications have not yet been fully resolved. In such circumstances, the Commission will increase the amounts of any previously awarded pro rata credits to make them full credits as well.

16. After all such applications have been finally resolved, the Commission will recalculate the amount of pro rata credits using the aggregate amount of actual full credits—*i.e.*, the tribal land bidding credits for which the applicants would have qualified absent the limitations resulting from the reserve price—rather than the hypothetical maximum aggregate amount for which all applicants might have qualified. In other words, the ratio of (a) each applicant's recalculated pro rata credit to (b) the total funds available for tribal land bidding credits will equal the ratio of (a) the applicant's full credit (the tribal land bidding credit for which that applicant would have qualified absent limitations resulting from the reserve price) to (b) the aggregate amount of the actual full credits. In the event that the recalculated pro rata credit is larger than the initial pro rata credit, the Commission will award the difference. If the second calculation produces a different result from the first, it will reflect the fact that when the amount of any one applicant's portion of the fixed funds available for tribal land bidding credits decreases, the amounts of other applicants' portions should increase. An applicant's portion of the fixed funds might decrease, for example, if it reaches agreements with tribal governments regarding service for less than the full area of tribal land covered by the license. Consequently, that applicant may be eligible for a credit smaller than the largest credit possible.

III. Updating Competitive Bidding Rules and Procedures

A. Tribal Land Bidding Credits in Non-CSEA Auctions

17. The Commission sought comment in the NPRM on whether the Commission should extend the same or a similar approach to the one the Commission selected for allocating tribal land bidding credits in auctions with a CSEA-mandated reserve price (or prices) to those non-CSEA auctions for which the Commission established a reserve price or prices based on winning bids net of discounts. No commenter addressed this aspect of the issue. The Commission believes that, for the reasons discussed above, the pro rata approach the Commission adopted for auctions with a CSEA-mandated reserve price would, in non-CSEA auctions, best allow both a speedy auction conclusion and an equitable allocation of available tribal land bidding credits among all qualified applicants. Accordingly, the Commission adopts a rule extending the pro rata approach, at the discretion of the Commission, to non-CSEA auctions with reserve prices.

B. Default Rule Clarification

18. In the NPRM, the Commission proposed two clarifications of its default payment rule. The first deals with the proper time to calculate the amount of the default payment when, in a subsequent auction, there is a higher withdrawn bid but no winning bid for a license that corresponds to the defaulted license. The second addresses an unusual situation in which it might not be clear whether net or gross bids should be used in calculating the default payment. Neither proposal prompted any response from commenters.

19. Under 47 CFR 1.2104(g), a winning bidder that defaults or is disqualified after the close of an auction is subject to a deficiency payment (or deficiency portion) plus an additional payment equal to 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulting bidder's bid or the subsequent winning bid, whichever is less. Under existing rules, the deficiency payment for a default or disqualification following a package bidding auction (or in situations where the subsequent winning bid is for a license won as part of a package) is, in most instances, calculated differently from the way in which the deficiency payment is calculated when none of the relevant bids is part of a package bid. However, under rule changes the Commission adopts today, the Commission will use a single method of calculating deficiency payments across all auctions.

20. The deficiency payment is calculated in the same manner as a payment owed following the withdrawal of bid. Section 1.2104(g) of the Commission's rules, 47 CFR

1.2104(g), provides that a bidder that withdraws a bid during the course of an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction. In the event that a bidding credit applies to any of the bids, the bid withdrawal payment equals the difference between either the net withdrawn bid and the subsequent net winning bid or the gross withdrawn bid and the subsequent gross winning bid, whichever difference is less. For purposes of calculating the withdrawal payment amount, net bids do not include any discounts resulting from tribal land bidding credits. No withdrawal payment is assessed for a withdrawn bid if either the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the original withdrawn bid. The additional 3 (or 25) percent payment must be calculated using the same bid amounts and basis (*i.e.*, net or gross bids) as used in calculating the deficiency payment.

21. In the NPRM, the Commission described the anomaly that might result from calculating the additional 3 or 25 percent payment for a bidder that defaults or is disqualified after the close of an auction, when, in a subsequent auction, there is a higher withdrawn bid, but no winning bid, for a license corresponding to the defaulted license. By corresponding license, the Commission generally means a license with the same geographic and spectral components as those of the defaulted license or the license on which a bid was withdrawn. However, when, because of intervening partitioning, disagregration, or rule change, there is no single license with the same geographic and spectral components as the original license then corresponding license means a license covering any part of the geography or spectrum of the original license. Under these circumstances, an original license may have more than one corresponding license. In some instances, the Commission may designate as a corresponding license a license that shares no spectrum or geography with the original license.

22. A selective reading of 47 CFR 1.2104(g) might indicate that, while the defaulter's deficiency obligation would be calculated as the difference between the defaulter's bid and the higher withdrawn bid in the subsequent auction (thus resulting in no deficiency payment), the defaulter's additional 3 or 25 percent payment obligation, which is based upon the lesser of the defaulter's bid or the subsequent winning bid, could not be calculated until the corresponding license had been won in a still later auction. However, as the Commission pointed out in the NPRM, such a reading would conflict with the assumption evident in the Commission's default payment rule that the deficiency payment and the additional payment are calculated using the same bids. This assumption is reflected, for example, in the rule's explanation of which basis—net bids or gross bids—should be used in calculating the interim bid withdrawal payment.

23. To prevent the anomaly just described, the Commission proposed to clarify the default payment rule as follows. If, in a subsequent auction, there were a higher withdrawn bid but no winning bid for a license that corresponds to a defaulted license, the additional default payment would be determined as 3 percent (or 25 percent) of the defaulting bidder's bid. In this situation, because the applicable subsequent bid was higher, no deficiency payment would be required. In the event that there were no intervening subsequent withdrawn bids that were higher than the defaulted bid but there were intervening subsequent withdrawn bids that were higher than the subsequent winning bid, under the Commission's proposal the highest such intervening subsequent withdrawn bid would be used to calculate both portions of the final default payment. As noted, this proposal generated no comments. Because the Commission believes that the proposed clarification would simplify and accelerate the calculation of final default payments in applicable situations, the Commission adopts the proposal. As in the calculation of withdrawal payments, net bids for purposes of calculating default deficiency and additional payments do not include discounts resulting from tribal land bidding credits.

24. The Commission also sought comment in the NPRM on a proposal to clarify the additional payment portion of the default payment rule in certain situations in which no deficiency payment is owed. The additional payment is, as noted, normally a percentage of either the defaulting bidder's bid or the subsequent applicable bid, whichever is less, using the same basis—net or gross bids—as used in calculating the deficiency payment. However, when the defaulted bid is subject to a bidding credit and the subsequent applicable bid equals or exceeds the defaulted bid, regardless of which basis—net or gross bids—is used, it is not clear whether the additional payment should be based on the net defaulted bid or on the gross defaulted bid. Accordingly, the Commission proposed that, in such a situation, the additional payment be 3 (or 25) percent of the net defaulted bid amount, thus basing the default payment on what the defaulter was obligated to pay at the close of bidding. Because the Commission believes that this clarification of the default rule is needed, and as no commenter opposed this aspect of the NPRM, the Commission adopts the proposal. The Commission also extends the clarification adopted here to determinations of the amount of default payments in situations where the initial bid, the subsequent winning bid, or any intervening withdrawn bid is for a license that is part of a package. Under the Commission's proposal, the additional payment would, as always, be calculated using the same basis, *i.e.*, net or gross bids, as used in the calculation of the deficiency payment.

C. Withdrawal and Default Payment Percentages

25. The Commission proposed in the NPRM to replace the current interim withdrawal and additional default payments of 3 percent of the relevant bid with an amount up to 20 percent of the relevant bid, with the precise amount for each auction established in advance of the auction.

i. Background

26. *Withdrawals.* The Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). If a license for which there has been a withdrawn bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment equal to 3 percent of the amount of its withdrawn bid, and this interim payment is applied toward any final bid withdrawal payment that is ultimately assessed.

27. The Commission adopted the withdrawal payment rules in 1994 to discourage insincere bidding, which, whether done for frivolous or strategic purposes, distorts price information generated by the auction process and may reduce the efficiency of the auction. The Commission anticipated

that strategic withdrawals—such as when a bidder attempts to deter a rival from acquiring a license by bidding up the price of the license and then withdrawing—would be particularly damaging to competitive bidding. The Commission added the 3 percent interim bid withdrawal payment to the rules to help ensure that the withdrawal payment could be collected if one ultimately were assessed.

28. *Defaults and Disqualifications.* The Commission's rules provide that if, after the close of an auction, a winning bidder defaults on a down payment or final payment obligation or is disqualified, the bidder is liable for a default payment. This payment consists of a deficiency portion, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulter's bid or of the subsequent winning bid, whichever is less. The rule as applied in non-combinatorial auctions has been in effect since 1994. In 1997, the Commission extended to all auctionable services a policy, earlier adopted for broadband personal communications services (PCS), of assessing initial default deposits. In instances when the amount of a default payment cannot yet be determined, the Commission assesses an initial default deposit of between 3 percent and 20 percent of the defaulted bid amount.

29. Requiring an additional payment in the case of post-auction defaults is intended to provide an incentive to bidders wishing to withdraw their bids to do so prior to the close of an auction, because a default or disqualification after an auction is generally more harmful to the auction process than a withdrawal during the auction. The Commission set the additional payment at 3 percent, estimating that amount as the transaction cost of selling a license in the after-market. The Commission posited that if it were to establish a significantly higher additional default payment, bidders in a position to do so would opt to sell unwanted licenses individually in the secondary market rather than default. The Commission determined that such a result would not only be unfair to entities unable to rely on the after-market but also would be a less efficient mechanism for assigning defaulted licenses than would Commission auctions of such licenses.

30. The Commission noted in the NPRM that there have been a disproportionate number of withdrawals late in the Commission's auctions, indicating that some bidders have been placing and then withdrawing bids primarily to discourage potential or existing market competitors from seeking to acquire licenses. The Commission noted further that bidders continue to default on their payment obligations. Because withdrawals and defaults weaken the integrity of the auctions process and impede the deployment of service to the public and could prove particularly troublesome in auctions with a specific cash proceeds or reserve price requirement, such as auctions subject to CSEA, the Commission proposed to deter such behavior more effectively by increasing to a maximum of 20 percent the current 3 percent limit on interim withdrawal payments and additional default payments.

ii. Discussion

31. The Commission will adopt its proposal in the NPRM to determine the precise amount of interim withdrawal and additional default payments, up to 20 percent of the relevant bid, in advance of the auction. The comments the Commission received support its proposal and provide additional support for the observation in the NPRM that the Commission's rationale for limiting additional default payments to 3 percent no longer holds the same validity that it did eleven years ago when the payment was established. Resale restrictions have since been reduced, and secondary market tools for the redistribution of access to spectrum have been rapidly developing. Consequently, the Commission is less concerned about potential negative effects resulting from a bidder's decision to pay for an unwanted license and resell it rather than default. Moreover, the Commission believes that raising the limit on the size of the payments may persuade bidders to be more realistic in their advance assessment of how much they can afford to pay for licenses. Accordingly, the Commission will modify 47 CFR 1.2104(g) of its rules to raise the current 3 percent limits on the interim withdrawal payment and the additional default payment to 20 percent each. The Commission will, as part of its determination of competitive bidding procedures in advance of each auction, establish the appropriate level, from 3 percent up to a maximum of 20 percent, at which to set each of the two payments. The level will be based on the nature of the service and the inventory of the licenses being offered.

32. Adoption of the 3 to 20 percent range permits the Commission to use more than one percentage in an auction for either the interim withdrawal payment or the additional default payment, or both. The Commission did not propose to, nor will it, alter the size of the 25 percent additional payment for defaults or disqualifications following combinatorial bidding auctions, as the Commission continues to believe that there is a greater potential for harm resulting from defaults following combinatorial bidding auctions than following other auctions.

D. Apportionment of Bid Amounts

i. Among the Licenses in a Package

33. The Commission proposed in the NPRM to determine a stand-in to use for the bid on an individual license included as part of a package in a combinatorial (or package) bidding auction whenever an individual bid amount was needed for a regulatory calculation. The need for this change arises out of the assumption in the Commission's competitive bidding rules and procedures that the amount of each bid on an individual license will always be known. For example, the Commission's rules for calculating the amount of a small business, new entrant, or tribal land bidding credit, presume that the Commission knows the amount of the winning bid amount on the license or construction permit involved. Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the Commission needs to know the bid amounts for individual licenses. However, in package bidding, where bidders place single all-or-nothing bids on groups (or packages) of licenses, there will be no identifiable bid amounts on the individual licenses comprising packages of more than one license.

34. Recognizing this problem in the context of default payments, the Commission established a rule, 47 CFR 1.2104(g)(3)(i), for calculating the deficiency portion of default payment obligations in connection with package bidding auctions. This provision accommodates situations in which all relevant licenses won in one or more subsequent auctions correspond to licenses originally made available in the same initial auction. However, it does not allow for situations in which the corresponding licenses are made available in one or more subsequent auctions that include licenses that were not won in the same initial auction.

35. As a more comprehensive solution, the Commission proposed in

the NPRM to specify in advance of each auction that uses a combinatorial bidding design or includes spectrum previously subject to combinatorial bidding a method for apportioning the bid on a package among the individual licenses comprising the package. The Commission proposed further that the apportioned package bid (APB)—the portion of the total bid attributed to an individual license pursuant to the selected method—serve as a substitute for the bid on that license whenever the individual bid amount was needed for one of the Commission's regulatory calculations.

36. There are at least two available methods by which the Commission could apportion package bids to the individual licenses comprising a package. One such method would be to use a MHz-pops ratio, just as is currently done for unjust enrichment calculations involving partitioning or disaggregating licenses. For Auction No. 51, the only auction conducted so far in which package bidding has been available, the Commission decided that MHz-pops would be used to determine a substitute individual bid amount should it be necessary to calculate a tribal land bidding credit for a license won as part of a package. In some cases, however, using a simple MHz-pops ratio to apportion a package bid to its component licenses might not reflect very well the relative values of the licenses in the package. For example, if a heavily encumbered license were packaged with an unencumbered license of the same bandwidth and in the same geographic area, the MHz-pops method would assign the same substitute price (half of the bid on the package) to each license, despite the possible effect on value of the encumbrance differential. An alternative method of calculating substitute prices would take into account information indicating the individual values of the licenses, including the minimum opening bid amounts (which may reflect differences in incumbency, for example) and all of the bids placed in the auction covering those licenses. The Commission has used a mathematical algorithm to calculate price estimates that takes these factors into account. These estimates of the prices of individual licenses covered in a single combinatorial bid are referred to as current price estimates (CPEs). The Commission developed a methodology for determining CPEs as part of the combinatorial bidding procedures established for Auction No. 51, as well as for Auction No. 31, an upcoming auction of licenses in the Upper 700 MHz bands for which the Commission previously announced plans to use package bidding. CPEs were calculated after every round of Auction No. 51 as part of the mathematical optimization process used to determine the winning bids and were also used in determining the minimum acceptable bid amounts for each subsequent round. The same use of CPEs was also announced before the previously scheduled start of Auction No. 31.

37. Although CPEs calculated after the final round of the auction are not needed to determine further minimum acceptable bids, final round CPEs (final price estimates or FPEs) can be interpreted as indicators of the individual value that a license covered by a package bid contributes to the winning bid amount for the package. FPEs reflect all available information about the relative demand for the licenses, since they are calculated using a mathematical algorithm that takes into account all the bids placed in the auction. In addition, the sum of the FPEs for the component licenses of a package is mathematically constrained to equal the winning bid for the package. Consequently, the ratios of these estimates to the package bid amount can be seen as indicators of the relative weights of the different licenses in the market value of the package. FPEs, therefore, may be useful in determining apportioned package bid amounts when an individual price is needed for a regulatory calculation.

38. The sole commenter to address this issue supports both aspects of the Commission's proposal, including affording the Commission the flexibility to use either what the commenter refers to as a proportionate approach (*i.e.*, MHz-pops) or an FPE approach to apportion bids among licenses in a package. The commenter believes, however, that in most cases the market approach would yield a better approximation of ''the real cost of subsequent default, a bidding credit or an unjust enrichment obligation.''

39. Given this support and the absence of opposition, the Commission adopts the proposal. Under this rule, the Commission will establish a methodology in advance of each auction with combinatorial bidding for determining APBs for licenses that are part of a package and will use the APB in place of the individual bid amount on a license included in a package whenever the amount of an individual bid on that license is needed for any determination required by the Commission's rules or procedures, such as determining the amount of a bidding credit or of a withdrawal or default payment. Adoption of this rule renders unnecessary 47 CFR 1.2104(g)(3)(i), the existing rule for calculating the deficiency portion of default payment obligations in connection with package bidding auctions. Accordingly, the Commission will eliminate this provision. However, as discussed above, the Commission will retain the substance of current 47 CFR 1.2104(g)(3)(ii), which provides 25 percent as the size of the additional payment for defaults or disqualifications following a combinatorial bidding auction.

ii. Among the Components of a License

40. In the NPRM, the Commission proposed that, prior to auctions involving licenses which, due to a rule change, covered different geographic areas or bandwidths than did corresponding licenses made available at an earlier auction, the Commission specify, as necessary, a method for apportioning the bid on any such reconfigured license among the license's component parts (*i.e.*, portions of the license's service area or bandwidth, or both). Implicit in the Commission's rules for determining the amount of a withdrawal or default payment—determinations that involve a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid—is the assumption that the subsequent bid will be for a license with the same geographic and spectral components as the original license. However, when there have been intervening rule changes involving the relevant spectrum, the second license may not be identical in geography and spectrum to the first. For example, both the geographic and spectral characteristics of what formerly were known as Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) licenses in the 2495–2690 MHz band and now are known as Broadband Radio Service (BRS) and Educational Broadband Service (EBS) licenses were changed last year when, in order to provide greater flexibility and a more functional band plan for licensees, the Commission restructured the rules governing these licenses. The Commission can expect that, as radio technology continues to evolve, there will be other instances where the Commission's band plans are updated. Therefore, for purposes of calculating a withdrawal or default payment—or for any comparison of a bid for one license with a bid for a corresponding license in a subsequent auction—the Commission needs a procedure for apportioning the bid placed on the reconfigured license(s).

41. In discussing its proposal for apportioning individual bids, the Commission noted that using a MHz-pops ratio would be suitable for such an apportionment, as the Commission has successfully employed the ratio to apportion small business bidding credit amounts in order to calculate unjust enrichment payments when the relevant license has been partitioned or disaggregated. However, the Commission proposed to retain the flexibility to select another method of apportionment in the event the Commission identified a method it believed would better suit the particular licenses involved. Further, the Commission proposed to use methods for package bid apportionment and individual license bid apportionment in concert when circumstances warranted. The Commission received no comments on this issue.

42. The Commission adopts its proposal with the following modification. Rather than specify a method for apportioning an individual bid among a license's component parts prior to auctions involving reconfigured licenses, the rule the Commission adopts will allow the Commission to apportion an individual bid amount whenever such an apportionment is necessary under Commission rules or procedures, such as when determining the amount of a withdrawal or a default payment. The Commission recognizes that past bids on original licenses, not just future bids on reconfigured licenses, might need to be apportioned in order to compare bids on the original licenses to bids on one or more other reconfigured licenses, or portions thereof. Accordingly, the Commission will use an apportioned individual bid (AIB) whenever it is necessary to allocate the bid on a license among its subparts, such as when comparing bids on licenses, at least one of which has been reconfigured. Under the Commission's rule, the Commission will retain the discretion to use a MHz-pops ratio or any other suitable method for the apportionment. Should it be necessary to apportion the bid on a license included as part of a package, the Commission will use both package bid apportionment and individual license bid apportionment together.

E. Payment Rules for Broadcast Construction Permits

43. The Commission proposed in the NPRM to adopt for broadcast auctions the final payment procedures in the Commission's Part 1 rules. The Commission's Part 1 rules provide that, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline. In recent wireless spectrum auctions, the Commission has required each winning bidder to submit the balance of the net amount of its winning bid(s) within ten business days after the deadline for submitting down payments; whereas, the Commission's prior practice was to require final payment ten business days after release of a public notice announcing that license applications were ready to be granted. This procedural change was necessary to limit the potential for post-auction bankruptcies to affect the payment obligations of winning bidders. Nevertheless, specific broadcast auction rules in Parts 73 and 74 provide that winning bidders of broadcast construction permits need not render their final payment until after their long-form applications have been processed, any petitions to deny have been dismissed or denied, and the public notice announcing that broadcast construction permits are ready to be granted has been released. Recognizing the discrepancy between the broadcast auction payment procedure and that for all other auctions, the Commission, in the *Auction No. 37 Procedures Public Notice,* 69 FR 136, July 16, 2004, noted that it would consider future changes to the broadcast rules to conform the broadcast final payment procedures to the analogous Part 1 requirements.

44. The only commenter on this issue opposes the proposal. It recommends that the Commission instead conform its Part 1 final payment rule to the payment procedures for broadcast auctions or, alternatively, require only a 50 percent down payment, rather than payment in full. The commenter argues that the Part 1 final payment rule is disproportionately burdensome to smaller carriers. The commenter also contends that the proposed rule change is unnecessary, because the Supreme Court's decision in NextWave, 537 U.S. 293 (2003), which involved a licensee's failure to pay for a license that had already been awarded, does not apply to a winning bidder's failure to pay prior to license grant.

45. The Commission will adopt the proposal. The Commission expects those entities that plan to participate in an auction to have their financing in place before the start of the auction. Consistent with this expectation, the new rule will apply in all auctions where the start of bidding occurs after the rule's effective date, pursuant to publication in the **Federal Register**. However, the new rule will not apply with respect to auction where the start of bidding occurs before the rule's effective date. In that case, the former rule regarding final payment will continue to apply. The Commission's goal is to ensure that only serious, financially qualified applicants receive licenses and construction permits so that the provision of service to the public is expedited. As the Commission noted in the NPRM, winning bidders, including small businesses, have been able to comply with the Commission's new final payment procedure without difficulty. The Commission therefore believes that, in broadcast auctions, winning bidders, regardless of size, should be able to comply with this change with similar ease. Further, the Commission believes that both the Commission and the public benefit by having, to the extent possible, a consistent set of auction procedures across services.

46. Moreover, the Commission cannot be certain that the commenter's interpretation of NextWave would prevail should the issue be decided in the courts. In NextWave, the Supreme Court held that Section 525 of the Bankruptcy Code prevented the Commission from canceling NextWave's licenses solely because of NextWave's failure to make full and timely installment payments of its auction debt pursuant to the Commission's installment payment plan. Although NextWave involved a default by a licensee on installment payments, the Supreme Court's construction of Section 525 of the Bankruptcy Code could be argued to apply not just to licensees' installment debt but also to any debt dischargeable in the bankruptcy case, including a license applicant's obligation to pay a winning bid. Under the Commission's auction rules, a winning bidder becomes bound to pay its full winning bid immediately upon the close of the auction, rather than at the time of the license grant. Thus, the Commission is at risk for a bankruptcy filing as soon as the auction closes, and, under a broad reading of Section 525, the Commission could be forced to issue a license to a winning bidder in bankruptcy even though the winning bidder has not (and may not ever) pay its full winning bid. Accordingly, despite the commenter's argument, the Commission believes that it is in the public interest to complete the auction process and award licenses as expeditiously as possible including collecting the proceeds of each auction as soon as possible after the auction closes.

47. The Commission will continue to make final determinations regarding an

applicant's eligibility to hold a permit or license, including eligibility for any bidding credits, such as new entrant bidding credits, when it is ready to grant the permit or license. In the event that an applicant's eligibility changes between the final payment deadline and the date on which the Commission is ready to grant the permit or license, the applicant will be required to make any additional payment prior to the issuance of the permit or license. If an event occurs that results in the loss or diminishment of a bidding credit between the final payment deadline and grant of the permit or license, the applicant must promptly report such event.

F. Consortium Exception for Designated Entities and Entrepreneurs

48. The Commission sought comment in the NPRM on several options for facilitating use of the consortium exception to the designated entity and entrepreneur aggregation rule. Under the consortium exception, when an applicant or licensee is a consortium comprised exclusively of members eligible for small business bidding credits or broadband PCS entrepreneur status, or both, the gross revenues (and, when determining broadband PCS entrepreneur eligibility, the total assets) of the consortium members are not aggregated. In other words, so long as each member of a consortium individually meets the financial caps for small business bidding credits (or broadband PCS entrepreneur status), the consortium will be eligible for such credits (or for closed bidding in auctions of broadband PCS licenses), regardless of whether the gross revenues (or total assets) of all consortium members would, if aggregated, exceed the caps. The consortium exception, originally adopted on a service-by-service basis where capital costs of auction participation were expected to be high, is intended to enable small businesses or entrepreneurs to pool their resources to help them overcome this challenge to capital formation.

49. The consortium exception has been seldom used, perhaps in part because of the lack of clear direction from the Commission as to how members of consortia that win licenses can be formally organized and how they can hold their licenses. When these structural questions are not resolved before licenses are awarded, contractual disputes may arise between members of consortia, particularly if any of the members file for bankruptcy protection. And if consortium members agree after the auction to divide among themselves the licenses they have won without first having applied for Commission approval, they may be held accountable for unauthorized assignments or transfers of control. Not only would such difficulties impede service to the public and consume Commission resources, they would prove expensive and time consuming for the small businesses involved.

50. The Commission sought comment on three rule changes intended to minimize the likelihood of these problems. First, the Commission asked whether it should adopt a requirement that each member of a consortium file an individual long-form application for its respective, mutually agreed-upon license(s), following an auction in which the consortium has won one or more licenses. Second, the Commission sought comment on whether, in order for two or more consortium members to be licensed together for the same license(s), they should be required to form a legal business entity, such as a corporation, partnership, or limited liability company, after having disclosed this intention on their short-form and long-form applications. Third, the Commission asked for comment on whether such new entities would have to meet the Commission's small business or entrepreneur financial limits and, if not, whether allowing these entities to exceed the limits would be consistent with the Commission's existing designated entity and broadband PCS entrepreneur rules, as well as the Commission's obligations under the Communications Act. The Commission also encouraged commenters to express their views on how these approaches might work in the context of package bidding and to what extent adopting these proposals might encourage wider use of the consortium exception. No commenter opposed these possible changes.

51. The Commission believes that if the consortium exception is to become a useful tool for smaller entities, while remaining faithful to the objectives and requirements of section 309(j) of the Communications Act the Commission should implement all of the changes the Commission discussed in the NPRM. Accordingly, the Commission adopts the following modifications to the consortium exception. First, the Commission will require consortium members to file individual long-form applications for their respective, mutually agreed-upon license(s) following an auction in which the consortium has won one or more licenses. Second, in order for two or more consortium members to be licensed together for the same license(s) (or disaggregated or partitioned portions thereof) the Commission will require them first to form a legal business entity, such as a corporation, partnership, or limited liability company. Third, the Commission will require any such entity to comply with the applicable small business or entrepreneur financial limits. A newly formed legal entity comprising two or more consortium members that do not qualify for as large a size-based bidding credit as that claimed by the consortium on its short-form application will be awarded a bidding credit, if at all, based on the entity's eligibility for such credit at the long-form filing deadline. A license won by the consortium in broadband PCS closed bidding will be granted only to a legal entity whose gross revenues and total assets do not, at the long-form filing deadline, exceed the financial limits for broadband PCS closed bidding.

52. The dissolution of a consortium that applied to participate in an auction into its constituent members or groups of members for purposes of filing long-form applications will not constitute a change in control of the applicant for purposes of 47 CFR 1.927, 1.929, or 1.2105. Because the Commission's application system requires that all long-form license applications for licenses won in an auction use the same FCC Registration Number (FRN) as the auction applicant/winning bidder, the members filing separate long-form applications will continue to use the consortium's FRN on their long-form applications. However, within ten business days after release of the public notice announcing grant of a long-form application, that licensee must update its filings in the Commission's Universal Licensing System (ULS) to substitute its individual FRN for that of the consortium. In addition, ULS accepts applications only for whole licenses won in an auction. Accordingly, if a consortium plans to partition or disaggregate a license among members after the auction, one member of the consortium will have to file the applicable long-form application and append the relevant partitioning or disaggregation agreement to the application. After the long-form application has been granted, members will have to file, pursuant to the Commission's existing rules, assignment applications to partition or disaggregate the license pursuant to the terms of the agreement attached to the original license application.

53. The Commission believes that these modifications will invest the consortium exception with greater transparency, thereby promoting clearer planning by smaller entities, while

continuing to allow them to enhance their competitiveness with efficiencies of scale and strategy. Moreover, ensuring that licenses are granted only to consortium members that comprise legal business entities facilitates enforcement of the Communications Act and the Commission's policies and rules, particularly in the event of a disagreement among consortium members. For this reason, the Commission takes this opportunity to remove any previous ambiguity in its rules by clarifying that the consortium exception (and, indeed, the consortium structure) is available only to short-form applicants seeking a size-based benefit for auction participation, and not to prospective lessees, assignees, or transferees.

IV. Procedural Matters

54. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis, set forth in an appendix C to the *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures Report and Order.*

55. *The Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures Report and Order* contains no new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

56. The Commission will include a copy of the *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures Report and Order* in a report it will send to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

V. Final Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making* (NPRM) in WT Docket No. 05–211, which, in combination with a *Declaratory Ruling*, began this proceeding. The Commission sought written public comment in the *NPRM* on possible changes to its competitive bidding rules, as well as on the IRFA. The Commission received three comments, one reply comment, and two *ex parte* comments on the *NPRM*, none of which addressed the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

58. This *Report and Order* adopts modifications to existing Commission rules for the purposes of implementing the recently enacted Commercial Spectrum Enhancement Act (CSEA). CSEA establishes a mechanism to use spectrum auction proceeds to reimburse federal agencies operating on certain frequencies that have been reallocated from federal to non-federal use for the cost of relocating their operations. The *Report and Order* also adopts a number of changes to the Commission's competitive bidding rules that are necessary, apart from CSEA, to enhance the effectiveness of the Commission's auctions program.

59. *Reserve Price Rule.* CSEA requires the total cash proceeds from any auction of eligible frequencies to equal at least 110 percent of the total estimated relocation costs provided to the Commission by National Telecommunications and Information Administration (NTIA). To implement this requirement, CSEA directs the Commission to revise its reserve price regulations adopted pursuant to Section 309(j)(4)(F) of the Communications Act. Accordingly, the Commission has adopted a proposal, which received no comment, to add a requirement to its existing reserve price rule (47 CFR 1.2104(c)) such that, for any auction of eligible frequencies requiring the recovery of estimated relocation costs under CSEA, the Commission will establish a reserve price (or prices) that ensures that the total cash proceeds attributable to such spectrum will equal at least 110 percent of the total estimated relocation costs provided to the Commission by NTIA.

60. *Tribal land bidding credit rule for CSEA auctions.* In an effort to encourage carriers to provide telecommunications services to tribal lands with low historical telephone service penetration rates, the Commission makes tribal land bidding credits available to auction winners that serve qualifying tribal lands. Under the Commission's current rules, in auctions that include spectrum covering qualifying tribal lands, the Commission may not know for at least 180 days after the long-form application deadline how much of a discount on the auction's winning bids it will have to allow for tribal land bidding credits. In auctions subject to CSEA, this timing could lead to substantial post-auction delay in calculating whether total cash proceeds meet the 110 percent revenue requirement. Accordingly, the Commission sought comments on three alternative methods of ensuring that it would be able to promptly calculate total cash proceeds while at the same time preserving the availability of tribal land bidding credits in auctions subject to CSEA. The only commenter to address these alternatives approved of two of them. The Commission has adopted one of these two alternatives, the pro rata option. Under this rule, the Commission will award tribal land bidding credits out of the amount by which net winning bids at the close of bidding exceed the reserve price(s) applicable to that auction. If this amount is insufficient to pay all of the tribal land bidding credits for which auction winners are eligible, then each eligible tribal land bidding credit applicant will receive a pro rata credit based on the credit the applicant would have received had the auction not been subject to a reserve price.

61. *Tribal land bidding credit rule for non-CSEA auctions.* The Commission sought comment in the *NPRM* on whether to extend the same or a similar approach as the one it selected for allocating tribal land bidding credits to auctions with a CSEA-mandated reserve price (or prices) to those non-CSEA auctions for which it established a reserve price or prices based on winning bids net of discounts. No commenter addressed this aspect of the issue. Believing that the pro rata approach the Commission had chosen for auctions with a CSEA-mandated reserve price would, in non-CSEA auctions, best allow both a speedy auction conclusion and an equitable allocation of available tribal land bidding credits among all qualified applicants, the Commission adopted a rule to extend, at Commission discretion, the pro rata approach to non-CSEA auctions with reserve prices.

62. *Default payment rule clarification.* Under 47 CFR 1.2104(g), a winning bidder that defaults or is disqualified after the close of an auction is subject to a default payment consisting of two parts—a deficiency payment and an additional payment. The deficiency payment is equal to the payment required for a withdrawn bid, i.e., the difference between the amount of the defaulted (or withdrawn) bid and the amount of a lower winning bid in the same or a subsequent auction. In the event that a bidding credit applies to any of the bids, the deficiency payment equals the difference between either the net defaulted bid and the subsequent net winning bid or the gross defaulted bid and the subsequent gross winning bid, whichever difference is less. The additional payment is equal to 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulting bidder's bid or the subsequent winning bid, whichever is less.

63. No deficiency payment is assessed when either the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the original defaulted bid. It is unclear from the existing rule whether, if there is a subsequent withdrawn bid equal to or exceeding the defaulted bid, the Commission must wait until there is a subsequent winning bid before calculating the additional payment. To clarify the rule, the Commission proposed that when, in a subsequent auction, there was a higher withdrawn bid on a license that corresponded to a defaulted license, the additional default payment would be determined as 3 percent (or 25 percent) of the defaulting bidder's bid. The Commission also proposed a further clarification of the additional payment rule for certain situations in which no deficiency payment is owed. The existing rule leaves unclear whether the additional payment should be based on the net defaulted bid or on the gross defaulted bid. Pursuant to the Commission's proposal, the additional payment in such a situation would be 3 (or 25) percent of the net defaulted bid amount. Having received no objections to these clarifications, the Commission adopted its proposals.

64. *Interim withdrawal and additional default payment rules.* When a license for which there has been a withdrawn bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is either subject to a higher bid or won in a subsequent auction. In such a case, under the Commission's existing rule, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment equal to 3 percent of the amount of its withdrawn bid, and this interim payment is applied toward any final bid withdrawal payment that is ultimately assessed. As noted in the previous paragraph, a winning bidder that defaults or is disqualified after the close of an auction is subject to a default payment consisting of a deficiency payment and an additional payment. Currently, the additional payment is calculated as 3 percent (or, in the case of defaults or disqualifications after the close of a package bidding auction, 25 percent) of the defaulting bidder's bid or the subsequent winning bid, whichever is less, except that no deficiency payment is assessed when either the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the original defaulted bid.

65. In an effort to deter improper withdrawals and defaults, both of which pose an ongoing threat to the integrity of the auctions process, the Commission proposed to set the upper limits on both the interim withdrawal payment and the additional default payment at 20 percent, with the specific percentage to be established by the Commission in advance of each auction. The two commenters that spoke to this issue, both endorsed the proposal. The Commission adopted the proposal, noting that the 3 to 20 percent range would allow it to use more than one percentage in an auction for either the interim withdrawal payment or the additional default payment, or both. The Commission did not alter the size of the 25 percent additional payment for defaults or disqualifications following combinatorial bidding auctions.

66. *Package bid and license apportionment.* In combinatorial (package) bidding, bidders may place single all-or-nothing bids on groups (or packages) of licenses. Thus, there are no identifiable bid amounts on the individual licenses composing packages of more than one license. Similarly, when the Commission reconfigures licenses, with respect to either geographic or spectral dimensions, following an initial auction, it may not be appropriate to compare bids on licenses before the reconfiguration to post-reconfiguation bids on corresponding licenses. However, there are several situations in which an individual bid amount is needed for one of the Commission's regulatory calculations, such as calculating a small business bidding credit, an unjust enrichment payment obligation related to such a credit, a tribal land bidding credit limit, or a withdrawal or default payment obligation. In some situations such as when determining withdrawal or default payment obligations, bids in different auctions must be compared. Accordingly, the Commission proposed to specify a method for apportioning bids among the individual licenses composing a package and/or among a license's component parts in advance of each auction that (a) used a combinatorial bidding design, (b) included spectrum previously subject to a combinatorial auction, or (c) included licenses that had been reconfigured following an initial auction.

67. The only commenter on this issue, fully supported the proposals, and the Commission adopted them with the following modification. Because any license, not just a reconfigured license, might at some point need to be apportioned in order to compare it to one or more other licenses or license components, the Commission decided that it would apportion a license among its component parts whenever it was necessary to compare bids on corresponding yet non-identical licenses.

68. *Broadcast construction permit rules.* The Commission's Part 1 competitive bidding rules provide that, unless otherwise specified by public notice, auction winners must pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline. In recent wireless spectrum auctions, winning bidders have been required to submit the balance of the net amount of their winning bids within ten business days after the deadline for submitting down payments. This procedure helps guard against defaults and bankruptcy filings that may tie up the availability of the defaulted licenses. Specific Part 73 and 74 rules, however, provide that winning bidders in broadcast service auctions must render their final payment for construction permits won through competitive bidding only after their long-form applications have been processed, any petitions to deny have been dismissed or denied, and the public notice announcing that broadcast construction permits are ready to be granted has been released. In order to provide consistency throughout the Commission's competitive bidding rules and help to ensure that only sincere, financially qualified applicants participate in competitive bidding, the Commission proposed to adopt for broadcast auctions the final payment procedures in its Part 1 competitive bidding rules.

69. The commenter discounting the Commission's concerns about the potential for bankruptcy filings to interfere with payment obligations, opposed the proposal. The commenter recommended that the Commission instead conform its Part 1 final payment rule to the payment procedures for broadcast auctions or, alternatively, require only ''a 50 percent down payment, rather than payment in full.'' The commenter argued that the Part 1 final payment rule is disproportionately burdensome to smaller carriers. Disagreeing with the commenter, the Commission adopted the rule as proposed. With particular regard to the effect on smaller carriers, the Commission noted, as it had in the *NPRM*, that winning bidders, including small businesses, have been able to comply with the Commission's new final payment procedure without difficulty. Accordingly, the Commission believes that, in broadcast auctions, winning bidders, regardless of size,

should be able to comply with this change with similar ease.

70. *Consortium exception to the designated entity and entrepreneur aggregation rule.* For purposes of determining whether an applicant or licensee is eligible for small business or broadband personal communications services (''PCS'') entrepreneur status, the Commission attributes to the applicant the gross revenues (and, when determining entrepreneur eligibility, the total assets) of the applicant's affiliates, its controlling interests, and the affiliates of its controlling interests, and aggregates these amounts with the applicant's own gross revenues (and total assets). However, under an exception to this aggregation rule, when an applicant or licensee is a consortium comprised exclusively of members eligible for small business bidding credits or broadband PCS entrepreneur status, or both, the gross revenues (and total assets) of the consortium members are not aggregated. The consortium exception has been seldom used, perhaps because of the absence of clear direction from the Commission as to how consortium members should be formally organized and how (and when) members should allocate and own the licenses they win. In order to provide additional guidance to those interested in taking advantage of the consortium exception and to reduce the likelihood of complications resulting from the exception's use, the Commission sought comment on three possible policy options for improving the pre- and post-auction procedures governing the exception. These options included, first, requiring each member of a consortium to file an individual long-form application for its respective, mutually agreed-upon license(s); second, requiring two or more consortium members seeking to be licensed together to form a legal business entity, such as a corporation, partnership, or limited liability company; and, third, not considering such a newly formed legal business entity a consortium for purposes of evaluating its eligibility for small business or entrepreneur status at the long-form application stage. There was no opposition to these options. Believing that they will promote use of the consortium exception, the Commission adopted all three options. The Commission also clarified that the consortium exception, and, indeed, the consortium structure, is available only to short-form applicants seeking a size-based benefit for auction participation and not to prospective lessees, assignees, or transferees.

71. No comments were filed in response to the IRFA; however, comments addressing small business concerns with regard to changes in the payment rules for broadcast auctions and changes in the consortium exception to the designated entity and entrepreneur aggregation rule were filed in response to the *NPRM.* The commenter opposed the proposal to conform the Part 73 and Part 74 payment rules applicable to broadcast construction permits won at auction to the final payment procedures in Part 1 of the Commission's rules. The commenter argued that the Part 1 final payment rule, which permits the Commission to require full license payment before being prepared to grant the licenses, is disproportionately burdensome to smaller carriers. Moreover, winning bidders, including small businesses, have been able to comply with the Part 1 final payment procedure without difficulty. The Commission explained that it was in the public interest to require final payments soon after the close of an auction in that such a rule allowed the Commission to limit the risk that bankruptcy filings might interfere with payment obligations and well as with the provision of service to the public.

72. With regard to modifying the consortium exception, a commenter warned that such changes would not eliminate the adverse consequences of package bidding for small bidders, and another commenter, in reply comments, agreed. Neither of the commenters, however, opposed adoption of the rule changes.

73. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small organization, small business, and small governmental jurisdiction. The term small business has the same meaning as the term small business concern under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

74. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term small governmental jurisdiction is defined as governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

75. The changes and additions to the Commission's Part 1 rules adopted in the Report and Order are of general applicability to all services, applying to all entities of any size that apply to participate in Commission auctions. The changes adopted in the *Report and Order* to parts 73 and 74 of the Commission's rules would apply to all entities of any size that win broadcast construction permits in future competitive bidding. Accordingly, this FRFA provides a general analysis of the impact of the proposals on small businesses rather than a service-by-service analysis. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date, 1973 out of a total of 3303 qualified bidders either have claimed eligibility for small business bidding credits or have self-reported their status as small businesses as that term has been defined under rules adopted by the Commission for specific services. In addition, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

76. Modifying the tribal land bidding credit rule adopted in the *Report and Order* is the least burdensome of all methods contemplated for complying with the CSEA revenue requirement or implementing a non-CSEA reserve price while permitting both a speedy auction conclusion and an equitable allocation of available tribal land bidding credits among all qualified applicants.

77. The increase in the limits on the interim withdrawal payment and the additional default payment from 3

percent to 20 percent each will, to the extent that the respective payment has been set at more than 3 percent, increase the financial burden on entities of any size that withdraw a bid or default on a payment obligation. However, by refraining from withdrawing bids and defaulting on payment obligations, entities will be able to avoid entirely such increased financial burden.

78. Adopting for broadcast auctions the final payment procedures of the Commission's Part 1 competitive bidding rules might require future winners of broadcast construction permits, both large and small, to submit their final payments for such permits sooner than would have been required in the absence of the proposed rule changes. License winners of all sizes in all recent non-broadcast auctions have, however, been able to comply with the Part 1 procedure without difficulty.

79. Requiring each member of a consortium to file an individual long-form application for its respective, mutually agreed-upon license(s) or requiring two or more consortium members seeking to be licensed together to form a legal business entity might increase the reporting requirements and/or regulatory compliance burdens on auction applicants using the consortium exception, all of which will be small businesses or broadband PCS entrepreneurs. However, adopting these requirements clarifies parties' obligations without necessarily increasing them and is expected to increase use of the consortium exception, thus increasing the availability of small business bidding credits and entrepreneur eligibility.

80. None of the other rules adopted in the *Report and Order* will alter reporting, recordkeeping, or other compliance requirements.

81. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule or any part thereof for small entities. The Commission has considered the economic impact on small entities of the rule changes adopted in the *Report and Order* and has taken steps to minimize the burdens on small entities.

82. The Commission sought comment on several options for modifying its tribal land bidding credit rule in order to determine which of the options would best ensure that the Commission would be able to comply with CSEA's reserve price requirement while at the same time preserving the availability of tribal land bidding credits in auctions subject to CSEA. The Commission selected the pro rata option, described above, as the best method of equitably apportioning tribal land bidding credits among the largest number of qualified applicants, while still allowing a speedy determination of whether the CSEA reserve price had been met in auctions of eligible frequencies.

83. Adoption of the increased limits for interim withdrawal payments and additional default payments is expected to benefit small entities more than it is expected to burden them. For example, the rule change providing the Commission with the option of increasing the size of the interim withdrawal payment is intended to discourage strategic withdrawals. Such bid withdrawals can have a significant adverse effect on the competitiveness of small entities in the auctions process. Moreover, to the extent that the increase in the additional default payment encourages bidders to realistically assess in advance their ability to pay for their bids, a larger payment requirement will help deter bidders from placing bids they cannot afford.

84. The Commission believes that adopting the modifications to its payment rules for broadcast construction permits to conform to them to the rules for non-broadcast auctions will provide consistency throughout its competitive bidding rules and promote its objective that only sincere, financially qualified applicants participate in competitive bidding. The Commission further believes that providing greater certainty to all winning bidders regarding when final payment is be due will also benefit them as they compete with other sincere bidders that have also secured the financing necessary to participate in an auction and pay for their licenses. The Commission has observed that in wireless spectrum auctions, winning bidders, including small businesses, have been able to comply with the Commission's new final payment procedure without difficulty, and it therefore surmises that winning bidders of all sizes in broadcast auctions will be able to comply with this change with similar ease.

85. The Commission has adopted modifications and clarifications to the consortium exception to the small business and entrepreneur aggregation rule with the goal of promoting wider use of the exception and thus of increasing the competitive bidding opportunities available to small entities facing capital formation constraints.

86. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

87. Accordingly, *it is ordered* that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), the *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures Report and Order* is hereby ADOPTED, and 47 CFR 1.2103, 1.2104, 73.3571, 73.3573, 73.5003, 73.5006, 74.1233 of the Commission's rules, 47 CFR 1.2103, 1.2104, 73.3571, 73.3573, 73.5003, 73.5006, 74.1233, are amended as set forth in Appendix A of the *Report and Order,* effective 60 days after publication in the **Federal Register**.

88. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

89. *It is further ordered* that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.131(c) and 0.331, the Chief of the Wireless Telecommunications Bureau *is granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein, including the authority to seek comment on and set forth mechanisms relating to the day-to-day conduct of specific auctions.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Auctions, Licensing, Telecommunications.

47 CFR Parts 73 and 74

Auctions, Licensing, Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the FCC amends parts 1, 73, and 74 of Title 47 of the Code of Federal Regulations to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Amend § 1.2103 by adding new paragraphs (b)(1) and (b)(2) to read as follows:

§ 1.2103 Competitive bidding design options.

* * * * *

(b) * * *

(1) *Apportioned package bid.* The apportioned package bid on a license is an estimate of the price of an individual license included in a package of licenses in an auction with combinatorial (package) bidding. Apportioned package bids shall be determined by the Commission according to a methodology it establishes in advance of each auction with combinatorial bidding.

(2) *Substitute for bid amount.* The apportioned package bid on a license included in a package shall be used in place of the amount of an individual bid on that license when the bid amount is needed to determine the size of a designated entity bidding credit (see § 1.2110(f)(1) and (f)(2)), a new entrant bidding credit (see § 73.5007), a bid withdrawal or default payment obligation (see § 1.2104(g)), a tribal land bidding credit limit (see § 1.2110(f)(3)(iv)), or a size-based bidding credit unjust enrichment payment obligation (see § 1.2111(d), (e)(2) and (e)(3)), or for any other determination required by the Commission's rules or procedures.

* * * * *

■ 3. Amend § 1.2104 by revising paragraphs (c), (g)(1), and (g)(2), removing paragraph (g)(3), and adding paragraph (j) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(c) *Reserve Price.* The Commission may establish a reserve price or prices, either disclosed or undisclosed, below which a license or licenses subject to auction will not be awarded. For any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) requiring the recovery of estimated relocation costs, the Commission will establish a reserve price or prices pursuant to which the total cash proceeds from any auction of eligible frequencies shall equal at least 110 percent of the total estimated relocation costs provided to the Commission by the National Telecommunications and Information Administration pursuant to section 113(g)(4) of such Act (47 U.S.C. 923(g)(4)).

* * * * *

(g) * * *

(1) *Bid withdrawal prior to close of auction.* A bidder that withdraws a bid during the course of an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). In the event that a bidding credit applies to any of the bids, the bid withdrawal payment is either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. In the case of multiple bid withdrawals on a single license, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn in the same or subsequent auction(s). In the event that a license for which there have been withdrawn bids subject to withdrawal payments is not won in the same auction, those bidders for which a final withdrawal payment cannot be calculated will be assessed an interim bid withdrawal payment of between 3 and 20 percent of their withdrawn bids, according to a percentage (or percentages) established by the Commission in advance of the auction. The interim bid withdrawal payment will be applied toward any final bid withdrawal payment that will be assessed at the close of a subsequent auction of the corresponding license.

Example 1 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, Bidder B places a bid of $90 and withdraws. In that same auction, Bidder C wins the license at a bid of $95. Withdrawal payments are assessed as follows: Bidder A owes $5 ($100–$95). Bidder B owes nothing.

Example 2 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, Bidder B places a bid of $95 and withdraws. In that same auction, Bidder C wins the license at a bid of $90. Withdrawal payments are assessed as follows: Bidder A owes $5 ($100–$95). Bidder B owes $5 ($95–$90).

Example 3 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, in that same auction, Bidder B places a bid of $90 and withdraws. In a subsequent auction, Bidder C places a bid of $95 and withdraws. Bidder D wins the license in that auction at a bid of $80. Assuming that the Commission established an interim bid withdrawal payment of 3 percent in advance of the first auction, withdrawal payments are assessed as follows: At the end of the first auction, Bidder A and Bidder B are each assessed an interim withdrawal payment equal to 3 percent of their withdrawn bids pending Commission assessment of a final withdrawal payment (Bidder A would owe 3% of $100, or $3, and Bidder B would owe 3% of $90, or $2.70). At the end of the second auction, Bidder A would owe $5 ($100–$95) less the $3 interim withdrawal payment for a total of $2. Because Bidder C placed a subsequent bid that was higher than Bidder B's $90 bid, Bidder B would owe nothing. Bidder C would owe $15 ($95–$80).

(2) *Default or disqualification after close of auction.* A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the winning bid at the close of an auction. If a bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to a default payment consisting of a deficiency payment, described in § 1.2104(g)(2)(i), and an additional payment, described in § 1.2104(g)(2)(ii) and (g)(2)(iii). The default payment will be deducted from any upfront payments or down payments that the defaulting bidder has deposited with the Commission.

(i) *Deficiency payment.* The deficiency payment will equal the difference between the amount of the defaulted bid and the amount of the winning bid in a subsequent auction, so long as there have been no intervening withdrawn bids that equal or exceed the defaulted bid or the subsequent winning bid. If the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the defaulted bid, no deficiency payment will be assessed. If there have been intervening subsequent withdrawn bids that are lower than the defaulted bid and higher than the subsequent winning bid, but no intervening withdrawn bids that equal or exceed the defaulted bid, the

deficiency payment will equal the difference between the amount of the defaulted bid and the amount of the highest intervening subsequent withdrawn bid. In the event that a bidding credit applies to any of the applicable bids, the deficiency payment will be based solely on net bids or solely on gross bids, whichever results in a lower payment.

(ii) *Additional payment—applicable percentage.* When the default or disqualification follows an auction without combinatorial bidding, the additional payment will equal between 3 and 20 percent of the applicable bid, according to a percentage (or percentages) established by the Commission in advance of the auction. When the default or disqualification follows an auction with combinatorial bidding, the additional payment will equal 25 percent of the applicable bid.

(iii) *Additional payment—applicable bid.* When no deficiency payment is assessed, the applicable bid will be the net amount of the defaulted bid. When a deficiency payment is assessed, the applicable bid will be the subsequent winning bid, using the same basis—i.e., net or gross—as was used in calculating the deficiency payment.

* * * * *

(j) *Bid apportionment.* The Commission may specify a method for apportioning a bid among portions of the license (i.e., portions of the license's service area or bandwidth, or both) when necessary to compare a bid on the original license or portions thereof with a bid on a corresponding reconfigured license for purposes of the Commission's rules or procedures, such as to calculate a bid withdrawal or default payment obligation in connection with the bid.

■ 4. Amend § 1.2107 by adding paragraph (g) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(g)(1)(i) A consortium participating in competitive bidding pursuant to § 1.2110(b)(3)(i) that is a winning bidder may not apply as a consortium for licenses covered by the winning bids. Individual members of the consortium or new legal entities comprising individual consortium members may apply for the licenses covered by the winning bids of the consortium. An individual member of the consortium or a new legal entity comprising two or more individual consortium members applying for a license pursuant to this provision shall be the applicant for purposes of all related requirements and filings, such as filing FCC Form 602. However, the members filing separate long-form applications shall all use the consortium's FCC Registration Number (''FRN'') on their long-form applications. An application by an individual consortium member or a new legal entity comprising two or more individual consortium members for a license covered by the winning bids of the consortium shall not constitute a major modification of the application or a change in control of the applicant for purposes of Commission rules governing the application.

(ii) Within ten business days after release of the public notice announcing grant of a long-form application, that licensee must update its filings in the Commission's Universal Licensing System (''ULS'') to substitute its individual FRN for that of the consortium.

(2) The continuing eligibility for size-based benefits, such as size-based bidding credits or set-aside licenses, of a newly formed legal entity comprising two or more individual consortium members will be based on the size of such newly formed entity as of the filing of its long-form application.

(3) Members of a consortium intending to partition or disaggregate license(s) among individual members or new legal entities comprising two or more individual consortium members must select one member or one new legal entity comprising two or more individual consortium members to apply for the license(s). The applicant must include in its applications, as part of the explanation of terms and conditions provided pursuant to § 1.2107(d), the agreement of the applicable parties to partition or disaggregate the relevant license(s). Upon grant of the long-form application for that license, the licensee must then apply to partition or disaggregate the license pursuant to those terms and conditions.

■ 5. Amend § 1.2110 by revising paragraphs (b)(3)(i), (f)(2) introductory text, (f)(3)(ii)(B), and (f)(3)(ii)(C), redesignating paragraphs (f)(3)(v) through (f)(3)(vii) as paragraphs (f)(3)(vi) through (f)(3)(viii), adding a new paragraph (f)(3)(v), and by revising newly designated paragraphs (f)(3)(vi) and (f)(3)(viii) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) * * *

(3) * * *

(i) *Consortium.* Where an applicant to participate in bidding for Commission licenses or permits is a consortium either of entities eligible for size-based bidding credits an/or for closed bidding based on gross revenues and/or total assets, the gross revenues and/or total assets of each consortium member shall not be aggregated. Each consortium member must constitute a separate and distinct legal entity to qualify for this exception. Consortia that are winning bidders using this exception must comply with the requirements of § 1.2107(g) of this chapter as a condition of license grant.

* * * * *

(f) * * *

(2) *Size of bidding credits.* A winning bidder that qualifies as a small business may use the following bidding credits corresponding to its respective average gross revenues for the preceding 3 years:

* * * * *

(3) * * *

(ii) * * *

(B) In addition, within 180 days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the construction requirements set forth in paragraph (f)(3)(vii) of this section and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(C) If the winning bidder fails to submit the required certifications within the 180-day period, the bidding credit will not be awarded, and the winning bidder must pay any outstanding balance on its winning bid amount.

* * * * *

(v) *Bidding credit limit in auctions subject to specified reserve price(s).* In any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2) with reserve price(s) and in any auction with reserve price(s) in which the Commission specifies that this provision shall apply, the aggregate amount available to be awarded as bidding credits for serving qualifying tribal land with respect to all licenses subject to a reserve price shall not exceed the amount by which winning bids for those licenses net of discounts the Commission takes into account when reporting net bids in the Public Notice closing the auction exceed the applicable reserve price. If the total amount that might be awarded as tribal land bidding credits based on applications for all licenses subject to the reserve price exceeds the aggregate amount available to be awarded, the Commission will award eligible applicants a pro rata tribal land bidding credit. The Commission may determine at any time that the total amount that

might be awarded as tribal land bidding credits is less than the aggregate amount available to be awarded and grant full tribal land bidding credits to relevant applicants, including any that previously received pro rata tribal land bidding credits. To determine the amount of an applicant's pro rata tribal land bidding credit, the Commission will multiply the full amount of the tribal land bidding credit for which the applicant would be eligible excepting this limitation ((f)(3)(v)) of this section by a fraction, consisting of a numerator in the amount by which winning bids for licenses subject to the reserve price net of discounts the Commission takes into account when reporting net bids in the Public Notice closing the auction exceed the reserve price and a denominator in the amount of the aggregate maximum tribal land bidding credits for which applicants for such licenses might have qualified excepting this limitation ((f)(3)(v)) of this section. When determining the aggregate maximum tribal land bidding credits for which applicants for such licenses might have qualified, the Commission shall assume that any applicant seeking a tribal land bidding credit on its long-form application will be eligible for the largest tribal land bidding credit possible for its bid for its license excepting this limitation ((f)(3)(v)) of this section. After all applications seeking a tribal land bidding credit with respect to licenses covered by a reserve price have been finally resolved, the Commission will recalculate the pro rata credit. For these purposes, final determination of a credit occurs only after any review or reconsideration of the award of such credit has been concluded and no opportunity remains for further review or reconsideration. To recalculate an applicant's pro rata tribal land bidding credit, the Commission will multiply the full amount of the tribal land bidding credit for which the applicant would be eligible excepting this limitation ((f)(3)(v)) of this section by a fraction, consisting of a numerator in the amount by which winning bids for licenses subject to the reserve price net of discounts the Commission takes into account when reporting net bids in the Public Notice closing the auction exceed the reserve price and a denominator in the amount of the aggregate amount of tribal land bidding credits for which all applicants for such licenses would have qualified excepting this limitation ((f)(3)(v)) of this section.

(vi) *Application of credit.* A pending request for a bidding credit for serving qualifying tribal land has no effect on a bidder's obligations to make any auction payments, including down and final payments on winning bids, prior to award of the bidding credit by the Commission. Tribal land bidding credits will be calculated and awarded prior to license grant. If the Commission grants an applicant a pro rata tribal land bidding credit prior to license grant, as provided by paragraph (f)(3)(v) of this section, the Commission shall recalculate the applicant's pro rata tribal land bidding credit after all applications seeking tribal land biddings for licenses subject to the same reserve price have been finally resolved. If a recalculated tribal land bidding credit is larger than the previously awarded pro rata tribal land bidding credit, the Commission will award the difference.

* * * * *

(viii) *Performance penalties.* If a recipient of a bidding credit under this section fails to provide the post-construction certification required by paragraph (f)(3)(vii) of this section, then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license. Failure to repay the bidding credit amount and interest within the required time period will result in automatic termination of the license without specific Commission action. Repayment of bidding credit amounts pursuant to this provision shall not affect the calculation of amounts available to be awarded as tribal land bidding credits pursuant to (f)(3)(v) of this section.

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 6. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 7. Amend § 73.3571 by revising paragraph (h)(4)(ii) to read as follows:

§ 73.3571 Processing AM broadcast station applications.

* * * * *

(h) * * *

(4) * * *

(ii) Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a). Long-form construction permit applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees, and if the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served.

* * * * *

■ 8. Amend § 73.3573 by revising paragraph (f)(5)(ii) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(f) * * *

(5) * * *

(ii) Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a) of this chapter. Long-form construction permit applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees, and if the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served.

* * * * *

■ 9. Section 73.5003 is revised to read as follows:

§ 73.5003 Submission of full payments.

Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a) of this chapter. If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due in accordance with § 1.2109(a) of this chapter. Broadcast construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees and in accordance with the provisions of this section.

■ 10. Amend § 73.5006 by revising paragraph (d) to read as follows:

§ 73.5006 Filing of petitions against long-form applications.

* * * * *

(d) Broadcast construction permits will be granted by the Commission only if the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, and after full and timely payment of winning bids and any applicable late fees. See 47 CFR 73.5003. Construction of broadcast stations shall not commence until the grant of such permit or license to the winning bidder and only after full and timely payment of winning bids and any applicable late fees.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 11. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 12. Amend § 74.1233 by revising paragraph (d)(5)(ii) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(d) * * *

(5) * * *

(ii) Winning bidders are required to pay the balance of their winning bids in a lump sum prior to the deadline established by the Commission pursuant to § 1.2109(a) of this chapter. Long-form construction permit applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Construction permits will be granted by the Commission only after full and timely payment of winning bids and any applicable late fees, and if the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served. If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due in accordance with § 1.2109(a) of this chapter. Construction of the FM translator station shall not commence until the grant of such permit to the winning bidder and only after full and timely payment of winning bids and any applicable late fees.

* * * * *

[FR Doc. 06–1100 Filed 2–6–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Addition of White Abalone and the United States Distinct Vertebrate Population Segment of the Smalltooth Sawfish to the List of Endangered and Threatened Wildlife; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the Fish and Wildlife Service (Service), published a final rule to add two marine taxa to the List of Endangered and Threatened Wildlife in accordance with the Endangered Species Act of 1973, as amended, on November 16, 2005. For one of the two taxa, the white abalone (*Haliotis sorenseni*), we incorrectly published in the List of Endangered and Threatened Wildlife at § 17.11(h) that the species was Threatened, when it is actually listed as Endangered. We now correct that error.

EFFECTIVE DATE: November 16, 2005.

FOR FURTHER INFORMATION CONTACT: Marjorie Nelson, Branch of Listing, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 420, Arlington, Virginia 22203 (703–358–2105).

SUPPLEMENTARY INFORMATION: In the November 16, 2005, **Federal Register** (70 FR 69464), we published a final rule to add two marine taxa to the List of Endangered and Threatened Wildlife (List) in accordance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). For one of the two taxa, the white abalone (*Haliotis sorenseni*), we incorrectly indicated in the List at § 17.11(h) that this species was Threatened, when we should have indicated that it was Endangered. We now correct that error. This correction is typographical in nature and involves no substantial changes to the substance in the contents of our prior final rule.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Correction

PART 17—[CORRECTED]

■ For reasons set forth in the preamble, we make the following correcting amendment to 50 CFR part 17:

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11 by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and Threatened Wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CLAMS							
*	*	*	*	*	*	*	
Abalone, white	*Haliotis sorenseni* ...	North America (West Coast from Point Conception, CA, U.S.A., to Punta Abreojos, Baja California, Mexico).	NA	E	748	NA	NA
*	*	*	*	*	*	*	

Dated: January 23, 2006.

Sara Prigan,

Fish and Wildlife Service Federal Register Liaison.

[FR Doc. 06–1081 Filed 2–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 020106A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 Feet (18.3 Meters) Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters (m)) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2006 Pacific cod allowable catch (TAC) of Pacific cod specified for catcher vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 3, 2006, though 1200 hrs, A.l.t., June 10, 2006.

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

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

The A season allowance of the 2006 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI is 8,234 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). See § 679.20(c)(3)(iii), (c)(5), (a)(7)(i)(A), and (a)(7)(i)(C)(*1*)(*iv*).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2006 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI. Vessels less than 60 feet (18.3 m) LOA using pot gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI.

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

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

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

Dated: February 1, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–1107 Filed 2–2–06; 2:06 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 25
Tuesday, February 7, 2006

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113365–04 and REG–209619–93]

RIN 1545–BD19 and RIN 1545–AR82

Escrow Accounts, Trusts, and Other Funds Used During Deferred Exchanges of Like-Kind Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: This document withdraws in part a notice of proposed rulemaking under section 468B of the Internal Revenue Code (Code) relating to the taxation and reporting of income earned on qualified settlement funds and certain other funds, trusts, and escrow accounts. This document also contains proposed regulations under section 468B regarding the taxation of the income earned on escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property, and proposed regulations under section 7872 regarding below-market loans to facilitators of these exchanges. The proposed regulations affect taxpayers that engage in deferred like-kind exchanges and escrow holders, trustees, qualified intermediaries, and others that hold funds during deferred like-kind exchanges. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 8, 2006. Outlines of topics to be discussed at the public hearing scheduled for June 6, 2006, at 10 a.m. must be received by May 16, 2006.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–113365–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–113365–04), courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–113365–04). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 468B, A. Katharine Jacob Kiss, (202) 622–4930; concerning the proposed regulations under section 7872, David Silber, (202) 622–3930; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws § 1.468B–6 of a notice of proposed rulemaking (REG–209619–93) relating to the taxation of qualified settlement funds and certain other escrow accounts, trusts, and funds under section 468B(g) that was published in the **Federal Register** (64 FR 4801) on February 1, 1999 (the 1999 proposed regulations). This document contains new proposed regulations that provide rules under sections 468B(g) and 7872 regarding the taxation of qualified escrow accounts, qualified trusts, and other escrow accounts, trusts, or funds used during section 1031 deferred exchanges of like-kind property.

Section 468B was added by section 1807(a)(7)(A) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2814) and was amended by section 1018(f) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3582). Section 468B(g) provides that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax and that the Secretary shall prescribe regulations providing for the taxation of such accounts or funds whether as a grantor trust or otherwise.

Section 7872 was added to the Internal Revenue Code by the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 494). Section 7872 provides rules for certain direct and indirect below-market loans enumerated in section 7872(c)(1). The legislative history of section 7872 states that the term loan is to be interpreted broadly for purposes of section 7872, potentially encompassing any transfer of money that provides the transferor with a right to repayment. See H.R. Rep. 98–861, 98th Cong., 2d Sess. 1018 (1984).

In general, section 7872 recharacterizes a below-market loan (a loan in which the interest rate charged is less than the applicable Federal rate (AFR)) as an arm's-length transaction in which the lender makes a loan to the borrower at the AFR, coupled with an imputed payment or payments to the borrower sufficient to fund all or part of the interest that the borrower is treated as paying on that loan. The amount, timing, and characterization of the imputed payments to the borrower under a below-market loan depend on the relationship between the borrower and the lender and whether the loan is characterized as a demand loan or a term loan.

Written comments responding to the 1999 proposed regulations under section 468B were received. A public hearing was held on May 12, 1999. After consideration of all the comments, portions of the 1999 proposed regulations are adopted in a Treasury decision published elsewhere in this issue of the **Federal Register**. The rules relating to the taxation of qualified escrow accounts, qualified trusts, and other escrow accounts, trusts, or funds used during deferred exchanges of like-kind property under section 1031 have been substantially revised and are reproposed in this notice of proposed rulemaking. All comments received in connection with the 1999 proposed regulations will continue to be considered in finalizing these proposed regulations.

Explanation of Provisions and Summary of Comments

1. Overview

Section 1.468B–6 of the 1999 proposed regulations provides rules for the current taxation of income of a qualified escrow account or qualified trust used in a section 1031 deferred

exchange of like-kind property. The 1999 proposed regulations provide that, in general, the taxpayer (the transferor of the property) is the owner of the assets in a qualified escrow account or qualified trust and must take into account all items of income, deduction, and credit (including capital gains and losses) of the qualified escrow account or qualified trust. However, if, under the facts and circumstances, a qualified intermediary or transferee has the beneficial use and enjoyment of the assets, then the qualified intermediary or transferee is the owner of the assets in the qualified escrow account or qualified trust and must take into account all items of income, deduction, and credit (including capital gains and losses) of the qualified escrow account or qualified trust. The 1999 proposed regulations further provide that, if a qualified intermediary or transferee is the owner of the assets transferred, the transaction may be characterized as a below-market loan from the taxpayer to the owner to which section 7872 may apply.

The comments received reflect differing interpretations of the 1999 proposed regulations and disagreement on the proper rules for taxing these transactions. The comments address three major issues (1) whether § 1.468B–6 should apply to all funds and accounts maintained by qualified intermediaries to facilitate deferred like-kind exchanges as well as to qualified escrow accounts and qualified trusts (the scope of the rules); (2) whether the regulations should adopt a per se rule in place of the facts and circumstances ownership test; and (3) whether these arrangements may be properly characterized as loans. Other comments requested clarification of the information reporting provisions.

2. Scope of the Rule

Section 1.1031(k)–1(g) of the Income Tax Regulations provides safe harbors that allow taxpayers to engage in deferred exchanges of like-kind property and to avoid being determined to be in actual or constructive receipt of the proceeds from the sale of the taxpayers' relinquished property during the exchange period. The proceeds may be held in a qualified escrow account or qualified trust or may be held by a qualified intermediary. The 1999 proposed regulations address the treatment of only qualified escrow accounts and qualified trusts whether or not used by a qualified intermediary, and do not address accounts or funds used by a qualified intermediary that are not qualified escrow accounts or qualified trusts.

Commentators on the 1999 proposed regulations stated that qualified intermediaries may maintain funds in accounts that are not qualified escrow accounts or qualified trusts, including accounts in which the proceeds of a disposition of relinquished property are commingled with other assets, such as the proceeds from deferred like-kind exchanges entered into by other taxpayers. Some commentators recommended applying the rules of § 1.468B–6 to income earned on amounts held in any escrow account, trust, or other account or fund used by a qualified intermediary in connection with a deferred like-kind exchange. They suggested that the limited scope of the 1999 proposed regulations may result in uncertainty and inconsistent treatment of the different types of accounts that may be used for similar purposes in deferred like-kind exchanges.

Other commentators took the contrary position, that is, that applying the rules proposed in 1999 to accounts other than qualified escrow accounts or qualified trusts is inappropriate. One commentator stated that at least one party (either the taxpayer or the qualified intermediary) is taxed on the income earned on every account used by a qualified intermediary. Therefore, the commentator reasoned, because there are no instances of homeless income (income that is not currently being taxed because the identity of the taxpayer has yet to be determined), applying the proposed regulations to escrow accounts or funds that are not qualified escrow accounts or qualified trusts would not advance the purpose of the statute. Another commentator opined that section 468B was intended to apply only to segregated accounts.

Other commentators urged that the 1999 proposed regulations be finalized without change or that the appropriate rules for taxation of accounts used in deferred like-kind exchanges other than qualified escrow accounts and qualified trusts should be considered at a later time.

The IRS and the Treasury Department have concluded that the same rules should apply to all escrow accounts, trusts, and funds used during deferred exchanges to provide certainty and consistency of treatment. Additionally, the IRS and the Treasury Department have concluded that the rules should apply equally to escrow accounts, trusts, and funds used during exchanges that are intended to qualify as like-kind but fail to satisfy a requirement of section 1031. Therefore, these regulations propose to apply to *exchange funds,* defined as the relinquished property (if held in kind), cash, or cash equivalent that secures an obligation of a transferee to transfer replacement property, or the proceeds from a transfer of relinquished property, held in a qualified escrow account, qualified trust, or other escrow account, trust, or fund during a deferred exchange.

3. Facts and Circumstances Ownership Test

Under the 1999 proposed regulations, the taxpayer generally is treated as the owner of a qualified escrow account or qualified trust and is taxed on the income. If, under the facts and circumstances, however, a qualified intermediary or transferee has the beneficial use and enjoyment of the assets in the account, the qualified intermediary or transferee is the owner and is taxed on the income. The 1999 proposed regulations provide three factors that will be considered in addition to other relevant facts and circumstances in determining whether the transferee or qualified intermediary, rather than the taxpayer, has the beneficial use and enjoyment of the assets of the account or trust (1) who enjoys the use of the earnings of the account or trust; (2) who receives the benefit from appreciation in the value of the assets; and (3) who bears any risk of loss from a decline in the value of the assets. The 1999 proposed regulations include two examples that conclude that the taxpayer is the owner of the assets if the income from a qualified escrow account or qualified trust is paid to the qualified intermediary or transferee as compensation for services performed for the taxpayer. See *Old Colony Trust* v. *Commissioner,* 279 U.S. 716 (1929).

Some commentators recommended that the facts and circumstances test be eliminated and that the regulations provide a per se rule that the taxpayer must always take into account all items of income, deduction, and credit (including capital gains and losses) of the exchange funds in computing the taxpayer's income tax liability. They suggested that the taxpayer always owns the exchange funds and any income earned on the funds that is retained by the qualified intermediary constitutes compensation to the qualified intermediary for services rendered to the taxpayer in facilitating the deferred like-kind exchange. Therefore, consistent with the principles of *Old Colony Trust,* the taxpayer should be taxed on all the earnings in all cases.

Other commentators urged that the facts and circumstances test should be retained. They stated that like-kind exchanges are often structured so that a

qualified intermediary has all the benefits and burdens of ownership of the exchange funds and that, in those circumstances, a qualified intermediary is the owner of the assets under general tax principles. These commentators explained that qualified intermediaries frequently charge separately stated fees that are the same if the earnings are paid to the taxpayer or retained by the qualified intermediary, indicating, they asserted, that the qualified intermediary's retention of the income is not properly characterized as compensation for services. These commentators further suggested, therefore, that in appropriate cases the qualified intermediary is the actual owner of the assets and the *Old Colony Trust* doctrine is inapplicable. These commentators also recommended that the rules should be sufficiently broad to permit parties to deferred like-kind exchanges flexibility in structuring the transactions, for example in the disposition of the income earned and in the use of commingled rather than segregated accounts.

A commentator recommended modifying the ownership rule to allow the allocation of the tax liability among the parties to the exchange and the qualified intermediary to the extent that those parties actually share the income earned on a qualified escrow account or qualified trust.

To enhance administrability, provide greater certainty, and ensure consistent treatment of taxpayers, these proposed regulations eliminate the facts and circumstances ownership test and propose specific rules that determine whether the income of an escrow account, trust, or fund used in a deferred like-kind exchange is taxed to the taxpayer or to an exchange facilitator, which is a qualified intermediary, transferee, or other party that holds the exchange funds. These rules are discussed further below.

Because the ownership test has been eliminated, these proposed regulations also eliminate the requirement in the 1999 proposed regulations that the parties provide a statement to the escrow holder or trustee when the taxpayer is not the owner of the assets.

4. Loan Treatment

One commentator argued that the treatment of a qualified intermediary as acquiring the relinquished property under the section 1031 regulations applies solely for purposes of section 1031. This commentator suggested that proceeds from the sale of the relinquished property in a deferred exchange are properly characterized in one of only two ways: (1) The taxpayer owns the funds and is taxed on the earnings; or (2) under section 7872, the taxpayer is treated as lending the funds to the qualified intermediary, in which case the qualified intermediary (or exchange facilitator) owns the funds and is treated as paying interest on the loan. The commentator also urged that, for reasons of administrative convenience, the parties should be permitted to elect either characterization and the rules should apply prospectively.

Other commentators stated that, if a qualified intermediary has the benefits and burdens of ownership, the funds are owned by the qualified intermediary and not the taxpayer, and therefore could not be loaned by the taxpayer. Because the taxpayer is deemed not to have actual or constructive receipt of the exchange funds under the rules of § 1.1031(k)–1, these commentators reasoned that a taxpayer cannot lend assets it does not possess.

The IRS and the Treasury Department agree with the comment that exchange funds held by exchange facilitators in connection with deferred like-kind exchanges are properly characterized either as the taxpayer's funds or as loans from the taxpayer to the qualified intermediary or other exchange facilitator. Characterizing the exchange funds as having been loaned is consistent with the broad definition of the term loan in the legislative history of section 7872. The provisions of § 1.1031(k)–1, stating that the taxpayer is deemed to not have actual or constructive receipt of the exchange funds if the safe harbors apply, do not preclude loan treatment. These rules permit taxpayers to engage in like-kind exchanges on a deferred basis but are not statements of general tax principles. See § 1.1031–1(n).

Therefore, these proposed regulations provide that exchange funds are treated, as a general rule, as loaned by a taxpayer to an exchange facilitator, and the exchange facilitator takes into account all items of income, deduction, and credit (including capital gains and losses). If, however, the escrow agreement, trust agreement, or exchange agreement specifies that all the earnings attributable to exchange funds are payable to the taxpayer, the exchange funds are not treated as loaned from the taxpayer to the exchange facilitator, and the taxpayer takes into account all items of income, deduction, and credit (including capital gains and losses). If an exchange facilitator commingles exchange funds with other funds (for example, for investment purposes), all the earnings attributable to the exchange funds are treated as paid to the taxpayer if the exchange facilitator pays the taxpayer all the earnings of the commingled account that are allocable on a pro-rata basis (using a reasonable method that takes into account the time that the exchange funds are in the commingled account, actual rate or rates of return, and the respective principal balances) to the taxpayer's exchange funds.

Payments from the exchange funds, or from the earnings attributable to the exchange funds, for the taxpayer's transactional expenses are treated as first paid to the taxpayer and then paid by the taxpayer to the recipient. Transactional expenses include the costs of land surveys, appraisals, title examinations, termite inspections, transfer taxes, and recording fees. An exchange facilitator's fee is a transactional expense only if the escrow agreement, trust agreement, or exchange agreement, as applicable, provides that (1) the amount of the fee payable to the exchange facilitator is fixed on or before the date of the transfer of the relinquished property by the taxpayer (either by stating the fee as a fixed dollar amount in the agreement or determining the fee by a formula, the result of which is known on or before the transfer of the relinquished property by the taxpayer), and (2) the amount of the fee is payable by the taxpayer regardless of whether the earnings attributable to the exchange funds are sufficient to pay the fee.

5. Treatment Under Section 7872 of Loans to Exchange Facilitators

The 1999 proposed regulations provide that if a qualified intermediary or transferee is the owner of the assets transferred, section 7872 may apply ''if the deferred exchange involves a below-market loan from the taxpayer to the owner.''

Several commentators did not agree that section 7872 could apply to exchange funds and suggested that the reference should be deleted. Commentators also suggested that, even if a transfer of the exchange funds from the taxpayer to an exchange facilitator is a loan, it would constitute a loan given in consideration for the sale or exchange of property (within the meaning of section 1274(c)(1)) or a deferred payment on account of a sale or exchange of property (within the meaning of section 483) and would be exempt from section 7872 under the rules contained in §1.7872–2(a)(2)(ii) of the proposed regulations that were published in the **Federal Register** (50 FR 33553) on August 20, 1985 (the 1985 proposed regulations). These commentators further argued that exchange facilitator loans should be exempted from section 7872 because

those loans must be repaid within six months. These commentators argued that the section 1274 exclusion of debt instruments payable within six months evidences Congress' intent that burdensome reporting and recordkeeping requirements should not apply to short-term loans.

Having considered the comments received, the IRS and the Treasury Department conclude that section 7872, rather than sections 1274 or 483, applies to loans from taxpayers to exchange facilitators. Therefore, these proposed regulations provide special rules under section 7872 for the treatment of exchange facilitator loans. Under these proposed regulations, an *exchange facilitator loan* is a transaction that, under §1.468B–6(c)(1), is treated as a loan from the taxpayer to an exchange facilitator in connection with a section 1031 deferred exchange. Below-market exchange facilitator loans are treated as compensation-related loans under section 7872(c)(1)(B) and are treated as demand loans for purposes of section 7872.

A commentator suggested that, if section 7872 applies to these transactions, interest should be tested and imputed at an alternative rate (similar to the alternative rate in § 1.1274–4(a)(iii)) rather than at the short-term AFR. These proposed regulations provide an alternative rate (the 182-day rate) for exchange facilitator loans for purposes of section 7872. This rate is equal to the investment rate on a 182-day Treasury bill determined on the auction date that most closely precedes the date that the exchange facilitator loan is made. This rate is based on semi-annual compounding and may be found at *http://wwws.publicdebt.treas.gov/AI/OFBills.* The IRS and the Treasury Department request comments regarding alternative rates for exchange facilitator loans under section 7872, including whether the 182-day Treasury bill rate is an appropriate rate. Notwithstanding §1.7872–13 of the 1985 proposed regulations, the taxpayer and exchange facilitator may use the approximate method to determine the amount of forgone interest on an exchange facilitator loan.

One commentator urged that a de minimis exception for loans of exchange funds under $10,000,000 should be added under §1.7872–5T because these loans are without significant tax effect. Several other commentators opined that §1.7872–5T(b)(14) should exempt loans of exchange funds from section 7872 because they are loans without significant tax effect. However, the proposed regulations provide that exchange facilitator loans are not eligible for the exemptions listed in §1.7872–5T(b), including §1.7872–5T(b)(14). An exchange facilitator loan may be excepted from the application of section 7872 only if the loan qualifies for the $10,000 de minimis exception in section 7872(c)(3) for compensation-related loans.

6. Information Reporting

The 1999 proposed regulations state that an escrow holder or trustee must report the income of the escrow, trust, or fund on Form 1099 in accordance with subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Code (currently, sections 6041 through 6050T), and provide rules for identifying the payee. Several commentators expressed concern that these provisions expand the existing information reporting obligations in sections 6041 through 6050T. The 1999 proposed regulations were not intended to create new information reporting requirements but merely to alert responsible persons of the potential obligation to report. To clarify this intent, these proposed regulations provide that a payor must report to the extent required by sections 6041 through 6050T and these regulations.

To enhance compliance, a commentator recommended that payors should be required to furnish Forms 1099 to corporate payees involved in deferred like-kind exchanges. This suggestion was not adopted because it would be inconsistent with provisions of sections 6041 through 6050T and the regulations thereunder that exempt payments to corporations from the information reporting requirements.

7. Effective Dates

Sections 1.468B–6 and 1.7872–16 apply, respectively, to transfers of property made by taxpayers and to exchange facilitator loans issued after the date these regulations are published as final regulations in the **Federal Register**. Section 1.468B–6 of these proposed regulations incorporates a transition rule similar to the transition rule in the 1999 proposed regulations. The transition rule provides that, with respect to transfers of property made by taxpayers after August 16, 1986, but on or before the date these regulations are published as final regulations in the **Federal Register**, the IRS will not challenge a reasonable, consistently applied method of taxation for income attributable to exchange funds.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under 5 U.S.C. 603. The analysis is set forth below under the heading ''Initial Regulatory Flexibility Analysis.'' Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Initial Regulatory Flexibility Analysis

The reasons for promulgation of these rules, and their legal basis, are set forth in this preamble under the heading ''Background.''

These rules impact exchange facilitators that hold exchange funds for taxpayers engaging in deferred exchanges of like-kind property. Exchange facilitators may be individuals, large entities such as banks, or small businesses. The IRS and the Treasury Department estimate that nationwide there are approximately 325 small businesses providing services as exchange facilitators, primarily as qualified intermediaries. For this purpose, a small business is defined as a business with annual receipts of up to $1.5 million, as provided in the Small Business Administration size standards set forth at 13 CFR 121.201 for NAICS code 531390 (other activities related to real estate).

Section 1.468B–6(c)(2) provides that exchange funds are not treated as loaned to an exchange facilitator if all the earnings attributable to the exchange funds are paid to a taxpayer. If the exchange facilitator commingles the exchange funds, the exchange facilitator will be required to account for the earnings attributable to the taxpayer's exchange funds.

As an alternative to these rules, retaining the facts and circumstances test of the 1999 proposed regulations was considered but rejected because the test lacks administrability and is subject to abuse. Other alternatives were considered and rejected as inconsistent with the statutory requirements of section 7872.

The number of transactions involving small entities that will be impacted by these regulations, and the full extent of the economic impact, cannot be precisely determined. Exchange facilitators may simplify the accounting for the earnings attributable to each taxpayer's exchange funds held in a commingled account by depositing each taxpayer's exchange funds in a

segregated account and paying the taxpayer all the earnings of that account.

Comments are requested on the nature and extent of the economic burden imposed on small entities by these rules and on alternatives that would be less burdensome to small entities.

The IRS and the Treasury Department are not aware of any duplicative, overlapping, or conflicting Federal rules.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 6, 2006, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance 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 preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by May 16, 2006. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are A. Katharine Jacob Kiss of the Office of Associate Chief Counsel (Income Tax & Accounting) and Rebecca Asta of the Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, §§ 1.468B–6 and 1.1031(k)–1(g)(3)(i) and (h)(2) of a notice of proposed rulemaking (REG–209619–93) amending 26 CFR part 1 that was published in the **Federal Register** (64 FR 4801) on February 1, 1999, are withdrawn.

Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.468B–6 also issued under 26 U.S.C. 468B(g). * * *

Section 1.7872–16 also issued under 26 U.S.C. 7872. * * *

Par. 2. Section 1.468B–0 is amended by revising the entries for §1.468B–6 to read as follows:

§ 1.468B–0 Table of contents.

* * * * *

§ 1.468B–6 Escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property under section 1031(a)(3).

(a) Scope.
(b) Definitions.
(1) In general.
(2) Exchange funds.
(3) Exchange facilitator.
(4) Transactional expenses.
(i) In general.
(ii) Special rule for certain fees for exchange facilitator services.
(c) Taxation of exchange funds.
(1) Exchange funds generally treated as loaned to an exchange facilitator.
(2) Exchange funds not treated as loaned to an exchange facilitator.
(i) Scope.
(ii) Treatment of the taxpayer.
(d) Information reporting requirements.
(e) Examples.
(f) Effective dates.
(1) In general.
(2) Transition rule.

* * * * *

Par. 3. Section 1.468B–6 is added to read as follows:

§ 1.468B–6 Escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property under section 1031(a)(3).

(a) *Scope.* This section provides rules under section 468B(g) relating to the current taxation of escrow accounts, trusts, and other funds used during deferred exchanges.

(b) *Definitions.* The definitions in this paragraph (b) apply for purposes of this section.

(1) *In general. Deferred exchange, escrow agreement, escrow holder, exchange agreement, exchange period, qualified escrow account, qualified intermediary, qualified trust, relinquished property, replacement property, taxpayer, trust agreement,* and *trustee* have the same meanings as in §1.1031(k)–1; *deferred exchange* also includes any exchange intended to qualify as a deferred exchange, and *qualified intermediary* also includes any person or entity intended by a taxpayer to be a qualified intermediary within the meaning of § 1.1031(k)–1(g)(4).

(2) *Exchange funds. Exchange funds* means relinquished property, cash, or cash equivalent, that secures an obligation of a transferee to transfer replacement property, or proceeds from a transfer of relinquished property, held in a qualified escrow account, qualified trust, or other escrow account, trust, or fund during an exchange period.

(3) *Exchange facilitator. Exchange facilitator* means a qualified intermediary, transferee, escrow holder, trustee, or other party that holds exchange funds for a taxpayer during an exchange period.

(4) *Transactional expenses*—(i) *In general. Transactional expenses* means the usual and customary expenses paid or incurred in connection with a deferred exchange. For example, the costs of land surveys, appraisals, title examinations, termite inspections, transfer taxes, and recording fees are transactional expenses. Except as provided in paragraph (b)(4)(ii) of this section, the fee for the services of an exchange facilitator is not treated as a transactional expense.

(ii) *Special rule for certain fees for exchange facilitator services.* The fee for the services of an exchange facilitator will be treated as a transactional expense if the escrow agreement, trust agreement, or exchange agreement, as applicable, provides that—

(A) The amount of the fee payable to the exchange facilitator is fixed on or before the date of the transfer of the relinquished property by the taxpayer (either by stating the fee as a fixed dollar amount in the agreement or determining the fee by a formula, the result of which

is known on or before the transfer of the relinquished property by the taxpayer); and

(B) The amount of the fee is payable by the taxpayer regardless of whether the earnings attributable to the exchange funds are sufficient to pay the fee.

(c) *Taxation of exchange funds*—(1) *Exchange funds generally treated as loaned to an exchange facilitator.* Except as provided in paragraph (c)(2) of this section, exchange funds are treated as loaned from a taxpayer to an exchange facilitator. The exchange facilitator must take into account all items of income, deduction, and credit (including capital gains and losses) attributable to the exchange funds. See § 1.7872–16 to determine if a loan from a taxpayer to an exchange facilitator is a below-market loan for purposes of section 7872.

(2) *Exchange funds not treated as loaned to an exchange facilitator*—(i) *Scope.* This paragraph (c)(2) applies if, in accordance with an escrow agreement, trust agreement, or exchange agreement, as applicable, all the earnings attributable to a taxpayer's exchange funds are paid to the taxpayer. For purposes of this paragraph (c)(2)—

(A) Any payment from the taxpayer's exchange funds, or from the earnings attributable to the taxpayer's exchange funds, for a transactional expense of the taxpayer (as defined in paragraph (b)(4) of this section) is treated as first paid to the taxpayer and then paid by the taxpayer to the recipient; and

(B) If an exchange facilitator commingles (for investment or otherwise) the taxpayer's exchange funds with other funds or assets (whether or not the taxpayer's funds are in a segregated account), all the earnings attributable to the taxpayer's exchange funds are paid to the taxpayer if all of the earnings of the commingled funds or assets that are allocable on a pro-rata basis (using a reasonable method that takes into account the time that the exchange funds are in the commingled account, actual rate or rates of return, and the respective account balances) to the taxpayer's exchange funds either are paid to the taxpayer or are treated as paid to the taxpayer under paragraph (c)(2)(i)(A) of this section.

(ii) *Treatment of the taxpayer.* If this paragraph (c)(2) applies, exchange funds are not treated as loaned from a taxpayer to an exchange facilitator. The taxpayer must take into account all items of income, deduction, and credit (including capital gains and losses) attributable to the exchange funds.

(d) *Information reporting requirements.* A payor (as defined in § 1.6041–1) must report the income attributable to exchange funds on Form 1099 to the extent required by the information reporting provisions of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code, and the regulations thereunder. See § 1.6041–1(f) for rules relating to the amount to be reported when fees, expenses or commissions owed by a payee to a third party are deducted from a payment.

(e) *Examples.* The provisions of this section are illustrated by the following examples in which T is a taxpayer that uses a calendar taxable year and the cash receipts and disbursements method of accounting. The examples are as follows:

Example 1. All earnings attributable to exchange funds paid to taxpayer. (i) T enters into a deferred exchange with R. The sales agreement provides that T will transfer property (the relinquished property) to R and R will transfer replacement property to T. R's obligation to transfer replacement property to T is secured by cash equal to the fair market value of the relinquished property that R will deposit into a qualified escrow account that T establishes with B, a financial institution. T enters into an escrow agreement with B that provides that all the earnings attributable to the exchange funds will be paid to T.

(ii) On February 1, 2006, T transfers property with a fair market value of $100,000 to R and R deposits $100,000 in T's qualified escrow account with B. Between February 1 and June 1, 2006, T's exchange funds earn $750. On June 1, 2006, R transfers replacement property worth $100,000 to T and B pays $100,000 from the qualified escrow account to R. Additionally, on June 1, B credits the qualified escrow account with $750 of earnings and pays the earnings to T.

(iii) Under paragraph (b) of this section, the $100,000 deposited with B are exchange funds and B is an exchange facilitator. Because all the earnings attributable to the exchange funds are paid to T in accordance with the escrow agreement, paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to B, and T must take into account in computing T's income tax liability for 2006 the $750 of earnings credited to the qualified escrow account.

Example 2. Payment of transactional expenses from earnings. (i) The facts are the same as in *Example 1*, except that the escrow agreement provides that, prior to paying the earnings to T, B may deduct any amounts B has paid to third parties for T's transactional expenses. B pays a third party $350 on behalf of T for a survey of the replacement property. After deducting $350 from the earnings attributable to T's qualified escrow account, B pays T the remainder ($400) of the earnings.

(ii) Under paragraph (b)(4) of this section, the cost of the survey is a transactional expense. Under paragraph (c)(2)(i)(A) of this section, the $350 that B pays for the survey is treated as first paid to T and then from T to the third party. Therefore, all the earnings attributable to T's exchange funds are paid or treated as paid to T in accordance with the escrow agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to B, and T must take into account in computing T's income tax liability for 2006 the $750 of earnings credited to the qualified escrow account.

Example 3. Earnings retained by exchange facilitator as compensation for services. (i) The facts are the same as in *Example 1*, except that the escrow agreement provides that B also may deduct any outstanding fees owed by T for B's services in facilitating the deferred exchange. In accordance with paragraph (b)(4)(ii) of this section, the escrow agreement provides for a fixed fee of $200 for B's services, which is payable by T regardless of the amount of earnings attributable to the exchange funds. Because the earnings on the exchange funds in this case exceed $200, B retains $200 as the unpaid portion of its fee and pays T the remainder ($550) of the earnings.

(ii) Under paragraph (b)(4) of this section, B's fee is treated as a transactional expense. Under paragraph (c)(2)(i)(A) of this section, the $200 that B retains for its fee is treated as first paid to T and then from T to B. Therefore, all the earnings attributable to T's exchange funds are paid or treated as paid to T in accordance with the escrow agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to B, and T must take into account in computing T's income tax liability for 2006 the $750 of earnings credited to the qualified escrow account.

Example 4. Stated rate of interest on account less than earnings attributable to exchange funds. (i) The facts are the same as in *Example 1*, except that the escrow agreement provides that the qualified escrow account will earn a stated rate of interest. B invests the exchange funds and earns $750, but credits $500 to the qualified escrow account at the stated rate. B pays to T the $500 of interest earned at the stated rate on the qualified escrow account.

(ii) Paragraph (c)(1) of this section applies and the exchange funds are treated as loaned from T to B. B must take into account in computing B's income tax liability all items of income, deduction, and credit (including capital gains and losses) attributable to the exchange funds. Paragraph (c)(2) of this section does not apply because B does not pay all the earnings attributable to the exchange funds to T. See § 1.7872–16 for rules relating to exchange facilitator loans.

Example 5. Exchange funds deposited by exchange facilitator with financial institution in account in taxpayer's name. (i) The facts are the same as in *Example 1*, except that, instead of entering into an escrow agreement, T enters into an exchange agreement with QI, a qualified intermediary. The exchange agreement provides that R will pay $100,000 to QI, QI will deposit $100,000 into an account with a financial institution under T's name and taxpayer identification number (TIN), and all the earnings attributable to the account will be paid to T.

(ii) On February 1, 2006, T transfers property with a fair market value of $100,000 to R, R delivers $100,000 to QI, and QI

deposits $100,000 into a money market account with B, a financial institution unrelated to QI, under T's name and TIN. Between February 1 and June 1, 2006, the account earns $500 of interest at the stated rate established by B. On June 1, 2006, QI uses $100,000 of the funds in the account to purchase replacement property identified by T and transfers the replacement property to T. B pays to T the $500 of interest earned on the money market account.

(iii) Under paragraph (b) of this section, the $100,000 QI receives from R for the relinquished property are exchange funds and QI is an exchange facilitator. B is not an exchange facilitator. T has no direct relationship with B, and QI, not B, holds the exchange funds on behalf of T. Because all the earnings attributable to the exchange funds held by QI are paid to T in accordance with the exchange agreement, paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI, and T must take into account in computing T's income tax liability for 2006 the $500 of interest earned on the money market account.

Example 6. All earnings attributable to commingled exchange funds paid to taxpayer. (i) The facts are the same as in *Example 5*, except that the exchange agreement does not specify how the $100,000 QI receives from R must be invested.

(ii) On February 1, 2006, QI deposits the $100,000 with B, a financial institution, in a pre-existing interest-bearing account under QI's name and TIN. The account has a total balance of $275,000 immediately thereafter. On the last day of each month between February and June, 2006, the account earns interest as follows: $690 in February, $920 in March, $516 in April, and $986 in May. On April 11, 2006, QI deposits $50,000 in the account. On May 15, 2006, QI withdraws $175,000 from the account.

(iii) QI calculates T's pro-rata share of the earnings allocable to the $100,000 based on the actual return, the average daily principal balances, and a 30-day month convention, as follows:

Month	Account's avg. daily bal.	T's avg. daily bal.	T's share *	Monthly interest (percent)	T's end. bal.**
February	$275,000	$100,000	36.4	$690	$100,251
March	275,690	100,251	36.4	920	100,586
April	309,943	100,586	32.5	516	100,754
May	236,626	100,754	42.6	986	101,174

* T's Average Daily Balance ÷ Account's Average Daily Balance.
** T's beginning balance + [(T's share)(Monthly Interest)].

(iv) On June 1, 2006, QI uses $100,000 of the funds to purchase replacement property identified by T and transfers the property to T. QI pays $1,174, the earnings of the account allocated to T's exchange funds, to T.

(v) Under paragraph (b) of this section, the $100,000 from the sale of the relinquished property are exchange funds and QI is an exchange facilitator. Because QI uses a reasonable method to calculate the pro-rata share of account earnings allocable to T's exchange funds and pays all those earnings to T, paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI. T must take into account in computing T's income tax liability for 2006 the $1,174 of earnings attributable to T's exchange funds.

(f) *Effective dates*—(1) *In general.* This section applies to transfers of property made by taxpayers after the date these regulations are published as final regulations in the **Federal Register**.

(2) *Transition rule.* With respect to transfers of property made by taxpayers after August 16, 1986, but on or before the date these regulations are published as final regulations in the **Federal Register**, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income attributable to exchange funds.

Par. 4. Section 1.1031(k)–1 is amended by adding a sentence at the end of paragraph (h)(2) to read as follows:

§ 1.1031(k)–1 Treatment of deferred exchanges.

* * * * *

(h) * * *

(2) * * * For rules under section 468B(g) relating to the current taxation of qualified escrow accounts, qualified trusts, and other escrow accounts, trusts, and funds used during deferred exchanges of like-kind property, see § 1.468B–6.

* * * * *

Par. 5. Section 1.7872–16 is added to read as follows:

§ 1.7872–16 Loans to an exchange facilitator under § 1.468B–6.

(a) *Special rules applicable to loans made to an exchange facilitator under § 1.468B–6*—(1) *Scope.* This section applies to a transaction that, under § 1.468B–6(c)(1), is treated as a loan to an exchange facilitator in connection with a deferred exchange (exchange facilitator loan). For purposes of this section, the terms *deferred exchange*, *exchange agreement*, *exchange facilitator*, *exchange funds*, *qualified intermediary*, *replacement property*, and *taxpayer* have the same meanings as in § 1.468B–6(b).

(2) *Treatment as compensation-related loans.* If an exchange facilitator loan is a below-market loan, the loan is treated as a compensation-related loan under section 7872(c)(1)(B).

(3) *Treatment of exchange facilitator loan as a demand loan.* For purposes of section 7872, exchange facilitator loans are treated as demand loans.

(4) *182-day rate for exchange facilitator loans.* For purposes of section 7872(f)(2), in lieu of the applicable Federal rate (AFR) provided under section 1274(d)(1), the taxpayer and the exchange facilitator must use the 182-day rate for an exchange facilitator loan. For purposes of the preceding sentence, the 182-day rate is equal to the investment rate on a 182-day Treasury bill determined on the auction date that most closely precedes the date that the exchange facilitator loan is made.

(5) *Use of approximate method permitted.* The taxpayer and exchange facilitator may use the approximate method under § 1.7872–13(b)(2) to determine the amount of forgone interest on any exchange facilitator loan.

(b) *No exemption for below-market exchange facilitator loans.* If an exchange facilitator loan is a below-market loan, the loan is not eligible for the exemptions listed under § 1.7872–5T(b), including § 1.7872–5T(b)(14) (relating to loans without significant-tax effect).

(c) *Example.* The provisions of this section are illustrated by the following example.

Example. (i) T enters into a deferred exchange with QI, a qualified intermediary. The exchange is governed by an exchange agreement. The exchange funds held by QI pursuant to the exchange agreement are treated as loaned to QI under § 1.468B–6(c)(1). Under paragraph (a)(1) of this section, the loan between T and QI is an exchange facilitator loan. The exchange agreement between T and QI provides that no earnings will be paid to T. On December 1, 2006, T transfers property with a fair market value of $1,000,000 to QI and QI deposits $1,000,000 in a money market account. On March 1, 2007, QI uses $1,000,000 of the funds in the account to purchase replacement property identified by T, and transfers the replacement property to T. The amount loaned for purposes of section 7872 is $1,000,000 and the loan is outstanding for three months. The 182-day rate under paragraph (a)(4) of this

section is 1 percent, compounded semi-annually.

(ii) Under paragraph (a) of this section, the loan from T to QI is treated as a compensation-related demand loan. Because there is no interest payable on the loan from T to QI, the loan is a below-market loan under section 7872. Under section 7872(e)(2), the amount of forgone interest on the loan for 2006 is $833 ($1,000,000*.01/2*1/6). Under section 7872(e)(2), the forgone interest for 2007 is $1667 ($1,000,000*.01/2*2/6). The $833 for 2006 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on December 31, 2006. The $1667 for 2007 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on March 1, 2007.

(d) *Effective date.* This section applies to exchange facilitator loans issued after the date these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–8027–7; EPA–HQ–RCRA–2005–0015]

Site-Specific Variance From the Land Disposal Restrictions Treatment Standard for 1,3-Phenylenediamine (1,3-PDA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the waste treatment standard for 1,3-phenylenediamine (1,3-PDA) for a biosludge generated at DuPont's Chambers Works facility in Deepwater, New Jersey. This variance is necessary because the facility is unable to measure compliance with the previously promulgated 1,3-PDA treatment standard in its multisource leachate biosludge matrix. As a practical matter, therefore, the facility cannot fully document compliance with the requirements of the treatment standard. For the same reason, EPA cannot ascertain compliance for this constituent. Furthermore, faced with the inability to demonstrate treatment residual content through analytical testing for this constituent, this facility faces potential curtailment of 1,3-PDA production operations. This site-specific variance will provide alternative technology treatment standards for 1,3-PDA in multisource leachate that do not require analysis of the biosludge matrix to determine whether the numerical treatment standard is being met, thus ensuring that treatment reflecting performance of the Best Demonstrated Available Technology occurs and that threats to human health and the environment from land disposal of the waste are minimized.

In the ''Rules and Regulations'' section of the **Federal Register,** we are revising the 1,3-PDA multisource leachate (F039) treatment standard for the DuPont Chambers Works facility in Deepwater, New Jersey without prior proposal because we view the revision as noncontroversial and anticipate no adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive adverse comment on this revision, however, we will withdraw the direct final action for that portion of the variance and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

DATES: Comments must be received by March 9, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2005–0015, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *rcra-docket@epa.gov* and *minnick.rhonda@epa.gov.*
- Fax: 202–566–0272.
- Mail: RCRA Docket (5305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of 3 copies.
- Hand Delivery: 1301 Constitution Ave., NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No EPA–HQ–RCRA–2005–0015. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information 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 *www.regulations.gov* or in hard copy at the HQ-Docket Center, Docket ID No EPA–HQ–RCRA–2005–0015, 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 RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this proposed rulemaking, contact Rhonda Minnick, Hazardous Waste Minimization and Management Division, Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308–8771; fax (703) 308–8443; or *minnick.rhonda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' We interpret this language to authorize treatment standards based on the performance of the Best Demonstrated Available Technology (BDAT). This interpretation was upheld by the DC Circuit in *Hazardous Waste Treatment Council* v. *EPA,* 886 F. 2d 355 (D.C. Cir. 1989).

We recognize that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes we evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (see 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current 1,3-PDA Treatment Standard?

The treatment standard for 1,3-PDA was promulgated in the Dyes and Pigments (K181) hazardous waste listing on February 24, 2005 (70 FR 9138) and it became effective on August 23, 2005. The 1,3-PDA treatment standard was placed in the Table of Treatment Standards (see 40 CFR 268.40) under ''K181'' (the waste code for the Dyes and Pigments listing) and under ''F039'' (the waste code for multisource leachate). It is the F039 treatment standard for 1,3-PDA that is addressed in this site-specific variance. We also added this constituent to the Universal Treatment Standard Table (see 40 CFR 268.48), which means that when 1,3-PDA is reasonably expected to be present in a characteristic waste at point of generation it must be considered an underlying hazardous constituent requiring treatment.

In the final rule, we set a numerical nonwastewater treatment standard of 0.66 mg/kg for 1,3-PDA, based on use of the best demonstrated available technology (BDAT) of combustion. For purposes of establishing the treatment standard, we grouped 1,3-PDA with other waste constituents (notably 1,2-PDA, but also including o-Anisidine, p-Cresidine, 2,4-dimethylaniline, aniline and 4-chloroaniline). No actual treatment data were available for 1,3-PDA. However, the 0.66 mg/kg treatment standard was based on: (1) The thermal stability index ranking system and incinerability index (if the most difficult to treat constituents can be destroyed via incineration, then all less stable constituents can also be destroyed); and (2) similar chemical structures and chemical and physical properties that are exhibited by the constituents in each treatability group (incineration should be able to destabilize and destroy each of the compounds in a similar fashion). See the ''Best Demonstrated Available Technology (BDAT) Background Document for Dyes and Pigments Production Wastes,'' December 2004, section 2.2.3.

II. What Is the Basis for Today's Determination?

A. What Criteria Govern a Treatment Variance?

Facilities can apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or a delegated representative, for a site-specific variance from a treatment standard. One of the demonstrations that an applicant for a site-specific variance may make is that it is not physically possible to treat the waste to the level specified in the treatment standard (40 CFR 268.44(h)(1)). This is the criteria pertinent to today's variance, in that it is not technically possible to measure the constituent in DuPont's biosludge treatment residual, as explained below.

B. What Does DuPont Request?

DuPont contacted EPA about an analytical problem it is having with 1,3-PDA in their multisource leachate (F039) treatment biosludge. The facility produces 1,3-PDA in their plant and then pipes the wastewaters from manufacturing 1,3-PDA to an onsite biological wastewater treatment plant. DuPont ultimately disposes of the biosolids containing 1,3-PDA into their hazardous waste landfill. The mass loading levels of the waste 1,3-PDA do not trigger the K181 listing, so such placement is not considered land disposal of a hazardous waste. However, the landfill is permitted to accept biosolids with several listed hazardous waste and, as a result, generates F039 (a hazardous waste), which is reasonably expected to contain 1,3-PDA. The F039 is introduced by pipeline into DuPont's biological treatment system, a two-step biological process that includes the use of activated carbon. Biodegradation reduces organics in this system by approximately 99%. The treatment residual is a F039 biosludge that is high in carbon. It is this biosludge that is the basis of the requested treatability variance.

DuPont has sent the biosludge to several commercial laboratories for analysis to see if it met the treatment standard and could be legally land disposed. The laboratories have consistently been unable to detect 1,3-PDA in this high carbon matrix. When asked if they could develop a new detection method for this constituent, only one laboratory was interested in attempting to do so, but indicated that it could take a year to develop and it likely would have a detection limit around 13 mg/kg (the detection limit for a similar compound, 1,4-PDA). This detection limit is much higher than the 1,3-PDA treatment standard of 0.66 mg/kg.

DuPont pointed out that when the treatment standard for a similar compound, 1,2-PDA (1,2-phenylenediamine, o-phenylenediamine), was promulgated in the dyes and pigments listing rule, we set a treatment standard expressed as specified technologies because of method detection problems: we specified that combustion (CMBST), or chemical oxidation (CHOXD) followed by biodegradation (BIODG) or carbon adsorption (CARBN), or a treatment train of BIODG followed by CARBN are the treatment standard. DuPont requested that we provide a variance that would set specified technologies as the treatment standard for 1,3-PDA at their Chambers Works facility, as we did for 1,2-PDA. We believe that this is a reasonable request because when we evaluated the waste constituents to determine the original treatment standards, we grouped 1,3-PDA with 1,2-PDA (and other constituents) because they are similar in chemical structure and physical properties.

C. New Treatment Standard for 1,3-PDA

We are granting DuPont's request in today's site-specific variance. Under one of the criteria for a variance from the treatment standard, the applicant must demonstrate that it is not physically possible to treat the waste to the level specified in the treatment standard. We believe that today's variance falls into this category, in that it is technically

impossible for DuPont to demonstrate that it complies with a treatment level when laboratories have not been able to detect the waste in DuPont's particular, site-specific biosludge matrix.[1] Therefore, certification that this constituent has been treated in the F039 biosludge matrix is not possible, and without the certification, disposal of the F039 biosludge cannot legally occur. This situation may impede production of 1,3-PDA at the facility, because legal disposal of this waste would no longer be available. See *Steel Manufacturers Association* v. *EPA*. 27 F.3d 642, 646–47 (D.C. Cir. 1994) (absence of a treatment standard providing a legal means of disposing of wastes from a process is equivalent to shutting down that process).

The alternative treatment standard established by today's site-specific variance is: Combustion (CMBST), or chemical oxidation (CHOXD) followed by biodegradation (BIODG) or carbon adsorption (CARBN), or a treatment train of BIODG followed by CARBN, the same treatment standard we set in the K181 listing rule for a similar constituent, 1,2-PDA. By altering the treatment standard for 1,3-PDA to allow certification of compliance based on the use of specified treatment technologies without constituent-specific testing, we can ensure that effective treatment occurs without delay and can also assure that threats to human health and the environment are minimized. We believe that DuPont's two-step biological treatment system that includes the use of activated carbon effectively treats 1,3-PDA in the F039 multisource leachate waste.[2] And, as mentioned in footnote 1, we made a similar finding that treatment of other carbamate waste constituents would adequately treat 1,2-PDA, when we withdrew it as a constituent of concern in 1998. Likewise, we believe that treatment of the other constituents of concern in DuPont's F039 multisource leachate waste will serve as a surrogate for 1,3-PDA.

III. Administrative Requirements

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of today's **Federal Register**.

Regulatory Flexibility Act

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

This treatment variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a specific waste stream that replaces a standard already in effect, and it applies to only one facility. Therefore, I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 27, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44, the table in paragraph (o) is amended by adding in alphabetical order an additional entry for ''DuPont Environmental Treatment Chambers Works, Deepwater, NJ'' and adding a new footnote 13 to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE.—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* *		*	*	*		*	*
DuPont Environmental Treatment-Chambers Works, Deepwater, NJ.	F039	Standards under § 268.40.	1,3-phenylene-dia-mine (1,3-PDA).	NA	NA	CMBST; CHOXD fb BIODG or CARBN; or BIODG fb CARBN.	([13])
* *		*	*	*		*	*

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

* * * * * * *

[13] This treatment standard applies to 1,3-PDA in biosludge from treatment of F039.

Note: NA means Not Applicable.

[1] This finding is similar to a previous LDR determination. We originally promulgated a numerical treatment standard for 1,2-PDA (o-phenylenediamine) on April 8, 1996 (61 FR 15583). However, we subsequently withdrew the treatment standard because of poor method performance on September 4, 1998. We stated at that time that treatment of other constituents would provide adequate treatment for o-phenylenediamine (63 FR 47409)).

[2] When we originally promulgated treatment standards for F039, we stated that constituents on the BDAT list serve as surrogates for those constituents that may be present in the multisource leachate that cannot be adequately analyzed (55 FR 22622, June 1, 1990).

[FR Doc. 06–1072 Filed 2–6–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Gunnison's Prairie Dog as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Gunnison's prairie dog (*Cynomys gunnisoni*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific and commercial data indicating that listing the Gunnison's prairie dog may be warranted. Therefore, we will not be initiating a formal status review to determine if listing this species is warranted. We will work with the States where information is currently unavailable to develop information that will assist in determining and monitoring the status of Gunnison's prairie dog. Once those results are available we will reevaluate the status of Gunnison's prairie dog.

DATES: The finding announced in this document was made on January 30, 2006.

ADDRESSES: The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the South Dakota Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota, 57501. Submit new information, materials, comments or questions concerning this taxon to the Field Supervisor at the above address.

FOR FURTHER INFORMATION CONTACT: Pete Gober, Field Supervisor, South Dakota Ecological Services Office at the above address (telephone 605–224–8693; facsimile 605–224–9974).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition and other information that is readily available to us (*e.g.*, in our files). To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register.**

Our standard for substantial scientific information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific information was presented, we are required to commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and information in our files, and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific information'' threshold.

We do not conduct additional research to make a 90-day finding, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we acknowledge the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our 90-day findings consider whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the species' status.

Petition

On February 23, 2004, the Service received a petition of the same date, from Forest Guardians and 73 other organizations and individuals (Forest Guardians *et al.* 2004). This petition requested that the Gunnison's prairie dog *(Cynomys gunnisoni)*, found in Arizona, Colorado, New Mexico, and Utah, be listed as threatened or endangered and that critical habitat be designated for the species.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2004. On July 29, 2004, we received a 60-day notice of intent to sue (Forest Guardians *et al.* 2004) for failure to complete a finding. On December 7, 2004, an amended complaint for failure to complete a finding for this and other species was filed (Biodiversity Conservation Alliance *et al.* 2004). We reached a settlement agreement with the plaintiffs for submittal to the **Federal Register** of a 90-day finding for the Gunnison's prairie dog by January 26, 2006. This notice constitutes our 90-day finding for the petition to list the Gunnison's prairie dog.

Species Information

The Gunnison's prairie dog is a member of the Sciuridae family, which includes squirrels, chipmunks, marmots, and prairie dogs. Prairie dogs constitute the genus *Cynomys.* Taxonomists currently recognize 5 species of prairie dogs belonging to 2 subgenera, all in North America (Goodwin 1995). The white-tailed subgenus, *Leucocrossuromys,* includes Utah (*C. parvidens*), white-tailed (*C. leucurus*), and Gunnison's prairie dogs (Goodwin 1995). The black-tailed subgenus, *Cynomys,* consists of Mexican (*C. mexicanus*) and black-tailed (*C. ludovicianus*) prairie dogs (Goodwin 1995). The number of chromosomes for the Gunnison's prairie dog (2n = 40) is different from all other prairie dog species (2n = 50), suggesting the species' uniqueness and its early evolutionary divergence from other prairie dog species (Goodwin 1995; Pizzimenti 1975).

The Gunnison's prairie dog has sometimes been divided into 2 subspecies: *C. g. gunnisoni* and *C. g. zuniensis* (Hollister 1916). The petition addressed the species, with no subspecies consideration. However, the petitioners later requested that the petition be considered to apply to both the full species and either of the subspecies (Rosmarino *in litt.* 2005). The most recent published analyses do not support subspecies designation (Goodwin 1995, Pizzimenti 1975), and this is position we currently hold. Research on the issue of subspeciation is ongoing (Hafner 2004; Hafner *et al.* 2005).

Gunnison's prairie dog adults vary in length from 309–373 millimeters (mm) (12–15 inches (in)) and weigh 650–1200 grams (gm) (23–42 ounces (oz)), with males averaging slightly larger than females (Hall 1981; Pizzimenti and Hoffman 1973). The dorsal color is yellowish buff intermixed with blackish hairs. The top of the head, sides of

cheeks, and ''eyebrows'' are noticeably darker than the dorsum (Hall 1981; Pizzimenti and Hoffman 1973). The species differs from black-tailed prairie dogs in having a much shorter and lighter colored tail and from other white-tailed species in having grayish-white hairs in the distal half of the tail rather than pure white (Hoogland 1995; Pizzimenti and Hoffman 1973).

The onset of reproduction in Gunnison's prairie dogs is somewhat variable depending upon latitude, elevation, and seasonal variation, but most typically is April and May (Hoogland 1998, 2001). Females will breed as yearlings when resources are abundant (Goodwin 1995; Hall 1981; Haynie *et al.* 2003; Hoogland 1998; Hoogland 2001; Pizzimenti and Hoffman 1973). A maximum of one litter is produced per year with a mean litter size of 3.77 (Hoogland 2001). Individuals live in family groups called clans; and adjacent clans constitute a colony (Fitzgerald and Lechleitner 1974). Clan members defend a home territory of approximately 2.5 acres (1 hectare), but commonly forage outside of home territory in the weakly defended peripheral sections of territories belonging to other clans (Hoogland 1998, 1999).

Gunnison's prairie dog potential habitat includes level to gently sloping grasslands and semi-desert and montane shrublands, at elevations from 6,000–12,000 feet (ft) (1,830–3,660 meters (m)) (Bailey 1932; Findley *et al.* 1975; Fitzgerald *et al.* 1994; Pizzimenti and Hoffman 1973; Wagner and Drickamer 2002). Grasses are the most important food item, with forbs, sedges, and shrubs also occasionally utilized (Pizzimenti and Hoffman 1973; Shalaway and Slobodchikoff 1988). Individuals hibernate for as long as 7 months (Ecke and Johnsonn 1952; Fitzgerald and Lechleitner 1974).

The current distribution of the species is generally centered on the ''Four Corners'' region of northern Arizona, southwestern Colorado, northwestern New Mexico, and southeastern Utah (Anderson *et al.* 1986; Bailey 1932; Hall 1981; Knowles 2002; Pizzimenti and Hoffman 1973). There is some very limited overlap between ranges for Gunnison's prairie dogs and black-tailed prairie dogs in New Mexico (Goodwin 1995; Sager 1996), and between Gunnison's prairie dog and white-tailed prairie dog in Colorado (Knowles 2002), but we have no evidence that interbreeding is occurring. Using Geographic Information Systems (GIS) datasets and known habitat requirements, Seglund *et al.* (2005) estimate that 27 percent of potential Gunnison's prairie dog habitat occurs in Arizona, 25 percent in Colorado, 45 percent in New Mexico, and 3 percent in Utah. Rangewide, approximately 73 percent of potential habitat occurs on tribal and private lands (Seglund *et al.* 2005). Significant portions of potential habitat occur on tribal lands, especially in Arizona and New Mexico. We contacted 29 Tribes and Pueblos within the Gunnison's prairie dog range to attain post-1961 status information. We did not receive any formal responses from the tribes; no information is available regarding the status of the species on tribal lands.

Of the documented range contractions, the most significant has occurred in Arizona. Gunnison's prairie dog was recorded in parts of 8 Arizona counties in the early 20th century (Wagner and Drickamer 2002). In 1961, the species was documented in 5 counties (Bureau of Sport Fisheries and Wildlife 1961). More recent studies have observed occupied habitat in only the four northernmost counties (Roemer 1997; Wagner and Drickamer 2002). We are unable to determine what if any contraction is attributable to more recent population changes which would assist us in determining whether the species may be threatened.

The best available information indicates that population densities of Gunnison's prairie dog colonies are variable, depending on environmental influences (including habitat, season, disease, and precipitation), as well as anthropogenic influences (such as chemical control and recreational shooting). Densities typically range from 2–23 individuals per acre (ac) (5–57 per hectare (ha)) (Fitzgerald *et al.* 1994), and are similar to densities in black-tailed prairie dog colonies (Cully 1993), which typically range from 2–18 individuals per ac (5–45 per ha) (Fagerstone and Ramey 1996; Hoogland 1995; King 1955; Koford 1958). Knowles (2002) notes historic densities for Gunnison's prairie dogs as high as 63 individuals per ac (156 per ha), but concludes that overall, they generally occur at lower densities than black-tailed prairie dog. In the available literature, prairie dog population abundance is most often discussed in terms of acres or hectares of occupied habitat rather than in numbers of individuals because of the wide range of observed population densities for the species, wide natural population fluctuations (due to drought, etc.) and the limited number of studies that have determined actual numbers of individuals in a population due to the significant additional cost and effort associated with doing so.

We have several estimates of historic and more recent Gunnison's prairie dog occupied habitat are available from the four States within the species' range (Tables 1–3). These estimates span a time period from 1916 to the present. Different methodologies were used at different times and in different locales to derive the various estimates. However, these estimates represent the best available information and are comparable for the purpose of determining general population trends on the scale of order-of-magnitude changes. Methodologies have improved in recent years, with the advent of tools such as aerial survey, satellite imagery, and GIS. Consequently, estimates that utilize these tools can be expected to be more accurate.

Only limited information is available regarding State-wide and range-wide historic estimates of occupied habitat. More accurate information is available regarding several smaller (more easily delineated) sites that have been monitored in recent years. All available estimates of occupied habitat are presented in the following paragraphs.

State-Wide Estimates

Information available regarding historic estimates of Gunnison's prairie dog occupied habitat is based largely on federal records from early poisoning efforts. Oakes (2000) used field survey and poisoning records from the Bureau of Biological Survey (a predecessor of the Service) to derive early estimates for occupied habitat in Arizona and New Mexico. Oakes (2000) estimated that in 1916, approximately 6.6 million ac (2.7 million ha) of Gunnison's prairie dog occupied habitat occurred in Arizona and 11 million ac (4.4 million ha) in New Mexico. Oakes (2000) postulated that following poisoning efforts, there were approximately 6 million ac (2.4 million ha) of occupied habitat in Arizona and 9 million ac (3.6 million ha) of occupied habitat in New Mexico in 1921 (Table 1). No estimate of density or population associated with the habitat is available, due to the previously-mentioned difficulty associated with determining population densities.

We are not aware of any literature regarding historic estimates of occupied Gunnison's prairie dog habitat for Colorado or Utah. We derived approximate estimates in order to gain some perspective on the extent of historic decline. As noted previously, the estimates of historically (i.e., 1916) occupied habitat from Oakes (2000) were based on federally-directed state inventories and poisoning records. Seglund *et al.* (2005) used GIS datasets

that considered known habitat requirements regarding elevation, slope, and land cover to predict the potential habitat available in each state. Using the estimates of historically-occupied habitat from Oakes (2000) for Arizona and New Mexico and the relative percentages of potential habitat presented in Seglund *et al.* (2005), we derived estimates of historically-occupied (circa 1916) habitat for Colorado (6 million ac / 2.4 million ha) and Utah (700,000 ac / 284,000 ha). Accordingly, the range-wide estimate for historic (circa 1916) Gunnison's prairie dog occupied habitat would be approximately 24 million ac (9.7 million ha) (Table 1).

We believe that these historic estimates are reasonable but also recognize that they are based on assumptions which could greatly influence the outcome of the estimate. Historic declines which occurred over the past 100 years do not provide an appropriate context for evaluating current threats to the species. These historic estimates are of limited value in determining the likely persistence of this species at present. The evaluation of whether or not a specific threat rises to the level of threatening a species should be based on ongoing and likely future impacts.

In 1961, the Bureau of Sport Fisheries and Wildlife (also a predecessor of the Service) tabulated habitat estimates on a county-by-county basis throughout the range of all prairie dog species in the western United States. This survey was in response to concerns from within the agency regarding possible adverse impacts to prairie dogs from poisoning (Oakes 2000). In State-wide summaries, the agency estimated approximately 445,000 ac (180,000 ha) of Gunnison's prairie dog occupied habitat in Arizona, 116,000 ac (47,000 ha) in Colorado, 355,000 ac (144,000 ha) in New Mexico, and 100,000 ac (41,000 ha) in Utah (Bureau of Sport Fisheries and Wildlife 1961). The total range-wide estimate for Gunnison's prairie dog occupied habitat in 1961 was approximately 1 million ac (405,000 ha) (Table 1).

The estimates of historic habitat compared to the 1961 data suggest that, from 1916 to 1961, Gunnison's prairie dog habitat and thus populations decreased by approximately 93 percent in Arizona, 98 percent in Colorado, 97 percent in New Mexico, and 86 percent in Utah, or by approximately 95 percent range-wide. While the magnitude of the habitat losses require a conclusion that overall populations declined as well, this decline does not necessarily lead to a conclusion that current populations continue to decline.

All four States within the range of the Gunnison's prairie dog assert in their Comprehensive Wildlife Conservation Strategies that the species is at risk, declining, and deserving of special management consideration (Seglund *et al.* 2005). These Strategies were developed by the States in response to Congressional funding and provide guidance for future conservation efforts between Federal, tribal, State, local, and private entities. The strategies focus on species in greatest need of conservation. However, since less than one year has elapsed since they were completed, an evaluation of their effectiveness cannot yet be made. Based upon the information available in our files, Colorado is the only state with a Gunnison's prairie dog population estimate derived from a recent, State-wide field effort (Skiba, *in litt.* 2005). Other recent State-wide estimates appear to be based on extrapolations (e.g., Bodenchuck (1981) for New Mexico and Colorado Department of Agriculture (1990) for Colorado), or are minimum estimates obtained from summing known, site-specific data (e.g., Knowles (2002) for New Mexico and Utah, Seglund *et al.* (2005) for New Mexico and Utah, and Van Pelt *in litt.* (2005) for Arizona).

In Arizona, it is estimated that occupied habitat on non-tribal lands was approximately 100,000 ac (40,500 ha) in 2005 (Van Pelt *in litt.* 2005) (Table 1). Approximately 50 percent of potential habitat is on tribal lands in Arizona; consequently, a current state-wide estimate in Arizona is likely substantially more than the 100,000 ac (40,500 ha) reported by Van Pelt (*in litt.* 2005), although no comprehensive data from tribal lands are available. Occupied habitat on non-tribal lands State-wide appears to have increased from 10,000 ac (4,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961) to 100,000 ac (40,500 ha) in 2005 Van Pelt (*in litt.* 2005). We have no data regarding, recent population trends on tribal lands State-wide. However, we are unaware of any disproportionate adverse effects to the species on tribal lands during this interval. Thus, we have assumed that the amount of habitat on tribal lands remained constant from 1961 to 2005 (Table 1). This assumption seems reasonable, particularly in light of the fact that occupied lands have increased ten-fold on non-tribal lands.

The Colorado Department of Agriculture (CDA 1990) solicited questionnaire responses from farmers and ranchers and thereafter extrapolated an estimate of 1,553,000 ac of occupied habitat for all 3 species of prairie dogs found in Colorado. Based upon species occurrence by county, Seglund *et al.* (2005) derived a state-wide estimate from the CDA (1990) data of 439,000 ac (178,000 ha) of Gunnison's prairie dog occupied habitat in 1990 (Table 1). However, other, more recent estimates based on field work may provide the best evidence of occupied habitat (population) trends for this species in recent years in Colorado. In 2005, the Colorado Division of Wildlife estimated 174,000 ac (70,000 ha) of Gunnison's prairie dog occupied habitat State-wide, based upon their own field surveys and reports from field personnel from other agencies (Skiba, *in litt.* 2005) (Table 1). State-wide occupied habitat since 1961 appears to have remained stable or increased somewhat, from 116,000 ac (55,000 ha) in 1961 to 174,000 ac (70,000 ha) in 2005.

In New Mexico, Bodenchuck (1981) solicited questionnaire responses from agricultural producers. Respondents reported 107,574 ac (43,567 ha) of Gunnison's prairie dog occupied habitat. Bodenchuck (1981) extrapolated a State-wide total of 348,000 ac (141,000 ha) of occupied habitat for the species (Table 1). Oakes (2000) questioned this extrapolation because of possibly faulty assumptions used to derive it. Knowles (2002) estimated that 75,000 ac (30,000 ha) of occupied habitat existed in 1982 (Table 1). Seglund *et al.* (2005) reported that New Mexico Game and Fish utilized Digital Orthophoto Quarter Quadrangles to estimate a minimum of 9,108 ac (3,689 ha) of occupied habitat state-wide in 2004 (Table 1). State-wide occupied habitat may have been in a decreasing trend, from 355,000 ac (144,000 ha) in 1961 to a minimum of 9,000 ac (4,000 ha) in 2004.

In Utah, Seglund *et al.* (2005) reported that the Utah Division of Wildlife estimated that the State had 22,007 ac (8,906 ha) of occupied Gunnison's prairie dog habitat in 1968 (Table 1). Knowles (2002) estimated a minimum of 3,678 ac (1,490 ha) of occupied habitat State-wide (Table 1). The state-wide trend in occupied habitat since 1961 appears to have been decreasing, from 100,000 ac (40,500 ha) in 1961 to 4,000 ac (2,000 ha) in 2002.

TABLE 1.—STATE-WIDE OCCUPIED HABITAT ESTIMATES (IN ACRES) FOR GUNNISON'S PRAIRIE DOG

State	1961	Recent	Trend, 1961 to present
Arizona	445,000	~535,000	Increasing.
Colorado	115,650	439,000 (CO DOA 1990) 174,224 (CO DOW 2005)	Increasing.
New Mexico	354,905	348,000 (Bodenchuk 1981) 75,000 in 1982 (Knowles 2002) >9,108 (Seglund et al. 2005).	Decreasing?
Utah	100,000	22,007 in 1968 (Seglund et al. 2005) >3,678 (Knowles 2002)	Decreasing?
Total	1,015,945	~722,000 (assuming no change in the amount of occupied habitat on AZ tribal lands since 1961).	

Range-Wide Estimates

Gunnison's prairie dog populations in all states within the species' range have declined significantly in a historic sense, but may have been relatively more stable in some States in recent decades. Regardless of the absolute accuracy of historic estimates of occupied habitat for the individual States, it is apparent that Gunnison's prairie dog occupied habitat has declined range-wide (Table 1). Differing survey and analytical methods, along with unknown confidence intervals prevents us from being able to compare estimates through time and among localities. Point estimates (Table 1) for New Mexico (Seglund *et al.* 2005) and for Utah (Knowles 2002) are estimated minimums.

Site-Specific Estimates

In addition to State-wide and range-wide estimates, we also evaluated site-specific estimates of occupied habitat, and considered this information in our conclusions regarding current population trends. Site-specific estimates of occupied habitat are typically derived from field surveys related to monitoring and/or research, rather than extrapolation. The smaller size of a study site versus a state-wide also lends itself to more precise assessment. Consequently site-specific estimates are often more accurate than state-wide estimates. Site-specific estimates are also often more recent and therefore provide additional insight into current trends. However, an inherent bias in evaluating prairie dog population trends may exist because dramatic declines or increases in existing colonies may be more likely to be reported than the establishment of new populations in previously uninhabited areas. In addition, monitoring programs tend to focus more on established sites than on identifying new occupied sites.

All site-specific estimates that we are aware of are listed in Table 2. As noted in the following text, all site-specific estimates, with the exception of Aubrey Valley in Arizona, indicate declines in occupied habitat due to plague epizootics. In addition to State-wide and site-specific estimates, there are several sites that have been studied and described in terms of numbers of colonies. While these sites do not provide precise data in terms of acres of occupied habitat, they provide additional insight into the likely extent of impact from sylvatic plague throughout the range of the Gunnison's prairie dog (Table 3). It should be noted that for most sites described in Tables 2 and 3, estimates are not available from the past year, so the current status of these sites is not known. In addition, the basis of the estimates vary, the relative rigor of the estimates vary from published papers to verbal estimates. Notwithstanding the variance in methodology and level of rigor it is apparent that plague can result in devastating population effects to individual populations and colonies.

TABLE 2.—SITE-SPECIFIC OCCUPIED HABITAT ESTIMATES (IN ACRES) FOR GUNNISON'S PRAIRIE DOG

Site	Estimate	Estimate	Estimate	Estimate	Status
Aubrey Valley, AZ		19,368 in 1990 (Seglund et al. 2005).	29,653 in 1997 (Winstead in litt 2002).	42,000 in 2005 (Van Pelt, pers.comm. 2005).	Increasing.
Dilkon, AZ			8,650 in 1994 (Wagner 2002).	43 in 2001 (Wagner 2002).	Decreasing.
Currecanti Natl. Rec. Area, CO.		148 in 1980 (Rayor 1985).	100% mortality by 1981 (Rayor 1985).		Decreasing.
Gunnison, Saguache, Montrose Co., CO.			15,569 in 1980 (Capodice & Harrell 2003).	770 in 2002 (Capodice & Harrell 2003).	Decreasing.
South Park, CO	915,000 in 1945 (Ecke & Johnson 1952).	74,000 in 1948 (Fitzgerald 1993).	None known in 1977 (Fitzgerald 1993).	42 in 2002 (CO DOW 2002).	Decreasing.
Catron & Socorro Co., NM.	2,458,650 in 1916 (Oakes 2000).		>12,000 in 1984 (Luce 2005).	>6,000 in 2005 (Luce 2005).	Decreasing.
Moreno Valley, NM		11,000 in 1984 (Cully et al. 1997).	>99% mortality by 1987 (Cully et al. 1997).		Decreasing.

TABLE 3.—SITE-SPECIFIC ESTIMATES OF COLONY NUMBERS FOR GUNNISON'S PRAIRIE DOG

Site	Estimate	Estimate	Status
Flagstaff, AZ	75 colonies in 2000 (Wagner & Drickamer 2002).	14 colonies in 2001 (Wagner & Drickamer 2002).	Decreasing.
Petrified Forest NP, AZ	8 colonies in 1994 (Turner 2001)	3 colonies in 1996 (Turner 2001)	Decreasing.

TABLE 3.—SITE-SPECIFIC ESTIMATES OF COLONY NUMBERS FOR GUNNISON'S PRAIRIE DOG—Continued

Site	Estimate	Estimate	Status
Seligman, AZ	47 colonies in 1990 (Wagner & Drickamer 2002).	11 colonies in 2001 (Wagner & Drickamer 2002).	Decreasing.
Chubbs Park, CO	1 colony in Aug., 1958 (Lechleitner et al. 1962).	100% mortality in Sept., 1959 (Lechleitner et al. 1962).	Decreasing.
Navajo Nation in NM	625 colonies in 1966 (Fitzgerald 1970) ...	233 colonies in 1969 (Fitzgerald 1970) ...	Decreasing.
Garfield Co., UT	1 colony in 1980 (Barnes 1993)	100% mortality in 1981 (Barnes 1993)	Decreasing.

The Dilkon area on the Navajo Reservation in Arizona had 8,650 ac (3,500 ha) of occupied habitat in 1994 and apparently decreased to 43 ac (17 ha) in 2001 (Wagner 2002) following a plague epizootic (Table 2). Other sites in Arizona, where only the number of colonies were noted (Table 3) include: 8 colonies in Petrified Forest National Park in 1994, with 5 colonies extirpated following a plague epizootic in 1995 and 1996 (Turner 2001); 75 active colonies in the Flagstaff area in 2000, reduced to 14 active colonies in 2001 following a plague epizootic (Wagner and Drickamer 2002); and 47 active colonies in the Seligman area, covering approximately 9,000 ac (3,500 ha) were reduced to 11 active colonies in 2001 following a plague epizootic (Wagner and Drickamer 2002).

In Colorado, a 148-ac (60-ha) colony in Curecanti National Recreation Area experienced 100 percent mortality following a plague epizootic in 1981 (Rayor 1985) (Table 2). In South Park, Colorado, there were an estimated 915,000 ac (371,000 ha) of occupied habitat in 1945 (Ecke and Johnson 1952) and 74,000 ac (30,000 ha) in 1948 (Fitzgerald 1993). Fitzgerald (1993) could not locate any colonies in South Park in 1977, but 42 ac (17 ha) of occupied habitat were located in 2002 (Colorado Division of Wildlife 2002) (Table 2). South Park experienced a remarkable decrease in occupied habitat from 1945 to 2002, due predominantly to plague. Another site in Colorado where only the number of colonies was noted (Table 3), is a colony in Chubbs Park, Chaffee County, which experienced 100 percent mortality in 1959 following a plague epizootic (Kartman *et al.* 1962 and Lechleitner *et al.* 1962).

In Moreno Valley, New Mexico, Cully (1991) estimated that there were 11,000 ac (4,500 ha) of occupied habitat in 1984; and in 1987, after two plague epizootics, there was a significant decrease, with greater than 99.5 percent mortality (Cully *et al.* 1997) (Table 2). Another site in New Mexico where only the number of colonies was noted, is the New Mexico portion of the Navajo Nation (Table 3), where the number of known colonies dropped from 625 in 1966 to 233 in 1969 following repeated epizootics (Fitzgerald 1970).

In Utah, a colony in Garfield County experienced 100 percent mortality following a plague epizootic in 1981 (Barnes 1993) (Table 3).

Threats Analysis

In the following narrative, we discuss each of the major assertions made in the petition, organized by the five listing factors found in section 4(a)(1) of the Act. A species may be determined to be endangered or threatened if it meets the definition specified in the Act pursuant to an evaluation of the following five threat factors: (A) the present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether impacts to the Gunnison's prairie dog presented in the petition and other information readily available in our files present substantial information that listing may be warranted. Our evaluation of these factors is presented below.

A. Present of Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition asserts that habitat loss and fragmentation has imperiled the Gunnison's prairie dog. The petitioner has documented, through personal observation, the loss of 745 ac (302 ha) of occupied habitat due to municipal development in Santa Fe, Albuquerque, Taos, and Flagstaff. The petition documents that poor rangeland management (primarily via overgrazing) has resulted in the proliferation of noxious weeds, especially cheatgrass (*Bromus tectorum*), that has in turn affected native vegetation. The petition asserts that loss of native vegetation may diminish habitat suitability for Gunnison's prairie dog. The petition notes that the proliferation of cheatgrass has resulted in the alteration of fire ecology, and asserts that it has in turn degraded prairie dog habitat. The petition asserts that the transfer of public lands (privatization) threatens the species. The petition presents an inventory of land parcels leased for oil and gas exploration and development and asserts that this activity threatens the species. The petition asserts that road mortality threatens the species. The petition asserts that all factors affecting the Gunnison's prairie dog result in isolation and fragmentation of remnant colonies, and that these smaller, isolated colonies are more susceptible to local extirpation by other factors such as poisoning and plague.

Evaluation of Information in the Petition

Although municipal development may have adverse impacts on some Gunnison's prairie dog populations at a local scale, we do not have substantial information that it causes range-wide population declines. Seglund *et al.* (2005) determined that urbanization affects 577,438 ac (233,681 ha) within the range of the species. This is less than 2 percent of the potential habitat within the range of the species. Wagner (2002) noted that in Arizona, human development undoubtedly impacts local populations of Gunnison's prairie dogs near the few cities and agricultural areas in northern Arizona, but the impact on overall populations is probably quite small. The petition did not present substantial scientific information that habitat loss and fragmentation is threatening the species.

We are aware of reports that noxious weeds increase in the presence of overgrazing. However, based upon the information in our files, the impact of overgrazing on prairie dog populations is contradictory. Some reports have noted that species density is positively correlated with the number of native plants (Shalaway and Slobdchikoff 1988; Slobdichikoff *et al.* 1988). Other reports have concluded that prairie dog density is positively correlated with an increase in grazing, which simulates the shortgrass environment preferred by prairie dogs (Fagerstone and Ramey 1996; Marsh 1984, Slobodchikoff *et al.*

1988). The petition did not present substantial scientific information that poor rangeland management is threatening the species.

We are aware that a relationship exists between overgrazing, cheatgrass proliferation, and fire frequency and intensity. However, we have no information in our files that addresses any correlation between fire and Gunnison's prairie dog populations. The petition does not present substantial scientific information that fire is threatening the Gunnison Prairie Dog.

We have no information in our files that indicates that the transfer of public lands (privatization) has any significant influence on Gunnison's prairie dog populations and the petition does not present substantial scientific information that privatization is threatening the Gunnison Prairie Dog.

We acknowledge that there are numerous land parcels within the Gunnison's prairie dog range that are leased for oil and gas development (Seglund *et al.* 2005). However, no information is available that quantifies the amount of occupied habitat that is affected. Menkens and Anderson (1985) concluded in a study of white-tailed prairie dogs that any impact from seismic testing is negligible. The petition does not present substantial scientific information that oil and gas development is threatening the Gunnison Prairie Dog.

We acknowledge that roads are related to some Gunnison's prairie dog mortality. However, there is no information that indicates range-wide impacts to the species from this factor and the petition does not provide substantial scientific information to support this assertion.

We have significant information available in our files indicating that generally smaller, more isolated populations are more vulnerable to extirpation. In addition, isolation of colonies may also reduce the chance of recolonization after extirpation (Wagner and Drickamer 2002). The literature on prairie dogs and the effects of isolation is inconclusive. Lomolino *et al.* (2003) found that persistence of black-tailed prairie dog towns increased significantly with larger town size and decreased isolation. However, Lomolino *et al.* (2003) and other recent reports (Cully and Williams 2001; Miller *et al.* 1993; Roach *et al.* 2001; Vosburgh 1996) also indicate that isolation and fragmentation may provide some protection to prairie dogs from sylvatic plague by lessening the likelihood of disease transmission. Conversely, large intercolony distances may not protect towns if agents of plague transmission include highly mobile species such as coyotes and raptors (Barnes 1982, 1993). Because we do understand the mechanics of plague transmission well, we are unable to find that isolation and fragmentation is wholly detrimental to the species as it may contribute to avoidance of plague transmission. The petition does not provide substantial scientific information to support an assertion that small colony size in and of itself in the absence of disease is currently threatening the Gunnison prairie dog.

Summary of Factor A

We have determined that information in the petition and readily available in our files does not constitute substantial scientific information that any present or threatened destruction, modification, or curtailment of habitat is a threat to Gunnison's prairie dog such that listing under the Act may be warranted. However, more information on the impacts of fragmentation and isolation with regard to persistence of prairie dog populations is needed.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition asserts that recreational shooting of Gunnison's prairie dogs threatens the species through population reduction, alteration of behavior, and potential extirpation of entire colonies. Citations are provided regarding the impact of shooting on prairie dogs, particularly black-tailed prairie dogs.

Evaluation of Information in the Petition

We are aware that recreational shooting can reduce prairie dog population density at specific sites (Cully 1986; Knowles 2002; Miller *et al.* 1993; Vosburgh 1996; Vosburgh and Irby 1998; Wagner 2002; Wagner and Drickamer 2002), and acknowledge the possibility that local extirpation may have occurred in isolated circumstances (Knowles 1988). However, no information is available in the petition or our files to support a correlation between a range-wide decline of Gunnison's prairie dogs and recreational shooting. Prairie dog colonies typically experience increased population growth rates following shooting and can recover from very low numbers (Knowles 1988; Reeve and Vosburgh, In press).

Summary of Factor B

We have determined that information in the petition and readily available in our files does not constitute substantial scientific information that overutilization is a threat to Gunnison's prairie dog such that listing under the Act may be warranted.

C. Disease or Predation

Information Provided in the Petition

The petition asserts that sylvatic plague threatens the Gunnison's prairie dog. The petition cites sources that report that plague is a non-native disease that was first reported in the species in 1932. It further cites sources that report that the species has almost a total lack of natural immunity, with mortality rates at infected colonies typically reaching 99 to 100 percent. The petition states that plague occurs throughout the range of the species and cites reports of epizootics in each of the states within the species' range. Some of the more significant epizootics cited by the petition include: The Dilkon region and Seligman region in Arizona; Saguache County and the South Park region in Colorado; Catron County and Moreno Valley in New Mexico; and Lisbon Valley and Tank Mesa in Utah.

The petition describes declines in black-tailed prairie dog populations at Rocky Mountain Arsenal National Wildlife Refuge due to sylvatic plague. Following a plague epizootic in 1988, prairie dog populations declined by at least 90 percent. During the next few years, populations rebounded to approximately half of the original number before experiencing another epizootic. After the epizootic, populations again declined by at least 90 percent. This pattern has repeated itself at this site through three epizootics. Each time the maximum population attained has only been approximately half of the previous maximum population. The petitioner asserts that a similar pattern of decline is likely for Gunnison's prairie dog colonies exposed to plague.

Evaluation of Information in the Petition

Information in our files supports the assertions made in the petition regarding sylvatic plague (Barnes 1982; Barnes 1993; Biggins and Kosoy 2001; Center for Disease Control 1998; Cully 1989; Eskey and Hass 1940; Gage and Kosoy 2005; Girard *et al.* 2004; Kartman *et al.* 1966; Navajo Natural Heritage Program 1996; Olsen 1981; Seglund *et al.* 2005; Stapp *et al.* 2004; Witmer 2004). Quantitative data indicate that plague has caused population declines in recent years at many well-studied sites throughout the range of Gunnison's prairie dog (Cully 1986; Cully 1989; Cully 1997; Cully *et al.* 1997; Ecke and Johnson 1952; Fitzgerald 1970; Fitzgerald 1993; Fitzgerald and

Lechleitner 1974; Girard *et al.* 2004; Kartman *et al.* 1962; Lechleitner *et al.* 1962; Lechleitner *et al.* 1968; Rayor 1985; Turner 2001; Wagner 2002; Wagner and Drickamer 2002). All of the declines noted in Tables 2 and 3 are due to plague epizootics. However, range-wide population trends may or may not follow this pattern (Table 1). Beyond absolute numbers, an additional consideration when evaluating Gunnison's prairie dog populations is the temporal fluctuation of occupied versus unoccupied habitat caused by periodic plague epizootics. We are unaware of any information at the landscape level that definitively suggests range-wide population declines caused by plague, although some reports indicate significant amounts of recently unoccupied habitat (Skiba, *in litt.* 2005 and Utah Division of Wildlife Resources, *in litt.* 2005), and many specific sites have experienced at least temporary reductions to extirpation or near extirpation (Tables 2 and 3).

Plague is an exotic disease foreign to the evolutionary history of North American species (Barnes 1982; Barnes 1993; Biggins and Kosoy 2001). Plague was first detected in Gunnison's prairie dogs in the 1930s (Eskey and Hass 1940) and has subsequently spread throughout the range of the species (Center for Disease Control 1998; Cully 1989; Girard *et al.* 2004). Therefore, it has been present within the species' range for only approximately 70 years, allowing very little time for any resistance to evolve (Biggins and Kosoy 2001). Once established in an area, plague becomes persistent and periodically erupts, with the potential to eventually extirpate or nearly extirpate entire colonies (Barnes 1982; Barnes 1993; Cully 1989; Cully 1993; Cully *et al.* 1997; Fitzgerald 1993).

Studies indicate that Gunnison's prairie dog populations are more susceptible to decline from sylvatic plague than white-tailed prairie dog populations, and are at least as, if not more, susceptible than black-tailed prairie dog populations (Antolin *et al.* 2002; Cully 1989; Cully and Williams 2001; Hubbard and Schmitt 1984; Knowles 2002; Ruffner 1980; Torres 1973; Turner 2001). Gunnison's prairie dogs commonly forage outside of their home territory, a characteristic that may play a significant role in the susceptibility of the species to plague. The Gunnison's prairie dog may be more susceptible to plague than the black-tailed prairie dog because of the Gunnison's less exclusive territorial behavior, where relatively many prairie dogs mix relatively freely throughout adjacent territories and thereby contribute to the communicability of plague. Additionally, plague is only present throughout approximately 66 percent of the black-tailed prairie dog's range (US Fish and Wildlife Service 2000) in comparison to 100 percent of the Gunnison's prairie dog's range (Center for Disease Control 1998; Cully 1989, Girard *et al.* 2004). The Gunnison's prairie dog is likely more susceptible to plague than the white-tailed prairie dog because the Gunnison's typically occurs at higher densities and is less widely dispersed on the landscape, allowing for more frequent transmission of the disease from one individual to another (Antolin *et al.* 2002, Cully 1989; Cully and Williams 2001; Turner 2001).

Many populations of Gunnison's prairie dogs have never been studied, and for those we have no information on their current population status or recent trends. In addition, for some previously studied sites we have no recent information regarding the status of the population. Tables 2 and 3 note declines due to plague at numerous sites throughout the range of the species For example, occupied habitat in South Park, Colorado was estimated at 915,000 ac (371,000 ha) in 1945, 74,000 ac (30,000 ha) in 1948, and 42 ac (17 ha) in 2002. This decline was largely due to plague and affected a substantial portion of the species' extant occupied habitat in Colorado (at least 15 percent). Partial or complete recovery following population reductions due to plague has been reported at various sites for both white-tailed and black-tailed prairie dogs (Biggins and Kosoy 2001). In the few sites where Gunnison's prairie dog populations have been monitored after plague, only one population may have increased after the plague outbreak, but it is a very small fraction of pre-plague abundance.

Summary of Factor C

We have determined that information in the petition and readily available in our files does not constitute substantial scientific information that disease or predation are threats to Gunnison's prairie dog such that listing under the Act may be warranted. We recognize that sylvatic plague has been and continues to be the major mortality factor for Gunnison's prairie dog at specific sites, but the impact that this disease has had on the overall status of the species, even at the State level, remains unclear. More information on the impacts of disease, specifically sylvatic plague, with regard to persistence of Gunnison's prairie dog populations is needed.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition documents the State and federal regulatory status of the Gunnison's prairie dog and asserts that those regulations are inadequate and constitute a threat to the species. Most concerns relate to a lack of restrictions with regard to chemical control and recreational shooting. However, information in our files indicates most of the Western Association of Fish and Wildlife Agencies (WAFWA) states have already established shooting restrictions on prairie dogs via state hunting regulations, however such regulations do not apply to tribal lands. The petition notes that in Arizona and Utah there is only a seasonal closure on public lands; and in Colorado and New Mexico, there is no season. The petition also notes that none of the state management plans developed in response to a petition on the black-tailed prairie dog include any conservation measures for Gunnison's prairie dogs. The petition further claims that federal policies of various agencies and departments allow chemical control of the species.

Evaluation of Information in the Petition

The current regulatory status with regard to Gunnison's prairie dogs is well documented in various State and federal statutes. However, the impacts resulting from these regulations or lack thereof are difficult to quantify. The petition notes that none of the State management plans developed in response to a petition on the black-tailed prairie dog (Colorado Division of Wildlife 2003; New Mexico Black-tailed Prairie Dog Working Group 2001; Van Pelt 1999) include any conservation measures for Gunnison's prairie dogs. However, this would be expected since these plans address a different species and/or habitat type. All four States discuss the Gunnison's prairie dog in their Comprehensive Wildlife Conservation Strategies (Seglund *et al.* 2005), and found the species deserving of special management consideration.

WAFWA has completed a conservation assessment for the species (Seglund *et al.* 2005) that describes regulatory status, occupied habitat estimates, limiting factors, and conservation needs for the species. After consideration of the contents of the assessment, the WAFWA and its Prairie Dog Conservation Team and White-tailed and Gunnison's Prairie Dog Working Group concluded that just active management and development of a comprehensive conservation strategy

for the species and its habitat are needed to conserve the species. Conservation planning efforts are underway among state and federal agencies for the Gunnison prairie dog with a strategy due to be completed by 2006.

The range-wide assessment indicates that BLM has incorporated Gunnison prairie dog conservation into most land use plans.

Summary of Factor D

Gaps in the regulatory mechanisms applicable to threats discussed in the analysis of the five factors are not determinative, as we do not have substantial scientific information that the species may warrant listing due to any of these potential threats, either together or in isolation.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition cites sources that document early chemical control (poisoning) efforts directed toward the Gunnison's prairie dog. These early efforts were generally broad-scale and federally directed. Competition with livestock for forage was the most common impetus for chemical control of prairie dogs. The petition cites sources that report that in Arizona, a minimum of 2.3 million ac (935,000 ha) of Gunnison's prairie dog occupied habitat were poisoned from 1915–1964. In Colorado, New Mexico, and Utah, the petition notes that control efforts were not quantified by species. However, for all prairie dog species from 1915 to 1964, the petition cites sources that report 23.2 million ac (9.4 million ha) poisoned in Colorado, 20.5 million ac (8.3 million ha) poisoned in New Mexico, and 2.7 million ac (1.1 million ha) poisoned in Utah.

The petition asserts that drought may have affected Gunnison's prairie dogs. It acknowledges that the effects of drought on the species have not been examined in the published scientific literature, but speculates that chemical control may be more likely during periods of drought.

Evaluation of Information in the Petition

Information in our files supports the assertions made in the petition regarding dramatic declines in Gunnison's prairie dog occupied habitat associated with early chemical control efforts (Bailey 1932; Bell 1921; Ecke and Johnson 1952; Hubbard and Schmitt 1984; Forrest 2002; Knowles 2002; Longhurst 1944; Oakes 2000; Seglund *et al.* 2005; Shriver 1965; Wagner 2002). In the early 1900s, strychnine treated grain was primarily used. In 1947, strychnine began to be replaced with compound 1080, which was used until it was rescinded in 1972 by Presidential Executive Order No. 11643 (Hubbard and Schmitt 1984). Since 1972, zinc phosphide has most often been used. Fewer chemical control efforts for the species have been federally directed in recent years and we are not aware of any recent large-scale chemical control programs. Consequently, the extent of impacts to the species likely has not continued to the same degree as in earlier years. We have no information to indicate that large scale poisoning is ongoing on the federal land management agencies. Information provided by the BLM indicates that no authorized poisoning is occurring on BLM lands. Other than a recitation of the effects of early chemical control activities, the petition does not provide substantial scientific information that chemical control is a current threat to the species, nor do we have information in our files that supports such a conclusion.

Drought may affect some Gunnison's prairie dog populations in some circumstances, but no information regarding a direct relationship between drought and range-wide populations is available.

Summary of Factor E

Substantial information is not presented by the petition or available in our files to indicate that other natural or manmade factors, in particular chemical control and drought, currently threaten the Gunnison's prairie dog such that listing under the Act may be warranted.

Finding

We have reviewed the information presented in the petition, and have evaluated that information in relation to information readily available in our files. On the basis of our review, we find that the petition does not present substantial scientific information indicating that listing the Gunnison's prairie dog species may be warranted due to any of the five threat factors. As noted previously under our discussion of factor C, we recognize that sylvatic plague has been and continues to be the primary mortality factor for Gunnison's prairie dog, especially at specific sites, but the impact that this disease has had on the overall status of the species is unclear. More information on the impacts of disease, specifically sylvatic plague, and on population status and trends is needed. The Service had already engaged the States in an effort to collect status information on the species, especially in areas where the current status of Gunnison's prairie dog in not well known. Results from these cooperative efforts should be available within a year. Once those results are available we will reevaluate the status of Gunnison's prairie dog.

References Cited

A complete list of all references cited herein is available upon request from the Field supervisor (see **ADDRESSES** section).

Author

The primary authors of this document are staff at the South Dakota Ecological Services Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 30, 2006.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–1630 Filed 2–6–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 25
Tuesday, February 7, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–NEW.

Form Number: N/A.

Title: Summer Internship Application.

Type of Submission: New Information Collection.

Purpose: The United States Agency for International Development, Africa Bureau, intends to use the Summer Internship Application to collect information from approximately 300 student applicants to its summer internship programs for USAID missions in Africa and in Washington, DC.

Annual Reporting Burden:

Respondents: 300.

Total annual responses: 300.

Total annual hours requested: 150 hours.

Dated: January 27, 2006.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 06–1079 Filed 2–6–06; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 1, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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.

Office of the Secretary, White House Liaison

Title: Advisory Committee and Research and Promotion Board Membership Background Information.

OMB Control Number: 0505–0001.

Summary of Collection: Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, *et seq.*) requires the Department to provide information concerning advisory committee members' principal place of residence, persons or companies by whom employed, and other major sources of income. Similar information will be required of research and promotion boards/committees in addition to the supplemental commodity specific questions. The Secretary appoints board members under each program. Some of the information contained on form AD–755 is used by the Department to conduct background clearances of prospective board members required by departmental regulations. All committee members who are appointed by the Secretary require this clearance. The Office of the Secretary, White House Liaison will collect information using form AD–755, Advisory Committee and Research and Promotion Board Membership Background Information.

Need and Use of the Information: The Office of the Secretary, White House Liaison will collect information on the background of the nominees to make sure there are no delinquent loans to the United States Department of Agriculture (USDA), as well as making sure they have no negative record that could be a negative reflection to USDA. The information obtained from the form is also used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent committee or board.

Description of Respondents: Individuals or households.

Number of Respondents: 1684.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 842.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–1599 Filed 2–6–06; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Notice.

DATES: The administrative actions announced in the notice are effective on February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Branch Chief—Stewardship Programs, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *craig.derickson@wdc.usda.gov*, Attention: Conservation Security Program.

SUMMARY: This document announces the sign-up CSP–06–01 for the Conservation Security Program (CSP). This sign-up will be open from February 13, 2006, through March 31, 2006, in selected 8-digit watersheds in all 50 States, Guam, and the Caribbean.

SUPPLEMENTARY INFORMATION: In an amendment to the Interim Final Rule published March 25, 2005, USDA's Natural Resources Conservation Service (NRCS) established the implementing regulations for Conservation Security Program (CSP). The CSP is a voluntary program administered by NRCS using authorities and funds of the Commodity Credit Corporation, that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands.

This document announces the CSP–06–01 sign-up that will be open from February 13, 2006, through March 31, 2006, in selected 8-digit watersheds in all 50 States, Guam, and the Caribbean, which can be viewed at *http://www.nrcs.usda.gov/programs/csp/2006_CSP_WS/index.html.* These watersheds were selected using the process set forth in the Interim Final Rule. In addition to other data sources, this process used National Resources Inventory data to assess land use, agricultural input intensity, and historic conservation stewardship in watersheds nationwide. NRCS State Conservationists recommended a list of potential watersheds after gaining advice from the State Technical Committees. The Secretary of Agriculture announced on August 25, 2005, the preliminary list of FY 2006 watersheds based on the President's budget. Of those 110 watersheds, CSP will be offered in 60 watersheds nationwide based on available funding. The sign-up will only include those producers who are not participants in an existing CSP contract. Applicants can submit only one application for this sign-up.

To be eligible for CSP, a majority of the agricultural operation must be within the limits of one of the selected watersheds. Applications which meet the minimum requirements as set forth in the Interim Final Rule (listed below) will be placed in enrollment categories for funding consideration. Categories will be funded in alphabetical order until funds are exhausted. If funds are not available to fund an entire category, then the applications will fall into subcategories and funded in order until funds are exhausted. If a subcategory cannot be fully funded, applicants will be offered the FY 2006 CSP contract payment on a prorated basis.

Producers should begin the application process by filling out a self-assessment to determine if they meet the basic qualification for CSP. Self-assessment workbooks are available in hard copy at USDA Service Centers within the watersheds, and electronically for download or an interactive Web site linked from *http://www.nrcs.usda.gov/programs/csp/2006_CSP_WS/index.html.* The self-assessment workbook includes a benchmark inventory where the applicant documents the conservation practices and activities that are ongoing on their operation. This benchmark inventory serves as the basis for the conservation stewardship plan. Once the producer concludes that they meet the CSP requirements as outlined in the workbook, they should make an appointment for an interview to discuss their application with the NRCS local staff to determine if they meet specific CSP eligibility requirements.

In order to apply, applicants must submit:

(1) A completed self-assessment workbook, including the benchmark inventory.

(2) A minimum of two years of documentation to show any stewardship completed including fertilizer, nutrient, and pesticide application schedules, tillage, and grazing schedules if applicable.

(3) Completed CCC–1200 available through the self-assessment online guide, Web site, and any USDA Service Center.

Applicants are encouraged to attend preliminary workshops, which will be announced locally. There, the basic qualifications will be explained, and assistance provided on the self-assessment workbook and benchmark inventory.

CSP is offered at three tiers of participation. Some payments are adjusted based on the tier, and some payments are tier-neutral. See payment information below.

Minimum Tier Eligibility and Contract Requirements

The following are the minimum tier eligibility and contract requirements:

CSP Tier I—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for any eligible landuse on part of the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

CSP Tier II—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for all eligible land uses on the entire agricultural operation. Additionally, the applicant must agree to address another significant resource concern applicable to their watershed to be started no later than two years prior to contract expiration, and completed by the end of the contract period. If the applicable resource concern is already addressed or does not pertain to the operation, then this requirement is waived.

CSP Tier III—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the existing resource concerns listed in Section III of the NRCS Field Office Technical Guide (FOTG) with a resource management system that meets the minimum level of treatment for all eligible land uses on the entire agricultural operation.

Delineation of the Agriculture Operation

Delineating an agricultural operation for CSP is an important part in determining the Tier of the contract, stewardship payments, and the required level of conservation treatment needed for participation. The applicant will delineate the agricultural operation to include all agricultural lands, and other lands such as farmstead, feedlots, and headquarters and incidental forestlands,

under the control of the participant and constituting a cohesive management unit that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. In delineating the agriculture operation, Farm Service Agency farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation.

Minimum Eligibility Requirements

To be eligible to participate in CSP, the applicants must meet the requirements for eligible applicants, the land offered for contract must meet the definition of eligible land, and the application must meet the conservation standards for that land as described below.

Eligible Applicants

To be eligible to participate, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions;

(2) Meet the Adjusted Gross Income requirements;

(3) Show control of the land for the life of the proposed contract period. If the applicant is a tenant, the applicant must provide NRCS with either written evidence or assurance of control from the landowner, but a lease is not required. In the case of land allotted by the Bureau of Indian Affairs (BIA) or Tribal land, there is considered to be sufficient assurance of control;

(4) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agriculture operation. Landlords and owners are ineligible to submit an application for exclusively cash rented agriculture operations;

(5) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a) in the Interim Final Rule; and

(6) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to, information related to eligibility criteria in this sign-up announcement; and information to verify the applicant's status as a beginning or limited resource farmer or rancher if applicable.

Eligible Land

To be eligible for enrollment in CSP, land must be:

(1) Private agricultural land;

(2) Private non-industrial forested land that is an incidental part of the agriculture operation;

(3) Agricultural land that is Tribal, allotted, or Indian trust land;

(4) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (including center pivot corners, linear practices, field borders, turn rows, intermingled small wet areas, or riparian areas); or

(5) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural land or enrolled parcel such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts.

Land Not Eligible for Enrollment in CSP

The following lands are ineligible for enrollment in CSP:

(1) Land enrolled in the Conservation Reserve Program, the Wetlands Reserve Program, or the Grassland Reserve Program; and

(2) Public land including land owned by a Federal, State, or local unit of government.

Land referred to above may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets eligibility criteria for the agricultural operation and may be described in the Conservation Stewardship Plan.

Land Not Eligible for Any Payment Component in CSP

Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002, is not eligible for any payment component in CSP.

Conservation Standards for Tier I and Tier II

The following conservation standards apply for Tier I and Tier II:

(1) The minimum level of treatment on cropland:

a. Soil Quality—the minimum level of treatment is considered achieved when the Soil Conditioning Index is positive; and

b. Water Quality—the minimum level of treatment is considered achieved when the CSP Water Quality Eligibility Tool minimum thresholds are met for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water, if applicable.

(2) The minimum level of treatment on pastureland and rangelands:

a. Soil Quality—the minimum level of treatment is considered achieved by following a grazing management plan that provides for vegetation and animal management achieved through a forage-animal balance, proper livestock distribution, and timing of use; and.

b. Water Quality—the minimum level of treatment is considered achieved when the access of livestock to water courses is properly managed according to the grazing plan and the CSP Water Quality Eligibility Tool minimum thresholds are met for the specific resource concerns of nutrients, pesticides, sediment and salinity for surface water and nutrients, pesticides and salinity for ground water, if applicable.

Conservation Standards for Tier III

The minimum level of treatment for Tier III on any eligible landuse is met by achieving the required conservation standards specified for Tier I and Tier II requirements, plus meeting the quality criteria for the local NRCS FOTG for all existing resource concerns and the following specific criteria:

(A) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use index value of at least 50;

(B) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 of the habitat potential using either a general or species specific habitat assessment guide, as determined by the State Conservationist;

(C) The minimum requirement for riparian corridors is considered achieved when the streams and natural drainages within the agricultural operation include natural vegetation, or a riparian forest or herbaceous buffer that extends at least 2.5 times the channel width on either side of the stream or 10 meters in width, whichever is less; and

(D) For grazing lands, the minimum requirement is considered achieved when the applicant can demonstrates that the agricultural operation is implementing a monitoring plan with appropriate records to verify that the grazing management plan is meeting the

CSP soil and water quality standards. The required minimum components of a monitoring plan include:

- Grazing use records outlining grazing periods and numbers of animals in each grazing unit.
- Assessments, such as trend studies, similarity indices or rangeland health assessments, as well photographs of resource conditions, and documentation of the condition of stream-banks and other sensitive areas.
- Target and actual utilization levels.

CSP Contract Payments and Limits

CSP contract payments include one or more of the following components subject to the described limits:

- An annual per acre stewardship component for the benchmark conservation treatment. This component is calculated separately for each land use by multiplying the number of acres times the tier factor (0.05 for Tier I, 0.10 for Tier II, and 0.15 for Tier III) times the stewardship payment rate established for the watershed times the tier reduction factor (0.25 for Tier I and 0.50 for Tier II, and 0.75 for Tier III).
- An annual existing practice component for maintaining existing conservation practices. Existing practice payments will be calculated as a flat rate of 25 percent of the stewardship payment.
- A new practice component for additional practices on the watershed specific list. New practice payments for limited resource farmers, beginning farmers and producers who qualify in the NRCS small producer initiative will be made at not more than 65 percent cost-share rate. New practice payments for all other contracts will be made at not more than a 50 percent cost-share rate. All new practice payments are limited to a $10,000 cumulative total for the contract.
- An annual enhancement component for exceptional conservation effort and additional conservation practices or activities that provide increased resource benefits beyond the required conservation standard noted above. This payment will be calculated at a variable payment rate for enhancement activities that are part of the benchmark inventory. The annual enhancement payment for the first contract year for the enhancements documented in the benchmark inventory will be calculated at a rate initiating at 120 percent for the 2006 contract year and then at a declining rate for the remainder of the contract of 100 percent for 2007, 80 percent for 2008, 60 percent for 2009, 30 percent for 2010, 10 percent for 2011, and 0 percent for 2012. This is intended to provide contract capacity to add additional enhancements in the out-years and to encourage participants to make continuous improvements to their operation. In order to maintain the same level of payment over the life of the contract, the participant may add additional enhancement activities of their choice in later years. The additional enhancements will be paid at a flat rate of 100 percent. The total of all enhancement payments in any one year will not exceed $13,750 for Tier I, $21,875 for Tier II, and $28,125 for Tier III annually. The NRCS Chief may allow for special enhancements for producer-based studies, watershed scale projects and evaluation and assessment activities on a case-by-case basis.
- An advance enhancement payment is available in the FY 2006 sign-up. The advance enhancement payment is available to contracts with an initial enhancement payment as determined in the benchmark inventory and interview. The advance enhancement payment would shift a portion of that annual enhancement payment amount into the first-year payment and deduct it from the following years' payments.

Tier I contracts are for a five-year duration. Tier II and Tier III contracts are for a five-to 10-year duration at the option of the participant. Participants who move from Tier I to Tier II or III may increase their contract length to up to ten years from the original contract date. Future contract improvements such as advancing tiers, adding land, and adding enhancements may be made to funded contracts during any announced contract modification period based on annual available funding and other constraints determined to be necessary to manage the CSP program.

Total annual maximum contract payment limits are $20,000 for Tier I, $35,000 for Tier II, and $45,000 for Tier III, including any advance enhancement payment.

The payment components are tailored for the selected watersheds. For more details, call or visit the local USDA Service Center, or view on the Web site at *http://www.nrcs.usda.gov/programs/csp/2006_CSP_WS/index.html.*

Enhancement Components Available in This Sign-Up

The following are the enhancement components available this sign-up:

(1) Additional conservation treatment above the quality criteria for soil quality, nutrient management, pest management, irrigation water management, grazing, air and energy management; and

(2) Conservation measures that address locally identified conservation needs shown on the watershed specific enhancement lists.

The payment components are tailored for the selected watersheds. For more details, call or visit the local USDA Service Center, or view on the Web site at *http://www.nrcs.usda.gov/programs/csp/2006_CSP_WS/index.html.*

CSP Enrollment Categories and Subcategories

Technical adjustments to the enrollment categories were made based on field testing of the criteria published in a previous notice. This notice provides updated enrollment category criteria.

An application will be placed in an enrollment category as follows:

- A single land use application will be placed in the highest category level that all conservation management units being offered meet.
- A multiple land use application will be placed in the category of the land use with the largest number of acres. Category placement for a land use will follow the direction for single land use application category placement (see above).

The CSP will fund the enrollment categories in alphabetical order (Attachment #1). If an enrollment category cannot be completely funded, then subcategories will be funded in the following order:

(1) Applicant is a limited resource producer, according to criteria specified in the USDA Limited Resource Farmers/Ranchers guidelines or a Tribal member producing on Tribal or historically tribal lands;

(2) Applicant is a participant in an on-going monitoring program that is sponsored by an organization or unit of government that analyzes the data and has authority to take action to achieve improvements;

(3) Agricultural operation in a water conservation area or aquifer zone designated by a unit of government;

(4) Agricultural operation in a drought area designated by a unit of government in the past three years before the sign-up dates;

(5) Agricultural operation in a water quality area with a priority on pesticides designated by a unit of government;

(6) Agricultural operation in a water quality area with a priority on nutrients designated by a unit of government;

(7) Agricultural operation in a water quality area with a priority on sediment designated by a unit of government;

(8) Agricultural operation in a non-attainment area for air quality or other local or regionally designated air quality zones designated by a unit of government;

(9) Agricultural operation in an area selected for the conservation of imperiled plants and animals, including threatened and endangered species, as designated by a unit of government; or

(10) Other applications.

Designated means ''officially assigned a priority by a Federal, State, or local unit of government'' prior to this notice. If a subcategory cannot be fully funded, applicants will be offered the FY 2006 CSP contract payment on a prorated basis.

Signed in Washington, DC, on February 1, 2006.

Dana D. York,

Deputy Vice President, Commodity Credit Corporation, Associate Chief, Natural Resources Conservation Service.

BILLING CODE 3410–16–P

2006 CSP Enrollment Categories – Criteria by Land Use and Category

Category	Tier I	Tier II	Tier III
A	Not Applicable	Group 1 or 2	Group 1, 2 or 3
B	Group 1	Group 3	Group 4
C	Group 2	Group 4	Group 5
D	Group 3	Group 5	
E	Group 4 and 5		

Cropland
(row crops, closely grown crops, hay or pasture in rotation with row or closely grown crops, orchards, vineyards, horticultural crops, cropped woodland and marshes, and permanent hay land)

Group	Conservation System Criteria
	Conservation Cropping System Performance Level and Stewardship Practices and Activities installed and maintained for at least two years prior to the sign-up period from the attached list.
1	SCI of ≥ 0.70 or STIR rating of ≤ 15, plus at least 2 unique practices or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat.
2	SCI of ≥ 0.50 or STIR rating of ≤ 30, plus at least 1 unique practice or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat, and one additional practice from any of the areas.
3	SCI of ≥ 0.25 or STIR rating of ≤ 60, plus at least 1 unique practice or activity from each area of Soil Quality, Water Quality and Wildlife Habitat.
4	SCI of ≥ 0.10 or STIR rating of ≤ 100, plus at least 2 unique practices or activities from any of the areas.
5	* Must meet minimum program eligibility requirements as defined in 7CFR1469

Grazing Land
(Range and Pasture)

Group	Conservation System Criteria
	Grazing Management System and Stewardship Practices and Activities installed and maintained for at least two years prior to the sign-up period from the attached list.
1	Vegetation and animal management accomplished by following a grazing management plan, plus at least 3 unique practices or activities from Water Quality and at least 2 unique practices or activities from each area of Soil Quality, and Wildlife Habitat.
2	Vegetation and animal management accomplished by following a grazing management plan, plus at least 2 unique practices or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat.
3	Vegetation and animal management accomplished by following a grazing management plan, plus at least 1 unique practice or activity from each area of Soil Quality, Water Quality and Wildlife Habitat.
4	Vegetation and animal management accomplished by following a grazing management plan, plus at least 2 unique practices or activities from any of the areas.
5	* Must meet minimum program eligibility requirements as defined in 7CFR1469

2006 CSP Enrollment Categories – Criteria by Land Use and Category

Cropland Soil Quality – Stewardship Practice and Activity List for Soil Quality

- ☐ **Alley cropping** with trees or shrubs planted in single or multiple rows with agronomic, horticultural crops or forages produced between rows of woody plants.
- ☐ **Conservation crop rotation** perennial grasses, legumes and forbs in rotation for a minimum of 2 years; or a high biomass crop every other year; (already have cover crop as an activity) or a combination of crops that match soil water storage with crop water use needs.
- ☐ **Contour buffer strips** with permanent, herbaceous vegetative cover established across the slope and alternated down the slope with parallel, wider cropped strips.
- ☐ **Contour Farming** orchards, vineyards, plantations and field grown ornamentals planted in parallel lines across and perpendicular to the dominant slope.
- ☐ **Cover crops** small grains, legumes, forbs, or other herbaceous plants established for seasonal cover.
- ☐ **Cross wind trap strips** the use of herbaceous cover resistant to wind erosion.
- ☐ **Field borders** with a strip of permanent vegetation established at the edge or around the perimeter of a field.
- ☐ **Forage harvest management** for improved ground cover, protection from soil erosion and to improve soil characteristics.
- ☐ **Grassed waterway** that is shaped or graded to required dimensions and established with suitable vegetation.
- ☐ **Ground Cover** use of grasses, legumes or forbs maintained as permanent cover between rows in orchards, vineyards, plantations, field grown ornamentals, or cropped woodland.
- ☐ **Pasture and Hayland Plantings/Improvement** to establish native or introduced grasses or legumes that improve forage quality and soil characteristics.
- ☐ **Hedgerow planting** with the establishment of dense vegetation.
- ☐ **Herbaceous Wind Barriers** with vegetation established in rows or narrow strips across the prevailing wind direction.
- ☐ **Irrigation Water Management** actions to reduce erosion such as the use of polyacrylamide (PAM) or controlling the volume, frequency, and application rate of irrigation water.
- ☐ **Mulching** use of wood chips, leaf litter or other organic materials as a year round cover between rows in orchards, vineyards, plantations, field grown ornamentals, or cropped woodland.
- ☐ **Residue management** system with no-till or strip tillage systems to maintain plant residues on the soil surface year-round.
- ☐ **Riparian forest buffer** of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.
- ☐ **Riparian herbaceous cover** consisting of grasses, grass-like plants and forbs immediately adjacent to watercourses.
- ☐ **Stripcropping** with row crops, forages, small grains, or fallow in alternating across a field.
- ☐ **Soil pH Management** use of soil amendments or activities to maintain the alkalinity and acidity at optimum levels for nutrient uptake, based on soil tests conducted per land grant university recommendations.
- ☐ **Soil salinity management** on irrigated cropland with soil amendments such as gypsum or sulfur.
- ☐ **Windbreak and shelterbelt establishment** of single or multiple rows of trees or shrubs.

2006 CSP Enrollment Categories – Criteria by Land Use and Category

Cropland Water Quality – Stewardship Practice and Activity List for Water Quality

Cropland WQ - PERMANENT VEGETATION PRACTICES AND ACTIVITES

☐ **Cover crops** of grasses, legumes, forbs, or other herbaceous plants established for seasonal cover.

☐ **Contour buffer strips** with permanent, herbaceous vegetative cover established across the slope and alternated down the slope with parallel, wider cropped strips.

☐ **Critical area planting** that establishes permanent vegetation on sites with high erosion rates, and physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.

☐ **Crop Management Consultation** the use of certified crop advisors to provide recommendations on nutrient and or pest management activities.

☐ **Field borders** with a strip of permanent vegetation established at the edge or around the perimeter of a field.

☐ **Filter strip** with herbaceous vegetation between cropland, grazing land, or forestland and environmentally sensitive areas.

☐ **Integrated Pest Management** the use of scouting, and economic thresholds to determine the method, timing and application of pest control methods.

☐ **Mulching** use of wood chips, leaf litter or other organic materials as a year round cover between rows in orchards, vineyards, plantations field grown ornamentals, or cropped woodland.

☐ **Pasture and hay land planting** to provide increased sod or perennial crops in rotation for a minimum of 2 years.

☐ **Riparian herbaceous cover** consisting of grasses, grass-like plants and forbs.

☐ **Riparian forest buffer** of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

☐ **Vegetative Barriers** narrow strips of perennial vegetation planted in parallel lines across and perpendicular to the predominant slope.

Cropland WQ - WATER MANAGEMENT PRACTICES AND ACTIVITES

☐ **Soil salinity management** on irrigated cropland through combination of drainage water management and amendments to move salts thru the root zone.

☐ **Water control structures** to catch, manage and properly use water applications.

☐ **Water and sediment control basins** to trap sediment and detain water.

☐ **Wetland enhancement** or **Wetland restoration and rehabilitation** to increase function and value for water quality purposes.

☐ **Irrigation system with micro-irrigation** for distribution of water directly to the plant root zone.

☐ **Irrigation system with MESA, LIPC, LEPA** or similar high efficiency irrigation system to supply crop needs that matches water application to crops, soils and topography.

☐ **Irrigation water management** by determining and controlling the volume, frequency, and application rate of irrigation water; and

- ○ Improved system efficiency by evaluations and adjustment;
- ○ Use of data from on-farm weather station; or
- ○ Use of tensiometers or other techniques to assess and improve irrigation water management.

☐ **Drainage water management** through seasonal on-farm water storage and retention.

☐ **Irrigation with a tailwater return system** which utilizes the collection, storage, and transportation of irrigation tailwater for reuse.

2006 CSP Enrollment Categories – Criteria by Land Use and Category

Cropland WQ - PEST & NUTRIENT MANAGEMENT PRACTICES AND ACTIVITES

☐ **Pest management** activities, including any one of the following:

- O Spot spraying activities and other control of noxious/invasive weeds;
- O Minimize pesticide use by selecting plant varieties to minimize the application of pesticides;
- O Use a risk assessment tool such as WINPST to select the least toxic pesticides and herbicides to minimize harmful environmental effects;
- O Use local guidelines to set economic thresholds for pests to minimize use of pesticides and herbicides;
- O Use of biological control methods such as beneficial insects, genetically modified varieties, or livestock; or
- O Use of cultural control methods such as rotations with allelopathic and smothering plants, intercropping, mulching, or plant removal.

☐ **Nutrient management** activities, including any one of the following:

- O Precise nutrient application of such as - banding, side dressing, injection, fertigation;
- O Split nitrogen application to meet crop needs;
- O Test soil and/or plant tissue annually for annual crops O per land grant university recommendations for perennial crops, and low input systems such as cropped woodland and marshes;
- O Use yield monitoring data t determine nutrient needs;
- O Waste utilization to control pathogen and organic runof or
- O Feed management and additives.

2006 CSP Enrollment Categories – Criteria by Land Use and Category

Cropland Wildlife Habitat - Stewardship Practice and Activity List for Wildlife Habitat (Activities to improve fish and wildlife habitat)

☐ **Brush Piles** located on the edge of fields or clearings in cropped woodland and marshes, minimum size pile 4'x 4'x 4', at least 1 pile per 5 acres.

☐ **Cover crops** grasses, legumes, forbs, or other herbaceous plants established for seasonal cover.

☐ **Critical area planting** that establishes permanent vegetation on sites with high erosion rates, and other conditions that prevent the establishment of vegetation with normal practices.

☐ **Drainage water management** (for wildlife) with control of water surface elevations and discharge from surface and subsurface drainage systems or through seasonal on-farm water storage and retention.

☐ **Diversification of plant species** in non-cropped areas for nester or attraction of beneficial insects.

☐ **Forage harvest management** with timely cutting and removal of forages from the field as hay, green-chop or ensilage, or by mowing crops from center of field outward.

☐ **Pest management** by any one of the following:

- O Spot spraying activities and other control of noxious/invasive weeds;
- O Minimize pesticide use by selecting plant varieties to minimize the application of pesticides;
- O Use a risk assessment tool such as WINPST or others to select the least toxic pesticides and herbicides to minimize harmful environmental effects;
- O Use of biological control methods such as beneficial insects, genetically modified varieties, or livestock; or
- O Use of cultural control methods such as rotations with allelopathic and smothering plants, intercropping, mulching, or plant removal.

☐ **Pasture and Hayland plantings /Improvement** establishing native or introduced forage species that provide additional benefits to wildlife.

☐ **Pasture & Hay in Rotation** perennial grasses, legumes and forbs in rotation for a minimum of 2 years.

☐ **Shallow water development** to provide open water on fields and moist soil areas to facilitate waterfowl resting and feeding and provide habitat for reptiles, amphibians and other aquatic species.

☐ **Raptor Nesting Trees** maintain trees with forks 15 ft or more above ground, at least 2 trees per acre at openings of cropped woodland and marshes.

☐ **Snag and Cavity Trees** maintain at least 7 standing dead or nearly dead trees per acre in cropped woodland and marshes.

☐ **Stream habitat management** activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

☐ **Vernal Pools** maintain buffer zones around vernal pools and protect during harvest operations.

☐ **Wetland enhancement** to increase function and values.

☐ **Wetland restoration and rehabilitation** of a drained or degraded wetland to restore wetland functions and values.

2006 CSP Enrollment Categories – Criteria by Land Use and Category

- ☐ **Wildlife habitat management** by winter flooding of cropland fields for species in need of conservation.
- ☐ **Wildlife habitat management Plan** a state approved management plan or Private Lands Agreement that meets the needs for food, cover or water for targeted species.
- ☐ **Windbreak and shelterbelt establishment** of single or multiple rows of trees or shrubs.
- ☐ **Hedgerow planting** of dense heterogeneous vegetation in a linear design.
- ☐ **Field borders** with permanent vegetation at the edge or around the perimeter of a field for wildlife.
- ☐ **Riparian herbaceous cover** consisting of grasses, grass-like plants and forbs.
- ☐ **Riparian forest buffer** of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

2006 CSP Enrollment Categories – Criteria by Land Use and Category

Grazing Lands: Stewardship Practice and Activity List for Soil Quality and Plant Health (Activities to improve soil quality or the health of the plant community)

- ☐ **Brush management** for removal, reduction or manipulation of non-herbaceous plants.
- ☐ **Pasture and hay plantings** by establishing permanent vegetative cover.
- ☐ **Range planting** to establish adapted perennial vegetation and improve plant diversity.
- ☐ **Prescribed burning** by applying controlled fire to a predetermined area.
- ☐ **Grassed waterway** that is shaped or graded to required dimensions and established with suitable vegetation.
- ☐ **Grazing land mechanical treatment** modifying physical soil and/or plant conditions.
- ☐ **Channel bank stabilization** by establishing and maintaining vegetation.
- ☐ **Soil salinity management** on non-irrigated grazing lands.
- ☐ **Prescribed grazing management** including any one of the following:
  - ○ Bottomland or riparian area treated as a separate grazing treatment unit and alternative watering facilities in place;
  - ○ Grazing distribution facilitated by managing watering locations and rotating feeding and salting areas;
  - ○ Use of decision support tools in development of grazing and/or animal management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), etc;
  - ○ Participating in grass-banking or stockpiling; or
  - ○ Application of monitoring plan for improved grazing management.
- ☐ **Riparian herbaceous cover** improvements with diversified cover consisting of grasses, grass-like plants and forbs.
- ☐ **Irrigation water management** properly determining and controlling the volume, frequency, and application rate of irrigation water in a planned, efficient manner.
- ☐ **Heavy use area protection** and stabilization by establishing vegetative cover, surfacing with suitable materials, and/or installing needed structures.

2006 CSP Enrollment Categories – Criteria by Land Use and Category

Grazing Lands: Stewardship Practice and Activity List for Water Quality

- ☐ **Prescribed grazing management** by use of decision support tools in development of grazing and/or animal management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), etc., or application of monitoring plan.
- ☐ **Brush management** for removal, reduction or manipulation of non-herbaceous plants.
- ☐ **Water well** constructed to access aquifers and move livestock away from water courses.
- ☐ **Watering facility** for providing animal access to water away from natural water bodies.
- ☐ **Critical area planting** that establishes permanent vegetation on sites with high erosion rates, and physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.
- ☐ **Fence** (sensitive area protection only) to control movement of animals and people.
- ☐ **Spring development** that provides water for a conservation need.
- ☐ **Pipeline** installed to convey water for livestock, or wildlife.
- ☐ **Nutrient management** by any one of the following:
  - ○ Soil and/or plant tissue test every 3 years on pastures not receiving confinement wastes or annual tests where confinement wastes are applied;
  - ○ Direct injection of animal wastes; or
  - ○ Split nitrogen applications to meet current crop needs.
- ☐ **Integrated pest management** to control weeds, brush, insects, or diseases.
- ☐ **Stream crossing** constructed to provide a travel way for people, livestock, equipment, or vehicles.
- ☐ **Stream habitat management** activities to maintain, improve, or restore physical, chemical and biological functions of a stream.
- ☐ **Streambank and shoreline protection** treatments to stabilize and protect banks of streams, constructed channels, shorelines of lakes, reservoirs, or estuaries.
- ☐ **Water and sediment control basins** to trap sediment and detain water.
- ☐ **Livestock watering areas** have controlled access.
- ☐ **Riparian herbaceous cover** improvements with additions of grasses, grass-like plants and forbs.
- ☐ **Wetland enhancement** or **Wetland restoration and rehabilitation** to increase function and value for water quality purposes.
- ☐ **Waste utilization** to control pathogen and organic runoff.

CSP Enrollment Categories – Criteria by Resource Concern

Grazing Lands: Stewardship Practice and Activity List for Wildlife Habitat (Activities to improve fish and wildlife habitat)

☐ **Channel bank stabilization** by establishing and maintaining vegetation.

☐ **Critical area planting** that establishes permanent vegetation on sites with high erosion rates, physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.

☐ **Diversification of plant species** in cropped areas.

☐ **Pasture and hay plantings** of diversified native or introduced forage species.

☐ **Prescribed burning** by applying controlled fire to a predetermined area.

☐ **Riparian herbaceous cover** improvements with additions of grasses, grass-like plants and forbs.

☐ **Spring development** that provides water during critical times.

☐ **Stream habitat improvement** and management activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

☐ **Streambank and shoreline protection** treatments to stabilize and protect banks of streams, constructed channels, shorelines of lakes, reservoirs, or estuaries.

☐ **Water well** constructed to access aquifers.

☐ **Wetland enhancement** to increase function and values.

☐ **Wetland restoration and rehabilitation** of a drained or degraded wetland to restore functions and values.

☐ **Wildlife watering facility** designed to meets the needs of targeted species.

☐ **Wildlife habitat management** by any one of the following:

- O Application of an approved management plan or Private Lands Agreement that meets the needs for food, cover or water for targeted species;
- O Enhance wildlife habitat linkages and corridors by creating a mosaic or pattern; or
- O Management that provides for shallow water and wetland wildlife habitat improvement.

☐ **Prescribed grazing management** by any one of the following:

- O Adds functional group pastures to improve pasture condition;
- O Interseeding of desirable forages and legumes;
- O Timed grazing on a portion of paddocks to create habitat for targeted species;
- O Increased plant diversity - forbs and legumes greater than 40%; or
- O Patch burn/graze to improve wildlife habitat diversity and cover.

☐ **Integrated pest management** activities for weeds, brush, insects, or diseases that include follow-up treatment.

☐ **Brush management** for removal, reduction or manipulation of non-herbaceous plants including brush piling and creation of mosaics.

☐ **Range planting** establishment of adapted diverse perennial vegetation.

☐ **Provide wildlife corridors** with pathways for predators and large animals or plant diversity for nectar-loving species.

☐ **Protection of honey trees** utilizing a physical barrier.

[FR Doc. 06–1108 Filed 2–6–06; 8:45 am]
BILLING CODE 3410–16–C

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, February 20, 2006. The meeting will include routine business, presentations on a large project and a completed project, and discussion of five previously submitted project proposals.

DATES: The meeting will be held February 20, 2006, from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, RAC Coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 31, 2006.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 06–1095 Filed 2–06–06; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on February 28, 2006, in Sierraville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held Tuesday, February 28, 2006 at 10 a.m.

ADDRESSES: The meeting will be held at the Forest Service Ranger Station, Sierraville, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, (530) 478–6205, e-mail: *awestling@fs.fed.usl.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and announcements; (2) Status of previously approved projects; and (3) Review of and decisions on new projects proposals for current year. The meeting is open to the public and the public will have an opportunity to comment at the meeting. The meeting will be rescheduled if weather conditions warrant.

Dated: February 1, 2006.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 06–1096 Filed 2–6–06; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No.1434]

Removal of Zone–Restricted Merchandise, Foreign–Trade Zone 89, Las Vegas, Nevada

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 Nevada Development Authority, grantee of Foreign–Trade Zone 89, submitted an application to the Board for authority to remove certain zone–restricted merchandise (carpets from Iran - HTS 5701.01) from FTZ 89, Las Vegas, Nevada, to the United States Customs territory (FTZ Docket 39–2005; filed 08/05/05);

Whereas, notice inviting public comment was given in the **Federal Register** (70 FR 48534, 8/18/05), 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 Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to remove certain zone–restricted merchandise (carpets from Iran - HTS 5701.01) from FTZ 89 to U.S. Customs territory is approved, subject to the Act and the Board's regulations. The merchandise shall be treated as foreign merchandise and is subject to all entry requirements based on its original country of origin, including the payment of duties and applicable taxes.

Signed at Washington, DC, this 26th day of January 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–1631 Filed 2–6–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Pakland PMD Corp., Humayun Khan; Order Renewing Order Temporarily Denying Export Privileges

In the Matters of: Pakland PME Corporation Unit 7&8, 2nd Floor, Mohammadi Plaza Jinnnah Avenue, Blue Area, F–6/4 Islamabad-44000, Pakistan and, Humayun Khan, Unit 7&8, 2nd Floor, Mohammadi Plaza Jinnah Avenue, Blue Area, F–6/4, Islamabad-44000, Pakistan, Respondents.

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I renew for 180 days an Order temporarily denying export privileges of Pakland PME Corporation, (''Pakland''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad-44000, Pakistan and, Humayun Kahn, (''Khan''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad-44000, Pakistan (hereinafter collectively referred to as the ''Respondents'').

On January 31, 2005, Acting Assistant Secretary for Export Enforcement Wendy Wysong found that evidence

[1] The EAR are at 15 CFR Parts 730–774 (2005). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (2000)) (''EAA''). The EAA lapsed on August 21, 2001. However, the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005, (70 FR 45273 (August 5, 2005), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

presented by BIS demonstrated that the Respondents conspired to do acts that violated the EAR and did in fact commit numerous violations of the EAR by participating in the unlicensed export of triggered spark gaps and oscilloscopes, items controlled for nuclear non-proliferation reasons, to Pakistan. Acting Assistant Secretary Wysong further found that such violations had been significant, deliberate and covert, and were likely to occur again, especially given the nature of the structure and relationships of the Respondents.

On August 1, 2005, Acting Assistant Secretary Wysong was presented additional evidence that Khan has been indicted for his role in the illegal exports of triggered spark gaps and oscilloscopes to Pakistan. In addition, OEE presented evidence that Khan and Pakland have refused to return to the United States an oscilloscope that was sent to Pakistan for demonstration purposes only. Acting Assistant Secretary Wysong again found that such violations had been significant, deliberate and covert, and were likely to occur again, especially given the nature of the structure and relationships of the Respondents.

OEE has not provided any additional evidence regarding Khan or Pakland in this renewal, however, because the previously identified violations were significant, deliberate, covert, and likely to occur again, and because of the serious nature of the items which Khan and Pakland diverted and attempted to divert to Pakistan, I find that it is necessary in the public interest to prevent an imminent violation of the EAA and the EAR that Khan and Pakland's export privileges be denied for a period of 180 days from the date of the expiration of the previous denial of Khan and Pakland's export privileges. All parties to this TDO have been given notice of the request for renewal.

It is therefore ordered:

First, that the Respondents, Pakland PME Corporation, (''Pakland''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad-44000, Pakistan and, Humayun Khan, (''Khan''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad-44000, Pakistan (hereinafter collectively referred to as ''Respondents''), and their successors and assigns and when acting on behalf of any of the Respondents, their officers, employees, agents or representatives, (''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and the Related Party, and shall be published in the **Federal Register**.

This Order is effective on February 3, 2006 and shall remain in effect for 180 days.

Entered this 31st day of January, 2006.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 06–1097 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on February 22 and 23, 2006, 9 a.m., at the Space and Naval Warfare Systems Center (SPAWAR), Building 33, Cloud Room, 53560 Hull Street, San Diego, California, 92152. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

February 22

Public Session

1. Opening Remarks and Introductions.
2. Digital Rights Management (DRM) and Consumer Products.
3. Mil-spec Qualification of Semiconductors.
4. AMD Roadmap and Directions.
5. Arbitrary Waveform Generators.
6. Quality of Service (QoS) in VoIP networks.
7. Robotics and Communications.
8. FPGAs in Defense Applications.

February 23

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 23, 2006, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: February 1, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–1109 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–812]

Carbon and Certain Alloy Steel Wire Rod from Ukraine: Notice of Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from JSC Kryvorizhstal, a Ukrainian producer of carbon and certain alloy steel wire rod, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Ukraine. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005) (*Initiation Notice*). The period of review (POR) covers October 1, 2004, through September 30, 2005. We are now rescinding this review because the respondent has withdrawn its request within 90 days of the initiation and is the only party to have requested the review. The respondent indicated that it is withdrawing its request because it realized, in preparing a response to the Department's questionnaire, that it did not have any reviewable U.S. transactions during the POR.

EFFECTIVE DATE: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Christopher Riker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4003, Washington, DC 20230; telephone: (202) 482–1386 and (202) 482–3441, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping order on carbon and certain alloy steel wire rod from Ukraine on October 29, 2002. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002). On October 3, 2005 the Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order for the period of October 1, 2004 through September 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 57558 (October 3, 2005). In accordance with 19 C.F.R. 351.213(b)(1), on October 28, 2005, respondent, JSC Kryvorizhstal, requested an administrative review of this order. In response to this request, the Department published the initiation of the antidumping duty administrative review on carbon and certain alloy steel wire rod from Ukraine on December 1, 2005. *See Initiation Notice*.

On December 12, 2005, we issued an antidumping questionnaire to JSC Kryvorizhstal to which we did not receive a response. However, on January 10, 2006, JSC Kryvorizhstal notified the Department that it did not have any reviewable U.S. transactions during the POR, and requested that this review be suspended or terminated.

See ''Letter from JSC Kryvorizhstal re: Request for Suspension or Termination of Review'' (January 10, 2006). If by requesting a ''suspension,'' JSC Kryvorizhstal meant to request a ''deferral,'' pursuant to section 351.213(c) of the Department's regulations, we note that a deferral is not appropriate here, as a deferral may only be requested prior to initiation of a review. As this review has already been initiated, we cannot defer the review. We address JSC Kryvorizhstal's alternative request for a ''termination,'' below.

Rescission of the Administrative Review

The Department's regulations at section 351.213(d)(1) provide that it will rescind an administrative review if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date, if the Department determines that it is reasonable to extend the time limit for withdrawing the request. The respondent was the only party to request this review and properly withdrew its request, by requesting termination of the review, within the 90–day period. Accordingly, we are rescinding this administrative review.

The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice. This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 31, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–1634 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission, in Part, and Extension of Time Limit for Preliminary Results of the Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 7, 2006.

SUMMARY: The Department of Commerce (the ''Department'') is partially rescinding the administrative review of eighteen companies under the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') for the period of review (''POR''), August 1, 2004, through July 31, 2005. This partial rescission covers 18 companies for which the Department received a timely withdrawal of the request for review and a company which had no entries, exports, or sales of the subject merchandise during the POR. A complete list of the companies for which the administrative review is being rescinded is provided in the ''Rescission, in Part, of Administrative Review'' section below. The Department is not rescinding the review with respect to An Giang Agriculture Technology Service Company (''ANTESCO''); Anhaco; Binh Dinh Import Export Company (''Binh Dinh''); QVD Food Company, Ltd. (''QVD''); Can Tho Animal Fishery Products Processing Export Enterprise (''Cafatex''); Mekongfish Company (''Mekonimex''); Can Tho Agricultural and Animal Products Import Export Company (''CATACO''); An Giang Agriculture and Food Import Export Company (''Afiex''); Phan Quan Trading Co., Ltd. (''Phan Quan''); Nam Viet Company Limited (''Navico''); and Vinh Long Import–Export Company (''Vinh Long'').

Additionally, for the reasons discussed below, the Department is extending the preliminary results of this administrative review by an additional 120 days, to no later than August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Cindy Robinson, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394 and (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2005, the Department published a notice of an opportunity to request an administrative review on the antidumping duty order on certain frozen fish fillets from Vietnam. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Notice of Opportunity To Request Administrative Review*, 70 FR 44085 (August 1, 2005) (''*Notice of Opportunity''); Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (''*Order*''). Pursuant to its *Notice of Opportunity*, and in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(b) of the Department's regulations, the Department received a request from the Catfish Farmers of America and individual U.S. catfish processors (collectively, ''Petitioners'') for a review covering twenty–nine exporters. These twenty–nine exporters are: An Giang Fisheries Import and Export Joint Stock Company (''Agifish''); ANTESCO; Anhaco; Bamboo Food Co., Ltd. (''Bamboo Food''); Binh Dinh; Da Nang Seaproducts Import–Export Corporation (''Danang''); Duyen Hai Foodstuffs Processing Factory (''Coseafex''); Gepimex 404 Company (''Gepimex''); Hai Vuong Co., Ltd. (''Hai Vuong''); Kien Giang Ltd. (''Kien Giang''); Mekonimex; Phuoc My Seafoods Processing Factory (''Phuoc My''); Phu Thanh Frozen Factory (''Phu Thanh''); Seaprodex Saigon; Tan Thanh Loi Frozen Food Co., Ltd. (''Tan Thanh Loi''); Thangloi Frozen Food Enterprise (''Thangloi Frozen Food''); Thanh Viet Co., Ltd. (''Thanh Viet''); Thuan Hung Co., Ltd. (''Thuan Hung''); Tin Thinh Co., Ltd. (''Tin Thinh''); Vifaco; Vinh Long; Viet Hai Seafood Company Limited (''Vietnam Fish–One''); QVD; Vinh Hoan Company Limited (''Vinh Hoan''); CATACO; Afiex; Phan Quan; and Navico. Additionally, the following six exporters individually requested a review: QVD; Vinh Hoan; CATACO; Afiex; Phan Quan; and Navico. No other interested party requested a review.

On September 28, 2005, the Department published its notice of initiation of an antidumping administrative review on certain frozen fish fillets from Vietnam. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005) (''*Initiation Notice*''). We initiated the review covering all 29 companies for which an administrative review was requested.

Withdrawal of Requests for Review

On November 21, 2005, Petitioners withdrew their request with respect to the following fourteen exporters that did not individually request a review: Bamboo Food; Coaseafex; Gepimex; Hai Vuong; Kien Giang; Phu Thanh; Phuoc My; Seaprodex Saigon; Tan Thanh Loi; Thangloi Frozen Food ; Thanh Viet; Thuan Hung; Tin Thinh; and Vifaco. Additionally, Petitioners withdrew their request with respect to the following three companies that did individually request a review: Afiex; Phan Quan; and Vinh Hoan.

On December 23, 2003, Vinh Hoan withdrew its request for an administrative review. Additionally, on December 23, 2005, H&N Foods International (''H&N''), a U.S. importer of the subject merchandise, requested that the Department extend the deadline for withdrawing requests for review by 30 days.

On December 27, 2005, Vinh Hoan submitted a letter to the Department requesting that its withdrawal letter dated December 23, 2005, be disregarded. Additionally, on December 27, 2005, the Department extended by ten days the deadline that parties which requested an administrative review of this *Order* may withdraw their request, from December 27, 2005, to January 6, 2006.

On January 5, 2006, H&N requested that the Department extend the deadline for withdrawing requests for review until two days after the Department's issuance of its decision regarding respondent selection. On January 9, 2006, Vinh Hoan again withdrew its request for a review.

On January 11, 2006, Petitioners withdrew their request with respect to two additional companies, Danang and Agifish, both of which did not individually request a review. Petitioners also did not object to Vinh

Hoan's January 9, 2006, second request to withdraw its request for a review.[1]

Accordingly, for 17 of the twenty–nine companies for which the Department initiated a review, the Department subsequently received timely withdrawal requests.

Quantity and Value (''Q&V'') Information

On September 14, 2005, the Department issued a quantity and value (''Q&V'') questionnaire to the 29 named firms, requesting the quantity and value of subject merchandise exported during the POR.

On September 20, 2005, Vietnam Fish–One submitted a letter to the Department indicating it did not have sales, shipments, or entries of the subject merchandise to the United States during the POR.

On November 21, 2005, Petitioners submitted comments regarding respondent selection. Specifically, Petitioners requested that the Department confirm with U.S. Customs and Border Protection (''CBP'') that Vietnam Fish–One had no shipments of subject merchandise to the United States during the POR. Petitioners argued that shipments of subject merchandise from Vietnam Fish–One may have entered into the United States through Canada.

On December 7, 2005, Vietnam Fish–One submitted a response to Petitioners' respondent selection comments. Specifically, Vietnam Fish–One stated that it made no transhipments of subject merchandise to the United States through Canada during the POR.

Rescission, in Part, of Administrative Review

Pursuant to section 351.213(d)(1) of the Department's regulations, the Department may rescind an administrative review, ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because Petitioners timely withdrew their request for an administrative review of the seventeen exporters listed below, and because Vinh Hoan withdrew its request for an administrative review and no other party requested a review of these companies, we are rescinding this administrative review, in part, for the period August 1, 2004, through July 31, 2005, for the following companies: Agifish; Bamboo Food; Coaseafex; Danang; Gepimex; Hai Vuong; Kien Giang; Phu Thanh; Phuoc My; Seaprodex Saigon; Tan Thanh Loi; Thangloi Frozen Food; Thanh Viet; Thuan Hung; Tin Thinh; Vifaco; and Vinh Hoan.

Additionally, pursuant to section 351.213(d)(3) of the Department's regulations, the Department may rescind an administrative review, ''to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' Accordingly, we are rescinding this review with respect to Vietnam Fish–One, which reported no shipments of subject merchandise during the POR. Petitioners argued that publicly available shipment data obtained from PIERS[2] indicates that Vietnam Fish–One may have sold subject merchandise that entered into the United States through Canada during the POR. *See Petitioners' Resubmission of Comments on Respondent Selection in the Second Administrative Review* (November 29, 2005) at 2, Footnote 4, Attachment 2. However, Vietnam Fish–One stated in response that it contacted all of its customers and that all shipments entered into Canada were destined for Canada. Thus, none of Vietnam Fish–One's shipments of subject merchandise to Canada were delivered to the United Stated during the POR. *See Vietnam Fish–One's Response to Petitioners' Allegation of Transshipments* (December 7, 2005) at 1. Additionally, we examined shipment data furnished by CBP for the producer/exporter identified above and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from this company during the POR.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for these companies at the cash deposit rate in effect on the date of entry for entries during the period August 1, 2004, through July 31, 2005.

Selection of Respondents and Issuance of Questionnaires

On January 13, 2006, the Department selected the following four companies as mandatory respondents: QVD; Cafatex; Mekonimex; and CATACO. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Office Director, Office 9, AD/CVD Operations, Import Administration, Subject: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents* (January 13, 2006). On January 17, 2006, the Department sent a questionnaire to the above four mandatory respondents. On January 18, 2006, the Department sent a Section A questionnaire to the following three non–mandatory respondents: Afiex; Phan Quan; and Navico.

Request for Extension of the Preliminary Results

On January 17, 2006, Petitioners submitted a timely request for a 120 day extension of the preliminary results of this review. The preliminary results of this administrative review are currently due no later than May 3, 2006.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in the administrative review of certain frozen fish fillets from Vietnam within this time limit. Specifically, it is necessary to extend the deadline of the preliminary results because (1) the Department did not select the respondents for this review until January 13, 2006, (2) the Department will need time to collect and analyze questionnaire responses for all mandatory respondents and issue supplemental questionnaires where necessary, and (3) the Department needs additional time to collect and analyze the responses of companies who previously have never been mandatory respondents. Accordingly, the Department finds that additional time is needed in order to complete these preliminary results.

Section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 365 days from the last of the anniversary month of the order. For the reasons noted above, we are extending the time for the completion of the preliminary results of this review until no later than August 31, 2006. The deadline for the

[1] In this case, the Department is accepting the withdrawal of administrative review requests from Vinh Hoan and Petitioners, with respect to Agifish and Danang, as it had not yet expended significant resources on the review of those entities.

[2] http://www.piers.com/

final results of the administrative review continues to be 120 days after the publication of the preliminary results.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(2)(c) and 777(i)(1) of the Act.

Dated: January 30, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–1608 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815]

Gray Portland Cement and Clinker from Japan; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 3, 2005, the Department of Commerce (the Department) initiated the second sunset review of the antidumping duty order on gray portland cement and clinker (cement) from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218. On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and no responses from respondent interested parties, the Department has conducted an expedited (120–day) sunset review. See section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Jeffrey Frank, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or (202) 482–0090.

SUPPLEMENTARY INFORMATION:

Background:

On October 3, 2005, the Department initiated the second sunset review of the antidumping duty order on cement from Japan pursuant to section 751(c) of the Act. See *Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 57560 (October 3, 2005). The Department received a notice of intent to participate from the Committee for Fairly Traded Japanese Cement, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and the Local Lodge 93 of the International Association of Machinists and Aerospace Workers (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i) pertaining to sunset reviews. The domestic interested parties claimed interested–party status under section 771(9)(C) of the Act as a manufacturer, producer, or wholesaler in the United States of a domestic like product, under section 771(9)(D) of the Act as a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product, and under section 771(9)(E) of the Act as a trade or business association, a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States. We received a complete substantive response from the domestic interested parties within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited (120–day) sunset review of the order.

Scope of the Order:

The products covered by this order are cement and cement clinker from Japan. Cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order. Cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The Department made two scope rulings regarding subject merchandise. See *Scope Rulings*, 57 FR 19602 (May 7, 1992), classes G and H of oil well cement are within the scope of the order, and *Scope Rulings*, 58 FR 27542 (May 10, 1993), ''Nittetsu Super Fine'' cement is not within the scope of the order. The order remains in effect for all manufacturers, producers, and exporters of cement from Japan.

The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received:

All issues raised in this review are addressed in the Issues and Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated January 31, 2006, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order is revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review:

We determine that revocation of the antidumping duty order on cement and cement clinker from Japan would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Onoda Cement Company, Ltd.	70.52
Nihon Cement Company, Ltd.	69.89
All Other Manufacturers/Producers/Exporters	70.23

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 30, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–1633 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–826]

Continuation of Antidumping Duty Order: Paper Clips from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''Commission'') that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department hereby orders the continuation of the antidumping duty order on paper clips from the People's Republic of China (''China''). The Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq. or Jim Nunno, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–4340 or (202) 482–0783, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department initiated and the Commission instituted a sunset review of the antidumping duty order on paper clips from China pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked. *See Paper Clips from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 70 FR 67433 (November 7, 2005).

On January 17, 2006, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Paper Clips from China*, 71 FR 3541 (January 23, 2006), USITC Publication 3834 (January 2006) (Investigation No. 731–TA–663 (Second Review)).

Scope of the Order

The products covered by this order are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (e.g., copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this order may have a rectangular or ring–like shape and include, but are not limited to, clips commercially referred to as No. 1 clips, No. 3 clips, Jumbo or Giant clips, Gem clips, Frictioned clips, Perfect Gems, Marcel Gems, Universal clips, Nifty clips, Peerless clips, Ring clips, and Glide–On clips. The products subject to this order are currently classifiable under subheading 8305.90.3010 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifically excluded from the scope of this order are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the HTSUS.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to sections 751(d)(2)(A) and (B) of the Act, the Department hereby orders the continuation of the antidumping duty order on paper clips from China.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of this order is the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this antidumping order not later than January 2011.

This sunset review and this continuation notice are in accordance with section 751(c) of the Act and published pursuant to 777(i)(1) of the Act.

Dated: January 30, 2006.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–1607 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2005, the Department of Commerce (the Department) published its *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 70 FR 45668 (August 8, 2005) (*Preliminary Results*). This review covers two French producers of the subject merchandise, Ugine & ALZ, France, S.A. and Imphy Ugine Precision (IUP), which have been collapsed into a single entity (collectively, U&A France) for purposes of calculating a dumping margin. *See Memorandum to Maria MacKay, Acting Office Director, through Sean Carey, Program Manager, from Sebastian Wright, Analyst, Stainless Steel Sheet and Strip in Coils From France: Collapsing of Ugine & ALZ, France, S.A. and Imphy Ugine Precision*, (August 1, 2005), on file in the Central Records Unit (CRU), Room B–099 of the main Commerce Building. The period of review (POR) is July 1, 2003, through June 30, 2004. Based on our analysis of the comments received, we have made changes to the preliminary results. For the final dumping margin, see the ''Final Results of Review'' section below.

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

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results, the following events have occurred: we invited parties to comment on the *Preliminary Results*. On August 30, 2005, we received U&A France's response to the Department's supplemental questionnaire, issued July 29, 2005. On September 15, 2005, we received case briefs from U&A France, (the ''respondent''), and from Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization (collectively, the ''petitioners''). U&A France and the petitioners submitted their rebuttal briefs on September 19, 2005 and September 20, 2005, respectively. No hearing was requested.

Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs' purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of

[1] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [6]

Analysis of Comments Received

The issues raised in all case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration (Decision Memorandum)*, which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in the CRU, and can be accessed directly on the Web at *http://ia.ita.doc.gov/*.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have corrected certain ministerial errors and made minor adjustments in the methodology that was used in the *Preliminary Results* concerning U.S. warranties, in order to calculate the final dumping margin. The adjustments are discussed in detail in the *Decision Memorandum.*

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period July 1, 2003, through June 30, 2004:

Manufacturer/exporter	Weighted-average margin (percent)
U&A France	12.31

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department has calculated a per-unit assessment rate by aggregating the dumping duties for all U.S. sales to each importer and dividing this amount by the total quantity sold to that importer (*see Comment 4*, the *Decision Memorandum*). Where the importer specific rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. In addition, as explained in the *Preliminary Results* at 45674–45675, we have continued to include in the denominator used to calculate the assessment rate, the merchandise entered for consumption into the United States, but subsequently first sold outside of the United States in order to ''facilitate the CBP's collection of antidumping duties on subject merchandise.'' *See, e.g., Stainless Steel Sheet & Strip in Coils from Mexico: Final Results of Antidumping Administrative Review*, 67 FR 6490 (February 12, 2002), at *Comment 15*.

Reimbursement

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

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 in the subsequent assessment of double antidumping duties.

Revocation of the Order

On July 12, 2005, the United States International Trade Commission (ITC) informed the Department that the revocation of the antidumping duty orders on stainless steel sheet and strip from France would not likely lead to continuation of recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Accordingly, the Department revoked this antidumping duty order effective July 27, 2004. Therefore, cash deposits of estimated antidumping duties are no longer required. We have instructed CBP to terminate suspension of liquidation and to liquidate all entries of subject merchandise that were suspended on or after July 27, 2004, without regard to antidumping duties. *See Certain Stainless Steel Sheet and Strip in Coils from France and the United Kingdom; Final Results of Sunset Reviews and Revocation of Antidumping Duty Order*, 70 FR 44894 (August 4, 2005).

Notification Regarding Administrative Protective Orders

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memorandum

Comment 1: Actual Selling Expenses in Lieu of Commissions for Affiliated Reseller
Comment 2: Cost Averaging Periods for U&A France
Comment 3: Price Adjustment for U.S. Warranty Expenses
Comment 4: Calculation of Duty Assessment
Comment 5: Ministerial Errors

[FR Doc. E6–1606 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On January 20, 2006, Consejo Mexicano De Porticultura, A.C. filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free-Trade Agreement. Panel review was requested of the antidumping duty determination made by the Secretaria de Economia, respecting Swine (pork) fresh, chilled or frozen, classified as tariff item 0203.12.01 and 0203.22.01 originating in the United States of America. This determination was published in the *Diario Oficial de la Federacion*, on December 21, 2005. The NAFTA Secretariat has assigned Case Number MEX–USA–2006–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 20, 2006, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 20, 2006);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 6, 2006); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: February 1, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–1592 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012706B]

Endangered Species; File No. 1551

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS, Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, Florida 33149, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), and olive ridley (*Lepidochelys olivacea*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before March 9, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1551.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to conduct scientific research that would study the survival, recruitment, age and growth, population dynamics, movements and migrations, habitat utilization, and distribution of sea turtles. The research would contribute information towards a better understanding of fishery interaction issues relating to these species. The information would be used to improve stock assessments, assess anthropogenic activities, and inform sea turtle conservation efforts. Up to 455 loggerhead, 336 green sea turtles, 230 Kemp's ridley sea turtles, 92 hawksbill sea turtles, 20 olive ridley sea turtles, 61 leatherback sea turtles, and 25 hardshell sea turtles species that would not be identifiable at the time of capture would be taken by pound net, entanglement net, hoop/dip net, or hand capture annually. An additional 1,700 loggerhead, 550 green, 600 Kemp's ridley, 550 hawksbill, 50 olive ridley, 850 leatherback, and 1,000 unidentified hardshell species could be harassed by aerial surveys. Up to 1,105 loggerhead, 536 green, 330 Kemp's ridley, 97 hawksbill, 22 olive ridley, 66 leatherback, and 30 unidentified hardshell species would be handled, measured, weighed, photographed, flipper tagged, passive integrated transponder (PIT) tagged, skin biopsied, and released annually. Researchers would take a variety of measurements, including the mouth, head, plastron, and tail length. Researchers would collect a blood sample, cloacal and lesion cultures, a epibiota sample, a keratin sample, and a fecal sample from a subset of these animals. Researchers would also gastric lavage, fat biopsy, tetracycline mark, laparoscopy, liver biopsy, take gonad, muscle and other colemic biopsies, attach electronic tags, attach a living tag, and conduct behavioral studies on a subset of these sea turtles. Up to 1 leatherback and 5 hardshell (total all species combined) mortalities could occur during the course of the research. The permit would be issued for 5 years. Research would take place in the Atlantic, Caribbean and Gulf of Mexico.

Dated: February 1, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–1636 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 February 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, 1 February 2006.

Thomas Luebke,

Secretary.

[FR Doc. 06–1093 Filed 2–6–06; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

February 1, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, U.S. Customs and Border Protection.

EFFECTIVE DATE: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the U.S. Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 17, 2003, as amended, between the Governments of the United States and the Socialist Republic of Vietnam, establishes limits for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Socialist Republic of Vietnam. The current limits for certain categories are being reduced for carryforward that was applied to the 2005 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel

website at http://otexa.ita.doc.gov). See 70 FR 75156 (December 19, 2005).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 2006.

Commissioner,
U.S. Customs and Border Protection,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 2005, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man–made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2006 and extends through December 31, 2006.

Effective on February 7, 2006, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
338/339	15,176,433 dozen.
340/640	2,296,760 dozen.
638/639	1,380,273 dozen.
647/648	2,244,491 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–1611 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Staged Entry of China Safeguard Overshipments to be Affected by the Reclassification of Shipments That Were Entered Incorrectly

February 1, 2006.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

As the result of an investigation into the evasion of China safeguard quotas, CBP has seized shipments of apparel from China that had been deliberately misdescribed and misclassified as being of ''ramie'' fabric, but which were actually of cotton and/or man-made fiber. Further investigation has found that shipments had already entered as being of ''ramie'' fabric, but were also of cotton and/or man-made fiber.

U.S. Customs and Border Protection (CBP) will adjust individual entries that had been entered incorrectly in 2005 to reflect the correct classification of apparel that should have entered and been charged against the 2005 safeguard limits in categories 338/339, 347/348, and 647/648. Any adjusted charges will be applied to scheduled staged entries of overshipments (70 FR 72427), beginning on March 1, 2006. This action may impact the amount of additional shipments that will be released during this and subsequent staged entries.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–1609 Filed 2–6–06; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, February 16, 2006; 10 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Final Rule for the Flammability (Open Flame) of Mattress Sets

The Commission will consider a final rule under the Flammable Fabrics Act for mattress flammability (open flame).

For a record message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: February 3, 2006.

Todd A. Stevenson

Secretary.

[FR Doc. 06–1153 Filed 2–3–06:10:57 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Community Redevelopment and Homeless Assistance Act; Base Realignments and Closures

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: Effective Date: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRA's) for Closing and Realigning Military Installations

California

Installation Name: Naval Weapons Station Seal Beach Detachment Concord.
LRA Name: City of Concord.
Point of Contact: Mr. James Forsberg, Director of Planning and Economic Development, City of Concord.
Address: 1950 Parkside Drive, MS/1B, Concord, CA 94519–2578.

Phone: (925) 671–3383.

Georgia

Installation Name: Fort McPherson.
LRA Name: McPherson Planning Local Redevelopment Authority.
Point of Contact: Mr. Felker Ward, Chair, McPherson Planning Local Redevelopment Authority.
Address: 86 Pryor Street, Atlanta, GA 30303–3131.
Phone: (404) 614–8298.

Installation Name: Naval Air Station Atlanta.
LRA Name: NAS Atlanta Local Redevelopment Authority.
Point of Contact: Mr. Bob Elsberry, Chairman, NAS Atlanta Local Redevelopment Authority.
Address: P.O. Box 671868, Marietta, GA 30006.
Phone: (770) 859–2342.

Installation Name: Navy Supply Corps School Athens.
LRA Name: Navy Supply Corps School Local Redevelopment Authority.
Point of Contact: Mr. Buddy Allen, Chairman, Navy Supply Corps School Local Redevelopment Authority.
Address: 2595 Atlanta Highway, Athens, GA 30604.
Phone: (706) 549–0706.

Kansas

Installation Name: Kansas Army Ammunition Plant.
LRA Name: Kansas Army Ammunition Plant Local Redevelopment Planning Authority.
Point of Contact: Mr. Brian C. Kinzie, Chairman, Labette County Commission.
Address: P.O. Box 387, Oswego, KS 67356.
Phone: (620) 795–2138.

Maine

Installation Name: Naval Air Station Brunswick.
LRA Name: Brunswick Local Redevelopment Authority.
Point of Contact: Mr. Mathew Eddy.
Address: 28 Federal Street, Brunswick, ME 04011.
Phone: (207) 721–0793.

Installation Name: Naval Air Station Brunswick (Topsham Annex).
LRA Name: Topsham Local Redevelopment Authority.
Point of Contact: Mr. Gary Brown, Town Manager, Town of Topsham.
Address: 22 Elm Street, Topsham, ME 04086.
Phone: (207) 725–5821.

Texas

Installation Name: Red River Army Depot.
LRA Name: Red River Redevelopment Authority.
Point of Contact: Mr. Denis Washington, President, Board of Directors, Red River Redevelopment Authority.
Address: 107 Chapel Lane, New Boston, TX 75570.
Phone: (903) 223–9841.

Installation Name: Lone Star Army Ammunition Plant.
LRA Name: Red River Redevelopment Authority.
Point of Contact: Mr. Denis Washington, President, Board of Directors, Red River Redevelopment Authority.
Address: 107 Chapel Lane, New Boston, TX 75570.
Phone: (903) 223–9841.

Virginia

Installation Name: Fort Monroe.
LRA Name: Federal Area Development Authority.
Point of Contact: Mr. Brian DeProfio, Assistant to the City Manager, City of Hampton.
Address: 22 Lincoln Street—8th Floor, Hampton, VA 23669.
Phone: (757) 727–6884.

February 1, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–1590 Filed 2–6–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Open Meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet on February 16, 2006. The meeting will be an Executive Session and will discuss studies to be undertaken by NRAC.

DATES: The meeting will be held on Thursday, February 16, 2006, from 8 a.m. to 12 p.m. All sessions of the meeting will be open to the public.

ADDRESSES: The meetings will be held at the Hyatt Regency Suites Palm Springs, 28 North Palm Canyon Drive, Palm Springs, CA 92262.

FOR FURTHER INFORMATION CONTACT: Dr. Sujata Millick, Program Director, Naval Research Advisory Committee, 875 North Randolph St, Arlington, VA 22203–1995, 703–696–6769.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to executive sessions to include discussions of upcoming studies on Distributed Operations and Software Intensive Systems.

Dated: February 2, 2006.

I.C. Lemoyne, Jr.,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. E6–1612 Filed 2–6–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of 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 March 9, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of 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: February 1, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Trends in International Mathematics and Science Study (TIMSS): 2007.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses—25,825.

Burden Hours—20,830.

Abstract: The TIMSS 2007 will assess the mathematical and science knowledge of students in over 60 participating countries. This is the fourth cycle of TIMSS studies. Previous TIMSS were conducted in 1994–1995, 1999, and 2003. TIMSS 2007 will go to fourth and eighth graders in the United States. In addition to the assessments, in each participating country, the selected students and their 4th grade teachers and 8th grade science and math teachers, and administrators of the selected schools will also fill out background questionnaires to learn about curricula, instruction, home context, and school characteristics and policies.

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 2946. 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 *IC DocketMgr@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 the e-mail address *IC DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–1624 Filed 2–6–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 10, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 1, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: An Assessment of Transition and Policies and Practices in State Vocational Rehabilitation Agencies: State VR Agency Survey Data Collection.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 120.

Abstract: The data collection is a critical element in the Assessment of Transition Policies and Practices in State VR Agencies that is needed to improve the provision of services for individuals with disabilities transitioning from secondary school to post-school environments including continuing education, employment, and community living. This study will provide Congress, the U.S. Department of Education, State VR agencies and other interested parties with a description of the current status of transition policies and practices in State VA agencies and identify promising practices in the provision of transition services. The respondents are state personnel responsible for the administration of programs and services in the 80 State VR agencies.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2979. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC DocketMgr@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 the e-mail address *IC DocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–1627 Filed 2–6–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management

Services, Office of 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 March 9, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of 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: February 1, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Evaluation of the Impact of Literacy Interventions in Freshman Academies-Follow-Up Forms for Students and Teachers.

Frequency: Annually.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses—1,998.

Burden Hours—1,998.

Abstract: The original OMB package requested clearance for the baseline intake and administrative records instruments to be used in the Evaluation of the Impact of Literacy Interventions in Freshman Academies. This package requests clearance for additional follow-up instruments to collect information from teachers and high school ninth-grade students at the end of the school year. The teacher instruments gather data about implementation issues, and the student instrument focuses on student outcomes related to reading attitudes and behaviors. The study has also been expanded to include an additional cohort of students, and thus will examine the impacts of these literacy interventions on student outcomes for two cohorts of students instead of one.

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 2926. 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 *IC DocketMgr@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 *INGALLS IC DocketMgr@ed.gov* 703–620–3655. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–1629 Filed 2–6–06; 8:45 am]

BILLING CODE 4000–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 9, 2006, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 6, 2006 (Open and Closed)

B. Reports

- Office of Management Services Report

C. New Business—Regulations

- Disclosure and Reporting Requirements—Proposed Rule
- Regulatory Burden—Proposed Rule and Notice

Dated: February 2, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–1123 Filed 2–2–06; 4:06 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group)

101 Market Street, San Francisco, California 94105–1579:

1. David W. Lanza, Roy E. Lanza, David W. Lanza Trust, Roy and Sondra Lanza Family Trust, Colusa Motor Sales, Inc., Hust Brothers, Inc., Marysville Auto Parts, Inc. and Yuba Street Ventures, LLC, all of Marysville, California; to acquire additional voting shares of Gold Country Financial Services, Inc., and thereby indirectly acquire shares of Gold Country Bank, N.A., both of Marysville, California.

Board of Governors of the Federal Reserve System, February 2, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–1635 Filed 2–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP—1249]

Rules Relating to Branches of Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors has reviewed and revised its Rules Relating to Branches of Federal Reserve Banks in light of the existing scope of, and other System-wide policies and procedures concerning, Federal Reserve branch operations. These revisions are designed to enable more efficient governance of Federal Reserve Bank branches and to streamline Federal Reserve System policies and procedures regarding branches.

DATES: The amendments became effective on January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Adrianne G. Threatt, Counsel (202/452–3554), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) *only*, call 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background and Summary of Amendments

The Federal Reserve Act (Act) states that the Board may permit or require any Federal Reserve Bank to establish branches within its Federal Reserve District, and that such branches, subject to the rules and regulations of the Board, must be operated under a board of directors. *See* 12 U.S.C. 521. The Act also provides that the Board at any time may require any Federal Reserve Bank to discontinue a branch, which then must be wound up in accordance with the rules and regulations of the Board. *Id.* The Board initially adopted its Rules Relating to Branches of Federal Reserve Banks (Branch Rule) in 1940, primarily to provide a uniform framework governing the appointment and responsibilities of branch directors. The Board most recently amended the Branch Rule in 1978 to conform the director-related provisions of the rule to the Federal Reserve Reform Act of 1977. *See* 43_ FR 29189 (July 6, 1978).

The current revisions to the Branch Rule are designed to bring the rule up to date with the current role of Reserve Bank branches within the Federal Reserve System and to conform the Branch Rule to the other Federal Reserve policies and procedures that affect branches. When the Board initially adopted the Branch Rule, most Reserve Bank branches generally provided many of the banking services offered by their head offices. Today, however, improvements in technology permit the Reserve Banks to offer a comparable level of nationwide services with a reduced physical presence and at a lower cost. In addition, most decisions that affect the operational scope of Reserve Bank branches are handled through a coordinated process, set forth in the Federal Reserve Administrative Manual (FRAM), that includes involvement by the Board and its staff as appropriate. Moreover, the Board recently conducted a System-wide review of the general policies that govern all directors associated with Federal Reserve Banks, including the directors of Federal Reserve branches, and adopted changes to its policies concerning branch directors as part of that review. Section 3 of the revised Branch Rule reflects that responsibility for management of the branches rests largely with the Reserve Bank and not with the board of directors of the branch.

The Board has revised the Branch Rule so that it reflects more accurately the current organization of Reserve Bank operations and better coordinates with other relevant policies and procedures. Highlights of the amendments include the following:

1. Branch territory and functions. The Board removed provisions of the Branch Rule that required Board approval for changes in the territory served by a branch and for substantial changes in the authority or functions of a branch. Currently, the overall scope of a branch's operations does not necessarily correlate to its generally assigned territory, and proposed territory and function changes are reviewed thoroughly through the above-mentioned procedures set forth in the FRAM. The Board has, however, added a sentence stating the Act's requirement that a Reserve Bank may neither establish nor discontinue a branch without Board approval.

2. Branch directors. The Board has eliminated the requirement for prior Board approval for a Reserve Bank to change the number of directors of a branch from seven to five (or vice versa) and has liberalized the qualification requirements for branch directors that are appointed by the Board. These changes should enable Reserve Banks more easily to obtain a board of directors that can serve the needs of a particular branch effectively. The Board also has simplified the provisions regarding director terms and made the term limit for branch directors consistent with that for Reserve Bank directors. The Board has deleted the quorum rule that previously applied to meetings of branch directors and has replaced a provision requiring branch directors to meet at least ten times per year with a rule requiring them to meet as set forth in the Reserve Bank by-laws.

3. Officers, supplemental instructions, and Reserve Bank/branch relations generally. The Board has revised and consolidated into a single section the previously existing provisions concerning the relationship between the branch, the Reserve Bank, and the Board. These include (1) a provision stating that the branch directors carry out their duties subject to the direction and control of the Reserve Bank and subject to the Board's rules, (2) a provision clarifying that the Reserve Bank, rather than the branch board of directors, is responsible for appointing branch officers and that officers serve at the pleasure of the Board, and (3) a provision stating that the Reserve Bank may adopt additional instructions or by-laws, consistent with the Branch Rule, concerning branch operations. The revisions to these provisions are intended to describe more accurately the current organization and operation of branches and their role within the Federal Reserve System.

Procedural Considerations

The Branch Rule is an uncodified rule issued for use within the Federal Reserve System pursuant to Section 3 of the Act. *See* 5 U.S.C. 521. The Board's amendments relate solely to the internal organization and procedures of the Federal Reserve System, particularly the operation of Federal Reserve Banks; accordingly, the public notice, public comment, and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5

U.S.C. 553(b) and (d). Because public notice and comment are not required, the Regulatory Flexibility Act also does not apply to this action. *See* 5 U.S.C. 601 *et seq.*

For the reasons stated above, the Board has adopted amendments to the Branch Rule, and the amended rule in its entirety reads as follows:

Regulations Relating to Branches of Federal Reserve Banks

Section 1—Branches Generally

A Reserve Bank may conduct business through a branch that is established in accordance with section 3 of the Federal Reserve Act. The title of each branch shall include the name of the city or metropolitan area in which it is situated and the name of the Federal Reserve Bank of which it is a branch, such as ''Detroit Branch of the Federal Reserve Bank of Chicago.'' A Reserve Bank may not establish or discontinue a branch unless the Board of Governors specifically has approved or directed that action.

Section 2—Directors of Branches

(a) *Number of directors.* The board of directors of each branch of a Federal Reserve Bank shall consist of seven members or five members, as may be determined by the Federal Reserve Bank. The Federal Reserve Bank shall appoint four members of a seven-member board and three members of a five-member board. The Board of Governors shall appoint the remainder of the board members.

(b) *Qualifications of directors.* (1) Directors shall be selected without discrimination on the basis of race, creed, color, sex, or national origin.

(2) The directors appointed by the Federal Reserve Banks shall be persons who meet the personal and occupational qualifications of class A or B Reserve Bank directors.

(3) The directors appointed by the Board of Governors shall be persons who meet the personal and occupational qualifications of class C Reserve Bank directors, except that—

(i) Board-appointed branch directors may be stockholders in banks and bank holding companies and may be advisory directors of a bank or bank holding company; and

(ii) One branch director appointed by the Board may, in extenuating circumstances and at the request of a Reserve Bank, be a director (but not an officer or employee) of a bank or bank holding company.

(4) No director of a Federal Reserve Bank shall serve as a director of a branch of the Bank during his or her service as a director of the Federal Reserve Bank.

(5) Each director shall be a citizen of the United States and shall reside or have a significant occupational interest within the territory served by the branch.

(c) *Terms of directors.* The term of office of directors shall be three years. In order to make practicable an orderly rotation of branch directorships, the terms of directors shall be arranged such that—

(1) Less than a majority of the terms expire in any year;

(2) If an even number of terms expire in any year, at least one of those terms is of a director appointed by the Board of Governors;

(3) If an odd number of terms expire in any year, a majority of those terms are of directors appointed by the Reserve Bank.

(d) *Limitation on years of service.* A branch director will not be reappointed if he or she has served two full terms each, or if, by the end of the new term, the individual would have served as a branch director for more than seven years of continuous service. The Board may grant exceptions where appropriate, but would expect to do so only in limited circumstances.

(e) *Chairman.* The Federal Reserve Bank shall provide for the annual designation, in such manner as it may prescribe, of one of the members of the board of directors of each branch appointed by the Board of Governors as the chairman of the board.

(f) *Vacancies.* In the event of a vacancy occurring in the board of directors of a branch of a Federal Reserve Bank, the appointment to fill such vacancy shall be made by the body making the original appointment and such appointment shall be for the unexpired term.

(g) *Removal of directors.* As provided in section 3 of the Federal Reserve Act, directors of branches of Federal Reserve Banks hold office at the pleasure of the Board of Governors.

(h) *Meetings.* The board of directors of a branch shall meet according to the schedule set by the Federal Reserve Bank.

(i) *Fees and allowances.* The fees and allowances to be paid to directors of the branch for attendance at meetings of the board of directors of the branch or any committees of the branch shall be subject to the approval of the Board of Governors.

Section 3—Relationship Between Branches and Reserve Banks

(a) *Operation of branches.* (1) Supervision of the operations of a branch shall be subject to the direction and control of the Federal Reserve Bank of the district and rules, regulations, policies, and procedures of the Board of Governors.

(2) The Federal Reserve Bank of the district shall appoint such officers for each branch as the Bank from time to time deems necessary.

(3) All offficers and employees of a branch shall be subject to the same employment and compensation policies and procedures that the Board of Governors applies to officers and employees, respectively, of a Federal Reserve Bank, and all branch officers shall be subject to removal by the Board of Governors.

(b) *Supplemental instructions.* Each Federal Reserve Bank may issue instructions or adopt by-laws, not inconsistent with the law or these regulations, containing such further provisions with regard to the operation of its branches as it may deem advisable.

By order of the Board of Governors of the Federal Reserve System, January 31, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–1547 Filed 2–6–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 72842–72843, dated December 15, 2005) is amended to reorganize the Management Analysis and Services Office.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title for the *Management Analysis and Services Office (CAJG)*, delete the functional statement and insert the following:

Management Analysis and Services Office (CAJG). (1) Plans, coordinates, and provides CDC-wide management and information services in the following areas: Policy development, management and consultation; management studies and surveys,

internal controls program, delegations of authorities, organizations and functions, Federal Advisory Committee management, records management, most efficient organization implementation, printing procurement, and management services, conference and meeting management, electronic forms design and management, mail center services and operations, information quality, competitive sourcing, and office automation services and support.

Office of the Director (CAJG1). Plans, directs, develops, implements, supports, and coordinates activities of the Management Analysis and Services Office (MASO). (1) Plans, develops, and implements strategic plans, goals and objectives, business services and evaluation, performance measurement plans, customer service management, and provides leadership, policy and procedural formulation and guidance in program planning and development; (2) prepares, reviews, and coordinates budgetary, informational, and programmatic resources; (3) plans, directs, and coordinates requirements of OMB Circular A–76 to conduct competitive sourcing activities, management review and FAIR Act activities and to determine whether certain agency functions might be more appropriately carried out through or by commercial sources; (4) provides electronic forms management services, including development, coordination of clearances, and inventory management; and (5) determines, collaborates, and manages appropriate information technology architecture and methodology for MASO's applications, databases, and systems.

Management Analysis and Policy Branch (CAJGB). (1) Provides management and oversight of CDC federal advisory committees that provide advice to the CDC Director and the Secretary of the Department of Health and Human Services (DHHS); (2) facilitate logistics and general committee support of scientific and programmatic peer review of research, applications and cooperative agreements for grant support and contracts; (3) provides consultation and assistance to CDC program officials on the establishment, modification, or abolishment of organizational structures and functions, reviews and analyzes organizational changes, and develops documents for approval by appropriate CDC or DHHS officials; (4) manages the internal controls program for CDC in consultation with the Financial Management Office (FMO) to include creating, maintaining and diffusing internal controls guidance, co-chairing and administering the CDC senior assessment team (and serving as the team's interface with executive management), serving as the CDC focal point for assessing risk, facilitating and overseeing CDC's scheduling, testing and review of internal controls, reporting on the control environment, and overseeing CDC compliance with OMB Circular A–123 and the management and internal controls guidance within the Federal Managers Financial Integrity Act, co-manages the process for developing and finalizing the components of the Annual Assurance Statement signed by the Director, CDC with FMO; (5) conducts management studies for CDC to improve the effectiveness and efficiency of management and administrative processes; (6) serves as the CDC office of record for delegations of authority by interpreting, analyzing, and making recommendations concerning delegations and re-delegations of program and administrative authorities, and developing appropriate delegating documents; (7) manages the CDC policy program, including the policy issuance system, policy development, dissemination, and policy advisory services, interprets DHHS and other Federal directives and assess their impact on CDC policy, maintains the official CDC library of administrative management policy and procedures manuals; (8) addresses policy gaps through periodic comprehensive administrative policy reviews and benchmarking; (9) manages the CDC records program, which includes providing technical assistance in developing new records schedules, transferring records, storing records, and administering electronic records, serves as the agency liaison to the National Archives and Records Administration; (10) provides advice and consultation in implementing most efficient organizations resulting from competitive sourcing decisions.

Management and Information Services Branch (CAJGC). (1) Plans and conducts a printing management program supporting all of CDC; (2) maintains liaison with contract suppliers, DHHS, the Government Printing Office and other agencies on matters pertaining to printing, copy preparation, reproduction, and procurement of printing; (3) plans, directs, coordinates, and implements CDC-wide information distribution services and mail and messenger services, including the establishment and maintenance of mailing lists and CDC announcements; (4) manages all functions of the auditoriums at the Roybal campus and specific meeting rooms at Roybal and other CDC campuses, provides conference management support and audio-visual expertise to Coordinating Centers and Coordinating Offices customers, and plans, develops, and implements policies and procedures in these areas, as appropriate; (5) serves as the focal point for recommending policies and establishing procedures for matters pertaining to the white office paper recycling; (6) manages the CDC-wide subject matter database that serves as an agency resource supporting call management services and hotlines within the CDC; (7) manages the food service facilities at the Roybal and Chamblee campuses as well as future planned food service facilities; (8) collaborates with stakeholders and partners, responsible for the planning, coordination and management of the conference center located in the Global Communications Center (GCC) on the Roybal campus, and manages the infrastructure support for functions within the GCC provided by contract; (9) manages the receipt and response to complaints by the public questioning the accuracy of any scientific information disseminated by CDC, implements established government guidelines contained in Public Law 106–554, section 515, for ensuring the quality of information disseminated to the public by government agencies.

Office Automation Service Activity (CAJGC2). (1) Plans, coordinates, and administers office automation (OA) services; (2) administers office automation services in accordance with the OA Performance Work Statement; (3) provides and performs clerical support, file management, meeting logistics, conference and workshop support, scientific and technical assistance; (4) maintains liaison with appropriate offices on matters pertaining to the oversight, performance, and contractual requirements of the Office Automation Service Activity.

Dated: January 20, 2006.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 06–1088 Filed 2–6–06; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0157]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarketing Adverse Drug Experience Reporting

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 March 9, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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.

Postmarketing Adverse Drug Experience Reporting—21 CFR 310.305 and 314.80 (OMB Control Number 0910–0230)—Extension

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations at §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80) to impose reporting and recordkeeping requirements on the drug industry enabling FDA to take the action necessary to protect the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those obtained in scientific literature and from postmarketing epidemiological/surveillance studies. Under § 314.80(c)(2) applicants must provide periodic reports of adverse drug experiences. A periodic report includes, for the reporting interval, reports of serious, expected adverse drug experiences and all nonserious adverse drug experiences, a narrative summary and analysis of adverse drug experiences, and a history of actions taken because of adverse drug experiences. Under § 314.80(i), applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports when needed (§ 310.305(c)). Under § 310.305(f), each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning) and when necessary, to initiate removal of a drug from the market.

Respondents to this collection of information are manufacturers, packers, distributors, and applicants. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
310.305(c)(5)	1	1	1	1	1
314.80(c)(1)(iii)	5	1	5	1	5
314.80(c)(2)	530	20	10,600	60	636,000
Total					636,006

[1]The reporting burden for §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) was reported under OMB control number 0910–0291. The capital costs or operating and maintenance costs associated with this collection of information are approximately $25,000 annually.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
310.305(f)	25	1	25	16	400

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
314.80(i)	530	1	400,000	16	6,400,000
Total					6,400,400

[1]There are no capital costs or operating costs associated with this collection of information. There are maintenance costs of $22,000 annually.

These estimates are based on FDA's knowledge of adverse drug experience reporting, including the time needed to prepare the reports, and the number of reports submitted to the agency during 2004.

In the **Federal Register** of May 3, 2005 (70 FR 22882), FDA published a 60-day notice requesting public comment on the information collection provisions (the May 2005 notice). One comment was received on the burden estimates.

The comment said that it was not clear what methodology and assumptions were used by FDA to calculate either the annual reporting burden or the annual recordkeeping burden of the proposed collection of information.

FDA responds that, as stated in the May 2005 notice, the estimates are based on FDA's knowledge of adverse dug experience reporting, including the time needed to prepare the reports, and the number of reports submitted to FDA during 2004.

The comment said that §§ 310.305(c)(5) and 314.80(c)(1)(iii) in the first two rows of Table 1 in the May 2005 notice refer to drugs without approved marketing applications and nonapplicants, respectively, rather than applicants. The comment contended that the citations used for these rows should be § 314.80(c)(1)(i) and (c)(1)(ii), which refer to the requirements for submission of initial and followup 15-day alert reports by the holders of approved marketing applications, or additional rows should be added to the table to include these additional reporting requirements. The comment also said that FDA's estimates of the burden of adverse experience reporting for 15-day alerts, periodic reports, and recordkeeping seem grossly underestimated, and that the discrepancy cited above concerning § 314.80(c)(1)(i) and (c)(1)(ii) may account for the apparent underestimation of the number of respondents and annual frequency of responses. The comment noted that it submitted 6,107 15-day alert reports to FDA in 2004, and that this alone exceeds the total burden reported in Table 1 of the May 2005 notice.

FDA responds that the agency agrees that Table 1, as presented in the May 2005 notice is misleading. There is an inadvertent omission of the first sentence of the footnote that appears under Table 1 of the May 2005 notice. That footnote reads: ''There are no capital costs or operating and maintenance costs associated with this collection of information.'' The footnote should read: ''The reporting burden for §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) was reported under OMB control number 0910–0291. There are no capital costs or operating and maintenance costs associated with this collection of information.'' (This correct version of the footnote appeared in earlier **Federal Register** notices requesting OMB extension of this information collection. See, for example, the **Federal Register** of July 22, 2002 (67 FR 47821)). OMB control number 0910–0291 refers to the information collection package for FDA's MedWatch program and forms (''MedWatch: Food and Drug Administration Medical Products Reporting Program''). The most recent request for OMB approval of this package was published in the **Federal Register** of August 16, 2005 (70 FR 48157), and OMB recently approved the package until October 31, 2008. MedWatch Form FDA 3500A is used to comply with the requirements in §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii). The remaining requirements for adverse experience reporting for human drugs are covered in this package (OMB control number 0910–0230).

Concerning periodic reports, the comment said the annual frequency per response (an estimate the comment assumed to be the average number of periodic reports submitted per company) is estimated by FDA to be 20, and that this is considerably less than the 218 periodic reports that the comment said it submitted in 2004.

FDA responds that the column in Table 1 of the May 2005 notice, entitled ''Total Annual Responses'', refers to the number of periodic reports submitted annually per company. FDA estimates 10,614 reports annually.

The comment said that the estimate of the hours required to prepare each periodic report is underestimated and only seems to reflect the time needed to compile the report and write the narrative sections. The estimate does not reflect the additional time required to collect, prepare, solicit, and process followup information for each individual FDA Form 3500A report. The comment estimated that these activities take approximately 90 minutes for each FDA Form 3500A, and that a true estimate of the hours to prepare a periodic report should include at least an additional 1.5 hours for each non-15-day report that is contained within each periodic report.

FDA responds that based on the information provided by the comment to prepare and submit in the periodic report information pertaining to 15-day alert reports and non-15-day alert reports, FDA has revised the estimate for the time required to prepare and submit each response under § 314.80(c)(2) to approximately 60 hours per response.

The comment said that it does not understand how the annual frequency, total annual reports, and total hours are calculated for the estimated annual recordkeeping burden. The comment said that it needs to store each individual 15-day alert report, each individual non-15-day FDA Form 3500A, and each individual periodic report. The comment said that FDA's estimates seem to indicate that each company has one document to store. The comment said that it annually submits more than 6,000 15-day alert reports and 200 periodic reports containing many thousands of non-15-day FDA Form 3500As. Because of this, the comment said that it spends well over the one hour allotted by FDA to each company for these activities.

FDA responds that the agency estimates that approximately 400,000 records are maintained by applicants under § 314.80(i). This estimate is based on the information provided by the comment concerning 15-day alert reports and non-15-day alert reports, on the approximate number of 15-day alert reports and non-15-day alert reports received by FDA annually, and the fact

that § 314.80(i) also requires that records of ''raw data and any correspondence relating to adverse drug experiences'' be maintained. FDA also estimates that approximately 16 hours are required to maintain each record (under § 314.80(i) as well as § 310.305(f)). Therefore, the total hours for records maintenance under § 314.80(i) is approximately 6,400,000.

The comment disagreed with FDA's statement that there are no capital costs, operating, or maintenance costs associated with the collection of 15-day alert and periodic reports. The comment said that it (and other pharmaceutical companies) develop and maintain or purchase expensive, validated databases to collect and process adverse event information. These systems must continually be enhanced to accommodate new regulatory initiatives, such as the electronic submission of individual case safety reports in accordance with the International Conference on Harmonisation (ICH) E2B guidelines. The comment said that companies must purchase servers (sometimes multiple servers worldwide), and each employee needs hardware and software. Support services for these systems are also quite expensive. The comment also said that companies must license the Medical Dictionary for Regulatory Activities each year to meet the international standards for common reporting terminology. The comment said that costs for computer systems vary widely, but can amount to millions of dollars per year, especially for larger companies, and that capital and operational expenses for safety databases average $7.6 million per year. The comment also questioned the statement that there are no capital, operating, or maintenance costs associated with maintaining records of adverse experience reports for 10 years. The comment said that companies must maintain facilities to store what amounts to large volumes of paper records, in addition to backup records on other media (scanned optical images, microfilm, and so forth). The comment said that costs for storage and retrieval vary widely, depending on the volume of records, rental fees, transportation costs, and retrieval fees, but can be substantial (e.g., thousands of dollars per year). The comment said that its storage and retrieval expenses are approximately $22,000 per year.

FDA responds that based on the information provided by the comment, FDA estimates that the capital costs or operating and maintenance costs associated with records maintenance is approximately $22,000 annually. The comment did not suggest a specific estimate for capital costs or operating and maintenance costs associated with reports submitted to FDA. FDA believes that many of the costs discussed by the comment that pertain to submitting reports to FDA are standard operating procedures for most pharmaceutical companies. However, FDA is estimating a cost of approximately $25,000 annually for maintenance costs resulting from the reporting requirements. FDA specifically requests comment on this estimate.

The comment said that it is important for FDA to move quickly to change periodic reporting requirements to be consistent with ICH guidelines for periodic safety update reports. The comment said that this will enable companies to submit the same report to all regulatory authorities globally, and will decrease the burden involved with preparing unique periodic reports specifically for FDA. Additionally, for those companies who have received a waiver from FDA to submit periodic reports in the periodic safety update report format, the comment said that this would decrease the burden of adding U.S.-specific appendices to the reports. The comment also said that periodic safety update reports submitted to FDA should not routinely include any information in addition to that included in ICH guidelines for periodic safety update reports. The comment noted that FDA should not require full copies in either paper or electronic form of cases that were not subject to expedited reporting. If a potential signal arises about a specific product, FDA has the authority and opportunity to request all available information associated with any individual case(s). The comments said that greater collaboration between FDA and companies when FDA identifies a potential signal would facilitate better pharmacovigilance. For example, case reports should be shared and mutually discussed.

The comment said that electronic submission of 15-day alert reports would decrease the reporting burden, and that FDA requirements for electronic submission should be harmonized with European Agency for the Evaluation of Medicinal Products requirements, so pharmaceutical companies do not have to develop and validate separate programs.

The comment said that cost savings could be realized by both FDA and companies by eliminating the requirement for submitting original literature articles as attachments to 15-day alert reports. Articles would always be available to FDA on request. Alternatively, if there was electronic reporting, the literature article could be submitted electronically as an attachment in accordance with the ICH E2B guidance.

The comment said that cost savings could also be realized by eliminating the requirement to collect non-serious labeled events. Costs associated with collecting information that has little, if any, value has a substantial financial impact on both companies and the agency.

The comment also said that it supports FDA's efforts to consider provisions for alternate methods of data storage other than through hard copy paper records. Companies prefer to choose and maintain methods for storage and retrieval of records according to the individual companies' needs. Storing scanned optical images of records instead of paper copies would considerably decrease the need for large file rooms, extensive offsite storage facilities, and the costs associated with maintaining these facilities.

FDA responds that the agency is in the process of revising its safety reporting and recordkeeping regulations. In the **Federal Register** of March 14, 2003 (68 FR 12406), FDA proposed to amend its pre- and postmarketing safety reporting regulations for human drug and biological products to implement definitions and reporting formats and standards recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use and by the World Health Organization's Council for International Organizations of Medical Sciences. The rulemaking is also intended to codify FDA's expectations for timely acquisition, evaluation, and submission of relevant safety information for marketed drugs and licensed biological products, to require that certain information be submitted to FDA in an expedited manner, to clarify certain requirements, and to make other minor revisions. FDA also proposed to amend its postmarketing annual reporting regulations for human drug and licensed biological products to revise the content for these reports. In the proposed rule, FDA said that it is taking this action to strengthen its ability to monitor the safety of human drugs and biological products. The intended effect of the changes would be to further worldwide consistency in the collection of safety information and submission of safety reports, increase the quality of safety reports, expedite FDA's review of critical safety information, and enable FDA to protect and promote public

health. FDA said that the proposed changes would be an important step toward global harmonization of safety reporting requirements and additional efforts are underway within the Department of Health and Human Services to harmonize the reporting requirements of U.S. Federal agencies (e.g., FDA and the National Institutes of Health are continuing to work together to address the best ways to streamline information sharing and to harmonize, to the extent possible, the safety reporting requirements of the two agencies).

Dated: January 30, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–1587 Filed 2–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0045]

Behavior-Based Blood Donor Deferrals in the Era of Nucleic Acid Testing; Public Workshop; Request for Comments

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 entitled ''Behavior-Based Blood Donor Deferrals in the Era of Nucleic Acid Testing (NAT).'' The purpose of the public workshop is to address regulatory and scientific challenges and opportunities in the development of policy concerning protection of the blood supply from transfusion-transmissible diseases by deferring blood donors based on high-risk behavior, and to request comments on this topic.

Date and Time: The public workshop will be held on March 8, 2006, from 8 a.m. to 5:30 p.m. The deadline for registration via mail, fax, or e-mail is February 17, 2006 (see *Registration*). Written or electronic comments will be accepted until May 8, 2006 (see *Comments*).

Addresses: The public workshop will be held at the National Institutes of Health, Lister Hill Auditorium, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD 20894. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *Rhonda.Dawson@fda.hhs.gov*.

Registration: Mail, fax, or e-mail your registration information (including name, title, firm name, address, and telephone and fax numbers) to Rhonda Dawson (see *Contact Person*) by February 17, 2006. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space-available basis beginning at 7:15 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson (see *Contact Person*) at least 7 days in advance.

Comments: Regardless of attendance at the public workshop, interested persons may submit to the Division of Dockets Management (see *Addresses*) written or electronic comments regarding the public workshop. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the public workshop is to address regulatory and scientific challenges and opportunities in the development of policy concerning protection of the blood supply from transfusion-transmissible diseases by deferring blood donors based on high-risk behavior. The public workshop will feature presentations by national and international experts from government and academic institutions and industry. The following discussions will be included:

- Current practices in the United States and in foreign countries regarding blood donor deferrals based on high-risk behavior,
- Comparison of selected tissue donor deferral policies to blood donor deferral policies,
- Behavioral risks for transfusion-transmitted diseases,
- Residual risks of infection from transfusion, and
- Potential alternative approaches to donor screening and testing.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: January 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–1588 Filed 2–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Independent Evaluation of the Food and Drug Administration's First Cycle Review Performance—Retrospective Analysis Final Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled ''Independent Evaluation of FDA's First Cycle Review Performance—Retrospective Analysis Final Report.'' This report describes an independent evaluation of the issues associated with FDA's conduct of first cycle reviews of new molecular entities for new drug applications (NMEs for NDAs), and biological license applications (BLAs). Applications covered by the report are those submitted to FDA in fiscal years 2002 to 2004. This independent study was conducted in relation to the Prescription Drug User Fee Amendments of 2002 (PDUFA III). This assessment includes a detailed evaluation of the events that occurred during the review process with a focus on identifying the best practices by FDA and industry that facilitated that process.

ADDRESSES: Submit written requests for single copies of this report to the Office of Planning (HFP–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit electronic requests to *Carolyn.Staples@fda.hhs.gov*. This

report will be available on FDA's Web site at a later date.

FOR FURTHER INFORMATION CONTACT: Carolyn Staples, Office of Planning (HFP–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5274, or William Hagan, Office of Planning (HFP–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8816.

SUPPLEMENTARY INFORMATION:

I. Background

On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which includes PDUFA III. In conjunction with the passage of PDUFA III, FDA agreed to certain performance goals and procedures that were described in an enclosure to a June 4, 2002, letter from the Secretary of Health and Human Services, Tommy Thompson, to Congress entitled ''PDUFA Reauthorization Performance Goals and Procedures'' (PDUFA Goals and Procedures).

One of the goals relates to FDA's performance of first cycle reviews of original NMEs for NDAs and BLAs (PDUFA Goals and Procedures, section 10). Related to this goal, FDA was to retain an independent expert consultant to undertake a study to evaluate issues associated with the agency's conduct of first cycle reviews. The study was to assess the following objectives: (1) Current first cycle review performance and any changes that occur after FDA publishes guidance on Good Review Management Principles (GRMPs), (2) the first cycle review history of all NDAs for new molecular entities and all BLAs during PDUFA III, and (3) the effectiveness of FDA's staff training regarding GRMPs. FDA awarded a contract to an independent expert to study these issues. The report referred to in this document covers the retrospective portion of objectives (1) and (2) listed previously.

In accordance with the PDUFA goal, the report is being made available to the public.

Dated: January 30, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–1605 Filed 2–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the SAMHSA Center for Substance Abuse Prevention (CSAP) National Advisory Council on February 14, 2006.

The meeting will be open and will include a Director's Report; discussions related to National Outcome Measures; an update on SAMHSA's Drug Free Communities programs; and a panel presentation on the roles of Project Officers, Grants Management staff and Contracts Management staff.

A roster of Council members may be obtained either by accessing the SAMHSA Council Web site, *http://www.samhsa.gov/council/csap/csapnac.aspx* or by communicating with the contact listed below. Substantive program information, a summary of the meeting, and the transcript for the open session will also be available on the SAMHSA CSAP Council Web site as soon as possible after the meeting. Attendance by the public will be limited to space available.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time: Tuesday, February 14, 2006, 12 p.m. to 5 p.m.

Place: Washington DC Convention Center, 801 Mount Vernon Place, NW., Room 204 B, Washington, DC 20001.

Type: Open.

Contact: Tia Haynes, Committee Management Specialist, 1 Choke Cherry Road, Room 4–1066, Rockville, Maryland 20857. *Telephone:* (240) 276–2436. *Fax:* (240) 276–2430 *E-mail: Tia.haynes@samhsa.hhs.gov.*

Dated: February 1, 2006.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E6–1623 Filed 2–6–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–23795]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). TSAC advises the Coast Guard on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Application forms should reach us on or before April 30, 2006.

ADDRESSES: You may request an application form by writing to Commandant (G–PSO–1); U.S. Coast Guard, Room 1210; 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–0214; or by faxing 202–267–4570. Send your original completed and signed application in written form to the above street address. Be sure to sign and include the short page that allows us to keep political affiliation on file. This notice is available on the Internet at *http://dms.dot.gov* in docket USCG–2006–23795 and the application form is also available at *http://www.uscg.mil/hq/g-m/advisory/index.htm.* (Click on ''ACM Application''.)

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante; Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee mandated by Congress and operates under 5 U.S.C. App. 2, (Pub. L. 92–463, 86 Stat. 770, as amended). It advises the Secretary of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. This advice also assists the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its working groups may meet to consider specific issues as required. The 16-person membership includes 7 representatives of the Barge and Towing Industry (reflecting a regional geographical balance); 1 member from the Offshore Mineral and Oil Supply Vessel Industry; and 2 members from each of the following areas: Maritime Labor; Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); Port Districts, Authorities, or Terminal Operators; and the General Public.

We are currently considering applications for two positions from the Barge and Towing Industry, one position from the Offshore Industry, one position from Shippers, and one position from the General Public. To be eligible, applicants should have particular expertise, knowledge, and experience relative to the position in towing operations, marine transportation, or business operations associated with shallow-draft inland and coastal waterway navigation and towing safety. Each member serves for a term of up to 4 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

When filling in the ''Name of Committee you are interested in'' block, please indicate ''TSAC'' followed by the position category for which you are applying.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: February 1, 2006.

Howard L. Hime,

Acting Director of Standards Prevention.

[FR Doc. E6–1597 Filed 2–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[5101 ER J206]

Notice of Request for Comments To Address Right-of-Way Applications Filed by Private Fuel Storage, LLC, for an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and Related Transportation Facility in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of request for comments.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is requesting comments that will address right-of-way applications filed by Private Fuel Storage (PFS), LLC, for an independent spent fuel storage installation on reservation lands of the Skull Valley Band of Goshute Indians (Band or Skull Valley Band). The installation is described in an environmental impact statement (EIS) prepared by the Nuclear Regulatory Commission (NRC), entitled Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah (December 2001). This EIS is available online at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1714/v1/*. BLM was a cooperating agency in the preparation of this EIS, as were the Bureau of Indian Affairs (BIA), U.S. Department of the Interior, and the U.S. Surface Transportation Board. Your comments are sought pursuant to 40 CFR 1506.6(d).

DATES: The Bureau of Land Management should receive your comments by May 8, 2006.

ADDRESSES: You should address your comments to the attention of Pam Schuller, Bureau of Land Management, Salt Lake Field Office, 2370 S. 2300 W., Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Pam Schuller, Environmental Specialist, Salt Lake Field Office, 801–977–4356.

SUPPLEMENTARY INFORMATION: The applications filed by PFS seek rights-of-way under Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761, to transport spent nuclear fuel (SNF) across public lands managed by BLM. As proposed, the fuel would be transported by rail from an existing Union Pacific railroad site to a PFS facility on the Reservation of the Skull Valley Band of Goshute Indians in Tooele County, Utah. The fuel would be stored in aboveground canisters on the Reservation, awaiting eventual disposal at a permanent geologic repository currently proposed for Yucca Mountain, Nevada, or other, further storage at a location off the Reservation.

In order for PFS to construct a rail line and transport SNF to reservation lands, an amendment to BLM's Pony Express Resource Management Plan (RMP) would be necessary and PFS would need a right-of-way grant from BLM. An alternative to this rail line would involve construction of an intermodal transfer facility (ITF) on BLM lands. SNF would be transported by heavy-haul tractor/trailers to the reservation site under this alternative.

Your comments are necessary to assist BLM in reviewing the applications of PFS. Regulations recently revised by BLM at 43 CFR part 2804.26 (70 FR 21067 (April 22, 2005)) call for BLM to consider a number of factors in deciding whether to grant or deny an application for a right-of-way. Among these factors are (1) the project's consistency with BLM(s management of the public lands; (2) the public interest; (3) the applicant's qualifications to hold a grant; (4) the project's consistency with FLPMA, other laws, or regulations; (5) the applicant's technical or financial capability; and (6) the applicant's compliance with information requests. BLM will apply these standards to the PFS applications in light of the data in the applications and in the EIS. Certain recent developments also merit consideration, including statements by the Energy Department and PFS members, and Congressional action.

Public Law 109–163, the National Defense Authorization Act for Fiscal Year 2006, was signed by President Bush on January 6, 2006. 119 Stat. 3136. Section 384 of this Act designated certain lands as the Cedar Mountain Wilderness Area and withdrew these lands ''from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the United States mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing, and mineral materials, and all amendments to such laws.'' These lands include the area described in PFS's application for a right-of-way for a rail line, but do not include the area described in PFS's application for a right-of-way for the ITF. Because a rail line would be incompatible with wilderness, designation of the Cedar Mountain Wilderness Area would appear to preclude the grant of a right-of-way for the proposed rail line and shift the focus of this project to the ITF alternative.

On October 26, 2005, Secretary of Energy Samuel W. Bodman stated that the PFS facility initiative is not part of the Energy Department's overall strategy for the management of SNF and high-level radioactive waste. The Secretary noted that the Energy Department would be prohibited by statute from providing funding or financial assistance to the initiative because the PFS facility would be constructed and operated by the private sector outside the scope of the Nuclear Waste Policy Act of 1982 (NWPA). The Energy Department will continue to work toward the successful development of Yucca Mountain as a permanent geologic repository for the Nation's

high-level radioactive waste. Development of Yucca Mountain would reduce, if not eliminate, the need for high-level radioactive waste to go to a private temporary storage facility in Utah, the Secretary remarked.

Correspondence dated December 8, 2005, between the Chief Executive Officer of Xcel Energy and Senator Orrin Hatch indicates that Xcel Energy, the majority shareholder and most active proponent of the PFS project, will hold in abeyance future investments in the next phase of the PFS facility as long as there is progress in various initiatives toward federally sponsored interim storage, reuse, and/or disposal of the nation's spent nuclear fuel. The initiatives referred to include the Energy Department's examination of multi-purpose canister systems for Yucca Mountain; Congressional passage of the FY 2006 Energy and Water Development Act providing funds for grants to communities interested in hosting facilities that would accept and eventually recycle used fuel from civilian nuclear plants; and Congressional preparation of legislation that will promote the movement of waste early in the next decade.

Correspondence dated December 7, 2005, between the Chief Executive Officer of Southern Company and Senator Hatch indicates that Southern Company, one of eight members of the PFS consortium, will no longer support the PFS facility, having concluded that the PFS facility ''cannot be successfully developed as a spent fuel repository in a time frame to meet Southern's needs.'' Southern will continue to work toward ensuring the eventual opening of Yucca Mountain, to which it is committed as the nation's spent fuel repository. Southern Company was one of six members of PFS that in July 2002 announced that they would commit no funds to construction of the PFS facility past the licensing phase so long as the Yucca Mountain project is approved by Congress and repository development proceeds in a timely fashion.

Correspondence dated September 9, 2005, from the Utah Congressional delegation to Secretary of the Interior Gale Norton states that the proximity of the Goshute reservation to the Utah Test and Training Range makes it one of the most dangerous locations for the aboveground storage of high-level nuclear waste. The proposed storage site would sit within miles of the training range where 7,000 overflights of F–16s occur every year. Due to heavy commercial air traffic in the area, a principal low level approach by these F–16s passes directly over the proposed storage site. The aircraft sometimes use live ordnance, and 70 crashes of F–16s have occurred within the past 20 years at the Utah Test and Training Range, a number of these well outside the boundaries of the range.

In this same correspondence, the Congressional delegation states that NRC refused to reopen its EIS, dated December 2001, to consider the threat of deliberate suicide air attacks, even though post September 11 studies have been completed at all other facilities licensed by NRC. Moreover, the EIS does not require PFS to have any on-site means to handle damaged or breached casks. NRC staff concluded that the risk of a cask breach is so minimal that this scenario need not be considered in the EIS. At the delegation's urging, the Department of Homeland Security has consented to review the location of the proposed site to consider its national security implications.

This Congressional correspondence of September 9, 2005, further states that ''the issuance of a license for a private away-from-reactor storage site has never been done and in our view runs counter to the Nuclear Waste Policy Act, which limits the NRC to license storage sites only at federal facilities or onsite at nuclear power plants.''

Finally, in correspondence with Senator Hatch, dated July 8, 2002, Secretary of Energy Spencer Abraham concluded that the NWPA authorizes DOE to provide funding and financial assistance only for shipments of spent fuel to a facility constructed under that act. The Secretary found that the PFS/Goshute facility would be constructed outside the scope of the act, and as a result DOE would not fund or otherwise provide financial assistance for PFS. Nor could DOE monitor the safety precautions that a private facility may install. All costs associated with the PFS plan would have to be covered by the members of the PFS private consortium, the Secretary concluded.

The proposed action (Alternative 1) involves the construction and operation of the proposed PFS facility at a site designated as Site A in the northwest corner of the Skull Valley Indian Reservation and a new rail line connecting the existing Union Pacific railroad to the site. The proposed facility would be designed to store a lifetime capacity of up to 40,000 metric tons of uranium (MTU) (44,000 tons) of spent nuclear fuel. SNF is the primary by-product from a nuclear reactor. The capacity of the proposed facility would be sufficient to store all SNF from reactor sites owned by PFS members, as well as SNF from reactor sites that are not owned by PFS members.

PFS is a limited liability company owned by eight U.S. electric power generating companies. These companies are: Entergy Corporation; Southern California Edison Company; Genoa FuelTech, Inc.; Indiana-Michigan Company (American Electric Power); Florida Power and Light Company; GPU Nuclear Corporation; Xcel Energy Inc.; and Southern Nuclear Operating Company.

Construction of the proposed PFS facility would occur in three phases. Phase 1 construction, which would provide an operational facility, is planned to begin upon issuance of a license by the NRC and certification by the Secretary that the conditions under which a May 1997 lease between PFS and the Band was approved have been satisfied. The maximum term of the lease is 50 years. About one-fourth of the storage area for the proposed facility would be constructed during Phase 1, which would be completed in approximately 18 months. Another one-fourth would be completed during Phase 2, and the remaining portion constructed during Phase 3. The maximum amount of SNF that PFS could accept at the proposed facility over the term of the initial license and the proposed lease is 40,000 MTU. Once PFS had accepted 40,000 MTU of SNF, it could not accept any additional shipments, even if it had begun to ship the SNF off site.

SNF to be shipped to the proposed PFS facility would be placed inside sealed metal canisters at commercial nuclear power plants. These canisters would then be placed inside NRC-certified steel shipping casks for transport by rail to the new rail siding at Skunk Ridge. Dedicated trains, stopping only for crew changes, refueling, and periodic inspections, would be used to transport SNF from the existing reactor sites to Skull Valley. PFS expects that it would receive 1 to 2 trains, each carrying 2 to 4 shipping casks, per week from the reactor sites. The number of loaded SNF canisters (inside shipping casks) is estimated to be between 100 and 200 annually. Each canister would contain approximately 10 MTU of SNF.

The nearest main rail line is approximately 39 km (24 miles) north of the proposed site. PFS's preferred option for transporting SNF from the existing Union Pacific main line railroad to the site is to build a new rail line to the site. The new rail line, and its associated rail siding, would connect to the existing Union Pacific main rail line at Skunk Ridge (near Low, Utah). The proposed right-of-way for the rail corridor would be 51 km (32 miles) long

and 60 m (200 ft) wide. It would run to the proposed PFS facility through public lands administered by BLM on the eastern side of the Cedar Mountains. Because these public lands are outside a transportation and utility corridor described in BLM's Pony Express RMP, an amendment to this RMP would be necessary before BLM could issue a right-of-way. Any amendment to this RMP would also await compliance by the Department of Defense with certain reporting duties under section 2815 of the National Defense Authorization Act for FY 2000, Pub. L. 106–65.

As noted above, designation of the Cedar Mountain Wilderness Area by Congress in Pub. L. 109–163 appears to preclude the grant of a right-of-way for the rail line in Alternative 1.

At the proposed PFS facility, a dry cask storage technology would be used. The sealed metal canisters containing the SNF would be unloaded from the shipping casks at the proposed PFS facility, loaded into steel-and-concrete storage casks, and then placed on concrete pads for aboveground storage. The canister-based cask system for confining the SNF would be certified by NRC in accordance with NRC requirements (10 CFR part 72). PFS proposes to employ the Holtec HI-STORM dual-purpose canister-based cask system for use at the proposed PFS facility. PFS anticipates storing as many as 4,000 sealed metal canisters inside individual storage casks, to store a maximum of 40,000 MTU of SNF.

The proposed PFS facility would be licensed by NRC to operate for up to 20 years. The applicant has indicated that it may seek to renew the license for 20 years (total of 40 years). By the end of the licensed life of the proposed PFS facility and prior to the expiration of the lease, it is expected that the SNF would have been shipped to a permanent repository. Service agreements (*i.e.*, contracts) between PFS and companies storing SNF at the proposed PFS facility will require that the utilities remove all SNF from the proposed PFS facility by the time the PFS license has terminated and PFS has completed its licensing or regulatory obligations under the NRC license. The service agreement requirement to remove the SNF from the proposed PFS facility is not dependent upon the availability of a permanent geological repository. Therefore, if the PFS license is terminated or revoked prior to the availability of a permanent geological repository, the reactor licensees storing SNF at the PFS facility would continue to retain responsibility for the fuel and must remove it from the proposed PFS facility before license termination.

At the end of its useful life (or upon termination of the lease with the Band or termination of the NRC license, whichever comes first), the proposed PFS facility would be closed. As a condition of the lease with the Band and as required by NRC regulations, decommissioning of the proposed PFS facility would be required prior to closure of the facility and termination of the NRC license. Although the exact nature of decommissioning cannot be predicted at this time, the principal activities involved in decommissioning would include:

1. Removal of all remaining SNF from Skull Valley;

2. Removal or disposition of all storage casks;

3. Removal or disposition of the storage pads and crushed rock, at the option of the Band and the BIA; and

4. Removal of the buildings and other improvements or their transfer to the Band, at the option of the Band and the BIA.

The objective of the radiological decommissioning would be to remove all materials having levels of radioactivity above the applicable NRC limits in order for the site to be released for unrestricted use. The SNF contained inside sealed metal canisters would be transferred to licensed shipping casks for transportation away from Skull Valley.

At the option of the Band, non-radiological decommissioning and restoration of the facility may include the removal of structures and reasonably returning the land to its original condition. The future of the buildings and other improvements to be constructed by PFS on the Reservation is to be determined by the Band and the BIA. PFS is obligated to remove the buildings and other improvements at the request of the Band. PFS will collect sufficient advanced funding or provide other financial assurances to accomplish any or all of the non-radiological decommissioning. If the Band chooses to retain any or all of the buildings and other improvements once the radiological decommissioning is complete, it has the right to receive a transfer from PFS in an ''intact'' condition. The future use of any buildings and other improvements not removed by PFS, including the soil-concrete mixture below the pads, would be at the discretion of the Band. Any impacts associated with such use would be evaluated by a separate NEPA review. The proposed lease requires that the SNF be removed from the Reservation before the end of the lease term.

Alternative 2 involves constructing the proposed PFS facility at an alternative location (Site B) on the Reservation. This site is located about 800 m (0.5 mile) south of the proposed Site A and is similar in terms of its environmental characteristics to the proposed site. Under this alternative, a new rail line would be constructed across BLM lands from Skunk Ridge. The rail corridor through Skull Valley would be essentially identical to the one for the proposed action, but it would be about 1.6 km (1 mile) longer due to the slightly greater distance of Site B from the existing main rail line. From BLM's perspective, Alternative 2 would require amendment of the Pony Express RMP and the authorization of a right-of-way across public lands for the construction and operation of a new rail line. Amendment of the Pony Express RMP would involve the Defense Department's compliance with section 2815(b) of the National Defense Authorization Act for FY 2000. Because the rail line is essentially the same as that involved in Alternative 1, designation of the Cedar Mountain Wilderness Area in Pub. L. 109–163 appears to preclude the grant of a right-of-way for the rail line in Alternative 2.

Alternative 3 involves constructing the proposed PFS facility at Site A, but transportation of SNF from the existing Union Pacific main rail line to the site would be accomplished by heavy-haul tractor/trailers. An ITF and rail siding would be built on land managed by BLM at the existing main rail line near Timpie, Utah, to transfer SNF shipping casks from rail cars to the heavy-haul vehicles, which would then transport the SNF along the existing Skull Valley Road to the site. No rail line would be built under this alternative.

The ITF would occupy 9–11 acres of BLM land approximately 2 miles west of the intersection of I–80 and Skull Valley Road and outside of the lands designated in Pub. L. 109–163 as the Cedar Mountain Wilderness Area. It would consist of three rail sidings, a new access road for heavy-haul vehicles, and a building with a crane for transferring SNF shipping casks from rail cars onto heavy-haul tractor/trailers. PFS has filed an application for a right-of-way from BLM to use this land. The ITF would not require an amendment to the Pony Express RMP. The ITF would occupy previously disturbed land lying between the existing Union Pacific Railroad and Interstate 80. SNF would arrive at the ITF by rail using the Union Pacific rail line. The crane would load the fuel from the rail cars onto heavy-haul tractor/trailers, which would use the existing Skull Valley road to carry

the fuel south to the PFS facility on the Goshute Reservation, a distance of approximately 26 miles. From BLM's perspective, Alternative 3 involves the authorization of a right-of-way to occupy public lands for the ITF; no RMP amendment would be necessary.

Alternative 4 involves constructing the PFS facility at Site B on reservation lands and transportation of SNF by heavy-haul tractor/trailers. As in alternative 3, PFS would seek a right-of-way to authorize use of an ITF on BLM lands. No rail corridor would be constructed under this alternative, and no amendment of BLM's RMP would be necessary.

Under the no action alternative, no PFS facility or transportation facilities would be built in Skull Valley. Under this alternative, NRC would deny the application for a license for the proposed PFS facility, and no certification by the Secretary of lease conditions would occur. From BLM's perspective, the right-of-way applications filed by PFS would be denied. The Band would be free to pursue alternative uses for the land in the northwest corner of the Reservation.

Jim Hughes,

Deputy Director.

[FR Doc. E6–1595 Filed 2–6–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, March 31, 2006, from 8 a.m. to 5 p.m., and meet in formal session on Saturday, April 1 from 8 a.m. to 1 p.m. in Conference Rooms A, B and C in the CalWorks Building within the Imperial County Center II Complex, located at 2895 South 4th Street, in El Centro, California.

The Council and interested members of the public will depart for a field tour of the Imperial Sand Dunes Recreation Area (ISDRA) at 8 a.m. from the parking lot of the Best Western John Jay Inn, located at 2352 South 4th Street in El Centro. The public is welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch. Tour stops and presentations/updates will focus on BLM management of the ISDRA, including monitoring and fee collection.

SUPPLEMENTARY INFORMATION: All Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda is scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting.

Although the Saturday meeting is tentatively scheduled from 8 a.m. to 1 p.m., the meeting could conclude prior to 1 p.m. should the Council conclude its discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist, (951) 697–5220.

Dated: January 30, 2006.

Steven J. Borchard,

District Manager.

[FR Doc. E6–1640 Filed 2–6–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

[WYW153578]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Section 371(a) of the Energy Policy Act of 2005, the lessee, Charles A. Einarsen, timely filed a petition for reinstatement of competitive oil and gas lease WYW153578 in Natrona County, Wyoming. The lessee paid the required rental accruing from the date of termination, September 1, 2002, and submitted a signed agreement, specifying future rental and royalty rates for this lease would be at $10.00 per acre or fraction of an acre and 16⅔ percent respectively. In accordance with 43 CFR 3103.4–1 and 43 CFR 3108.2–3(f) the lessee petitioned to reduce the rental and royalty rates for the subject lease to the rates specified in Sections 1 and 2 of the original lease agreement and submitted justification and rationalization for the request. After thoroughly reviewing the lessee's petition and taking into consideration the information submitted, we have granted the request to reduce the rental rates to those in Section 1 of the original lease agreement but have denied the request for a reduced royalty rate. The purpose of granting a reduced royalty rate is to extend the productive life of an existing well. Normally it cannot be determined whether a lease can be successfully operated at the higher royalty rate required for reinstated leases until the lease has been fully developed. Because the productivity of the leasehold has not been fully determined, the request for a reduced royalty rate is premature.

No leases were issued that affect these lands. The lessee had paid the required $500 administrative fee for lease reinstatement and $166 cost for publishing this Notice.

The lessee has met all the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The rental rates specified in Section 1 of the original lease agreement; and
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–1638 Filed 2–6–06; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–457–A–D (Second Review)]

Heavy Forged Hand Tools From China

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on heavy forged hand tools from China would be likely to lead to continuation or recurrence of material injury to industries in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 2005 (70 FR 38197) and determined on October 4, 2005 that it would conduct expedited reviews (70 FR 61156, October 20, 2005).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 31, 2006. The views of the Commission are contained in USITC Publication 3836 (January 2006), entitled *Heavy Forged Hand Tools from China: Investigation Nos. 731–TA–457 (Second Review).*

By order of the Commission.

Issued: February 1, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–1637 Filed 2–6–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–011]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: February 23, 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. Nos. 701–TA–401 and 731–TA–853 and 854 (Second Review) (Structural Steel Beams from Japan and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 8, 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.

By order of the Commission:

Issued: February 3, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–1176 Filed 2–3–06; 2:00 pm]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans Employment and Training

President's National Hire Veterans Committee; Notice of Open Meeting

The President's National Hire Veterans Committee was established under 38 U.S.C. 4100 Public Law 107–288, Jobs for Veterans Act, to furnish information to employers with respect to the training and skills of veterans and disabled veterans, and to the advantages afforded employers by hiring veterans with training and skills and to facilitate the employment of veterans and disabled veterans through participation in Career One Stop National Labor Exchange, and other means.

The President's National Hire Veterans Committee will meet on Thursday, February 23, 2006 beginning at 1 p.m. at the Omni Hotel, 245 Water Street, Jacksonville, Florida.

The committee will discuss raising corporate awareness as to the advantages of hiring veterans.

Individuals needing special accommodations should notify Bill Offutt at (202) 693–4717 by February 16, 2006.

Signed in Washington, DC, this 23rd day of January 2006.

Charles S. Ciccolella,

Assistant Secretary, Veterans Employment and Training.

[FR Doc. E6–1610 Filed 2–6–06; 8:45 am]

BILLING CODE 4510–79–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; License Nos. DPR–26 and DPR–64; EA–05–190]

In the Matter of Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Unit Nos. 2 and 3); Confirmatory Order Modifying License (Effective Immediately)

I

Entergy Nuclear Operations, Inc. (Licensee) is the holder of Facility Operating License Nos. DPR–26 and DPR–64 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. The licenses authorize the operation of Indian Point Nuclear Generating Unit Nos. 2 and 3, in accordance with the conditions specified therein. The facilities are located on the Licensee's site in Buchanan, New York.

II

The Energy Policy Act of 2005 (Act) (see 42 U.S.C. 2210 *et seq.*) was enacted on August 8, 2005. Section 651(b) of the Act states:

> For any licensed nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50-mile radius of the power plant, not later than 18 months after enactment of this Act, the Commission shall require that backup power to be available for the emergency notification system of the power plant, including the emergency siren warning system, if the alternating current supply within the 10-mile emergency planning zone of the power plant is lost.

Public Law 109–58, 119 Stat 594. Indian Point Nuclear Generating Unit Nos. 2 and 3 meet the criteria of the Act.

Adequate backup power for the emergency notification system (ENS), as required by section 651(b) of the Act, requires that: (a) The backup power supply for the Public Alerting System (PAS) must meet commonly-applicable standards, such as National Fire Protection Association (NFPA) Standard 1221, Standard for the Installation, Maintenance, and Use of Emergency Communications Systems (2002) and Underwriters Laboratory (UL) 2017, section 58.2; (b) each PAS and PAS Alerting Appliance (PASAA) must receive adequate power to perform their intended functions such that backup power is sufficient to allow operation in standby mode for a minimum of 24 hours and in alert mode for a minimum of 15 minutes; (c) batteries used for backup power must recharge to at least 80 percent of their capacity in no less than 24 hours; (d) except for those

components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, immediate automatic indication of a loss of power must be provided to the Licensee and appropriate government agencies; and (e) except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, an automatic notification of an unplanned loss of power must be made to the Licensee in sufficient time to take compensatory action before the backup power supply can not meet the requirements of section IV, part II. A. 2.

III

In order to carry out the statutory mandate discussed above, the Commission has determined that the operating licenses for Indian Point Nuclear Generating Unit Nos. 2 and 3 must be modified to include provisions with respect to the measures identified in section II of this Order. The requirements needed to effectuate the foregoing are set forth in section IV below. On January 31, 2006, the Licensee consented to the license modifications set forth in Section IV below. The Licensee further agreed in its letter dated January 31, 2006, that it has waived its right to a hearing on this Order, and, therefore, that the terms of the Order are effective upon issuance.

I find that the license modifications set forth in section IV are acceptable and necessary, and conclude that with these provisions the Licensee will be in compliance with the intent of the Act. Based on the above and Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, section 651(b) of the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat 594), and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *It is hereby ordered,* Effective Immediately, that License Nos. DPR–26 and DPR–64 Are Modified as Follows:

I. The Licensee shall provide and maintain a backup power supply for the ENS for the Indian Point Nuclear Generating Unit Nos. 2 and 3, facilities. The ENS is the primary prompt notification system used to alert the public of an event at a nuclear power plant.

II. The Licensee shall implement II.A, II.B, and II.C.1–3 by January 30, 2007. The backup power system for the ENS shall be declared operable by January 30, 2007. The backup power supply for the ENS shall include, as a minimum:

A.1. A backup power supply for the PAS and each PASAA which shall provide adequate power for each component to perform their design function. These functions include the following as examples: sound output, rotation, speech intelligibility, or brightness as applicable. This criterion includes the associated activation, control, monitoring, and testing components for the backup power supply to the ENS including, but not limited to: radio transceivers, testing circuits, sensors to monitor critical operating parameters of the PAS and PASAA.

The Licensee is required to meet all applicable standards, such as NFPA Standard 1221, Standard for the Installation, Maintenance, and Use of Emergency Communications Systems (2002) and UL 2017, Section 58.2;

2. The backup power supply for each PAS and PASAA shall be designed for operation in standby mode, including, but not limited to: radio transceivers, testing circuits, sensors fully operational and providing polling data to the activation, control, monitoring, and test system for at least 24 hours without AC supply power from the local electric distribution grid. The backup power supply then shall be capable of performing its intended function, without recharge, by operating the PAS and PASAA in its alerting mode at its full design capability for a period of at least 15 minutes. This sequence shall be assumed to occur at the most unfavorable environmental conditions including, but not limited to, temperature, wind, and precipitation specified for PAS and PASAA operation and assume that the batteries are approaching the end of their design life (*i.e.*, the ensuing recharge cycle will bring the batteries back to the minimum state that defines their design life).

3. In defining battery design life, automatic charging shall be sized such that batteries in the backup power are fully recharged to at least 80 percent of their maximum rated capacity from the fully discharged state in a period of not more than 24 hours.

4. Battery design life and replacement frequency shall comply with vendor(s) recommendations.

5. Except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, there shall be a feedback system(s) that provides immediate automatic indication of a loss of power to the Licensee and the appropriate government agencies, and an automatic notification of an unplanned loss of power must be made to the Licensee in sufficient time to take compensatory action before the backup power supply can not meet the requirements of section IV, part II. A. 2.

6. The Licensee shall implement a preventative maintenance and testing program of the ENS including, but not limited to: the equipment that activates and monitors the system, equipment that provides backup power, and the alerting device to ensure the ENS system performs to its design specifications.

B.1. The Licensee shall implement any new Department of Homeland Security (DHS) guidance pertaining to backup power for ENS that may affect the system requirements outlined in this Order that is issued prior to obtaining DHS approval of the alerting system design. The Licensee shall not implement any DHS guidance that reduces the effectiveness of the ENS as provided for in this Order without prior NRC approval.

2. The Licensee shall document the evaluation of lessons learned from any evaluation of the current alert and notification system (ANS) and address resolution of identified concerns when designing the backup power system and such consideration shall be included in the design report.

3. The final PAS design must be submitted to DHS for approval prior to May 1, 2006.

C.1. Within 60 days of the issuance of this Order, the Licensee shall submit a response to this Order to the NRC Document Control Desk providing a schedule of planned activities associated with the implementation of the Order including interactions with the Putnam, Rockland, Westchester, and Orange Counties, the State of New York, and DHS. In addition, the Licensee shall provide a progress report on or shortly before June 30, 2006.

2. The Licensee shall submit a proposed revision to its emergency response plan to incorporate the implementation of items A.1–A.6, B.1–B.3, and C.4–C.5. This plan shall be submitted to the NRC for review and approval within 120 days from the issuance of the Order.

3. Prior to declaring the ENS operable, the Licensee shall, in accordance with a test plan submitted to and approved by the NRC in conjunction with the design submittal, demonstrate satisfactory performance of all (100%) of the ENS components including the ability of the backup power supply to meet its design requirements.

4. After declaring the ENS operable, the Licensee shall conduct periodic testing to demonstrate reliable ENS system performance.

5. The results from testing as discussed in paragraph C.4 shall be reported, in writing, to the NRC Document Control Desk, with a copy to the Director of Nuclear Reactor Regulation, documenting the results of each test, until there are 3 consecutive tests testing the operability of all ENS components used during an actual activation), conducted no sooner than 25 days and no more than 45 days from the previous test with a 97% overall entire emergency planning zone success rate with no individual county failure rate greater than 10%. A false negative report from a feedback system will constitute a siren failure for the purposes of this test.

III. The Licensee shall submit a written report to the NRC Document Control Desk, with a copy to the Director of Nuclear Reactor Regulation, when the ENS is declared operable.

IV. The Licensee shall submit a written report to the NRC Document Control Desk and provide a copy to the Director of Nuclear Reactor Regulation when it has achieved full compliance with the requirements contained in this Order.

V. The Licensee may use the criteria contained in 10 CFR 50.54(q) to make changes to the requirements contained in this Order without prior NRC approval provided that they do not reduce the effectiveness of the Order requirements or the approved emergency plan. The Licensee shall notify, in writing, the NRC Document Control Desk, with a copy to the Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response, 30 days in advance of implementing such a change. For other changes, the Licensee may submit a request, in writing, to the NRC Document Control Desk, with a copy to the Director, Office of Nuclear Reactor Regulation, to relax or rescind any of the above requirements upon a showing of good cause by the Licensee.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator, NRC Region I, U.S. NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415; and to the Licensee, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing or for time extensions be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received. *An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.*

For The Nuclear Regulatory Commission.

Dated this 31st day of January 2006.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E6–1626 Filed 2–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–139; EA–05–230]

In the Matter of the University of Washington; (The University of Washington Research Reactor); Order Modifying Requirements for Dismantling of Facility and Disposition of Component Parts

I

The University of Washington (UW or the licensee) is the holder of Facility License No. R–73 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. The license authorizes possession but not operation of the UW Research Reactor (the facility) in accordance with conditions specified therein. The facility is located on the licensee's campus in Seattle, Washington.

II

By application dated August 2, 1994, the licensee requested authorization to dismantle the UW Research Reactor and to dispose of the component parts, in accordance with the decommissioning plan (DP) submitted as part of the application. The NRC reviewed the application with respect to the provisions of the Commission's rules and regulations and found that the dismantling and disposal of component parts as stated in the licensee's DP are consistent with the regulations in 10 CFR Chapter 1 and are not inimical to the common defense and security or to the health and safety of the public. On May 1, 1995, the Commission issued an ''Order Authorizing Dismantling of Facility and Disposition of Component Parts'' (the 1995 order) to the licensee to dismantle the UW Research Reactor facility covered by Facility License No. R–73, as amended, and dispose of the component parts in accordance with its DP and the Commission's rules and regulations.

By letter dated October 27, 2004, as supplemented on March 18 and September 28, 2005, the licensee requested that the NRC amend the 1995 order to allow the licensee to make certain changes to the DP without prior NRC approval.

III

The licensee requested that the provisions of 10 CFR 50.59 be made applicable to the DP for the UW Research Reactor to allow the licensee to make certain changes to the DP without prior Commission approval. The licensee made this request to allow flexibility during decommissioning in

making changes which are of minimal significance to safety. At the time the UW DP was approved, the DP was a stand-alone document approved by the order. The DP was not part of the safety analysis report and there was no process in the DP or the 1995 order to allow changes to be made to the DP without prior Commission approval. The UW was ordered to dismantle the facility and dispose of the component parts in accordance with the DP and the Commission's rules and regulations. The regulations in 10 CFR 50.59 did not apply to the UW DP because 10 CFR 50.59 applies to changes to the facility safety analysis report. In addition, 10 CFR 50.59 does not apply to the UW reactor, because it no longer is authorized to operate. In a request for additional information, the staff asked the licensee to propose wording for making changes to the UW DP. The staff also asked the licensee to identify the sections of the DP that would not be subject to the proposed change process and would require prior Commission approval to be made.

The NRC staff has reviewed the proposed change process by the licensee and concludes that it will allow the licensee to make changes to the DP without prior Commission approval consistent with the intent of the 10 CFR 50.59 process. Therefore, the licensee's proposed change process is acceptable to the staff. The staff has also reviewed the sections of the DP that the licensee proposes not to change without prior Commission approval. These sections concern the DECON decommissioning option chosen by the licensee, the criteria proposed by the licensee and approved by the Commission for unrestricted release of the facility and the site, the Technical and Safety Committee, which is a requirement of the technical specifications, and the radiation exposure limits, which are a requirement of the regulations in 10 CFR part 20. Therefore the licensee's proposed list of DP sections not subject to the change process is acceptable to the staff.

IV

Accordingly, pursuant to sections 104c, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *It is hereby ordered that*:

The University of Washington Nuclear Reactor Decommissioning Plan dated July 1994 be modified to add the following:

10.0 Decommissioning Plan Change Process

(a) Definitions for the purposes of this section:

(1) Change means a modification or addition to, or removal from, the facility or procedures that affects a design function, method of performing or controlling the function, or an evaluation that demonstrates that intended functions will be accomplished.

(2) Departure from a method of evaluation described in the Decommissioning Plan (as updated) used in establishing the design bases or in the safety analyses means:

(i) Changing any of the elements of the method described in the Decommissioning Plan (as updated) unless the results of the analysis are conservative or essentially the same; or

(ii) Changing from a method described in the Decommissioning Plan to another method unless that method has been approved by NRC for the intended application.

(3) Facility as described in the Decommissioning Plan (as updated) means:

(i) The structures, systems, and components (SSC) that are described in the Decommissioning Plan (as updated),

(ii) The design and performance requirements for such SSCs described in the Decommissioning Plan (as updated), and

(iii) The evaluations or methods of evaluation included in the Decommissioning Plan (as updated) for such SSCs which demonstrate that their intended function(s) will be accomplished.

(4) Decommissioning Plan (as updated) means the Decommissioning Plan submitted and approved by the Commission, as amended and supplemented, and as updated per the requirements of Sec. 50.71, as applicable.

(5) Procedures as described in the Decommissioning Plan (as updated) means those procedures that contain information described in the Decommissioning Plan (as updated) such as how structures, systems, and components are operated and controlled (including assumed operator actions and response times).

(6) Tests or experiments not described in the Decommissioning Plan (as updated) means any activity where any structure, system, or component is utilized or controlled in a manner which is either:

(i) Outside the reference bounds of the design bases as described in the Decommissioning Plan (as updated) or

(ii) Inconsistent with the analyses or descriptions in the Decommissioning Plan (as updated).

(b)(1) The University may make changes in the facility as described in the Decommissioning Plan (as updated), make changes in the procedures as described in the Decommissioning Plan (as updated), and conduct tests or experiments not described in the Decommissioning Plan (as updated) without obtaining Commission approval only if:

(i) A change to the technical specifications incorporated in the license is not required, and

(ii) The change, test, or experiment does not meet any of the criteria in paragraph (b)(2) of this section.

(2) The University shall obtain Commission approval prior to implementing a proposed change, test, or experiment if the change, test, or experiment would:

(i) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the Decommissioning Plan (as updated);

(ii) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the Decommissioning Plan (as updated);

(iii) Result in more than a minimal increase in the consequences of an accident previously evaluated in the Decommissioning Plan (as updated);

(iv) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the Decommissioning Plan (as updated);

(v) Create a possibility for an accident of a different type than any previously evaluated in the Decommissioning Plan (as updated);

(vi) Result in a departure from a method of evaluation described in the Decommissioning Plan (as updated) used in establishing the design bases or in the safety analyses.

(3) In implementing this paragraph, the Decommissioning Plan (as updated) is considered to include Decommissioning Plan changes pursuant to this condition and changes ordered by the Commission.

(4) The provisions in this section do not apply to changes to the facility or procedures when the applicable regulations establish more specific criteria for accomplishing such changes.

(c)(1) The licensee shall maintain records of changes in the facility, of changes in procedures, and of tests and experiments made pursuant to paragraph (b) of this section. These records must include a written

evaluation which provides the bases for the determination that the change, test, or experiment does not require Commission approval pursuant to paragraph (b)(2) of this section.

(2) The licensee shall submit, as specified in 10 CFR 50.4, a report containing a brief description of any changes, tests, and experiments, including a summary of the evaluation of each. A report must be submitted at intervals not to exceed 24 months.

(3) The records of changes in the facility must be maintained until the termination of a license issued pursuant to 10 CFR Part 50. Records of changes in procedures and records of tests and experiments must be maintained for a period of 5 years.

(d) The following sections of the Decommissioning Plan (as amended) are not subject to the Decommissioning Plan change process: 1.3.1, 2.1, 1.3.7.1, 1.3.7.2, 2.6, 2.3.2, and 3.2.2.

V

Any person adversely affected by this Order may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension.

A request for a hearing or a petition for leave to intervene must be filed (1) by first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) by courier, express mail, and expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) by e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) by facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101 (the verification number is 301–415–1966). A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and NRC requests that copies be transmitted either by facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the licensee. The licensee's contact for this is Stanley J. Addison, UW Radiation Safety Officer, University of Washington, Environmental Health and Safety, 201 Hall Health Center, Box 354400, Seattle, Washington 98195–4400.

If a person other than the licensee requests a hearing, he or she shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received.

For further information see the application from the licensee dated October 27, 2004 (ML043090558), as supplemented on March 18 (ML050900307) and September 28, 2005 (ML052770539), and the staff's safety evaluation dated January 31, 2006 (ML052910487), available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 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* (use the ADAMS ML numbers given above). Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated this 31st day of January 2006.

Christopher I. Grimes,

Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E6–1625 Filed 2–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 14–16, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss that is proprietary to various equipment vendors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, February 14, 2006—8:30 a.m. until the conclusion of business.

Wednesday, February 15, 2006—8:30 a.m. until the conclusion of business.

Thursday, February 16, 2006—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss and hear a briefing from the NRC staff, the Nuclear Energy Institute (NEI), and other interested stakeholders regarding recent work related to chemical effects in containment sumps during loss of coolant accident events, and licensee responses to Generic Letter 2004–02 concerning pressurized water reactor sumps. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, NEI, licensees, contractors, and other interested persons regarding this matter.

The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named

individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 1, 2006.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E6–1628 Filed 2–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of February 6, 13, 20, 27, March 6, 13, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of February 6, 2006

Monday, February 6, 2006

9:30 a.m. Briefing on Materials Degradation Issues and Fuel Reliability (Public Meeting), (Contact: Jennifer Uhle, 301–415–6200).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

2 p.m. Discussion of Security Issues (Closed—Ex. 1).

Wednesday, February 8, 2006

9:30 a.m. Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS) Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Teresa Mixon, 301–415–7474; Derek Widmayer, 301–415–6677).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

1:30 p.m. Briefing on Office of Research (RES) Programs, Performance and Plans (Public Meeting) (Contact: Gene Carpenter, 301–415–7333).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Week of February 13, 2006—Tentative

Tuesday, February 14, 2006

2 p.m. Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS) Programs, Performance, and Plans—Waste Safety (Public Meeting) (Contact: Teresa Mixon, 301–415–7474; Derek Widmayer, 301–415–6677).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Wednesday, February 15, 2006

9:30 a.m. Briefing on Office of Chief Financial Officer (CFO) Programs, Performance, and Plans (Public Meeting), (Contact: Edward New, 301–415–5646)

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Week of February 20, 2006—Tentative

There are no meetings scheduled for the Week of February 20, 2006.

Week of February 27, 2006—Tentative

There are no meetings scheduled for the Week of February 27, 2006.

Week of March 6, 2006—Tentative

There are no meetings scheduled for the Week of March 6, 2006.

Week of March 13, 2006—Tentative

Monday, March 13, 2006

1:30 p.m. Briefing on Office of Information Services (OIS) Programs, Performance, and Plans (Public Meeting), (Contact: Edward Baker, 301–415–8700).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Wednesday, March 15, 2006

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting), (Contact: Evelyn S. Williams, 301–415–7011)

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Thursday, March 16, 2006

9:30 a.m. Briefing on Office of Nuclear Reactor Regulation (NRR— Programs, Performance, and Plans (Public Meeting), (Contact: Cynthia Carpenter, 301–415–1275).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: February 2, 2006.

R. Michelle Shroll,

Office of the Secretary.

[FR Doc. 06–1161 Filed 2–3–06; 13:54 pm]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Briefing on the Future of Mail

AGENCY: Postal Rate Commission.

ACTION: Notice of briefing.

SUMMARY: On February 22, 2006, the Commission will host a presentation by Pitney Bowes on the future of mail. Topics will include, among others, the evolution of substitution models; volume forecasting comparisons; technology; pricing; regulation; and human and ethnographic factors. The briefing will begin at 10:30 a.m. in the Commission's hearing room.

DATES: February 22, 2006.

ADDRESSES: Postal Rate Commission, 901 New York Ave., NW., Suite 200, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 06–1105 Filed 2–6–06; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:
Form F–9; OMB Control No. 3235–0377; SEC File No. 270–333
Form F–10; OMB Control No. 3235–0380; SEC File No. 270–334

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 collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extensionand approval.

Form F–9 is a registration statement under the Securities Act of 1933 that is used to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer and are either non-convertible or not convertible for a period of at least one year from the date of issuance and thereafter are only convertible into a security of another class of the issuer. The purpose of the information collection is to permit verification of compliance with securities law requirements and to assure the public availability and dissemination of such information. The principal function of the Commission's forms and rules under the securities laws' disclosure provisions is to make information available to the investors. We estimate that Form F–9 takes approximately 25 hours per response and it is filed by 18 respondents. We further estimate that 25% of the 450 total burden hours (113 burden hours) is prepared by the company.

Form F–10 is a registration statement under the Securities Act of 1933 that is used by certain Canadian ''substantial issuers'' (those issuers with at least 36 calendar months of reporting history with a securities commission in Canada and a market value of common stock of at least $360 million (Canadian) and an aggregate market value of common stock held by non-affiliates of at least $75 million (Canadian)). The purpose of the information collection is to facilitate cross-border offerings by specified Canadian issuers. We estimate that Form F–10 takes approximately 25 hours per response and is filed by 75 respondents. We further estimate that 25% of the 1,875 total burden hours (469 burden hours) are prepared by the company.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 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.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: January 31, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1618 Filed 2–6–06; 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 15g–3; SEC File No. 270–346; OMB Control No. 3235–0392

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 publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. It is estimated that approximately 240 respondents incur an average burden of 100 hours annually to comply with the rule.

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 agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: January 31, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1620 Filed 2–6–06; 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 15g–4; SEC File No. 270–347; OMB Control No. 3235–0393

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 publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 240 respondents incur an average of 100 hours annually to comply with the rule.

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 agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: January 31, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1621 Filed 2–6–06; 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 19a–1; SEC File No. 270–240; OMB Control No. 3235–0216

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 19(a) [15 U.S.C. 80a–19(a)] of the Investment Company Act of 1940 (the ''Act'') makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a–1 [17 CFR 270.19a–1] under the Act, entitled ''Written Statement to Accompany Dividend Payments by Management Companies,'' sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.[1] The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits and paid-in capital. When any part of the payment is made from net profits, rule 19a–1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a–1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 3,000 portfolios of registered investment companies that are management companies may be subject to rule 19a–1 each year, and that each portfolio on average mails two statements per year to meet the requirements of the rule.[2] The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1.5 hours per statement. The total annual burden for all portfolios therefore is estimated to be approximately 9,000 burden hours.

The staff estimates that approximately one-third of the total annual burden (3,000 hours) would be incurred by a senior administrative officer with an average hourly wage rate of approximately $158 per hour, and approximately two-thirds of the annual burden (6,000 hours) would be incurred by senior clerical staff with an average hourly wage rate of $25 per hour.[3] The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $624,000 ((3,000 hours × $158) + (6,000 hours × $25)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a–1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections 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.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: January 31, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1622 Filed 2–6–06; 8:45 am]

BILLING CODE 8010–01–P

[1] Section 4(3) of the Act [15 U.S.C. 80a–4(3)] defines ''management company'' as ''any investment company other than a face amount certificate company or a unit investment trust.''

[2] A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

[3] All hourly rates in this Supporting Statement are derived from the average annual salaries reported for employees outside of New York City in Securities Industry Association, Management and Professional Earnings in the Securities Industry (2003) and Securities Industry Association, Office Salaries in the Securities Industry (2003).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8659; 34–53204, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing

notice that it will hold a public meeting on Tuesday, February 21, 2006, in Multi-Purpose Room L006 of the Commission's headquarters, 100 F Street, NE., Washington, DC 20549, beginning at 9 a.m. The meeting is expected to last until approximately 4 p.m., with a lunch break from approximately noon to 1 p.m. The meeting will be audio webcast on the Commission's Web site at *http://www.sec.gov*.

The agenda for the meeting includes a discussion of a proposal to publish a draft of the Advisory Committee's Final Report for public comment. The Advisory Committee may also discuss written statements received and other matters of concern. The public is invited to submit written statements for the meeting.

DATES: Written statements should be received on or before February 15, 2006.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acspc.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov*. Please include File Number 265–23 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Nancy M. Morris, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov/info/smallbus/acspc.shtml*).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.–App. 1, section 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: February 1, 2006.

Nancy M. Morris,

Committee Management Officer.

[FR Doc. E6–1619 Filed 2–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 6, 2006:

A closed meeting will be held on Thursday, February 9, 2006 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), (3), (4), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a), (3), (4), (5), (7), (8), 9(ii) and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 9, 2006 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Regulatory matters regarding financial institutions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: February 2, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–1164 Filed 2–3–06; 12:54 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53194; File No. SR–CHX–2006–01]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Bidding and Offering in Sub-penny Increments

January 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. The CHX has filed this proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to confirm that, beginning with the compliance date for Rule 612 of Regulation NMS,[5] Exchange participants (a) may bid or offer in sub-penny increments in the trading of Nasdaq/NM securities where those bids or offers are less than $1.00, and (b) may bid or offer in sub-penny increments in the trading of other securities where an exemption from the provisions of Rule 612 is granted by the Commission and where the Exchange's Board of Directors agrees to allow that sub-penny quoting. The text of this proposed rule change is available on the Exchange's Web site (*http://www.chx.com/rules/proposed_rules.htm*), at the principal

[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] 17 CFR 242.612.

office of the Exchange, 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 on the proposed rule change. 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 generally may not bid or offer in increments below $0.01.[6] Through this filing, the Exchange seeks to amend its rules to confirm that, beginning with the compliance date for Rule 612,[7] Exchange participants (a) may bid or offer in sub-penny increments in the trading of Nasdaq/NM securities where those bids or offers are less than $1.00, and (b) may bid or offer in sub-penny increments in the trading of other securities where an exemption from the provisions of Rule 612 is granted by the Commission and where the Exchange's Board of Directors agrees to allow that sub-penny quoting.[8]

As noted above, the proposed rule change first would confirm that an Exchange participant may submit bids or offers, for Nasdaq/NM securities, in sub-penny increments of at least $0.0001 where the bids or offers are less than $1.00. Sub-penny quoting at prices less than $1.00 is permitted, but not required, by the provisions of Rule 612, and the Exchange believes that it would be appropriate to allow its participants to engage in this practice in the trading of Nasdaq/NM securities.[9]

Additionally, the proposed rule change would permit an Exchange participant to bid or offer in sub-penny increments in the trading of any securities where an exemption from the provisions of Rule 612 is granted by the Commission and where the Exchange's Board of Directors agrees to allow that sub-penny quoting. The Exchange, however, currently does not intend to more generally permit its participants to bid or offer in sub-penny increments in the trading of listed securities.

The Exchange's MAX system will reject any orders in minimum variations that cannot be displayed as bids or offers on the Exchange pursuant to CHX Rule 22.[10]

This proposed rule change would apply only in the Exchange's current trading model. The Exchange will re-address issues associated with sub-penny trading as part of the soon-to-be-filed package associated with its new trading model.

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).[11] The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] because it 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 Exchange participants to bid and offer in sub-penny increments in the trading of specific groups of securities.

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.

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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative on January 31, 2006, the compliance date for Rule 612. The Commission hereby grants that request.[15] The Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. The Commission previously has considered whether, for NMS stocks, quoting below $1.00 in sub-penny increments should be permitted. The Commission determined that it should and codified that view in Rule 612(b) of Regulation NMS.[16] The CHX's proposal to permit its participants to make bids or offers—

[6] 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* CHX Article XX, Rule 22.

[7] The compliance date for Rule 612 is January 31, 2006. *See* Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

[8] The Exchange has filed a separate proposal to permit its participants to execute trades in sub-penny increments. *See* Securities Exchange Act Release No. 52953 (Dec. 14, 2005) 70 FR 76088 (Dec. 22, 2005) (noticing SR–CHX–2005–36).

[9] The Exchange currently permits its participants to send sub-penny-priced orders, in Nasdaq/NM securities, to the Exchange. These orders are rounded to a penny increment for quoting purposes pursuant to exemptive relief from the Commission that will expire on the compliance date of Rule 612. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37556–57 n. 547 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] The MAX system, however, will accept inbound ITS commitments that are priced in variations smaller than the minimum variation set out in CHX Rule 22, and its specialists may execute those commitments, so long as the minimum variation is permitted by Rule 612 and so long as the specialist adheres to all other Exchange rules in executing the commitment. A specialist, among other things, should be cognizant when executing an inbound sub-penny-priced ITS commitment of its obligations under CHX Article XXX, Rule 2, Interpretation and Policy .06 with regard to ''stepping ahead'' of orders resting on the specialist's book. However, as of January 30, 2006, the CHX understands that no ITS participant intends to display, rank, or send commitments via ITS priced in sub-pennies. Telephone conversation between Ellen Neely, President and General Counsel, CHX, and Michael Gaw, Assistant Director, and Sara Gillis, Attorney, Division of Market Regulation, Commission, dated January 30, 2006.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with 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 the proposed rule change.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] *See* Regulation NMS Adopting Release, 70 FR at 37555.

in NMS stocks that are listed on Nasdaq—priced below $1.00 in increments as small as $0.0001 is consistent with Rule 612(b) and raises no new regulatory 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 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–CHX–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the 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 Number SR–CHX–2006–01 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1616 Filed 2–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53203; File No. SR–NASD–2006–016]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Mechanism for Handling Sub-Penny Orders in Securities Listed on the New York Stock Exchange or the American Stock Exchange

January 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective immediately 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

Nasdaq proposes to establish a mechanism for handling sub-penny orders in securities listed on the New York Stock Exchange (''NYSE'') or the American Stock Exchange (''Amex'') due to readiness issues at those two exchanges and to make another minor adjustment in the related rule language. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].[5]

* * * * *

6330. Obligations of CQS Market Makers

(a) through (c) No change

(d) Minimum Price Variation

(1) No change

(2) [When a quotation properly (not in violation of paragraph (1) above) priced in an increment of less than $0.01 is routed for execution via the ITS System to a market that does not accept quotations in increments of less than $0.01, such a quotation is rounded down (for bids) or up (for offers) to the nearest $0.01 increment.] *A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of paragraph (1) above) priced in an increment of less than $0.01 will be adjusted by the Nasdaq Market Center down (for bids) or up (for offers) to the nearest $0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.*

* * * * *

4962. Minimum Quotation Increment

The minimum quotation increment in the INET System for quotations of $1.00 or above in Nasdaq-listed securities and in securities listed on a national securities exchange shall be $0.01. The minimum quotation increment in the INET System for quotations below $1.00 in Nasdaq-listed securities and in securities listed on a national securities exchange shall be $0.000*1*. *However, if the Securities and Exchange Commission (''SEC'') permits, with respect to any security, the display, rank or acceptance of quotations priced at or above $1.00 per share in an increment smaller than $0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or $0.0001, whichever is greater.*

* * * * *

[17] 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] Changes are marked to the rule text that appears in the electronic NASD Manual found at *www.nasd.com*. Prior to the date when The NASDAQ Stock Market LLC (''NASDAQ LLC'') commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 22, 2005, Nasdaq filed with the Commission a rule change [6] to align Nasdaq's rules on minimum pricing increments with Rule 612 of the Commission's Regulation NMS.[7] Consistent with Rule 612, the Nasdaq Market Center (''NMC'') and Nasdaq's BRUT and INET facilities now accept quotes that are in increments ofleast $0.0001 if these quotes are priced below $1.00 or if they are in securities exempted by the Commission under Rule 612.[8] Quotes priced above $1.00 will be accepted by the NMC, BRUT, and INET in increments of at least $0.01 (unless they are in securities exempted by the Commission). These principles apply equally to Nasdaq-listed securities and to securities listed on other exchanges.

Under the present proposal, which is being made to accommodate the NYSE and the Amex, the NMC will adjust all proper (*i.e.*, priced under $1.00 and in increments of not less than $0.0001) sub-penny quotes in NYSE- and Amex-listed securities as soon as it receives them. Offers will be adjusted upwards to the next whole cent, while bids will be adjusted downward to the next whole cent. Sub-penny quotes that are adjusted in this manner will be displayed, executed, or routed, as otherwise applicable, at the adjusted price and will not be accorded any price priority over the equivalent unadjusted whole-cent quotes. The NMC will adjust all sub-penny quotes that it receives for NYSE and Amex securities, regardless of whether such quotes are entered into the NMC directly or routed from another trading venue (including when the quotes are routed to the NMC from Nasdaq's BRUT or INET facilities).

The ability of the NMC, BRUT, or INET to accept sub-penny quotes in Nasdaq-, NYSE-, or Amex-listed securities is not affected by this proposal. However, the ''accepted'' sub-penny quotes for NYSE-or Amex-listed stocks will be adjusted before being displayed in the NMC or routed via the ITS linkage from the NMC to the NYSE or the Amex.

Nasdaq views the proposal described above as temporary because it will, in most cases, deprive investors of the ability, envisioned in Rule 612, to trade in sub-pennies those NYSE and Amex listed stocks that are priced below $1.00. When Nasdaq determines that this approach is no longer appropriate, it will change the rule described herein by making an immediately effective filing with the Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(6) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] The Commission hereby waives the 30-day operative delay.[13] The Commission has previously determined that, for NMS stocks, quoting below $1.00 in sub–penny increments should be permitted and codified that view in Rule 612(b) of Regulation NMS.[14] The proposed rule change to clarify that the minimum pricing increment for INET will be $0.0001 is consistent with Rule 612(b) and raises no new regulatory issues. With regard to the Exchange's proposal to round away all proper sub–penny quotes in NYSE- and Amex-listed securities immediately upon receipt by the NMC, the Commission believes that such rounding is non-controversial, as Rule 612 does not require that accepted sub–penny quotes priced below $1.00 be displayed, executed, or routed in sub–pennies. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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[6] *See* Securities Exchange Act Release No. 53017 (December 22, 2005), 70 FR 77225 (December 29, 2005). The rule change was effective immediately upon filing, but not operational until January 31, 2006.

[7] 17 CFR 242.612.

[8] The present proposed rule change clarifies with respect to INET that the minimum pricing increment will, in fact, be $0.0001, as opposed to $0.001. This filing also includes an additional conforming change to the INET rules, to clarify that any security that receives the Commission's permission for sub-penny quoting above $1.00 will be eligible for such quoting on INET.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37555 (June 29, 2005).

Electronic Comments

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–016 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–016 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1614 Filed 2–6–06; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53192; File No. SR–NASD–2006–004]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Pilot Programs Relating to Multiple Market Participant Identifiers

January 30, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq 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 the proposal 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

Nasdaq proposes to continue two pilot programs that provide market participants who execute transactions in Nasdaq and exchange-listed securities through its systems the ability to display trading interest using up to 10 individual Market Participant Identifiers (''MPIDs''). The text of the proposed rule change is available at NASD, the NASD Web site, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As set forth in more detail below, Nasdaq is proposing to re-establish two pilot programs that inadvertently were permitted to lapse on December 1, 2005. On March 1, 2004, Nasdaq filed SR–NASD–2004–037[6] with the Commission, establishing the ability of ECNs and market makers in Nasdaq securities to use up to 10 individual MPIDs to display attributable quotes and orders in the Nasdaq Quotation Montage. On July 29, 2004, Nasdaq filed SR–NASD–2004–097[7] with the Commission, which created this same capability for ECNs and market makers using Nasdaq systems to quote and trade exchange-listed securities. MPIDs for Nasdaq and exchange-listed securities are allocated and, when Nasdaq is reaching technological limits for displayed, attributable MPIDs, re-allocated using the same procedures.[8] Additional MPIDs are known as a ''Supplemental MPID'' with a market maker's or ECN's first MPID being known as the ''Primary MPID.'' Nasdaq subsequently filed SR–NASD–2004–134[9] with the Commission, which extended both pilots through March 1, 2005, and SR–NASD–2005–069,[10] which extended the pilots through November 30, 2005. Nasdaq is proposing to re-establish the pilot programs through November 30, 2006.

[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] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 49471 (March 25, 2004), 69 FR 17006 (March 31, 2004).

[7] Securities Exchange Act Release No. 50140 (August 3, 2004), 69 FR 48535 (August 10, 2004).

[8] Under those procedures, rankings are based only on the volume associated with a member's Supplemental MPID—Primary MPIDs will be excluded from the calculation. The member with lowest volume using a Supplemental MPID will continue to be the first to lose the display privilege, but only with respect to the Supplemental MPID that caused it to have the lowest ranking; the member will not lose its authority to use the Supplemental MPID in that security to submit quotes and orders to SIZE or the display privileges associated with that Supplemental MPID with respect to other securities in which it is permitted to use the identifier. When reallocating the display privileges, requests for Primary MPIDs will continue to receive precedence over requests for Supplemental MPIDs.

[9] Securities Exchange Act Release No. 50434 (September 23, 2004), 69 FR 58564 (September 30, 2004).

[10] Securities Exchange Act Release No. 51810 (June 9, 2005), 70 FR 34803 (June 15, 2005).

The purpose of providing Supplemental MPIDs is to provide quoting market participants a better ability to organize and manage diverse order flows from their customers and to route orders and quotes to Nasdaq's listed trading facilities from different units/desks. To the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems, all market participants can be expected to benefit.[11]

The restrictions on the use of any Supplemental MPID are the same as those applicable to a Primary MPID. Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and Commission rules governing the trading of these securities. There are only two exceptions to this general principle. First, the continuous quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in NASD Rule 5220(e), as well as the procedures described in NASD Rule 4710(b)(2)(B) and (b)(5), do not apply to Supplemental MPIDs; second, only one MPID may be used to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619. In all other respects, market makers and ECNs will have the same rights and obligations in using a Supplemental MPID to enter quotes and orders and to display quotations, as they do today.

The granting of Supplemental MPIDs is secondary to the integrity of the Nasdaq system trading those issues. As such, ECNs and market makers may not use a Supplemental MPID or Supplemental MPIDs to accomplish indirectly what they would be prohibited from doing directly through a single MPID. For example, members will not be permitted to use a Supplemental MPID to avoid their Manning or best execution obligations or their obligations under the Commission's Order Handling Rules, the firm quote rule, the OATS rules, and the Commission order routing and execution quality disclosure rules. To the extent that the allocation of Supplemental MPIDs creates regulatory confusion or ambiguity, every inference will be drawn against the use of Supplemental MPIDs in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market. Accordingly, if it is determined that a Supplemental exchange-listed MPID is being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID for all purposes for all securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[12] in general, and with section 15A(b)(6) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes the use of multiple MPIDs in listed securities can be expected to provide greater flexibility in the processing of diverse order flows, thereby improving overall system liquidity for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[16] The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow these lapsed pilots to be reinstated as quickly as possible. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASD–2006–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–004. 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

[11] Nasdaq assesses no fees for the issuance or use of Supplemental MPIDs other than the Commission-approved transaction fees set forth in NASD Rule 7010.

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–004 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1617 Filed 2–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53195; File No. SR–NSX–2006–02]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 11.3 To Allow for Sub-Penny Quoting in Certain Securities

January 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2006, the National Stock Exchange SM (''NSX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 11.3 to allow for sub-penny quoting in securities that are listed on the Nasdaq Stock Market where such quotes are priced less than $1.00 per share, and in any other security approved by the Commission for sub-penny quoting. Exchange Rule 11.3 currently prohibits, and will continue to prohibit, sub-penny quoting in securities whose quotes are at $1.00 or more per share, except to the extent otherwise approved by the Commission. The text of the proposed rule change is below. Proposed new language is *italicized*. Proposed deletions are indicated in [brackets].[5]

RULES OF NATIONAL STOCK EXCHANGE

* * * * *

CHAPTER XI

Trading Rules

* * * * *

Rule 11.3 Price Variations

Bids, [or] offers, *orders or indications of interests* in [stocks] *securities* traded on the Exchange shall not be made [at a] *in an increment* smaller [variation] than:

(i) $*0*.01 [per share; and in bonds at a smaller variation than ⅛ of 1% of the principal amount.] *if those bids, offers or indications of interests are priced equal to or greater than $1.00 per share; or*

(ii) $0.0001 if those bids, offers or indications of interests are priced less than $1.00 per share and the security is listed on the Nasdaq Stock Market and is trading on the Exchange; or

(iii) Any other increment established by the Commission for any security which has been granted an exemption from the minimum price increments requirements of SEC Rule 612(a) or 612(b).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 11.3 currently provides that bids or offers in stocks traded on the Exchange shall not be made at a smaller variation than $0.01 per share. Rule 612 of Regulation NMS under the Act provides, in relevant part, that no national securities exchange shall ''display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share.''[6] Rule 612 also prohibits national securities exchanges from displaying, ranking or accepting bids, offers, orders, or indications of interest priced in increments smaller than $0.0001 if the bid, offer, order, or indication of interest is priced less than $1.00 per share.[7] Finally, Rule 612(c) of Regulation NMS provides that the Commission may grant exemptions from the minimum price increment requirements of Rule 612(a) and 612(b) ''if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.''[8] The compliance date for Rule 612 is January 31, 2006 (the ''Compliance Date'').[9]

The Exchange is now proposing to prohibit the submission of bids, offers, orders, or indications of interest priced in increments smaller than (i) $0.0001 if the bid, offer, order, or indication of interest is priced less than $1.00 per share on securities that are listed in the Nasdaq Stock Market and traded on the Exchange, or (ii) the minimum price increment established by the Commission for any security that has been granted an exemption from the minimum price increment requirement of Rule 612(a) or 612(b) of Regulation NMS. Exchange Rule 11.3 currently prohibits, and will continue to prohibit, sub-penny orders and quotes priced at $1.00 or more per share, except to the extent otherwise approved by the Commission, and will maintain a minimum increment of $0.01 for any security traded on the Exchange and listed by the New York Stock Exchange or American Stock Exchange.

[18] 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] Certain technical changes to the rule text have been made pursuant to a telephone conversation between James C. Yong, Chief Regulatory Officer, NSX and Sara Gillis, Attorney, Division of Market Regulation, Commission on January 30, 2006.

[6] 17 CFR 242.612(a).

[7] 17 CFR 242.612(b).

[8] 17 CFR 242.612(c).

[9] *See* Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

In connection with these revisions to Exchange Rule 11.3, the Exchange is also removing the language in Exchange Rule 11.3 relating to minimum price variations in bonds. The Exchange does not trade bonds and has not traded bonds for several years.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange also believes that the proposal is consistent with the quoting restrictions of Rule 612 of Regulation NMS.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative on January 31, 2006, the compliance date for Rule 612. The Commission hereby grants that request.[14] The Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. The Commission previously has considered whether, for NMS stocks, quoting below $1.00 in sub-penny increments should be permitted. The Commission determined that it should and codified that view in Rule 612(b) of Regulation NMS.[15] The Exchange's proposal to permit its members to make bids or offers—in NMS stocks that are listed on Nasdaq—priced below $1.00 in increments as small as $0.0001 is consistent with Rule 612(b) and raises no new regulatory 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 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–NSX–2006–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2006–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2006–02 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1615 Filed 2–6–06; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37555 (June 29, 2005).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53197; File No. SR–Phlx–2006–08]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Rule 715

January 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Phlx filed the proposed rule change pursuant to Section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act[3] and Rule 19b–4(f)(1) thereunder,[4] and consequently the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 715, Monthly Payment and Reporting, to clarify that equity floor members are no longer required to submit a monthly report of net commissions on transactions effected on the floor of the Exchange. Exchange Rule 715 is set forth below, with new text *italicized*:

Rule 715

Monthly Payment and Reporting

(a) Each member and member organization shall submit to the Exchange's Controller, in such form as the Exchange may prescribe, a monthly report of net commissions on transactions*, other than equity transactions,* effected on the Floor of the Exchange during the preceding month together with a check payable to the Exchange for the appropriate fee. Said reports and fees must be received by the Exchange on or before the 28th calendar day following the month covered by the report, unless the Exchange is not open for business on such day, in which event the report is to be filed and the fees are to be paid on the next business day.

(b) A member or member organization may, in writing, request that the Controller grant an extension of not more than five business days to file such reports or pay such fees. The Controller has the discretion to grant or deny such extension requests.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of amending Exchange Rule 715 is to update this rule to reflect that monthly reports of net commissions are no longer required to be submitted in connection with equity transactions. This clarification should help avoid any member confusion as it relates to the floor brokerage assessment. No fee changes are being made pursuant to this proposal.

Previously, the Exchange adopted a monthly fee of $250 for each member who derives his/her primary income from floor brokerage business conducted on the equity floor of the Exchange and eliminated the equity floor brokerage assessment fee of five percent of net floor brokerage income.[5] The Exchange waived the equity floor brokerage assessment and implemented the flat monthly fee of $250 to encourage floor brokers to send additional order flow to the Exchange and to simplify Phlx accounting procedures and billing. Thus, because the equity floor brokerage assessment is no longer based on net commissions, equity floor members do not need to submit monthly reports of net commissions, as required by Exchange Rule 715. Equity option and index option members and foreign currency participants, however, are still required to submit monthly reports because their floor brokerage assessment continues to be imposed based on monthly net floor brokerage income.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it should help to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to and facilitating transactions in securities by clarifying that a floor brokerage assessment form is not required to be completed in connection with the assessment of the flat monthly fee of $250.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(1) thereunder[9] because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

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–Phlx–2006–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 49057 (January 12, 2004), 69 FR 2808 (January 20, 2004) (SR–Phlx–2003–83).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] *See* Section 19(b)(3)(C), 15 U.S.C. 78s(b)(3)(C).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–08 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1613 Filed 2–6–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2005–20109]

Proposed Grant of Exemption; Ameriflight, Inc.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice; Request for comments.

SUMMARY: This notice contains the text of a proposed grant of exemption from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication or this notice nor the inclusion or omission of information in the text of the proposed exemption is intended to affect the legal status of the petition or its final disposition.

DATES: Comments must be received on or before March 9, 2006.

ADDRESSES: You may send comments [identified by Docket Number FAA–2005–20109] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Governmentwide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Perfetti, Air Transportation Division, Flight Standards Service, Room 831, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3760, e-mail: *Katherine.perfetti@faa.gov.*

SUPPLEMENTARY INFORMATION

Comments Invited

The FAA invites interested persons to submit written comments, data, and views on the agency's analysis contained in the proposed grant of exemption contained below. The most helpful comments reference a specific portion of the analysis, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed grant of exemption. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.).

You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.* Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

The Proposal

On January 13, 2005, Mr. John W. Hazlet, Jr., Vice President of Flight, Ameriflight, Inc. (Ameriflight) petitioned the FAA for relief from § 119.3 of Title 14, Code of Federal Regulations (14 CFR) to allow Ameriflight to operate certain EMBRAER Brasilia EMB–120 (EMB–120) airplanes with a maximum payload capacity greater than 7,500 pounds in all-cargo service under part 135 rather than part 121. This petition was denied on February 4, 2005, because Ameriflight sought to comply with certain sections of part 121 instead of complying with all the applicable sections of 121. In addition, Ameriflight did not show how its situation was different from the general class of regulated entities. On March 22, and April 5, 2005, Ameriflight petitioned the FAA for a reconsideration of Denial of Exemption No. 8480. The FAA has reconsidered its position and is considering granting Ameriflight's petition. The FAA is publishing the text of this proposed grant for comment because the increase in the payload capacity for all-cargo operations is a change to the basic applicability standards contained in part 119 and could potentially have broader applicability to other all-cargo operations. Further, the part 125/135 Aviation Rulemaking Committee (ARC) has submitted a recommendation on this subject. That recommendation has broader applicability and higher payload capacity limits than proposed by Ameriflight. The ARC recommendation is currently under consideration by the FAA for general rulemaking action. Although elements of the ARC's recommendation were considered in the FAA's analysis of this petition, the FAA's decision to grant this exemption is based solely on the merits of Ameriflight's petition. The entire content of the proposed grant of exemption, including the FAA's analysis and conditions and limitations of the grant follows:

[11] 17 CFR 200.30–3(a)(12).

The Petitioner Requests Relief From the Following Regulation

Section 119.3 prescribes, in pertinent part, that an on-demand operation means any operation for compensation or hire that is an all-cargo operation conducted with airplanes having a payload capacity of 7,500 pounds or less.

The Petitioner Supports Its Request With the Following Information

The petitioner presents additional information to serve as the basis for a Grant of Exemption. The petitioner incorporates the recommendation of February 24, 2005, Part 125/135 Aviation Rulemaking Committee's (ARC) Steering Committee, ''Applicability 32'' with one dissenting vote from the Air Line Pilots Association (ALPA). (Hereafter, Recommendation Document.)

Ameriflight states that the Recommendation Document proposes to increase the maximum payload for part 135 cargo-only operations from the current 7,500-pound limit to 18,000 pounds, subject to certain requirements intended to provide an equivalent level of safety.

The Ameriflight petition includes equipment, maintenance, and training requirements, which Ameriflight states provide a compelling argument in favor of a Grant of Exemption. This includes a requirement for a § 135.411(a)(2), Continuous Airworthiness Maintenance Program, which Ameriflight states essentially parallels requirements for part 121 supplemental operations.

The petitioner presents the following information. First, Ameriflight states that it is requesting a payload increase only to allow the difference between basic operating weight, plus the crew, and the aircraft's certificated maximum-zero fuel weight. Ameriflight states the greatest weight difference this exemption would permit is only 633 pounds above the current 7,500-pound payload standard.

Ameriflight states that it has accumulated more than 18,000 hours in the EMB–120 in all-weather operations. This has been accomplished with perfect safety, while operating seven EMB–120 airplanes with a reduced payload capacity under part 135.

Ameriflight states that it is also important to note that it is permitted to, and in some cases does, carry the additional weight increment for which Ameriflight is petitioning as fuel, rather than payload. Ameriflight states that there is clearly no safety issue, because this total aircraft weight is within the airplanes' certificated maximum weight limits.

A summary of the petition was published in the **Federal Register** on May 16, 2005 (70 FR 25874). One comment was received.

The Air Line Pilots Association, International (ALPA) is opposed to granting the Petition for Reconsideration. ALPA also opposes taking part 121 turbo-propeller aircraft out of part 121 by increasing the weight from 7,500 pounds and allowing them to operate in part 135.

ALPA supports the FAA's original denial in which the FAA stated that picking and choosing isolated sections from each part to comply with would not provide an equivalent level of safety. Additionally, ALPA disagrees with Ameriflight's claim that a major, significant change has taken place since the filing and denial of the original Petition for Exemption. ALPA asserts that nothing has changed except an opinion vote on a recommendation document in the 135 ARC. Furthermore, there have been no studies or analyses completed concerning the proposed changes.

The FAA's Proposed Analysis Is as Follows

In reviewing the Reconsideration of Denial of Exemption No. 8480, the FAA has fully evaluated all of Ameriflight's supportive information and the opposing comments submitted by ALPA.

The FAA finds for the reasons presented below, the proposed exemption would be in the public interest. First, this exemption meets the equivalent level of safety standard. This exemption is limited to Ameriflight's all-cargo operations in EMB–120 airplanes. This exemption is limited to an increase of 633 pounds payload capacity above the part 135 standard of 7,500 pounds and it does not increase the maximum certificated takeoff weight of the airplane.

These airplanes must be equipped with an operable cockpit voice recorder (CVR), flight data recorder (FDR), traffic alert and collision avoidance system (TCAS), ground proximity warning system (GPWS) and autopilot navigation. This equipment provides an equivalency to part 121 supplemental operations and exceeds part 135 requirements for passenger or all-cargo operations.

The FAA notes that Ameriflight, in its original petition of January 13, 2005, proposed to conduct operations in which Ameriflight would utilize the services of a chief inspector and a director of quality control. Ameriflight proposed that the chief inspector report to a director of quality control. Ameriflight offered to use a voluntary required inspection item process. Ameriflight states that it would accept these practices as a condition upon which a grant of the proposed exemption would be predicated. The FAA finds that Ameriflight must meet the requirements of § 135.411(a)(2) as a condition and limitation of this grant.

Ameriflight does not address part 121 flight following in its petition. The FAA finds that the flight locating requirements of 135 do not provide an equivalent standard to part 121. Ameriflight must institute a flight following program equivalent to that as specified in § 121.125 as a condition to this grant. This will ensure adequate monitoring of each flight.

The FAA points out that the Ameriflight petition discussed transition and initial cadre considerations. Ameriflight stated that if this exemption is granted, its employees will need additional training. It proposed that flight crewmembers, flight instructors, check airmen, flight following personnel, mechanics, and inspectors qualified under Ameriflight's previous authorizations in the same type of aircraft will have to satisfactorily complete a training program acceptable to the Administrator addressing any differences associated with the increased weight or additional equipment installed on the aircraft.

Although not noted by Ameriflight, these seven airplanes could be operated in a passenger configuration in on-demand service under part 135 if they were properly converted. The removal of passenger seats and furnishings increases the payload capacity to above 7,500 pounds. It should be noted, however, that the FAA does not intend to increase the 7,500-pound payload capacity applicability standard for on-demand passenger service under part 135; nor does it intend to change the 10 or more passenger seat part 121 applicability standard for scheduled passenger service.

Second, this exemption serves the public interest by more efficiently meeting market demands with a high degree of safety. Ameriflight has presented a convincing case that there is an ever-increasing demand for cargo operations of this size and classification of aircraft. Ameriflight would satisfy that market need with fewer flights than would be necessary under the weight limits of part 135. Fewer operations provide an environmental incentive through the saving of fuel, reducing air traffic, and reducing exposure to risk. Ameriflight holds an air carrier certificate under part 119 to operate all-cargo operations under part 135. It is

currently operating seven EMB–120 airplanes under part 135 complying with the 7,500 pounds payload capacity limit. Ameriflight has accumulated over 18,000 hours of all-cargo operations in these airplanes. The FAA finds that an equivalent level of safety can be maintained because of Ameriflight's safe operation of this aircraft in all-cargo operations, use of a two pilot crew, use of a part 25 certificated airplane, newer technology and the conditions and limitations specified in this grant.

Third, in response to ALPA's comment that this exemption will result in airplanes moving from part 121 to part 135, the FAA finds that Ameriflight is somewhat unique in its circumstances. Although it is possible for some aircraft to move from 121 to 135 operations, this transition is limited by the total number of available EMB–120 aircraft and the number of EMB–120 aircraft configured for all-cargo operations. There are only two operators operating a total of three EMB–120 airplanes in all-cargo operations under part 121. Additionally, there are three operators, including Ameriflight, operating a total of 11 EMB–120 airplanes in an all-cargo operation under part 135. There is a limited population of airplanes that are, or could potentially be, retired from scheduled passenger service that could be reconfigured for use in an all-cargo operation. The FAA recognizes that other companies in similar situations could petition for an exemption; however, the FAA would consider each petition on its own merits.

Fourth, the FAA finds that if Ameriflight is ''picking and choosing'' the regulations it wishes to follow, it has done so judiciously. The maintenance, equipment, training and flight locality required by conditions and limitations in this grant of exemption will ensure the equivalency to part 121, supplemental operations. Ameriflight has conducted all-cargo operations for more than 36 years. It currently has a fleet comprised of 180 aircraft and has accumulated over 350,000 flight-hours under part 135. It currently has seven EMB–120 aircraft and has accumulated over 18,000 hours and 15,000 landings in those airplanes. This experience adds considerable merit to this grant of exemption.

Ameriflight cited as part of its petition the Recommendation Document submitted by the Part 135/125 Review ARC. While that documentation has been formally sent to the FAA and is currently being reviewed, this grant of exemption stands on its own merit as presented by Ameriflight, not on the basis of the justification or recommendation for general rulemaking by the ARC.

Proposed Conditions and Limitations

1. Prior to conducting operations under this exemption, Ameriflight must obtain amended operations specifications that include this exemption.

2. Operations under this exemption are limited to EMB–120ER airplanes modified into dedicated freighters under STC00598WI, or Embraer's own factory-dedicated freighter conversion.

3. A copy of this exemption must be carried on board each EMB–120ER airplane operated under this exemption.

4. EMB–120ER airplanes operated under this exemption must be maintained in accordance with the maintenance requirements set forth in § 135.411(a)(2).

5. Ameriflight must institute a flight following program in accordance with § 121.125.

6. The increase in payload capacity, in excess of 7,500 pounds, is limited to 633 pounds. Ameriflight must compute the increase in weight, in excess of 7,500 pounds by determining the difference between the certificated Maximum Zero-Fuel Weight and the actual Empty Operating Weight plus crew weight.

7. All operations conducted under this exemption must be conducted with EMB–120ER airplanes that are equipped with an operable CVR, FDR, TCAS, GPWS, and autopilot.

8. Prior to conducting any operations under this exemption, Ameriflight must amend its approved training program, in a manner acceptable to its principal operations inspector, to include training with the additional equipment listed in Condition and Limitation No. 7 and any other differences.

Issued in Washington, DC on February 1, 2006.

Thomas K. Toula,

Manager, Air Transportation Division.

[FR Doc. 06–1087 Filed 2–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Application Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

X—Renewal.

PM—Party to application with modification request.

Issued in Washington, DC, on January 31, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Safety, Special Permits & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
New Special Permit Applications			
13281–N	The Dow Chemical Company, Midland, MI	4	03–31–2006

Application No.	Applicant	Reason for delay	Estimated date of completion
13266–N	Luxfer Gas Cylinders, Riverside, CA	4	03–31–2006
13309–N	OPW Engineered Systems, Lebanon, OH	4	03–31–2006
13347–N	Amvac Chemical Corporation, Los Angeles, CA	4	03–31–2006
13341–N	National Propane Gas Association, Washington, DC	3	03–31–2006
13999–N	Kompozit-Praha s.r.o., Dysina u Plzne, Czech Republic, CZ	4	03–31–2006
14138–N	INO Therapeutics, Inc., Port Allen, LA	4	03–31–2006
14151–N	ChevronTexaco, Houston, TX	4	03–31–2006
14167–N	Trinityrail	4	03–31–2006
14209–N	ABB Power Technologies AB, Alamo, TN	4	02–28–2006
14215–N	U.S. Department of Energy, Washington, DC	4	02–28–2006
14221–N	U.S. Department of Energy, Washington, DC	4	02–28–2006
14218–N	Air Logistics of Alaska, Inc., Fairbanks, AK	4	03–31–2006
14197–N	GATX Rail Corporation, Chicago, IL	4	02–28–2006
14199–N	RACCA, Plymouth, MA	4	02–28–2006
14185–N	U.S. Department of Energy, Washington, DC	4	03–31–2006
14184–N	Global Refrigerants, Inc., Denver, CO	4	03–31–2006
14178–N	Brider Fire Inc., Bozeman, MT	4	03–31–2006
14239–N	Marlin Gas Transport, Inc., Odessa, FL	4	04–30–2006
14233–N	U.S. Department of Energy (DOE), Richland, WA	4	04–30–2006
14232–N	Luxfer Gas Cylinders—Composite, Cylinder Division, Riverside, CA	4	04–30–2006
14225–N	The Colibri Group, Providence, RI	4	02–28–2006
14228–N	Aluminum Tank Industries, Inc., Winter Haven, FL	4	04–20–2006
14229–N	Senex Explosives, Inc., Cuddy PA	4	04–30–2006
14228–N	Goodrich Corporation, Colorado Springs, CO	4	04–30–2006
14223–N	Technical Concepts, Mundelein, IL	4	02–28–2006
14212–N	Clean Harbors Environmental Services, Inc., North Andover, MA	4	02–28–2006
14163–N	Air Liquide America L.P., Houston, TX	4	03–31–2006
14141–N	Nalco Company, Naperville, IL	4	03–31–2006
14038–N	Dow Chemical Company, Midland, MI	1	03–31–2006
13582–N	Linde Gas LLC (Linde), Independence, OH	4	03–31–2006
13302–N	FIBA Technologies, Inc., Westboro, MA	4	03–31–2006
13346–N	Stand-By-Systems, Inc., Dallas TX	1	03–31–2006
13563–N	Applied Companies, Valencia, CA	4	03–31–2006
	Modification to Special Permits		
7277–M	Structural Composites Industries, Pomona, CA	4	03–31–2006
4661–M	Chemtell Foote Corporation, Kings Mountain, NC	4	03–31–2006
11924–M	Wrangler Corporation, Auburn, ME	4	02–28–2006
12929–M	Matheson Tri-Gas, East Rutherford, NJ	4	02–28–2006
11321–M	E.I. Du Pont, Wilmington, DE	4	03–31–2006
13484–M	Air Liquide Industrial U.S. LP (formerly: Air Liquide America L.P.), Houston TX	4	02–28–2006
11917–M	ITW Sexton, Decatur, AL	4	02–28–2006
11321–M	E.I. Du Pont, Wilmington, DE	4	03–31–2006
12412–M	Los Angeles Chemical Company, South Gate, CA	4	03–31–2006
12412–M	Hawkins, Inc., Minneapolis, MN	3, 4	03–31–2006
11903–M	Comptank Corporation, Bothwell, ON	4	03–31–2006
13229–M	Matheson Tri-Gas, East Rutherford, NJ	4	03–31–2006
13327–M	Hawk FRP LLC, Ardmore, OK	1	03–31–2006
13488–M	FABER INDUSTRIES SPA, (U.S. Agent: Kaplan Industries, Maple Shade, NJ)	4	03–31–2006
12284–M	The American Traffic Safety Services Assn. (ATSSA), Fredericksburg, VA	1	03–31–2006
10319–M	Amtrol, Inc., West Warwick, RI	4	03–31–2006
6263–M	Amtrol, Inc., West Warwick, RI	4	03–31–2006
7835–M	Air Products & Chemicals, Inc., Allentown, PA	4	02–28–2006
10019–M	Structural Composites Industries, Pomona, CA	4	03–31–2006
10915–M	Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA	1	03–31–2006
7280–M	Department of Defense, Ft. Eustis, VA	4	03–31–2006
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	03–31–2006
11241–M	Rohm and Haas Co., Philadelphia, PA	1	03–31–2006
8162–M	Structural Composites Industries, Pomona, CA	4	03–31–2006
8718–M	Structural Composites Industries, Pomona, CA	4	03–31–2006

[FR Doc. 06–1089 Filed 2–6–06; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–139768–02]

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–139768–02 (TD 9134), Excise Tax Relating to Structured Settlement Factoring Transactions.

DATES: Written comments should be received on or before April 10, 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: Excise Tax Relating to Structured Settlement Factoring Transactions.

OMB Number: 1545–1824.

Regulation Project Number: REG–139768–02.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the 40 percent excise tax imposed by section 5891 of the Internal Revenue Code with respect to acquiring of structured payment rights.

Current Actions: This regulation has gone final.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 4.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 2.

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: January 26, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1600 Filed 2–6–06; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13750

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 13750, Election to Participate in Announcement 2005–80 Settlement Initiative.

DATES: Written comments should be received on or before April 10, 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: Election to Participate in Announcement 2005–80 Settlement Initiative.

OMB Number: 1545–1970.

Form Number: Form 13750.

Abstract: The information requested on Form 13750 (as required under Announcement 2005–80) will be used to determine the applicant's eligibility for participation in the settlement initiative as well as to calculate the tax liabilities resolved under this initiative, including penalties and interest.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals or households, and not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1601 Filed 2–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–01

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 Notice 2006–01, Charitable Contributions of Certain Motor Vehicles, Boats and Airplanes, reporting Requirements under § 170(f)(12)(D).

DATES: Written comments should be received on or before April 10, 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 notice 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: Charitable Contributions of Certain Motor Vehicles, Boats and Airplanes, reporting Requirements under § 170(f)(12)(D).

OMB Number: 1545–1980.

Notice Number: Notice 2006–01.

Abstract: Charitable organizations are required to send an acknowledgement of car donations to the donor and to the Service. The purpose is to prevent donors from taking inappropriate deductions.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, Individuals or Households.

Estimated Number of Respondents: 4,300.

Estimated Average Time per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 21,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1603 Filed 2–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 2005.

Last name	First name	Middle name/initials
YOUNG	DOREEN	
YOUNG	NOEL	
CLARK	KAREN	
OCONNELL	EILEEN	
LOUPERE	MARC	
SICRE	FREDERIC	
HO	VERONICA	
OBERSCHNEIDER	PAUL	R
BRUNNING	ERIC	AKIRA

Last name	First name	Middle name/initials
MACDONALD	VICTORIA	BACARDI
GOLD	KENNETH	O
PRENTICE	GEOFFREY	
BAHOSHY	MAYA	YOUSIF
LEAL	DENISE	B
LEAL	RICARDO	P
O'MAHONY	ROSEMARY	M
BAGBY	SCOTT GEOFFREY	STEVENSON
VOHSEMER	PETER	
VOHSEMER	ISABELLE	
VOHSEMER	LISA	GABRIELA
BADIA-FERNAUD	JOSE	M
HOWELL	MICHAEL	
OERTEL VON SELLE	INGRID	
VALEN	STEN	JOHAN
DEWAZIERS	AUREUE	GHISLAINE VANDER CRUISSE
DEWAZIERS	VAN DER CRUISSE	
TANG	HAMILTON	TY
BURGESS	GARY	
TWEEBOOM	NORMAN	LIONEL
MA	LILLIAN	LING CHEUNG
VIK	NANCY	ALICE
SHORT	ELIZABETH	
JOHNSON	ROBERT	E
KHOURI	RASHA	S
DEDNER	DORIS	G E
D'ALVIELLA	CHARLES	GOBLET
GUIDON	YANN	
BOURNE	MARCY	LEAVITT
ROOS	BODIL	MARIT
JOHANSSON	NICKLAS	JOHN
WINUP	MARGARET	JEAN
CHIANG	TIMOTHY	T
SINGH	RUPIKA	
CORNELLA	GUIDO	
JONES	PENELOPE	ANNE
DESSON	HERBERT	GRALEN
SIRRIS	ANGELO	
NERGAARD	OLAV	ALEXANDER
BUTLER	LYNNE	
DYER	JULIE	MARIE
DACOSTA	CHARLES	
PALMER	ANDREW	NEWTON
REEVE	WILLIAM	F
AHLUWALIA	HARMOHAN	SINGH
BROSSETTE	GUILLEMETTE	
ELVIN	CHARLES	
KRIKIS	MARTINS	
DE WAZIERS	NICOLAS	A
BREHM	GISELA	F
IACONO	SERAFINO	
BERGSTROM	ERIC	JAMES
DAVIDGE	PETER	CLIFFORD
MASRI	OMAR	M
HUEHN	WERNER	J
KATO	MASAYA	
AHLUWALIA	RODA	H
ELDHOLM	HENRY	ANDREAS
BOISSIER	JEAN	FRACOIS
CHOI	CRYSTAL	KA-YEE
LEE	WAI	L
JELEN	IVAN	
JELEN	HILARY	PATRICIA
YU	HENRY	TATCHING
BLONDIN	CLAUDINE	
VAN VARENBERG	JEAN	CLAUDE
HARBIN	MARK	TAYLOR
LEUNG	TSUNG	WAI
DAVIDGE	OLGA	THERESE
WONG	JOHN	P
JOHNSTON	MARY	ELIZABETH
LEE	JIN	YI
MAEKAWA	NORIKO	

Last name	First name	Middle name/initials
FONG	RYAN	YEN-HWUNG
MAEKAWA	KIYOSHI	
HOGUE	PETER	E
NEUMANN	RICHARD	L
NEUMANN	WENDY	L
PHILLIPS	SUSAN	ANNE
LACROIX	PIERETTE	
BALFOUR	ANDREW	L
PHILLIPS	JOHN	ROBERT
BUSTO-ADAN	ARMANDO	AURELIO
DEBUSTO	GABRIELA	ITURBIDE
GABETTI	ALESSANDRO	
OWEN	CAROL	MARY
OWEN	ROBERT	
DEWAART	EDO	
DESOUCHES	THOMAS	HENRI

Dated: January 24, 2006.

Angie Kaminski,

Examinations Operations, Philadelphia Compliance Services.

[FR Doc. 06–1085 Filed 2–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Tuesday, March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Tuesday, March 7, 2006 from 3:30 p.m. ET to 4:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: January 31, 2006.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–1598 Filed 2–6–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 25

Tuesday, February 7, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051213334–5334–01; I.D. 112905C]

RIN 0648–AT98

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Correction

Correction

In proposed rule document 06–843, beginning on page 4886 in the issue of Monday, January 30, 2006, make the following corrections:

§ 660.306 [Corrected]

1. On page 4886, in the third column, under the heading **Correction**, after instruction 2, the section heading should read as follows:

§660.306 Prohibitions.

§ 660.395 [Corrected]

2. On page 4888, in the second column, in §660.395(a), in the fifth line from the top, in entry (90), ''34°38.54′ N. lat.'' should read ''32°38.54′ N. lat''.

3. On page 4889, in the second column, in §660.395(kk), in the eighth line from the bottom, in entry (17), ''122°58.25′ W. long'' should read ''121°58.25′ W. long''.

4. On the same page, in the third column, in §660.395(nn), in entry (17), ''124°34.15′ W. long'' should read ''124°24.15′ W. long''.

[FR Doc. C6–843 Filed 2–6–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
February 7, 2006

Part II

Department of Education

National Institute on Disability Research Projects and Centers Program; Funding Priorities; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program; Funding Priorities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes certain funding priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes priorities for Disability Rehabilitation Research Projects (DRRPs), including Disability Business and Technical Assistance Centers (DBTACs); Rehabilitation Research and Training Centers (RRTCs); and Rehabilitation Engineering Research Centers (RERCs). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2006 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before March 9, 2006.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use one of the following addresses: *donna.nangle@ed.gov.*

You must include the term ''Proposed Priorities for DRRPs, RRTCs, and RERCs'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle or Lynn Medley. Telephone: (202) 245–7462 (Donna Nangle) or (202) 245–7338 (Lynn Medley).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This notice of proposed priorities is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Proposed Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.* The Plan, which was published in the **Federal Register** on July 27, 2005 (70 FR 43522), can be accessed on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister/other/2005–3/072705d.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

One of the specific goals established in the Plan is for NIDRR to publish all of its proposed priorities, and following public comment, final priorities, annually, on a combined basis. Under this approach, NIDRR's constituents can submit comments at one time rather than at different times throughout the year, and NIDRR can move toward a fixed schedule for competitions and more efficient grant-making operations. This notice, which proposes priorities NIDRR intends to use for DRRP, RRTC, and RERC competitions in FY 2006 and possibly later years, represents NIDRR's first step toward a notice of priorities that will include its entire portfolio of research and related activities for the year. However, nothing precludes NIDRR from publishing additional priorities, if needed.

In addition to this notice, on December 13, 2005, NIDRR published a separate notice of proposed priorities for Spinal Cord Injury Model Systems (SCIMS) Centers and for SCIMS multi-site research projects (70 FR 73738). NIDRR also intends to publish a separate notice of proposed priorities for an additional DRRP with the focus on Individuals Who are Blind and Visually Impaired this year. Moreover, for FY 2006 competitions using priorities that already have been established and for which publication of a notice of proposed priority is unnecessary (*e.g.*, competitions for Field-Initiated Projects, Advanced Rehabilitation Research Training Projects, Fellowships, and Small Business Innovation Research Projects), NIDRR has published or will publish notices inviting applications. More information on these other projects and programs that NIDRR intends to fund in FY 2006 can be found on the Internet at the following site: *http://ed.gov/fund/grant/apply/nidrr/priority-matrix.html.*

Invitation to Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority or topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in one or more notices in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does *not* preclude us from proposing or using additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we

designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

In this notice, we are proposing 11 priorities for DRRPs (including 2 priorities for DBTACs), 1 priority for an RRTC, and 3 priorities for RERCs.

For DRRPs, the proposed priorities are:

- Priority 1—General DRRP Requirements.
- Priority 2—National Data and Statistical Center for the Spinal Cord Injury (SCI) Model Systems.
- Priority 3—National Data and Statistical Center for the Traumatic Brain Injury (TBI) Model Systems.
- Priority 4—Rehabilitation of Children with Traumatic Brain Injury (TBI).
- Priority 5—Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities.
- Priority 6—Model Systems Knowledge Translation Center (MSKTC).
- Priority 7—Assistive Technology (AT) Outcomes Research Project.
- Priority 8—Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision.
- Priority 9—Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population.
- Priority 10—Disability Business Technical Assistance Centers (DBTACs).
- Priority 11—Disability Business Technical Assistance Centers (DBTAC) Coordination, Outreach, and Research Center.

For the RRTC, the proposed priority is:

- Priority 12—Rehabilitation Research and Training Center on Effective Independent and Community Living Solutions and Measures.

For RERCs, the proposed priorities are:

- Priority 13—RERC for Technologies for Successful Aging.
- Priority 14—RERC for Wheelchair Transportation Safety.
- Priority 15—RERC for Wireless Technologies.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#DRRP.*

Proposed Priorities

Priority 1—General Disability and Rehabilitation Research Projects (DRRP) Requirements

Background

NIDRR proposes the following *General DRRP Requirements* priority because it believes that the effectiveness of any DRRP (including any DBTAC) depends on, among other things, how well the DRRP coordinates its research efforts with the research of other NIDRR-funded projects, involves individuals with disabilities in its activities, and identifies specific anticipated outcomes that are linked to its objectives in applying for DRRP funding. Accordingly, NIDRR intends to use proposed *Priority 1—General DRRP Requirements* in conjunction with each of the other DRRP priorities proposed in this notice (*i.e.*, priorities 2 through 11).

Proposed Priority

To meet this priority, the Disability and Rehabilitation Research Projects (DRRP) must:

(a) Coordinate on research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer;

(b) Involve individuals with disabilities in planning and implementing the DRRP's research, training, and dissemination activities, and in evaluating its work; and

(c) Identify anticipated outcomes (*i.e.*, advances in knowledge or changes and improvements in policy, practice, behavior, and system capacity) that are linked to the applicant's stated grant objectives.

Priority 2—National Data and Statistical Center for the Spinal Cord Injury (SCI) Model Systems

Background

It is estimated that the number of Americans living with traumatic spinal cord injury (SCI) ranges from 222,000 to 285,000, with an incidence of approximately 11,000 new cases each year (Spinal Cord Injury: Facts and Figures at a Glance, 2004).

NIDRR supports a variety of research projects that focus on the wide range of needs of individuals with SCI. These projects include the SCI Model Systems Centers funded through NIDRR's Model Systems Program. The SCI Model Systems Centers establish and carry out innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with SCI.

The SCI Model Systems Centers have developed a national, longitudinal database that contains information on approximately 23,000 people injured since 1973 (SCI Model Systems Database). The SCI Model Systems Database is the most extensive source of information available about the characteristics and life course of individuals with SCI. The SCI Model Systems Database contains a sample that is demographically representative of all cases that occur throughout the United States, though the sample is not population-based (DeVivo, Go, & Jackson, 2002). The SCI Model Systems Database also can be used to examine specific outcomes of SCI. NIDRR seeks to continue and build upon this important source of data by funding a National Data and Statistical Center for the SCI Model Systems (National SCI Model Systems Data Center) that will

maintain the SCI Model Systems Database and improve the quality of information that is entered into it.

The SCI Model Systems Database is a collaborative project in which all of the SCI Model Systems Centers participate. The data for the SCI Model Systems Database are collected by the SCI Model Systems Centers. The Directors of the SCI Model System Centers, in consultation with NIDRR, determine the parameters of the SCI Model Systems Database, including the number and type of variables to be examined, and the criteria for including Model Systems patients in the database.

To maximize the external validity of findings from the SCI Model Systems Database, the SCI Model Systems Centers must achieve and maintain high rates of retention and successful follow-up with database participants. Accordingly, the central role of the National SCI Model Systems Data Center will be to work with SCI Model Systems Centers to increase follow-up rates and to ensure data quality.

Since the creation of the SCI Model Systems Database more than 30 years ago, the proportion of database participants from racial and ethnic minority populations has grown steadily (Jackson, Dijkers, DeVivo & Poczatek, 2004). This growth reflects the urban location of many of the SCI Model Systems Centers, as well as the growing proportion of racial/ethnic minorities in the general population. This growth in the racial/ethnic diversity of the SCI Model Systems population creates a vital technical assistance role for the National SCI Model Systems Data Center. The National SCI Model Systems Data Center will work with the SCI Model Systems Centers to ensure that the data collected from these populations are of high quality and that the data collection procedures used reflect sufficient knowledge about the cultural backgrounds of patient populations and research participants.

The specifications of the SCI Model Systems Database as it is currently implemented can be obtained from the National SCI Statistical Center at the University of Alabama at Birmingham. The National SCI Statistical Center may be contacted on the World Wide Web at *http://www.spinalcord.uab.edu/show.asp?durki=21446.*

References

DeVivo, M., Go, B., & Jackson, A. (2002). Overview of the National Spinal Cord Injury Statistical Center Database. The Journal of Spinal Cord Medicine. 25(4): 335–338.

Jackson, A., Dijkers, M, DeVivo, M., & Poczatek, R. (2004). A Demographic Profile of New Traumatic Spinal Cord Injuries: Change and Stability Over 30 Years. Archives of Physical Medicine and Rehabilitation. 85(11): 1740–1748.

Spinal Cord Injury: Facts and Figures at a Glance. (2004). Retrieved July 6, 2005 from the National Spinal Cord Injury Statistical Center Web site: *http://www.spinalcord.uab.edu*.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the establishment of a National SCI Model Systems Data Center that advances medical rehabilitation by increasing the rigor and efficiency of scientific efforts to longitudinally assess the experience of individuals with SCI. To meet this priority, the National SCI Model Systems Data Center's research and technical assistance must be designed to contribute to the following outcomes:

(a) Maintenance of a national longitudinal database for data submitted by each of the SCI Model Systems Centers (SCI Model Systems Database). This database must provide for confidentiality, quality control, and data-retrieval capabilities, using cost-effective and user-friendly technology.

(b) High-quality, reliable data in the SCI Model Systems Database. The National SCI Model Systems Data Center must contribute to this outcome by providing training and technical assistance to SCI Model Systems Centers on subject retention and data collection procedures, data entry methods, and appropriate use of study instruments, and by monitoring the quality of the data submitted by the SCI Model Systems Centers.

(c) High-quality data collected from database participants of all racial/ethnic backgrounds. The National SCI Model Systems Data Center must contribute to this outcome by providing knowledge, training, and technical assistance to the SCI Model Systems Centers on culturally appropriate methods of longitudinal data collection and participant retention.

(d) Rigorous research conducted by SCI Model Systems Centers and all investigators who are analyzing data from the SCI Model Systems Database. The National SCI Model Systems Data Center must contribute to this outcome by making statistical and other methodological consultation available for research projects that use the SCI Model Systems Database, as well as center-specific and collaborative projects of the SCI Model Systems Program.

(e) Enhanced continuity of the SCI Model Systems Database. The National SCI Model Systems Data Center must contribute to this outcome by establishing and implementing a mechanism for continued collection of follow-up data from individuals who were enrolled by SCI Model Systems Centers that no longer receive Model Systems Program funding. This mechanism must focus on continued collection of data from up to four SCI Model Systems Centers that were funded during the most recent five-year grant cycle, but that do not receive subsequent funding under the Model Systems Program.

(f) Improved quality and efficiency of the SCI Model Systems Database operations through collaboration with the National Traumatic Brain Injury Model Systems Data Center and the National Burn Model Systems Data Center.

Priority 3—National Data and Statistical Center for the Traumatic Brain Injury (TBI) Model Systems

Background

It is estimated that at least 5.3 million Americans are living with disability as a result of traumatic brain injury (TBI). Approximately 1.4 million Americans sustain a TBI each year, and 230,000 of these injuries lead to hospitalization (Traumatic Brain Injury: Facts and Figures, 2005).

NIDRR supports a variety of research projects that focus on the wide range of needs of individuals with TBI. These projects include the TBI Model Systems Centers funded through NIDRR's Model Systems Program. The TBI Model Systems Centers establish and carry out innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with TBI.

The TBI Model Systems Centers have developed a national, longitudinal database of information about the characteristics and life course of individuals with TBI (TBI Model Systems Database). The TBI Model Systems Database also can be used to examine specific outcomes of TBI. NIDRR seeks to continue and build upon this important source of data by funding a National Data and Statistical Center for the TBI Model Systems (National TBI Model Systems Data Center) that will maintain the TBI Model Systems Database and improve the quality of information that is entered into it.

The TBI Model Systems Database is a collaborative project in which all of the TBI Model Systems Centers participate. The data for the TBI Model Systems Database are collected by the TBI Model

Systems Centers. The Directors of the TBI Model Systems Centers, in consultation with NIDRR, determine the parameters of the TBI Model Systems Database, including the number and type of variables to be examined, and the criteria for including TBI Model Systems patients in the database.

To maximize the external validity of findings from the TBI Model Systems Database, the TBI Model Systems Centers must achieve and maintain high rates of retention and successful follow-up with database participants. Accordingly, the central role of the National TBI Model Systems Data Center will be to work with TBI Model Systems Centers to increase follow-up rates and ensure data quality.

The TBI Model Systems Database contains a disproportional number of participants from minority backgrounds, relative to the general population (Burnett *et al.* 2003). The disproportional representation of racial/ethnic minorities reflects the urban location of many of the TBI Model Systems Centers. The racial/ethnic diversity of the TBI Model Systems population creates a vital technical assistance role for the National TBI Model Systems Data Center. The National TBI Model Systems Data Center will work with the TBI Model Systems Centers to ensure that the data collected from these populations are of high quality and that the data collection procedures used reflect sufficient knowledge about the cultural backgrounds of patient populations and research participants.

The specifications of the TBI Model Systems Database as it is currently implemented can be obtained from the TBI National Data Center at the Kessler Medical Rehabilitation Research and Education Corporation (see *http://www.tbindc.org*).

References

Burnett, D., Kolakowsky-Hayner, S., Slater, D., Stringer, A., Bushnik, T., Zafonte, R., and Cifu, D. (2003). Ethnographic Analysis of Traumatic Brain Injury Patients in the National Model Systems Database. Archives of Physical Medicine and Rehabilitation. 84(2): 263–267.

Traumatic Brain Injury: Facts and Figures (2005). Retrieved July 6, 2005 from the Traumatic Brain Injury National Data Center Web site: *http://www.tbindc.org/registry/pdf/ff_winter2005.pdf.*

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the establishment of a National TBI Model Systems Data Center that advances medical rehabilitation by increasing the rigor and efficiency of scientific efforts to longitudinally assess the experience of individuals with TBI. To meet this priority, the National TBI Model Systems Data Center's research and technical assistance must be designed to contribute to the following outcomes:

(a) Maintenance of a national longitudinal database for data submitted by each of the TBI Model Systems Centers (TBI Model Systems Database). This database must provide for confidentiality, quality control, and data-retrieval capabilities, using cost-effective and user-friendly technology.

(b) High-quality, reliable data in the TBI Model Systems Database. The National TBI Model Systems Data Center must contribute to this outcome by providing training and technical assistance to TBI Model Systems Centers on subject retention and data collection procedures, data entry methods, and appropriate use of study instruments, and by monitoring the quality of the data submitted by the TBI Model Systems Centers.

(c) High-quality data collected from database participants of all racial/ethnic backgrounds. The National TBI Model Systems Data Center must contribute to this outcome by providing knowledge, training, and technical assistance to the TBI Model Systems Centers on culturally appropriate methods of longitudinal data collection and participant retention.

(d) Rigorous research conducted by TBI Model Systems Centers and all investigators who are analyzing data from the TBI Model Systems Database. The National TBI Model Systems Data Center must contribute to this outcome by making statistical and other methodological consultation available for research projects that use the TBI Model Systems Database, as well as center-specific and collaborative projects of the TBI Model Systems program.

(e) Enhanced continuity of the TBI Model Systems Database. The National TBI Model Systems Data Center must contribute to this outcome by establishing and implementing a mechanism for continued collection of follow-up data from individuals who were enrolled by TBI Model Systems Centers that no longer receive Model Systems Program funding. This mechanism must focus on continued collection of data from up to four TBI Model Systems Centers that were funded during the most recent five-year grant cycle, but that do not receive subsequent funding under the Model Systems Program.

(f) Improved quality and efficiency of the TBI Model Systems Database operations through collaboration with the National Spinal Cord Injury Model Systems Data Center and the National Burn Model Systems Data Center.

Priority 4—Rehabilitation of Children with Traumatic Brain Injury (TBI)

Background

The Department's regulations implementing the Individuals with Disabilities Education Act (IDEA) define traumatic brain injury as ''* * * an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance'' (34 CFR 300.7(c)(12)). The Centers for Disease Control and Prevention report that among children up to 14 years of age, TBI results annually in an estimated 2,685 deaths, 37,000 hospitalizations, and 435,000 emergency department visits (Langlois, Rutland-Brown, & Thomas, 2004). These estimates do not include children who sustained a TBI and did not seek medical care or were seen only in private doctors' offices. Because most survivors of moderate to severe TBI experience chronic, life-long disabilities with varying degrees of dependence, the costs of these disabilities in terms of individual suffering, family burden, and financial burden to society are quite significant (Carney, Maynard, Davis-O'Reilly, Zimmer-Gembeck, Krages, & Helfand, 1999).

The effects of TBI can be pervasive, but researchers who have begun to document the functional outcomes in children with TBI have encountered several obstacles. For example, assessments of injury characteristics have rarely included measures of the location, depth, or severity of brain insult; environmental, family, and child characteristics (including pre-injury functioning) have received insufficient attention; and follow-up assessments have largely included outcomes of TBI at only a single point in time several years after injury (Taylor, 2004). These and other limitations must be addressed in order to better understand and improve outcomes for children with TBI.

There also is little high quality evidence regarding the effectiveness of rehabilitation interventions for children with TBI (Carney, Maynard, Davis-O'Reilly, Zimmer-Gembeck, Krages, & Helfand, 1999; Chen, Heinemann, Bode, Granger, & Mallinson, 2004). When children who have sustained a TBI are discharged from emergency and acute care facilities, they may continue to receive treatment, including medical

services; physical, occupational, and speech therapy; cognitive rehabilitation; social and behavioral interventions; and educational and family interventions. These interventions, however, have largely not been validated through experimental design or in carefully controlled observational studies. Further, there is a well-documented and unmet need for intensive, ongoing services and supports for families and school staff as children with TBI transition from medical and rehabilitation systems to community and school systems (Ylvisaker et al, 2005).

In addition to the lack of interventions research and limited availability of family and school support services, there is insufficient information available to ensure the appropriate identification of children with TBI who are in need of special education and related services. Many children who have sustained a TBI and reenter the school system fail to receive the services that they need and that are mandated by IDEA, in part, because they fail to be identified or their needs are not associated with the injury. In fact, the number of children reported by States to be receiving special education and related services under the TBI label is much lower than would be expected based on the numbers of children who sustain a TBI each year (Langlois & Rutland-Brown, 2005). All of these problems faced by children with TBI, their families, and service providers demonstrate the need for further studies and research.

References

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on the Rehabilitation of Children with Traumatic Brain Injury (TBI). Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Improved physical, cognitive, social/behavioral, family, educational, or employment outcomes for children with TBI by development or testing of rehabilitation interventions.

(b) Improved transition of children from health care facilities to school and community by development or testing of effective transition strategies.

(c) Improved TBI screening and special education services for children by development or testing of methods and procedures for use in school settings.

Priority 5—Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults With Disabilities

Background

Approximately two out of three adults in the United States are classified as overweight or obese, and obesity is now the second leading cause of mortality in this country (Flegal *et al.*, 2002). As disturbing as the obesity prevalence is for the general U.S. population, rates of obesity among adolescents and adults with pre-existing disabilities are even more alarming. A recent study based on pooled self-report data from the 1994–1995 National Health Interview Survey (NHIS), the 1994–1995 Disability Supplement (NHIS–D), and the 1995 Healthy People 2000 Supplement reports a 66 percent higher rate of obesity among people with disabilities compared to the general population (Weil *et al.*, 2002). Similarly, a recent regional study, based on actual measurements of height and weight, reported that extreme obesity (a body mass index (BMI) of 40 or larger) was approximately four times higher among persons with disabilities compared to the general population (Rimmer & Wang, 2005).

Obesity has a profoundly negative effect on the overall health status and quality of life of individuals with disabilities. First, like the population at large, for whom obesity is typically a primary health condition, obesity among individuals with disabilities leads to higher-risks for cardiovascular disease, type 2 diabetes, hypertension, osteoarthritis, and certain cancers. Second, for people with pre-existing disabilities, obesity constitutes a significant secondary condition leading to new physical impairments and increased mobility limitations, which in turn further undermine an individual's functional abilities and negatively impact opportunities for employment and participation in the community (Kinne, Patrick, & Doyle, 2004). There also is growing evidence that many of these chronic health problems and functional impairments occur earlier and with more severity among people with existing disabilities than in the general adult population (Campbell, Sheets, & Strong, 1999). Notwithstanding this information, there remains a lack of knowledge about both the antecedents to obesity in adults and adolescents with disabilities and the rehabilitation interventions that could be successful in treating or preventing this condition.

Lack of routine and timely screening for obesity by medical providers also contributes to the magnitude of the obesity epidemic in this country, particularly among adults with disabilities who face well-documented barriers to accessing primary health care services (Iezzoni, McCarthy, Davis, & Siebens, 2001). To address this problem, the U.S. Preventive Services Task Force (USPSTF) recently published guidelines recommending that clinicians screen all adult patients for obesity based on BMI and offer appropriate behavioral interventions and intensive counseling to promote sustained weight loss for those who are obese (''Screening for Obesity in Adults: Recommendations and Rationale,'' November 2003). Further information, however, is needed to assess the effectiveness of screening and diagnostic procedures and the interventions that medical providers are recommending.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Disability and Obesity: Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the antecedents and consequences of obesity as a secondary condition among adolescents and adults with different types of pre-existing physical, sensory, cognitive, and behavioral-health impairments.

(b) Improved obesity screening and diagnosis among adolescents and adults with different types of disabilities by developing or testing effective screening and diagnostic methods and procedures.

(c) Improved outcomes for adolescents and adults with disabilities with obesity by development or testing of prevention strategies and treatments.

Priority 6—Model Systems Knowledge Translation Center (MSKTC)

Background

NIDRR's Model Systems Programs were originally developed to demonstrate the value of a comprehensive integrated continuum of care for individuals with spinal cord injury (SCI), traumatic brain injury (TBI), and burn injury (Burn). Currently, NIDRR's Model Systems Programs include 36 centers that conduct or sponsor research activities designed to improve rehabilitative and pharmacological interventions that can help optimize levels of community participation, employment, and overall quality of life for individuals with SCI, TBI, and Burn. Research sponsored by the Model Systems Programs has led to a wealth of publicly available, retrievable information about SCI, TBI, and Burn. Additionally, research conducted by Model Systems Programs grantees has advanced knowledge regarding, and led to changes in, clinical practice and policy in the fields of SCI, TBI, and Burn.

The usefulness of NIDRR-funded SCI, TBI, and Burn research and development findings and products depends on how well potential users can assess the strength and relevance of these findings and products, as applied to their particular needs. End-users with limited scientific training, in particular, may need assistance in order to understand competing research claims or determine the relevance of particular findings to their individual situations. In addition, given the nature of scientific study, practical information often is based on cumulative knowledge, not upon the results of any one study.

The following proposed priority for an MSKTC is intended to ensure that information and products developed and identified through NIDRR-funded SCI, TBI, and Burn research are of high quality, are based on scientifically rigorous research and development, and are disseminated effectively. To this end, the proposed priority embraces a newer concept, knowledge translation (KT), to shape the effective dissemination and utilization of disability and rehabilitation research results critical to achieving NIDRR's mission. KT encompasses the exchange, synthesis, and ethically sound application of knowledge within a complex system of relationships among researchers and users. See, for example, the Knowledge Translation Overview of Canadian Institutes of Health Research Web site at: *http://www.cihr-irsc.gc.ca/e/7518.html.*

Acting as a centralized resource center, the proposed MSKTC would establish coordinated, collaborative relationships among the three Model Systems Programs (*i.e.*, SCI, TBI, and Burn Model Systems Programs) to identify effective dissemination strategies and to help other Federal agencies and national organizations use new information and discoveries emanating from NIDRR-funded SCI, TBI, and Burn research.

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National Center for the Dissemination of Disability Research. 2005, *http://www.ncddr.org/.*

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project to serve as the Model Systems Knowledge Translation Center (MSKTC). Under this priority, the MSKTC must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the quality and relevance of NIDRR's Spinal Cord Injury (SCI), Traumatic Brain Injury (TBI), and Burn Injury (Burn) Model Systems Programs' findings. The MSKTC must contribute to this outcome by identifying and applying appropriate standards and methods for conducting research syntheses. This will allow the Model Systems Programs to bridge gaps in evidence-based practice and research.

(b) Enhanced knowledge of advances in SCI, TBI, and Burn research among consumers, clinicians, and other end users of such information. The MSKTC must contribute to this outcome by (1) identifying effective strategies for, and guiding targeted dissemination of, SCI, TBI, and Burn Model Systems Programs' findings about available services and interventions for individuals with SCI, TBI, and Burn; and (2) developing partnerships and collaborating with key constituencies and groups conducting similar work.

(c) Centralization of SCI, TBI, and Burn Model Systems resources for effective and uniform dissemination and technical assistance. The MSKTC must contribute to this outcome by serving as a centralized resource for the SCI, TBI, and Burn Model Systems Centers.

Priority 7—Assistive Technology (AT) Outcomes Research Project

Background

The Assistive Technology Act of 1998, as amended (29 U.S.C. 3001 *et seq.*), defines an assistive technology (AT) device as ''any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities'' (29 U.S.C. 3001(3)(4)). AT serves a broad and diverse range of functional needs among people with an expansive range of potentially disabling conditions. AT devices and AT services are provided in many contexts,

including rehabilitation programs, schools, employment programs, and residential and independent living programs.

Current NIDRR-sponsored AT Outcomes Research Projects are creating and classifying new outcomes measures to help determine and describe the impact that various AT devices and services have on the lives of people with disabilities (Jutai, Fuhrer, Demers, Scherer, & DeRuyter, 2005). While the ability to measure potential outcomes of AT use is maturing through this NIDRR-sponsored research, the ability to measure key characteristics of AT interventions is still in its infancy.

To advance AT outcomes research beyond a collection of ad hoc evaluations of specific products, it is necessary to develop a commonly shared means of classifying all aspects of AT interventions. Standardization of intervention measurement would promote the replicability of AT interventions that are shown by rigorous research to be associated with positive outcomes. A valid classification of AT interventions would capture key characteristics of the device or device-type being provided, as well as information about key characteristics of AT provision, including setting, assessment, fit/customization, user training, and device maintenance (Fuhrer, 2001; Edyburn, 2003).

In addition to the creation and classification of new outcomes measures, current AT Outcomes Research Project grantees have developed conceptual frameworks to guide future AT outcomes research (Fuhrer, Jutai, Scherer, & DeRuyter, 2003). These grantees have designed sophisticated data-collection interfaces to bring new efficiencies to the collection of data on AT interventions, key contextual factors, and outcomes. To facilitate the development of rigorous evidence-based knowledge in the AT field, these conceptual frameworks and data collection technologies must be applied more broadly and systematically. More systematic application of these tools would allow the AT field to move beyond a series of limited ad hoc evaluations of single AT products, towards a scientific body of knowledge regarding expected outcomes associated with the delivery of a wide variety of AT interventions.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) for an Assistive Technology (AT) Outcomes Research Project. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Improvement of the AT field's ability to measure the impact of AT on the lives of people with disabilities by continuing to develop AT outcomes measures and measurement systems.

(b) Improvement of the AT field's ability to measure the impact of AT on the lives of people with disabilities by developing validated methods for measuring and classifying AT interventions, including key characteristics of both the AT device and AT provision (*e.g.*, setting, assessment, fit/customization, user-training, and device maintenance).

(c) Enhanced understanding of the impact of AT on the lives of people with disabilities by conducting at least one research project that systematically applies state-of-the-science measures of AT interventions, outcomes, and data collections mechanisms.

(d) Collaboration with the relevant NIDRR-sponsored projects, such as the Rehabilitation Research Training Center on Measuring Rehabilitation Outcomes and relevant projects within the Rehabilitation Engineering Research Center program, as identified through consultation with the NIDRR project officer.

Priority 8—Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision

Background

Three of the most challenging and dangerous problems faced by individuals with blindness and low vision are travel related: (1) Negotiating complex transit stations; (2) locating bus and metro train stops; and (3) crossing light-controlled intersections safely and efficiently (Crandall, Bentzen, Myers, & Brablyn, 2001). To address these challenges, the Transportation Equity Act for the 21st Century requires that transportation plans and projects include, where appropriate, consideration of pedestrian safety issues, including installation of audible traffic signals and signs at street crossings (23 U.S.C. 217(g)(c)). Our knowledge about the effectiveness of the range of technology solutions developed in response to this law and other intervention strategies for safety, travel, location, and mobility issues is limited, particularly with regard to subpopulations within the blind and visually impaired community.

Navigation and travel related challenges are most often addressed by two primary approaches, orientation and mobility (O&M) and wayfinding technology solutions. O&M is the conventional approach designed to provide instruction and experience in independent travel in the community, including the use of public transportation. Orientation refers to an individual's ability to monitor his or her position in relation to the environment, and mobility refers to an individual's ability to travel safely, detecting and avoiding obstacles and other potential hazards. Advanced technologies designed to assist individuals with blindness and low vision in attaining the body of knowledge relative to the location of spaces through which they travel is known as wayfinding or ''environmental literacy.'' Whereas many O&M tools, such as white canes, are designed to address a traveler's mobility safety concerns, wayfinding or environmental literacy tools, such as talking signs located at street crossings, are designed to provide a traveler with orientation information. Some O&M aids are worn on the body and often are designed to detect and identify obstacle features. Wayfinding or environmental systems are technologies that are typically embedded in the texture of spaces and that provide ''location-based'' information (access to some kind of ''knowledge sharing network'' or ''geographic data base'')—for example, manually activated audible pedestrian signals embedded in intersection traffic lights (Baldwin, D., 2005).

Although O&M and wayfinding techniques are widely used by individuals with vision loss, there is ongoing controversy about whether newly developed wayfinding technologies should supplement rather than supplant already accepted O&M aids such as white canes and guide dogs. Currently, no empirically based studies examining or comparing differences between outcomes for O&M

users and outcomes for wayfinding technology users exist.

There is a paucity of sound scientific studies examining the effectiveness of both O&M and wayfinding solutions and intervention approaches in varied situations, conditions, and functional capacities, but the literature that is available identifies specific problems with existing technology and supports the need for better wayfinding and O&M solutions. For example, bird-call type signals do not provide unambiguous information about which crosswalk has the walk interval. Signals comprised only of a bird-call and bell do not indicate the presence or location of a pedestrian push button and, therefore, do not solve one of the most important problems associated with push buttons: the difficulty in knowing whether pedestrian action is required (Bentzen, Barlow, & Franck, 2000). Although advances have been made to address some of these problems, there is no consensus about whether available solutions are adequate to address the travel needs of individuals with blindness and low vision. Research leading to development of innovative and effective solutions that will help individuals with blindness and low vision to safely and independently navigate their surroundings, and a better understanding of technology applications would increase our capacity to improve disability and rehabilitation outcomes for these individuals.

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National Eye Institute *http://www.nei.nih.gov/eyedata/* (2004).

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision. To meet this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Effective technology solutions and intervention approaches that can enable blind and low vision individuals to safely and independently navigate their surroundings. The DRRP must contribute to this outcome by identifying or developing and testing methods, models, and measures that will inform the technology solutions and intervention approaches.

(b) Improved understanding about the effectiveness of wayfinding technology and orientation and mobility (O&M) techniques for navigation and travel problems. The DRRP must be designed to contribute to this outcome by, at a minimum, conducting comparative analysis of outcomes for specific subpopulations of individuals with blindness and low vision who use O&M techniques and wayfinding technology.

(c) Increased technical and scientific knowledge about the applications of navigation and travel technologies for individuals with blindness and low vision, leading to more effective use of technologies and intervention strategies, through the development of knowledge translation and utilization activities.

(d) Coordination of research activities. The DRRP must contribute to this outcome by collaborating and consulting with relevant Federal agencies responsible for the administration of public laws that address access to and usability of transportation and transit-related systems and environmental structures for individuals with disabilities, such as the Architectural and Transportation Barriers Compliance Board, the U.S. Department of Transportation's Federal Highway Administration, Federal Transit Administration and National Highway Traffic Safety Administration, and relevant NIDRR-funded research projects as identified through consultation with the NIDRR project officer.

Priority 9—Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population

Background

Current population estimates indicate that there are approximately 53 million individuals with disabilities in the United States and an estimated 8 million of these individuals are deaf or hard of hearing (McNeil, 1994; 1995). The pervasiveness of a hearing problem and its impact on every aspect of life, including employment status, is well documented (Stika, 1997; Hetu, Lalonde, and Getty, 1994).

Within the population of individuals who are deaf or hard of hearing there is an even smaller sub-population, estimated at between 125,000 and 165,000 persons referred to as ''low functioning deaf'' (LFD). While individuals considered LFD share the primary disability of hearing loss, as a group, they also are compromised by a combination of environmental risk factors and a lack of appropriate environmental and social supports. Most LFD individuals have limited communication skills, often are unable to live independently, cannot obtain or maintain employment, and exhibit minimal social and emotional competency.

Studies indicate that the functional capacity of individuals who are LFD present unique challenges and complications at the individual and systems levels. More specifically, significant difficulty with all modes of communication, including the limited literacy proficiency that characterizes the LFD population (Wheeler-Scruggs, 2002), is a potentially important factor in disability and rehabilitation outcomes across the lifespan and major life domains for these individuals.

While several factors influence employment outcomes for the general population of individuals who are deaf or hard of hearing, the LFD population is at particular risk for being underserved by rehabilitation and vocational training systems. Most LFD individuals are inadequately prepared for workforce participation due to limited communication abilities and low literacy rates; often LFD adults read below the second grade level and are unable to complete high school. Additionally, the majority of existing social supports and services are targeted to deaf and hard of hearing youth able to participate in college and other postsecondary vocational programs where a certain level of academic achievement is presumed (National Association for the Deaf, 2004). Thus, LFD individuals are at a distinct disadvantage in their ability to access and benefit from existing employment and vocational services and supports.

Further, although the literature in this field documents the impact of hearing problems on functional outcomes, there is limited understanding about the unique employment needs of the LFD population. Past research on LFD and employment has not extensively examined the various elements of job readiness, job placement, and retention in relation to the impact that programs such as Supplemental Security Income, Social Security Disability Insurance, and welfare have on long-term employment outcomes for individuals who are LFD.

The complexity of the employment issues facing individuals who are LFD presents a unique opportunity for researchers to expand the current knowledge base and facilitate development of the most effective methods, approaches, and intervention strategies to improve employment outcomes for the LFD population (Dew, 1999). Research is needed to inform policy, program planning, and development activities and to assist with improving systems and individual level outcomes for the LFD population.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced knowledge about the unique functional and communication characteristics of the LFD population and the extent to which these characteristics affect disability and rehabilitation outcomes, including labor force participation and employment preparation. The DRRP must contribute to this outcome by developing and testing protocols that accurately measure population characteristics; and psychometrically sound instruments that measure predictors of disability, rehabilitation, and employment outcomes.

(b) Improved employment outcomes and reduction of barriers to labor force participation for individuals who are LFD. The DRRP must contribute to this outcome by developing theory-based intervention strategies and methods that help to enhance functional skills, social interaction, communication and literacy competencies, and scientifically-sound approaches for identifying barriers to labor force participation.

(c) Collaboration with NIDRR-sponsored projects, including the Rehabilitation Research and Training Center (RRTC) on Measuring Rehabilitation Outcomes and other relevant projects within NIDRR's RRTC and Field Initiated programs.

Priority 10—Disability Business Technical Assistance Centers (DBTACs)

Background

The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* (ADA), prohibits discrimination against individuals with disabilities in employment, transportation, public accommodations, State and local government services, and telecommunications. Since 1991, NIDRR has supported 10 regional DBTACs that have provided technical assistance and training and disseminated information on the requirements of the ADA to entities covered by the law and individuals with disabilities. The current regional DBTACs provide information and services on ADA issues relating to employment, public services, and public accommodations, and communicate with businesses, public organizations, architects, individuals with disabilities, disability organizations, and others on the law's requirements (see *http://www.adata.org/centers.htm* for a current listing of the DBTACs). Each DBTAC's activities vary, but all regional DBTACs provide technical assistance and training, disseminate materials, provide information and referral services, build public awareness, and work to build local capacity to promote technical assistance and training on the ADA. DBTACs provide their services via telephone calls (including toll-free ''800'' number calls), the World Wide Web, workshops and other training sessions. Services provided by DBTACs in 2004 included providing training on employment issues for State human resource personnel; collaborating with a State agency to develop an ADA reference guide for agencies within the State; providing training on accessible Web design for city and State personnel; assisting in the development of State policies regarding the accessibility of information technology procured and used by State agencies; providing training to local health departments on accessibility of medical services; development of a training curriculum on workplace accommodations for employers; conducting Web casts for public and private employers on disability-related employment policies and job accommodations; and surveying polling places to determine accessibility.

NIDRR is proposing this priority to support the funding of 10 regional DBTACs to provide technical assistance on the ADA and other assistance designed to improve employment outcomes for individuals with disabilities. Despite past attempts to reduce unemployment rates and increase workforce participation, individuals with disabilities continue to be employed at much lower rates than individuals without disabilities. The 2003 American Community Survey, for example, found that approximately 37.8 percent of adults age 21 to 64 with disabilities were employed, compared to approximately 77.5 percent of adults without disabilities (U.S. Census Bureau, 2003). Identifying strategies for improving employment outcomes is critical if such disparities are to be reduced.

Knowledge gained from the DBTAC program about the ADA, employers, and employment issues suggests that research and research-based information are needed to help employers, State and local governments, other public entities, private entities, and postsecondary institutions better achieve the objectives of the ADA and improve outcomes for individuals with disabilities. Through this proposed priority, NIDRR seeks to advance the DBTAC program beyond a strict focus on compliance with the ADA and expand the focus to include assistance in identifying and implementing a variety of more effective intervention approaches and more cost-effective strategies to help individuals with a variety of disabilities reach their full potential on the job. NIDRR also intends that this proposed priority will improve the research capacity of the regional DBTACs so that the DBTACs can identify areas where research is warranted and conduct targeted research and development that would be of benefit to employers and to individuals with disabilities.

We are proposing that each of the 10 regional DBTACs will provide technical assistance to increase the capacity of other organizations to provide technical assistance; identify problematic areas where research or informational campaigns might aid in the avoidance of

or solution to problems associated with compliance with the ADA in their region; and conduct research to inform program planning, development, policy, and practice.

Finally, in order to prevent duplication of effort, NIDRR intends to fund, under a separate priority, a center that will be responsible for taking the lead in making available, through a central Web site, information about the ADA that is of interest nationally and would be useful across all regions. This center, the DBTAC Coordination, Outreach, and Research Center (DBTAC CORC), will be expected to serve several functions, including overall coordination of activities among the regional DBTACs, conducting research, and facilitating research capacity building and dissemination.

Reference

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes to fund, under its Disability Rehabilitation Research Projects program, 10 Disability and Business Technical Assistance Centers (DBTACs), 1 within each of the 10 U.S. Department of Education regions. Each DBTAC must be designed to contribute to the following outcomes:

(a) Improved understanding about rights and responsibilities under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* (ADA), as well as developments in case law, policy, and implementation through rigorous research and technical assistance activities.

(b) Improved employment outcomes for individuals with disabilities by conducting activities that help to increase accommodations, access to technology, and supports in the workplace, especially in high growth industries.

(c) Enhanced ADA information dissemination, awareness, and referral activities by establishing effective, coordinated local, regional, and national resource networks. The DBTAC will contribute to this outcome by, among other activities, partnering with the DBTAC Coordination, Outreach and Research Center (DBTAC CORC) and other regional DBTACs to develop, implement and evaluate these networks.

(d) Enhanced capacity of entities at the local and State levels and within specific industries to provide technical assistance and training on the ADA through dissemination of information that promotes awareness of the ADA.

(e) Identification of impediments to compliance with the ADA and individuals' access to technology, postsecondary education, and the workforce, and of tested solutions and innovative approaches for eliminating these impediments by conducting targeted, rigorous research activities in at least one of the following areas: employment, technology and postsecondary education, technology and school-to-work transition, and participation and community living.

(f) Enhanced quality and relevance of information, and dissemination of research-based information through adherence to standards and guidelines that are consistent with evidence-based practices for research dissemination and evaluation (see *http://www.cebm.net, http://www.cochrane.org, http://www.campbellcollaboration.org/guide.flow.pdf, http://www.ngc.gov, http://www.science.gov/*).

(g) Improved technical assistance and research capacity through development and application of effective coordination strategies within the network of relevant NIDRR Rehabilitation Research and Training Centers, Rehabilitation Engineering Research Centers, Disability and Rehabilitation Research Projects, Assistive Technology and Outcomes Research Projects, NIDRR-funded knowledge translation and dissemination centers, employers, industries, and community entities.

(h) Improved research capacity through scientifically sound data collection and analysis leading to identification of research topics and submission of a preliminary research proposal to the DBTAC CORC beginning in the first year of the project period, and conducting rigorous, high quality research beginning in the second year of the project period.

(i) Improved knowledge about the provision of ADA and employment-related technical assistance, implementation of the ADA, and employment outcomes through submission of region-specific information and data to the DBTAC CORC for analysis and reporting.

Proposed Priority 11—Disability Business Technical Assistance Centers (DBTAC) Coordination, Outreach, and Research Center

Background

The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* (ADA), prohibits discrimination against individuals with disabilities in employment, transportation, public accommodations, State and local government services, and telecommunications. Since 1991, NIDRR has supported 10 regional Disability and Business Technical Assistance Centers (DBTACs) that have provided technical assistance and training, and disseminated information on the requirements of the ADA to entities covered by the law and individuals with disabilities. (See the background statement and priority for Proposed Priority 10—Disability and Business Technical Assistance Centers (DBTACs) for additional information on DBTAC activities.) Despite past efforts, however, unemployment rates for individuals with disabilities remain high. For that reason, NIDRR seeks to advance the DBTAC program beyond a strict focus on compliance with the ADA and expand the focus to include assistance in identifying and implementing research-based interventions.

NIDRR is proposing this priority to support the funding of an entity to take the lead in conducting activities to improve the capacity of the regional DBTACs to use research-based information to help achieve the objectives of the ADA and improve employment outcomes for individuals with disabilities. This entity, the DBTAC Coordination, Outreach, and Research Center (DBTAC CORC), will serve several functions, including overall coordination of activities among the regional DBTACS, conducting research, facilitating research capacity building, and information dissemination. The key goals of the DBTAC CORC are improving ADA and employment-related technical assistance to employers, State and local governments, and other public entities; enhancing understanding and knowledge about the ADA, employers, and employment issues; and improving research capacity related to the ADA and employment. Accomplishing these goals will require a coordinated effort to facilitate partnerships and collaborative research and development activities that respond to the state of the science and national needs. All 10 regional DBTACs are expected to provide region-specific information and contribute data to the DBTAC CORC to support this effort.

The regional DBTACs and the DBTAC CORC will share some responsibilities; however, they each play a distinct role within the DBTAC program. For example, regional DBTACs provide frontline technical assistance to help with implementation of the ADA and conduct research that leads to improved employment outcomes for individuals

with disabilities. While the DBTAC CORC does not have oversight responsibility for the regional DBTACs, it provides technical assistance to the regional DBTACs to increase their research capacity and generate evidence to inform practice, based on scientifically-sound research.

The Department intends to have substantial and sustained involvement in the activities of the DBTAC CORC to be funded through this proposed priority, including by shaping the grantee's priorities, activities, and major products to meet the purposes of this program. The details and parameters of the Department's expectations and involvement with the DBTAC CORC will be included in the Department's cooperative agreement with the grantee that receives an award under this proposed priority. This project will work closely with NIDRR through a cooperative agreement.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes to provide funding, under its Disability Rehabilitation Research Projects program, for a DBTAC Coordination, Outreach, and Research Center (DBTAC CORC). The DBTAC CORC must be designed to contribute to the following outcomes:

(a) Improved public access to information relating to the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* (ADA), through development and maintenance of a public Web site that includes relevant information that is of interest nationally and that would be useful across all DBTAC regions, preparation of documents in a format that meets a government or industry-recognized standard for accessibility, and establishment of a DBTAC database to support regional DBTAC activities.

(b) Improved technical assistance, collaboration, information dissemination, knowledge translation and training materials through a national, coordinated process for developing materials to address topics that are relevant across regions; and use of a document review board to assist with development and review of collaborative products and research activities.

(c) Increased research capacity building and high quality research through synthesis and analysis of ADA information and data provided by the regional DBTACs, and review of literature and related information from other sources, in order to produce evidence reports, generate topics for the regional DBTAC research activities, identify areas where additional research is warranted, conduct relevant research, and enhance understanding of ADA compliance and implementation issues on a national level.

(d) Enhanced capacity of regional DBTACs to assist with improving employment outcomes, workplace supports and accommodations, and ADA compliance by producing evidence reports, conducting rigorous analyses of regional DBTAC data, and evaluating products and proposed publications. The DBTAC CORC will contribute to this outcome by (1) establishing a document review board to review regional DBTAC plans for new research activities, products, and publications and to conduct systematic reviews linked to a set of evidence questions based on scientific studies and standards (see *http://www.cebm.net, http://www.cochrane.org, http://www.campbellcollaboration.org/guide.flow.pdf, http://www.ngc.gov, http://www.science.gov/*); (2) establishing guidelines for submission of information to the DBTAC CORC; and (3) providing technical assistance to regional DBTACs.

(e) Improved knowledge of and contribution to the state of the science within the subject areas covered by the regional DBTACs by serving as a consultant to regional DBTACs to support research capacity building, facilitating development of a coordinated national research agenda, and working cooperatively with regional DBTAC grantees to assist with the development of research topics and activities.

(f) Enhanced coordination of information dissemination on DBTAC activities, research findings, publications, products, and tools through coordination of the network of appropriate NIDRR research projects, including Rehabilitation Research and Training Centers, Disability and Rehabilitation Research Projects, Field-Initiated Projects, Rehabilitation Engineering Research Centers, and NIDRR dissemination centers, including the National Rehabilitation Information Center (*http://www.naric.com*) and the National Center for the Dissemination of Disability Research (*http://www.ncddr.org*).

(g) Increased use of DBTAC-generated products and information by developing strategies to promote the use of developed products and improved relevance and quality of the products through assessment of their effectiveness and impact on practice and policy.

(h) Increased application of research findings and products through translation of DBTAC evidence reports into practice guidelines, quality improvement products, and technical assistance tools.

(i) Enhanced understanding about the state of the science and improved program planning, development and evaluation by hosting a DBTAC biannual program development and planning meeting beginning in year one of the project period; and an annual conference leading to a report of proceedings in years three through five of the project period.

Rehabilitation Research and Training Centers (RRTCs)

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

General Requirements of RRTCs

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority 12—Rehabilitation Research and Training Center (RRTC) on Effective Independent and Community Living Solutions and Measures

Background

Advances in technology and research have helped to enhance our understanding about disability and to improve outcomes for individuals with

disabilities. However, there are numerous barriers that prevent individuals with disabilities from full participation in society. Data indicate that there are large gaps in participation in home, community, education, and workplace activities between individuals with and individuals without disabilities. Compared to individuals without disabilities, individuals with disabilities are more likely to be homebound due to lack of transportation (Department of Transportation, 2003). Also, compared to individuals without disabilities, individuals with disabilities are less likely to own a home (internal NIDRR analysis of U.S. Census 2000) and less likely to be employed (Waldrop, J. & Stern, S., 2003). Individuals with disabilities also are less likely to socialize or engage in a number of other activities (National Organization on Disability, 2004).

A variety of factors may account for disparities between individuals with and individuals without disabilities; these include differences in functional abilities, health and well-being, access to assistive technology and personal supports, economic resources, and a variety of physical, social, cultural, and environmental barriers. However, we have limited understanding about the effects that environmental barriers and facilitators at the systems and individual levels have on opportunities for participation for people with disabilities, particularly with respect to differences in outcomes for specific disability populations and within specific environmental conditions.

Laws protecting the civil rights of individuals with disabilities and various disability policies have helped to promote the inclusion of and participation by individuals with disabilities and foster change. For example, Executive Order 13217, ''Community-based Alternatives for Individuals with Disabilities,'' requires Federal agencies to implement the U.S. Supreme Court's 1999 decision in *Olmstead* v. *L.C.* (527 U.S. 581) (*http://www.cms.hhs.gov/olmstead/default.asp*). However, barriers to implementation of the *Olmstead* decision and to full participation (*e.g.*, lack of affordable, accessible housing and reliable, accessible transportation; difficulty obtaining well-qualified personal attendants; and frequent social isolation) are preventing the inclusion of and participation by individuals with disabilities in society. Consequently, research is needed to inform development of new, validated strategies, supports, programs, interventions, guidelines, and policies to achieve improved community living outcomes for deinstitutionalized individuals or those diverted from potential institutionalization.

Additionally, the demand for evidence-based practice requires the development, evaluation, and use of scientifically sound measures to evaluate the effectiveness and impact of programs and interventions intended to alleviate disparities in participation. Given the scarcity of economic resources, research is also needed to understand the costs and benefits of investments intended to maximize independence and participation. Research can help to inform the development of the next generation of measures that can be easily utilized to drive decisions made by key stakeholders and improve understanding about environmental, systems, and individual level factors that influence the participation of individuals with disabilities in society across their lifespan.

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Proposed Priority

The Assistant Secretary proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Effective Independent and Community Living Solutions and Measures. To meet this priority, the RRTC's research must be designed to contribute to the following outcomes:

(a) Enhanced participation by individuals with disabilities at home, in the community, or in educational or workplace activities through development of effective theory-based intervention methods and outcome measures.

(b) Improved intervention approaches and guidelines that help to remove or reduce barriers to full community integration and participation for individuals with disabilities. The RRTC must contribute to this outcome by conducting rigorous research examining the implementation of the *Olmstead* decision and practices that serve as facilitators or barriers to independent and community living.

(c) Improved understanding about the economic utility of existing or proposed policies and practices to maximize independence and participation for individuals with disabilities through development of scientifically sound, valid and reliable methods and measures to assess these policies and practices.

Rehabilitation Engineering Research Centers Program General Requirements of Rehabilitation Engineering Research Centers (RERCs)

RERCs carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by:

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (a) solve rehabilitation problems and remove environmental barriers and (b) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or
- Demonstrating and disseminating (a) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or
- Facilitating service delivery systems change through (a) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Priorities 13, 14, and 15—Rehabilitation Engineering Research Centers (RERCs) for Technologies for Successful Aging (Priority 13), Wheelchair Transportation Safety (Priority 14), and Wireless Technologies (Priority 15)

Background

Individuals with disabilities regularly use products developed as the result of rehabilitation and biomedical research to achieve and maintain maximum physical function, live independently, study and learn, and attain gainful employment. The range of engineering research encompasses not only assistive technology but also technology at the systems level (*i.e.*, the built environment, information and communication technologies, transportation, etc.) and technology that interfaces between the individual and system and is basic to community integration.

The NIDRR RERC program has been a major force in the development of technology to enhance independent function for individuals with disabilities. The RERCs are recognized as national centers of excellence in their respective areas and collectively represent the largest federally supported program responsible for advancing rehabilitation engineering research. For example, the RERC program was an early pioneer in the development of augmentative communication and has been at the forefront of prosthetics and orthotics research for both children and adults. RERCs have played a major role in the development of voluntary standards that the medical equipment and technology industries use when developing wheelchairs, wheelchair restraint systems, information technologies, and the World Wide Web. RERCs also have been a driving force in the development of universal design principles that can be applied to the built environment, information technology, and consumer products.

Advancements in basic biomedical science and technology have resulted in new opportunities to enhance further the lives of people with disabilities. Specifically, recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro electro mechanical systems (MEMS), sensor technologies, and the neurosciences provide a wealth of opportunities for individuals with disabilities and could be incorporated into research focused on disability and rehabilitation.

Through the following proposed priorities, NIDRR intends to fund RERCs that advance rehabilitation engineering research in the following priority research areas: Technologies for Successful Aging, Wheelchair Transportation Safety and Wireless Technologies.

(a) RERC for Technologies for Successful Aging

More than half of Americans age 65 and older report having at least 1 disability and it is estimated that one-third of this population has a severe disability. Despite the increased risks of disability associated with aging, ninety-five percent of older Americans choose to remain in their own homes, use public services, and function independently as they age. Accordingly, NIDRR seeks to fund an RERC that focuses on improving the quality of life of older persons with disabilities and promote health, safety, independence and active engagement.

(b) RERC for Wheelchair Transportation Safety

There are roughly 1.7 million Americans living outside of institutions who use wheeled mobility devices (Kaye, Kang, & LaPlante, 2000), including those who rely heavily on public and private transportation services to commute to work and school, participate in recreational activities, and carry out daily activities. However, most wheelchairs are not designed to function as vehicle seats, thus putting wheelchair-seated travelers at greater risk of injury compared to those who sit in standard vehicle seats (Bertocci, Szobota, Hobson, & Digges, 1997). NIDRR, therefore, seeks to fund an RERC that researches and develops innovative technologies to improve the current state of the science, design guidelines and performance standards, and usability of wheeled mobility devices and wheelchair seating systems.

References

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Kaye, H.S., Kang, T., & LaPlante, M.P. (2000). Mobility device use in the United States. Disability Statistics Report 14. Washington, DC: U.S. Department of Education, National Institute on Disability and Rehabilitation Research.

(c) RERC for Wireless Technologies

Wireless technologies allow connection of communication, information, and control devices to local, community, and nationwide networks without wires. These wireless devices support a wide range of applications spanning voice and data communication, remote monitoring, and position finding, and offer tremendous potential for assisting people with disabilities. Accordingly, NIDRR seeks to fund an RERC that facilitates equitable access to, and use of, future generations of wireless technologies for individuals with disabilities.

Proposed Priorities

The Assistant Secretary for Special Education and Rehabilitative Services proposes the following three priorities for the establishment of (a) an RERC for Technologies for Successful Aging, (b) an RERC for Wheelchair Transportation Safety, and (c) an RERC for Wireless Technologies. Within its designated priority research area, each RERC will focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of persons with disabilities.

(a) *RERC for Technologies for Successful Aging.* Under this priority, the RERC must research, develop and evaluate innovative technologies and approaches that will improve the quality of life of older persons with disabilities and promote health, safety, independence, and active engagement.

(b) *RERC for Wheelchair Transportation Safety.* Under this priority, the RERC must research, develop, and evaluate innovative technologies and strategies that will improve the safety and independence of wheelchair users who remain seated in their wheelchairs while using public and private transportation services. The RERC must research and develop innovative technologies and strategies that will improve the current state of the science, design guidelines and performance standards, and usability of wheeled mobility devices and wheelchair seating systems.

(c) *RERC for Wireless Technologies.* Under this priority, the RERC must research, develop, and evaluate innovative technologies that facilitate equitable access to, and use of, future generations of wireless technologies for individuals with disabilities of all ages.

Under each priority, the RERC must be designed to contribute to the following programmatic outcomes:

(1) Increased technical and scientific knowledge-base relevant to its designated priority research area.

(2) Innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its designated priority research area. The RERC must contribute to this outcome by developing and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, and institutions of higher education.

(4) Improved focus on cutting edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR and the field regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to public and private organizations, persons with disabilities, and employers on policies, guidelines, and standards related to its designated priority research area.

In addition, under each priority, the RERC must:

- Have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Develop and implement in the first three months of the project period a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Develop and implement in the first year of the project period, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate its research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Develop and implement in the first year of the project period, in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by the RERC are successfully transferred to the marketplace;
- Conduct a state-of-the-science conference on its designated priority research area in the third year of the project period and publish a comprehensive report on the final outcomes of the conference in the fourth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these proposed priorities are minimal while the benefits are significant. Grantees may incur some costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these proposed priorities is that the establishment of new DRRPs (including the new DBTACs), a new RRTC, and new RERCs will support the President's NFI and will improve the lives of persons with disabilities. The new DRRPs, RRTC, and RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 part 79.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects, 84.133D Disability Business Technical Assistance Centers, 84.133B Rehabilitation Research and Training Centers Program, and 84.133E Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g), 764(a), 764(b)(2), and 764(b)(3).

Dated: January 31, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Coast Guard

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- Grizzly bears; Yellowstone distinct population

LIST OF PUBLIC LAWS

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H.R. 4340/P.L. 109–169

United States-Bahrain Free Trade Agreement Implementation Act (Jan. 11, 2006; 119 Stat. 3581)

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