AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# Federal Register

11–22–04 Monday
Vol. 69 No. 224 Nov. 22, 2004

Pages 67805–68052

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 69 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |

**General online information** **202–512–1530; 1–888–293–6498**

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–741–6005** |
| Assistance with Federal agency subscriptions | **202–741–6005** |

**What's NEW!**

**Federal Register** Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

*Online mailing list archives*
*FEDREGTOC-L*
*Join or leave the list*

Then follow the instructions.

**What's NEW!**

**Regulations.gov,** the award-winning Federal eRulemaking Portal

Regulations.gov is the one-stop U.S. Government web site that makes it easy to participate in the regulatory process.

Try this fast and reliable resource to find all rules published in the *Federal Register* that are currently open for public comment. Submit comments to agencies by filling out a simple web form, or use available e-mail addresses and web sites.

The Regulations.gov e-democracy initiative is brought to you by NARA, GPO, EPA and their eRulemaking partners.

Visit the web site at: **http://www.regulations.gov**

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 69, No. 224

Monday, November 22, 2004

**Administration on Aging**
*See* Aging Administration

**Aging Administration**
NOTICES
Meetings:
2005 White House Conference on Aging Policy Committee, 67915

**Agriculture Department**
*See* Grain Inspection, Packers and Stockyards Administration

**Antitrust Division**
NOTICES
National cooperative research notifications:
Actuarial Standards Board, 67940
American Association for Accreditation of Ambulatory Surgery Facilities, 67940
American Association of Textile Chemists and Colorists, 67940
American College of Osteopathic Emergency Physicians, 67940–67941
American Institute of Aeronautics and Astronautics, 67941
American Society of Baking, 67941
Association for Information and Image Management, 67941–67942
Automotive Lift Institute, 67942
Builders Hardware Manufacturers Association, Inc., 67942
Commission on English Language Program Accreditation, 67942–67943
Composite Panel Association, 67943
Consortium for Advanced Manufacturing-International, 67943
Cyber Security Industry Alliance, Inc., 67943
Distributed Management Task Force, Inc., 67943–67944
DVB Project, 67944
Electric Reliability Council of Texas, Inc., 67944
Electronic Industries Alliance, 67944
Gaming Standards Association, 67944–67945
Glazing Industry Secretariat Committee, 67945
GlobalPlatform, Inc., 67945
Illuminating Engineering Society of North America, 67945
Institute of Nuclear Materials Management, 67945–67946
International Imaging Industry Association, Inc., 67946
Joint Venture (under ATP Award No. 70NANB4H3044), 67946
Material Handling Industry, 67946–67947
National Council for Prescription Drug Programs, 67947
National Electrical Manufacturers Association, 67947
National Fluid Power Association, 67947–67948
OASIS Open, 67948
Open Geospatial Consortium, Inc, 67948
Outdoor Power Equipment Institute, 67948–67949
Petroleum Environmental Research Forum, 67949
Software Defined Radio Forum, 67949–67950
Southwest Research Institute, 67950
Steel Joist Institute, 67950
Steel Tank Institute, 67950
Unified Abrasive Manufacturers Association, 67950–67951
Video Electronics Standards Association, 67951
Window & Door Manufacturers Association, 67951

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Centers for Disease Control and Prevention**
NOTICES
Grants and cooperative agreements; availability, etc.:
National Academic Centers of Excellence on Youth Violence Prevention, 67915–67930

**Coast Guard**
NOTICES
Meetings:
Towing Safety Advisory Committee, 67932

**Commerce Department**
*See* Industry and Security Bureau
*See* International Trade Administration

**Commodity Futures Trading Commission**
RULES
Commodity Exchange Act:
Derivatives transaction execution facility registration or contract market designation; application procedures, 67811–67817

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 67899

**Defense Department**
RULES
Acquisition regulations:
Architect-engineer services contracting, 67855–67856
Freedom of Information Act; implementation, 67856
Government supply sources; contractor use, 67858
Obsolete research and development contracting procedures removed, 67857–67858
Small disadvantaged businesses and leader company contracting, 67855
Technical amendments, 67854–67855
Technical data conformity; written assurance, 67856–67857
PROPOSED RULES
Acquisition regulations:
Information technology equipment; government inventory screening, 67884–67885
Telecommunications services—
Basic agreements, 67883–67884
Clauses update, 67885–67886
NOTICES
Acquisition regulations:
Contract financing; Contractor's Request for Progress Payments (SF 1443), 67899
Agency information collection activities; proposals, submissions, and approvals, 67899–67901
Meetings:
U.S. Joint Forces Command Transformation Advisory Group, 67901

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
Indace, Inc., 67951–67962
ISP Freetown Fine Chemicals, Inc., 67962–67963
Orasure Technologies, Inc., 67963

**Employment and Training Administration**
NOTICES
Federal-State unemployment compensation program:
Federal law interpretations—
Trade Adjustment Assistance Program; Training and Employment Guidance Letters; correction, 67963–67964
Federal Unemployment Tax Act; certifications, 67964

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
Oregon, 67819–67823
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Oregon, 67880
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67903–67911

**Federal Aviation Administration**
RULES
Airworthiness directives:
McCauley Propeller Systems, 67807–67809
MD Helicopters, Inc., 67805–67807
Mooney Airplane Co., Inc., 67809–67811
Class E airspace; correction, 67811
PROPOSED RULES
Airworthiness directives:
Airbus, 67869–67872
Pacific Aerospace Corp., Ltd., 67864–67867
Rolls-Royce Corp., 67867–67869
Airworthiness standards:
Special conditions—
Cessna Model 172 series airplanes, 67860–67864
NOTICES
Exemption petitions; summary and disposition, 68001–68002

**Federal Communications Commission**
RULES
Radio services, special:
Private land mobile services—
800 MHz band; public safety interference proceeding, 67823–67854
PROPOSED RULES
Radio services, special:
Private land mobile services—
800 MHz band; public safety interference proceeding; ex parte presentations, etc., 67880–67882
Radio stations; table of assignments:
New Jersey and Texas, 67882–67883
Ohio and Kentucky, 67882
NOTICES
*Applications, hearings, determinations, etc.:*
Gulf Power Co., 67911–67912

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings, 67902–67903
*Applications, hearings, determinations, etc.:*
Sun River Electric Cooperative, Inc., 67901–67902

**Federal Highway Administration**
NOTICES
Environmental statements; notice of intent:
Riverside County, CA, 68002–68003

**Federal Maritime Commission**
NOTICES
Investigations, hearings, petitions, etc.:
China Shipping Container Lines (Hong Kong) Co., Ltd., 67912

**Federal Railroad Administration**
RULES
Railroad safety:
Locomotive horns use at highway-rail grade crossings; sounding requirement, 67858–67859

**Federal Reserve System**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67912–67913
Banks and bank holding companies:
Change in bank control, 67913
Formations, acquisitions, and mergers, 67913–67914

**Fish and Wildlife Service**
NOTICES
Endangered and threatened species:
Incidental take permits—
Elbert County, CO; Preble's meadow jumping mouse, 67934

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Estradiol, 67818–67819
Trenbolone acetate and estradiol benzoate, 67817–67818
NOTICES
Reports and guidance documents; availability, etc.:
Approved or abbreviated new drug application specifications; enforcement discretion for compendial changes, 67930–67931

**Geological Survey**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67934–67935
Meetings:
Commercial Remote Sensing Space Policy Implementation Working Group, 67935

**Grain Inspection, Packers and Stockyards Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67887–67890

**Health and Human Services Department**
*See* Aging Administration
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Resources and Services Administration

NOTICES
Grants and cooperative agreements; availability, etc.:
Family planning—
Services projects; correction, 67914–67915

**Health Resources and Services Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67931
Grant and cooperative agreement awards:
International AIDS Education and Training Center, 67931–67932

**Homeland Security Department**
*See* Coast Guard
*See* Transportation Security Administration

**Housing and Urban Development Department**
RULES
Grants:
Home Investment Partnerships Program; homeownership affordability requirements; amendments, 68849–68852

**Industry and Security Bureau**
PROPOSED RULES
National security industrial base regulations:
Defense priorities and allocations system; rated orders rejection; electronic transmission of reasons, 67872–67873

**Interior Department**
*See* Fish and Wildlife Service
*See* Geological Survey
*See* Land Management Bureau
*See* Minerals Management Service

**Internal Revenue Service**
PROPOSED RULES
Income taxes:
Predecessors and successors; section 355(e) gain recognition limitation, 67873–67880
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68003–68004

**International Trade Administration**
NOTICES
Antidumping:
Polychloroprene rubber from—
Japan, 67890–67891
Polyester staple fiber from—
Korea, 67891–67892
Stainless steel sheet and strip in coils from—
Germany, 67896–67898
Italy, 67894–67896
Various countries, 67892–67894
Countervailing duties:
Stainless steel sheet and strip in coils from—
Korea, 67898–67899

**Justice Department**
*See* Antitrust Division
*See* Drug Enforcement Administration

**Labor Department**
*See* Employment and Training Administration

**Land Management Bureau**
PROPOSED RULES
Land resource management:
Indian allotments—
Federal regulatory review; withdrawn, 67880
NOTICES
Oil shale research and development, CO, UT, and WY; potential, 67935–67938

**Minerals Management Service**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67938–67939

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Arts Advisory Panel, 67964

**Nuclear Regulatory Commission**
RULES
Production and utilization facilities; domestic licensing:
Risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors, 68007–68048
NOTICES
Environmental statements; availability, etc.:
Belair Quartz, Inc., 67964–67965
Meetings:
Reactor Safeguards Advisory Committee, 67965
Reports and guidance documents; availability, etc.:
Enforcement actions; policy and procedures—
Civil monetary penalties; inflation adjustment; correction, 68005

**Pacific Northwest Electric Power and Conservation Planning Council**
NOTICES
Columbia River Basin Fish and Wildlife Program; amendments, 67966

**Personnel Management Office**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67966–67967

**Presidio Trust**
NOTICES
Meetings:
Board of Directors, 67967

**Securities and Exchange Commission**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67967–67968
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 67968–67970
Chicago Board Options Exchange, Inc., 67971–67972
Fixed Income Clearing Corp., 67972–67973
International Securities Exchange , Inc., 67974–67979
National Association of Securities Dealers, Inc., 67979–67980
New York Stock Exchange, Inc., 67980–67999
Pacific Exchange, Inc., 67999–68001

**Small Business Administration**
NOTICES
Disaster loan areas:
Alabama, 68001

North Carolina, 68001
Meetings:
National Advisory Council, 68001

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Railroad Administration

**Transportation Security Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 67933–67934

**Treasury Department**
*See* Internal Revenue Service

**Separate Parts In This Issue**

**Part II**
Nuclear Regulatory Commission, 68007–68048

**Part III**
Housing and Urban Development Department, 68849–68852

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**10 CFR**
50 ..... 68808

**14 CFR**
39 (3 documents) ..... 67805, 67807, 67809
71 ..... 67811

**Proposed Rules:**
23 ..... 67860
39 (3 documents) ..... 67864, 67867, 67869

**15 CFR**

**Proposed Rules:**
700 ..... 67872

**17 CFR**
37 ..... 67811
38 ..... 67811

**21 CFR**
522 (2 documents) ..... 67817, 67818

**24 CFR**
92 ..... 68850

**26 CFR**

**Proposed Rules:**
1 ..... 67873

**40 CFR**
52 ..... 67819

**Proposed Rules:**
52 ..... 67880

**43 CFR**

**Proposed Rules:**
2530 ..... 67880

**47 CFR**
2 (2 documents) ..... 67823, 67853
22 (2 documents) ..... 67823, 67853
24 (2 documents) ..... 67823, 67853
74 (2 documents) ..... 67823, 67853
78 (2 documents) ..... 67823, 67853
90 (2 documents) ..... 67823, 67853

**Proposed Rules:**
2 ..... 67880
22 ..... 67880
24 ..... 67880
73 (2 documents) ..... 67882
74 ..... 67880
78 ..... 67880
90 ..... 67880

**48 CFR**
211 ..... 67854
217 ..... 67855
219 (2 documents) ..... 67855
224 ..... 67856
227 ..... 67856
235 ..... 67857
251 ..... 67858
252 (2 documents) ..... 67856, 67858

**Proposed Rules:**
239 (3 documents) ..... 67883, 67884, 67885
252 ..... 67885

**49 CFR**
222 ..... 67858
229 ..... 67858

# Rules and Regulations

Federal Register
Vol. 69, No. 224
Monday, November 22, 2004

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

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2004–19613; Directorate Identifier 2004–SW–38–AD; Amendment 39–13870; AD 2004–23–15]**

**RIN 2120–AA64**

## Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the MD Helicopters, Inc. (MDHI) Model MD900 helicopters. This action requires reducing the life limit of certain Notar fan system tension-torsion (TT) straps. This action also requires, at a specified time interval, removing each affected TT strap from the helicopter, doing a visual and x-ray inspection, and replacing any unairworthy part before further flight. Reporting the discovery of any unairworthy TT strap is also required. This amendment is prompted by two recent in-flight TT strap failures. The actions specified in this AD are intended to prevent failure of a TT strap resulting in loss of directional control and subsequent loss of control of the helicopter.

**DATES:** Effective December 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 2004.

Comments for inclusion in the Rules Docket must be received on or before January 21, 2004.

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

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

You may get the service information identified in this AD from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the Web at *http://www.mdhelicopters.com*. You may examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

### Examining the Docket

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

**FOR FURTHER INFORMATION CONTACT:** Roger Durbin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** This amendment adopts a new AD applicable to MDHI Model MD900 helicopters with a TT strap, part number (P/N) 900R3442009–103, 900R6442009–103, 900R3442009–101, or 500N5311–5, installed. This action requires:

- Before further flight, for TT strap, P/N 900R3442009–103 and 900R6442009–103, reducing the life limit from 3034 to 2500 hours time-in-service (TIS);
- Within 10 hours TIS, for any TT strap that has accumulated 1190 or more hours TIS, doing a visual and x-ray inspection of each TT strap and replacing any unairworthy part before further flight;
- Before the TT strap accumulates 1200 hours TIS, for any TT strap with less than 1190 hours TIS, doing a visual and x-ray inspection of each strap and replacing any unairworthy part before further flight; and
- Within 7 days, reporting information about any unairworthy TT strap to Roger Durbin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210.

This amendment is prompted by two recent in-flight TT strap failures. The cause of the failures is not known at this time, and this AD is interim action. We will consider further rulemaking once our investigation is complete. The actions specified in this AD are intended to prevent failure of a TT strap resulting in loss of directional control and subsequent loss of control of the helicopter.

We have reviewed MD Helicopters Service Bulletin SB–900–095, dated November 3, 2004. The service bulletin advises of the reduction of the TT strap life limit and describes procedures for performing an inspection of each TT strap for nicks, cuts, cracks, or wear. Procedures for a Level II or higher X-Ray Technician to do and interpret an x-ray inspection of each TT strap for progressive fiber fractures are also included in the service bulletin.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent failure of a TT strap resulting in loss of directional control and subsequent loss of control of the helicopter. This AD requires, before further flight, reducing the life limit of

certain part-numbered TT straps. This AD also requires, depending on the hours accumulated on the TT strap, doing a visual and x-ray inspection within 10 hours TIS or before the accumulation of 1200 hours TIS and replacing any unairworthy part before further flight. Reporting the discovery of any unairworthy TT strap is also required. Accomplishing the inspections in accordance with the previously described service bulletin is required. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, reducing the TT strap life limit before further flight, inspecting each TT strap at the specified time interval, and reporting information about any unairworthy TT strap is required within 7 days, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 31 helicopters. It will take approximately 7 work hours for each inspection and replacement at an average labor rate of $65 per work hour. It will also cost $100 for each x-ray inspection. Required parts will cost approximately $757 per TT strap replacement. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $40,672 (assuming a visual and x-ray inspection on each helicopter and a TT strap replacement on 8% of the fleet).

## Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19613; Directorate Identifier 2004–SW–38–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2004–23–15 MD Helicopters, Inc.:** Amendment 39–13870. Docket No. FAA–2004–19613; Directorate Identifier 2004–SW–38–AD.

*Applicability:* Model MD900 helicopters, with a Notar fan system that has a tension-torsion (TT) strap, part number (P/N) 900R3442009–103, 900R6442009–103, 900R3442009–101, or 500N5311–5, installed, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of a TT strap in the Notar fan system, which could result in loss of directional control and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, for TT straps, P/N 900R3442009–103 and 900R6442009–103, reduce the life limit from 3034 to 2500 hours time-in-service (TIS).

(b) Within 10 hours TIS, for any TT strap that has accumulated 1190 or more hours TIS, remove the TT strap from the helicopter and do a visual and x-ray inspection in accordance with the Inspection Instructions, paragraph 2.B.(1). through (5). and Figures 1 and 2 of MD Helicopters Service Bulletin SB900–095, dated November 3, 2004 (SB). Replace any unairworthy part before further flight.

(c) Before the TT strap accumulates 1200 hours TIS, for any TT strap with less than 1190 hours TIS, remove the TT strap from the helicopter and do a visual and x-ray inspection in accordance with the Inspection Instructions, paragraph 2.B.(1). through (5). and Figures 1 and 2 of the SB. Replace any unairworthy part before further flight.

(d) The x-ray inspection of the TT strap must be performed by a Level II or higher x-ray technician who is qualified under the guidelines established by MIL–STD–410E, ATA Specification 105, AIA–NAS–410, or an FAA-accepted equivalent for qualification standards.

(e) Within 7 days, for any TT strap that you find unairworthy, report the helicopter serial number (S/N), the TT strap P/N and S/N, the total hours TIS on the TT strap, and a description of the part condition rendering it unairworthy. Report the information to Roger Durbin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210.

(f) Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(g) This AD revises the Airworthiness Limitations section of the maintenance manual by reducing the life limit of the TT strap, P/N 900R3442009–103 and 900R6442009–103, from 3034 hours TIS to 2500 hours TIS.

(h) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification, Transport Airplane Directorate, FAA, for information about previously approved alternative methods of compliance.

(i) The inspections shall be done in accordance with MD Helicopters Service Bulletin SB900–095, dated November 3, 2004. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR

part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at *www.mdhelicopters.com*. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(j) This amendment becomes effective on December 7, 2004.

Issued in Fort Worth, Texas, on November 10, 2004.

**Kim Smith,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 04–25542 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–U

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19242; Directorate Identifier 2004–NE–21–AD; Amendment 39–13871; AD 2004–23–16]**

**RIN 2120–AA64**

## Airworthiness Directives; McCauley Propeller Systems Five-Blade Propeller Assemblies

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for McCauley Propeller Systems propeller assemblies, part numbers (P/Ns) B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0, installed on BAE Systems (Operations) Limited Jetstream Model 4100 series airplanes. This AD requires a one-time eddy-current inspection of the propeller hub for cracks, and if necessary, replacing the propeller assembly. This AD results from three reports of cracked hubs. We are issuing this AD to detect cracked hubs, which could cause failure of the propeller hub and loss of control of the airplane.

**DATES:** This AD becomes effective December 7, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of December 7, 2004.

We must receive any comments on this AD by January 21, 2005.

**ADDRESSES:** Use one of the following addresses to comment on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704, U.S.A.; telephone (800) 621–7767, for the service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7132; fax: (847) 294–7834.

**SUPPLEMENTARY INFORMATION:** We have received three reports of cracks in the hubs of certain McCauley Propeller Systems propeller assemblies. An operator reported an oil leak at the end of a flight. Investigation revealed a significant crack in the propeller hub. In addition, the same operator reported cracks in two other hubs that might be related to the first report. In both of those reports, the operator inspected the hub because of reported oil leaks. The operator performed a voluntary inspection program, and did not find any more cracks. About 30 percent of the remaining fleet has complied with the voluntary inspection over the past several months. No operator has reported any more cracked hubs. Although we believe the cracks are caused by fatigue, we don't know the exact cause. One possibility is that operating the propeller in the restricted RPM range during ground operation is contributing to premature failure of the propeller hub. This condition, if not corrected, could result in failure of the propeller hub and loss of control of the airplane.

### Relevant Service Information

We have reviewed and approved the technical contents of McCauley Alert Service Bulletin (ASB) No. ASB247A, Revision A, dated August 18, 2004. That ASB describes procedures for removing the propeller from the airplane, performing an eddy-current inspection, and installing the propeller after the inspection.

### FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other McCauley Propeller Systems propeller assemblies, P/Ns B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0, of the same type design. We are issuing this AD to detect cracked hubs, which could cause failure of the propeller hub and loss of control of the airplane. This AD requires performing a one-time eddy-current inspection of the propeller hub for cracks within:

- 200 hours time-since-last inspection (TSLI), but not later than 30 days after the effective date of this AD, on propeller assemblies with more than 8,000 hours time-in-service (TIS) and, if necessary, replacing the propeller assembly.
- 400 hours TSLI, but not later than 60 days after the effective date of this AD, on propeller assemblies with 8,000 or fewer hours TIS and, if necessary, replacing the propeller assembly.

You must use the service information described previously to perform the actions required by this AD.

### FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in fewer than 30 days.

### Interim Action

These actions are interim actions and we might take further rulemaking actions in the future.

### Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send any written relevant data, views, or arguments on this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2004–19242; Directorate Identifier 2004–NE–21–AD'' in the subject line of

your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to adjust it.

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

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

## Examining the AD Docket

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

## Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

**2004–23–16 McCauley Propeller Systems:** Amendment 39–13871. Docket No. FAA–2004–19242; Directorate Identifier 2004–NE–21–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective December 7, 2004.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McCauley Propeller Systems propeller assemblies, part numbers (P/Ns) B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0, installed on BAE Systems (Operations) Limited Jetstream Model 4100 series airplanes.

**Unsafe Condition**

(d) This AD results from three reports of cracked hubs. We are issuing this AD to detect cracked hubs, which could cause failure of the propeller hub and loss of control of the airplane.

**Compliance**

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

**Onetime Eddy-Current Inspection**

(f) Perform a onetime eddy-current inspection using the compliance times specified in Table 1 of this AD. Use 1.A. through 2.D.(7)(c) of the Accomplishment Instructions of McCauley Alert Service Bulletin (ASB) No. ASB247A, Revision A, dated August 18, 2004.

TABLE 1.—COMPLIANCE TIMES

| If the propeller assembly has . . . | Then inspect . . . |
|---|---|
| (1) More than 8,000 hours time-in-service (TIS) on the effective date of this AD. | Within 200 hours time-since-last inspection (TSLI) or within 30 days after the effective date of this AD, whichever is earlier. |
| (2) 8,000 or fewer hours TIS on the effective date of this AD. | Within 400 hours TSLI or within 60 days after the effective date of this AD, whichever is earlier. |

**Credit for Previous Compliance**

(g) Performing the eddy-current inspection using McCauley ASB No. A247, dated April 30, 2004, is acceptable for compliance with this AD.

**Reporting Requirements**

(h) The reporting requirement specified in 2.D.(5) of the Accomplishment Instructions of Alert Service Bulletin No. ASB247A, Revision A, dated August 18, 2004, are approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

**Alternative Methods of Compliance**

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

**Material Incorporated by Reference**

(j) You must use McCauley Propeller Systems Alert Service Bulletin No. ASB247A, Revision A, dated August 18, 2004, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704, U.S.A.; telephone (800) 621–7767. You may review copies on the internet at *http://dms.dot.gov*, or at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Related Information**

(k) None.

Issued in Burlington, Massachusetts, on November 10, 2004.

**Peter A. White,**

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

[FR Doc. 04–25543 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19618; Directorate Identifier 2004–CE–39–AD; Amendment 39–13872; AD 2004–23–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Mooney Airplane Company, Inc., Model M20M Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) to supersede Airworthiness Directive 91–03–15, which applies to certain Mooney Airplane Company, Inc., (Mooney) Model M20M airplanes. AD 91–03–15 currently requires you to replace the tailpipe coupling with improved tailpipe coupling. Since we issued AD 91–03–15, a fire erupted in the lower left cockpit area on one of the airplanes affected by AD 91–03–15. The V-clamp that attaches the exhaust tailpipe to the turbocharger fell off, which allowed the exhaust tailpipe to detach from the turbocharger. Hot exhaust gases from the turbocharger outlet blasted the lower left firewall. This AD requires you to replace the existing radiant heat shield with the new improved design heat shield, deflector kit; replace the existing exhaust tailpipe-to-turbocharger V-band clamp with the new design V-band clamp; and modify the hydraulic brake fluid poly line. We are issuing this AD to prevent the V-clamp from detaching from the turbocharger and to prevent exposure of the firewall to hot exhaust gases, which could result in an in-flight fire. An in-flight fire could lead to loss of control of the airplane and passenger injury.

**DATES:** This AD becomes effective on December 1, 2004.

As of December 1, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by January 12, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Mooney Airplane Company, Inc., Louis Schreiner Field, Kerrville, Texas 78028; telephone: (830) 896–6000.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2004–19618.

**FOR FURTHER INFORMATION CONTACT:** Garry D. Sills, Aerospace Engineer, Rotorcraft Directorate, ASW–150, 2601 Meacham Blvd, Fort Worth, Texas 76193; telephone: (817) 222–5154; facsimile: (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

*Has FAA taken any action to this point?* The FAA issued AD 91–03–15, Amendment 39–6870 to prevent the discharge of high temperature exhaust gases inside the engine compartment that could result in the airplane cabin catching fire for certain Mooney Model M20M airplanes. AD 91–03–15 currently requires replacing the tailpipe coupling.

*What has happened since AD 91–03–15 to initiate this AD action?* The FAA received a report that a fire erupted below the pilot's rudder pedals shortly after takeoff on one of the airplanes affected by AD 91–03–15, which caused smoke to fill the cabin. Investigation revealed that the V-clamp attaching the exhaust tailpipe to the turbocharger had fallen off. This allowed the exhaust tailpipe to drop away form the turbocharger. Hot exhaust gases from the turbocharger outlet were blasted onto the lower left firewall. The fire ignited in the left lower cockpit area below the rudder/brake pedals and behind the firewall. Hydraulic fluid ignited when a plastic hydraulic supply line behind the firewall melted.

*What is the potential impact if FAA took no action?* The V-clamp could detach from the turbocharger and expose the firewall to hot exhaust gases, which could result in an in-flight fire. An in-flight fire could lead to loss of control of the airplane and passenger injury.

*Is there service information that applies to this subject?* Mooney has issued Service Bulletin M20–283A, dated March 30, 2004.

*What are the provisions of this service information?* The service bulletin includes procedures for:

—Replacing the existing radiant heat shield with the new heat shield, deflector kit;
—Replacing the existing exhaust tailpipe-to-turbocharger V-band clamp; and
—Modifying the hydraulic brake fluid poly line.

### FAA's Determination and Requirements of the AD

*What has FAA decided?* We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Mooney Model M20M airplanes of the same type design, we are issuing this AD to prevent the V-clamp from detaching from the turbocharger and to prevent exposure of the firewall to hot exhaust gases, which could result in an in-flight fire. An in-flight fire could lead to loss of control of the airplane and passenger injury.

*What does this AD require?* This AD supersedes AD 91–03–15 and requires you to incorporate the actions in the previously-referenced service bulletin.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs 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.

### Comments Invited

*Will I have the opportunity to comment before you issue the rule?* This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19618; Directorate Identifier 2004–CE–39–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

### 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 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–2004–19618; Directorate Identifier 2004–CE–39–AD'' in your request.

This rulemaking is promulgated under the authority in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with prescribing minimum standards required in the interest of safety for the design of aircraft. This regulation is within the scope of that authority since it corrects an unsafe condition in the design of the aircraft caused by the V-clamp detaching from the turbocharger and exposing the firewall to hot exhaust gases.

### 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. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 91–03–15, Amendment 39–6870 and by adding a new AD to read as follows:

**2004–23–17 Mooney Airplane Company, Inc.:** Amendment 39–13872; Docket No. FAA–2004–19618; Directorate Identifier 2004–CE–39–AD. Supersedes AD 91–03–15; Amendment 39–6870.

**When Does This AD Become Effective?**

(a) This AD becomes effective on December 1, 2004.

**Are Any Other ADs Affected by This Action?**

(b) Yes. This AD supersedes AD 91–03–15, Amendment 39–6870.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Model M20M airplanes, serial numbers 27–0001 through 27–0321, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of an in-flight cockpit fire. We are issuing this AD to prevent the V-clamp from detaching from the turbocharger and to prevent exposure of the firewall to hot exhaust gases, which could result in an in-flight fire. An in-flight fire could lead to loss of control of the airplane and passenger injury.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Remove the existing radiant heat shield, part number (P/N) 600182–501 (A), and replace with the new radiant heat shield, P/N 600182–501 (B), and install the new heat shield deflector, P/N 600505–001. Remove the existing V-band clamp, P/N 55677–340M or 40D21162–340M, and install the new V-band clamp, P/N NH1009399–10 or 40D23255–340M. | Within 10 hours time-in-service (TIS) after December 1, 2004 (the effective date of this AD), unless already done. If you have already incorporated all parts of Mooney Airplane Company, Inc. Service bulletin M20–283, dated January 3, 2004, then you only have to replace the tailpipe V-band clamp with the new configuration V-band clamp, P/N NH109399–10 or 40D23255–340M. | Follow Mooney Airplane Company, Inc. Service Bulletin M20–283A, dated March 30, 2004. |
| (2) Modify the hydraulic brake fluid poly line ..... | Within 10 hours TIS after December 1, 2004 (the effective date of this AD), unless already done. If you have already incorporated all parts of Mooney Airplane Company, Inc. Service Bulletin M20–283, dated January 3, 2004, then you only have to replace the tailpipe V-band clamp with the new configuration V-band clamp, P/N NH109399–10 or 40D23255–340M. | Follow Mooney Airplane Company, Inc. Service Bulletin M20–283A, dated March 30, 2004. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Fort Worth Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Garry D. Sills, Aerospace Engineer, Rotorcraft Directorate, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone: (817) 222–5154; facsimile: (817) 222–5960.

(1) Alternative methods of compliance (AMOC) approved for AD 91–03–15 are not considered approved as an AMOC for this AD.

(2) You may have already done the actions of this AD per an AMOC from 91–03–15. If so, no further action is required.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Mooney Airplane Company, Inc. Service Bulletin M20–283A, dated March 30, 2004. 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 Mooney Airplane Company, Inc., Louis Schreiner Field, Kerrville, Texas 78028; telephone: (830) 896–6000. 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–2004–19618.

Issued in Kansas City, Missouri, on November 12, 2004.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–25595 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–19325; Airspace Docket No. 04–ACE–54]**

## Modification of Class E Airspace; Dodge City, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; correction.

**SUMMARY:** This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, October 19, 2004, (69 FR 61439) (FR Doc. 04–23387). It corrects errors in the legal descriptions of the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS.

**DATES:** This direct final rule is effective on 0901 UTC, January 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:**

### History

**Federal Register** document 04–23387, published on Tuesday, October 19, 2004 (69 FR 61439), modified the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS. The modification corrected discrepancies in the Dodge City Regional Airport airport reference point (ARP) used in the legal descriptions, corrected the airspace dimensions to protect for diverse departures, established an extension to the airspace area extending upward from 700 feet above the surface and brought the legal descriptions of the Dodge City, KS Class E airspace areas into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. However, the Dodge City Regional Airport ARP has since been recomputed requiring a further revision to the Dodge City, KS Class E airspace areas.

■ Accordingly, pursuant to the authority delegated to me, the legal descriptions of the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS, as published in the **Federal Register** on Tuesday, October 19, 2004, (69 FR 61439) (FR Doc. 04–23387) are corrected as follows:

## PART 71—[CORRECTED]

**§ 71.1 [Corrected]**

■ On page 61440, Column 2, change the third paragraph to read:

**"ACE KS E2 Dodge City, KS**

Dodge City Regional Airport, KS
(Lat. 37°45′53″ N., long. 99°58′00″ W.)

Within a 4.2-mile radius of Dodge City Regional Airport."

■ On page 61440, Column 2, change the fifth paragraph to read:

**"ACE KS E5 Dodge City, KS**

Dodge City Regional Airport, KS
(Lat. 37°45′53″ N., long. 99°58′00″ W.)
Dodge City VORTAC
(Lat. 37°51′02″ N., long. 100°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Dodge City Regional Airport and within 1.9 miles each side of the Dodge City VORTAC 160° radial extending from the 6.7-mile radius of the airport to 17 miles southeast of the VORTAC."

Issued in Kansas City, MO, on November 4, 2004.

**Anthony D. Roetzel,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 04–25700 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–M

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Parts 37 and 38

**RIN 3038–AC14**

## Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is amending its regulations to revise the application and review procedures for registration as a Derivatives Transaction Execution Facility (DTEF) or designation as a Contract Market (DCM). The amendments eliminate the presumption of automatic fast-track review of applications and replace it with the presumption that all applications will be reviewed pursuant to the statutory 180-day timeframe and procedures

specified in Section 6(a) of the Commodity Exchange Act (CEA or Act). In lieu of the automatic fast-track review (under which applicants were deemed to be registered as DTEFs 30 days, or designated as DCMs 60 days, after receipt of an application), the amendments permit applicants to request expedited review and to be registered as a DTEF or designated as a DCM by the Commission not later than 90 days after the date of receipt of the application. The amendments also, among other things, more completely identify application content requirements; provide that review under the expedited review procedures may be terminated if it appears that the application is materially incomplete, raises novel or complex issues that require additional time for review, or has undergone substantive amendment or supplementation during the review period; reorganize the paragraphs being revised; and eliminate duplication. The amendments are responsive to the Commission's experience in processing applications and reflect administrative practices that have been implemented since the rules were first adopted.

**DATES:** Effective December 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Duane C. Andresen, Special Counsel, (telephone 202–418–5492, e-mail *dandresen@cftc.gov*), Division of Market Oversight, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. This document is also available at *http://www.regulations.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Overview*

The Commission adopted the application procedures specified in Commission Regulations 37.5 [1] and 38.3 [2] for boards of trade applying to be registered as DTEFs or designated as DCMs in 2001 when it first implemented the Commodity Futures Modernization Act of 2000 (CFMA).[3] These procedures presume that an application will be submitted and reviewed pursuant to a fast-track procedure under which a board of trade is deemed to be designated as a DCM 60 days after submitting its application,[4] or registered as a DTEF 30 days after submitting its application,[5] unless notified otherwise during the respective review period. These fast-track review periods are substantially shorter than the 180-day review period specified in Section 6(a) of the Act for reviewing DCM and DTEF applications.[6] The rules provide procedures for terminating the fast-track review, including termination by the Commission if it appears that the application's form or substance fails to meet the requirements of the Commission's regulations.[7]

Among other things, the application procedures also generally identify information required to be included in applications for registration as a DTEF [8] or designation as a DCM,[9] require that the applicant support requests for confidential treatment of information included in the application with reasonable justification,[10] and identify where additional guidance for applicants can be found.[11] The rules also provide procedures for the withdrawal of an application for registration or vacation of registration as a DTEF [12] and for the withdrawal of an application for designation or vacation of designation as a DCM,[13] and specify the extent of the delegation of authority from the Commission to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, with respect to the termination of expedited review procedures.[14]

### *B. The Proposed Amendments*

On September 1, 2004, the Commission published proposed amendments to its part 37 and 38 regulations governing application procedures.[15] The proposed amendments would modify the application procedures in a number of respects. With respect to the timeliness of the review of applications generally, the proposed amendments would establish the presumption that all applications are submitted for review under the 180-day timeframe specified in section 6(a) of the Act.[16] An expedited 90-day review could be requested by the applicant, in which case the Commission would register the applicant as a DTEF or designate the applicant as a DCM during or by the end of the 90-day period unless the Commission terminated the expedited review for certain specifically identified reasons. The proposed amendments would lengthen the expedited review periods for DCM applications by 30 days and for DTEF applications by 60 days. The longer time periods were believed to be necessary, based upon the Commission's review of eight DCM applications under the current DCM expedited review period, to ensure a comprehensive review of applications and to meet other public policy objectives, including the Commission's policy to promote transparency in Commission operations, implemented in August of 2003, by providing for the posting of all such applications on the Commission's website for a period of at least 15 days for public review and comment.[17] The proposed 90-day review period should provide sufficient time to review applications and to respond to any public comments. While longer than the current fast-track review periods, the 90-day review period would be substantially shorter than the 180-day review period established under the Act.[18]

The proposed amendments would also modify the Commission's internal processing procedures under which an applicant would be registered as a DTEF or designated as a DCM. Under the proposal, an applicant would no longer be deemed to be registered or designated based upon the passage of time (30 days for DTEFs, 60 days for DCMs). If the applicant requested expedited review, the Commission would take affirmative action to register or designate the applicant as a DTEF or DCM, respectively, subject to conditions if appropriate, not later than 90 days after receipt of the application, unless the Commission terminated the expedited review. Thus, registration as a DTEF or designation as a DCM would involve affirmative action by the Commission, which would normally be in the form of issuance of a Commission order. It would be possible, under the proposed procedures, for applicants who submit

[1] 17 CFR 37.5.

[2] 17 CFR 38.3.

[3] *See* 66 FR 42256 (August 10, 2001). The CFMA, Appendix E of Pub. L. 106–554, 114 Stat. 2763, substantially revised the Commodity Exchange Act, 7 U.S.C. 1 *et seq*.

[4] 17 CFR 38.3(a)(1).

[5] 17 CFR 37.5(b).

[6] *See* 7 U.S.C. 8(a).

[7] 17 CFR 37.5(d), 38.3(c).

[8] 17 CFR 37.5(b)(1)(iii).

[9] 17 CFR 38.3(a)(1)(iii).

[10] 17 CFR 37.5(b)(1)(v); 38.3(a)(1)(v).

[11] 17 CFR 37.5(c); 38.3(b).

[12] 17 CFR 37.5(e).

[13] 17 CFR 38.3(d).

[14] 17 CFR 37.5(f); 38.3(e).

[15] 69 FR 53367 (September 1, 2004).

[16] Under the current rules, DCM and DTEF applications are routinely reviewed under the fast-track procedures unless the applicant instructs the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act. *See* 17 CFR 37.5(b)(1)(vi); 38.3(a)(1)(vi).

[17] The Commission has recently proposed revisions to Commission Regulation 40.8 to specify which portions of an application for registration as a DTEF or designation as a DCM will routinely be made public. *See* 69 FR 44981 (July 28, 2004).

[18] Although the Commission has not yet reviewed an application to become registered as a DTEF under the fast track procedure, it anticipates that such an application would likely require a review period similar to that experienced in the review of DCM applications. Accordingly, the Commission proposed to conform the DTEF expedited review period to that applicable to DCMs.

applications that are complete and not amended or supplemented during the review period to be registered as a DTEF or designated as a DCM in less than 90 days.

With respect to the termination of expedited review, the rules provide that fast-track review may be terminated because the application's form or substance fails to meet the requirements of Part 37 or 38, as appropriate, or upon written instruction of the applicant during the review period. The proposed amendments would clarify and expand the rationale for terminating expedited review and would provide that the expedited review period also could be terminated if the application is materially incomplete, raises novel or complex issues that require additional time for review or, as more fully described below, undergoes major amendment or supplementation. If expedited review were terminated for any of the reasons cited above, the application would continue to be reviewed pursuant to the 180-day statutory procedure. Finally, the proposed amendments would delete the provision of the rules that would require the Commission, upon terminating fast-track review, to commence a proceeding to deny a DCM or DTEF application upon the request of the applicant. This procedure has proved to be unnecessary to date, and an analogous procedure is available under the statutory review procedure.[19]

In order to further enhance the application process, the proposed amendments would more completely identify and expand the information required to be provided by an applicant under both the statutory 180-day and the expedited 90-day review procedures. The proposal would clarify that the rules required to be included in all applications are those rules as defined in Commission Regulation 40.1 and would more clearly identify the documents required to be provided pertaining to the applicant's legal status and governance structure. The Commission anticipates that such documents would include copies of corporate charters, limited liability corporation or partnership agreements, and the like.[20]

The proposed amendments would make it clear that all applicants would be required to submit for review an executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant that enable the applicant to comply with a requirement for trading or registration criterion (DTEFs) or a designation criterion or core principle (DCMs) and that final, signed copies of such documents would be required to be submitted prior to registration or designation. The initial application would be required to include something more than a letter of intent or draft contract or agreement, such as a final contract or agreement signed by at least one of the parties. While the Commission is cognizant that applicants may prefer to defer the finalization of contracts in order to defer associated costs until registration or designation, it must balance that preference against the assurance that a contract or agreement will actually be executed prior to registration or designation.

With respect to the additional information that would be required to be submitted as part of the application,[21] the proposed amendments would require that applicants submit a ''regulatory chart'' that describes the manner in which the items included in the application enable the applicant to comply with each requirement for trading and registration criterion (DTEFs) or with each designation criterion and core principle (DCMs). The proposal would also require that the applicant identify any item included in the application that raises novel issues and explain how that item satisfies the requirements for trading or the registration criteria (DTEFs) or the designation criteria or the core principles (DCMs). In addition, the proposed amendments would require that the applicant submit a copy of any manual or other document describing the manner in which the applicant will conduct trade practice, market, and financial surveillance. Based upon experience in reviewing DCM applications, the Commission recognizes that this additional information is necessary for Commission review of the application when determining whether the applicant satisfies the requirements for trading and registration criteria (DTEFs) or the designation criteria and core principles (DCMs). Finally, the proposed amendments would eliminate the requirement that the applicant support requests for confidential treatment of information included in the application with reasonable justification. The Commission believes that the procedures provided in Commission Regulation 145.9, Petition for confidential treatment of information submitted to the Commission, should be followed by all applicants.

Under the proposed amendments, the items required to be included in an application to be reviewed under the statutory 180-day review procedures would be identical to those required to be included in an application to be reviewed under the expedited review procedures with the following exceptions for the expedited review applicants and applications: (1) The applicant must request expedited review; and (2) the application must not be amended or supplemented by the applicant, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions. The proposal would provide that amending or supplementing an application in a manner that is inconsistent with the above provision would result in termination of the expedited review.

The proposed amendments would also modify and standardize the delegation of authority provisions applicable to applications for registration as a DTEF and for designation as a DCM. Currently, the rules provide for the delegation of authority to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, (1) to terminate the fast-track review of both types of applications and (2) to designate an applicant as a DCM subject to conditions. Under the proposed amendment, the Commission would also delegate to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, the authority to stay the running of the 180-day statutory review period for both types of applications if they are materially incomplete, as is provided under section 6(a) of the Act. Because one result of the proposed amendments would be that registration as a DTEF and designation as a DCM would involve affirmative action on the part of the Commission, the proposal would rescind the delegation of the authority to designate the applicant as a DCM subject to conditions.

Finally, the proposed amendments would reorganize the sequence of paragraphs in the rules where appropriate and to make minor word changes and deletions in order to clarify the application requirements. The proposal would also delete certain guidance regarding applications for designation as that information

[19] *See* 7 U.S.C. 8(a).

[20] The proposal adds the requirement that DTEF applications also must include a copy of any documents describing the applicant's legal status and governance structure.

[21] It should be noted that the ''additional information'' referred to herein is additional only in the sense that the proposal specifically codifies the information that must be included in an application. In fact, Commission staff has been requesting this type of information from each of the DCM applicants that have applied.

duplicates information available elsewhere in Part 38.[22]

*C. Comments and Final Rule*

In response to the proposed amendments, the Commission received comment letters from the Chicago Mercantile Exchange and the Chicago Board of Trade (CBOT), both of which voiced support for the proposed amendments. With respect to the proposed application content requirements, however, the CBOT, suggested that the Commission should also require submission of documents detailing the applicant's plans to offer payment for order flow, or other incentives that could encourage wash trading or compromise the fiduciary responsibilities of intermediaries, as well as documentation of plans to allow or encourage trading off the centralized market. The Commission has carefully considered this suggestion, but does not believe that the application content requirements need to be expanded to include this information.

If an applicant's plans regarding payment for order flow [23] or other incentive plans are established at the time of the application, it is expected that they would be included in the application because they would be considered to be rules and the applicant's proposed rules are required to be submitted as part of the application. The same is true with respect to plans to allow or encourage trading off the centralized market, such as block trading. Of course, any proposal to implement incentive and/or off-centralized market trading plans after DCM designation or DTEF registration would have to be submitted to the Commission by the registrant as rule changes, either seeking Commission approval or certifying compliance with designation criteria and core principles (DCM) or with core principles (DTEF) as required under the Act.

Although the Commission expects that an application represents the applicant's actual business plan at the time of its submission, the Commission has never required an applicant to reveal all of its potential future plans, which may be in various stages of development and indeed may never be adopted, when considering whether the application satisfies the designation criteria and core principles. Commission staff appropriately considers the materials filed and representations made by an applicant in drawing conclusions as to whether designation or registration is warranted. Subsequent to designation or registration, the DCM or DTEF may adopt changes to its rules and procedures; however, under the Act, DCMs and DTEFs must, on a continuing basis, comply with all designation criteria and core principles (DCMs) and core principles (DTEFs). In implementing changes to their business plans, DCMs and DTEFs seek Commission approval or certify compliance with the designation criteria and core principles, as applicable, as required under the Act. The Commission considers whether to approve new rules or rule amendments or whether to take action concerning certifications when a DCM or DTEF proposes to implement its revised plans.[24]

For the reasons cited above, the Commission does not believe that the application content requirements need to be expanded to include documents detailing the applicant's incentive plans or documentation of plans to allow or encourage trading off the centralized market. After careful review and consideration of the comments received, the Commission has determined to adopt the proposed amendments to the application procedures as written. The Commission continues to encourage would-be applicants to consult with Commission staff prior to formally submitting a DTEF or DCM application to help ensure that an application, once formally submitted, will be reviewed in a timely manner.

**Related Matters**

*A. The Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect DCMs and DTEFs. The Commission has previously established certain definitions of small entities to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[25] In its previous determinations, the Commission has concluded that DCMs and DTEFs are not small entities for the purpose of the RFA.[26]

In the proposed rules, the Commission solicited comment on whether the proposed amendments would have a significant impact on a substantial number of small entities. The Commission received no comments in response to this request. Accordingly, the Commission hereby determines that the rules, as adopted herein, will not have a significant economic impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

*B. The Paperwork Reduction Act*

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Commission submitted a copy of the proposed rule amendments to the Office of Management and Budget for its review. The Commission did not receive any public comments relative to its analysis of paperwork burdens associated with this rulemaking.

*C. Cost Benefit Analysis*

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1)

[22] The guidance provided in 17 CFR 38.3(b) is discussed more completely in Appendices A and B to Part 38.

[23] The term ''payment for order flow'' is more commonly used to describe incentives offered by securities exchanges or market makers to securities brokers to direct orders to a particular exchange or an over-the-counter (OTC) dealer. Commission staff generally views these plans as volume discount programs because their primary purpose is to enhance volume by discounting transaction costs.

[24] For instance, when reviewing an incentive program proposed to be adopted by a DCM, Commission staff's regulatory analysis of the proposed rule would focus on the manner of implementation and the potential for distorting open, competitive, and efficient trading by facilitating illegal trading practices, such as wash or fictitious trading. DCMs are obligated by Core Principle 2 to monitor trading for trade practice abuses. Staff would also analyze a plan's potential for eroding fiduciary obligations owed by futures brokers to customers. Core Principle 12 requires that DCMs establish and enforce rules that protect market participants from abusive trading practices committed by any party acting as an agent for a participant, and in a situation where a broker handles an order that could be executed at more than one exchange, Commission staff would want to ensure that an incentive plan does not compromise the broker's fiduciary obligations.

[25] 47 FR 18618, 18618–21 (April 30, 1982).

[26] 47 FR 18618, 18619 (April 30, 1982) (discussing DCMs); 66 FR 42256, 42268 (August 10, 2001) (discussing DTEFs).

Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission published an analysis of costs and benefits when it proposed the rule amendments that have now been adopted.[27] The Commission did not receive any public comments pertaining to the analysis.

**List of Subjects**

*17 CFR Part 37*

Commodity futures, Commodity Futures Trading Commission.

*17 CFR Part 38*

Commodity futures, Commodity Futures Trading Commission.

■ In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 2, 3, 4, 4c, 5, 5a and 8a of the Act, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

■ 1. The authority citation for Part 37 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 7a and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 2. Revise § 37.5 to read as follows:

### § 37.5 Procedures for registration.

(a) *Notification by contract markets.* (1) To operate as a registered derivatives transaction execution facility pursuant to section 5a of the Act, a board of trade that is designated as a contract market, which is not a dormant contract market as defined in § 40.1 of this chapter, must:

(i) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility's rules (as defined in § 40.1 of this chapter) or a list of the designated contract market's rules that apply to the operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of section 5a(b) of the Act; and

(B) The criteria for registration under section 5a(c) of the Act.

(ii) Comply with the core principles for operation under section 5a(d) of the Act and the provisions of this part 37.

(2) Before using the notification procedure of paragraph (a)(1)(i) of this section for registration as a derivatives transaction execution facility, a dormant contract market, as defined in § 40.1 of this chapter, must reinstate its designation under § 38.3(a)(3) of this chapter.

(b) *Application Procedures.* (1) *Statutory (180-day) review procedures.* A board of trade desiring to be registered as a derivatives transaction execution facility shall file an application for registration with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (b)(2) of this section, the Commission will review the application for registration as a derivatives transaction execution facility pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, register the applicant as a derivatives transaction execution facility subject to conditions.

(i) The applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37.

(ii) The application must include the following:

(A) The derivatives transaction execution facility's rules (as defined in § 40.1 of this chapter);

(B) Any technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, descriptions of the trading mechanism or algorithm used or to be used by such facility, and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a requirement for trading or a registration criterion (final, executed copies of such documents must be submitted prior to registration);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 37.5(b)(1)(ii)(A) through (E) enable or empower the applicant to comply with each requirement for trading and registration criterion (a regulatory chart); and

(G) To the extent that any of the items in § 37.5(b)(1)(ii)(A) through (E) raise issues that are novel, or for which compliance with a requirement for trading or condition for registration is not self-evident, an explanation of how that item and the application satisfy the requirements for trading and registration criteria.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be registered as a derivatives transaction execution facility may request that its application be reviewed on an expedited basis and that the applicant be registered as a derivatives transaction execution facility not later than 90 days after the date of receipt of the application for registration by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 37.5(c), the Commission will register the applicant as a derivatives transaction execution facility during the 90-day period. If deemed appropriate by the Commission, the registration may be subject to such conditions as the Commission may stipulate.

(i) The applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37;

(ii) The application must include the items described in § 37.5(b)(1)(ii) and (iii); and

(iii) The applicant must not amend or supplement the application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive

[27] 69 FR 53367, 53370 (September 1, 2004).

revisions, during the 90-day review period.

(c) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (b)(2) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section, and will review the application under the 180-day time period and procedures of section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete;

(ii) Fails in form or substance to meet the requirements of this part;

(iii) Raises novel or complex issues that require additional time for review; or

(iv) Is amended or supplemented in a manner that is inconsistent with § 37.5(b)(2)(iii).

(2) The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(3) The termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 37.5(b)(2)(iii).

(d) *Reinstatement of dormant registration.* Before listing products for trading, a dormant derivatives transaction execution facility as defined in § 40.1 must reinstate its registration under the procedures of paragraphs (a)(1), (b)(1) or (b)(2) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, authority to notify the applicant seeking registration under section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (b)(2) of this section is terminated.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

(f) *Request for withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (b)(1) or (b)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for registration was pending with the Commission.

(g) *Request for vacation of registration.* A registered derivatives transaction execution facility may vacate its registration under section 7 of the Act by filing such a request with the Commission at its Washington, DC, headquarters. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was registered by the Commission.

(h) *Guidance for applicants.* Appendix A to this part provides guidance on how the registration criteria in section 5a(c) of the Act can be satisfied.

## PART 38—DESIGNATED CONTRACT MARKETS

■ 1. The authority citation for Part 38 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 2. Revise § 38.3 to read as follows:

### § 38.3 Procedures for designation.

(a) *Application procedures.* (1) *Statutory (180-day) review procedures.* A board of trade desiring to be designated as a contract market shall file an application for designation with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(2) of this section, the Commission will review the application for designation as a contract market pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, designate the applicant as a contract market subject to conditions.

(i) The applicant must demonstrate compliance with the criteria for designation of section 5(b) of the Act, the core principles for operation of section 5(d) of the Act and the provisions of this part 38.

(ii) The application must include the following:

(A) A copy of the applicant's rules (as defined in § 40.1 of this chapter) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure, including governance fitness information;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principle (final, executed copies of such documents must be submitted prior to designation);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 38.3(a)(1)(ii)(A) through (E) enable or empower the applicant to comply with each designation criterion and core principle (a regulatory chart); and

(G) To the extent that any of the items in § 38.3(a)(1)(ii)(A) through (E) raise issues that are novel, or for which compliance with a designation criterion or a core principle is not self-evident, an explanation of how that item and the application satisfy the designation criteria or the core principles.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be designated as a contract market may request that its application be reviewed on an expedited basis and that the applicant be designated as a contract market not later than 90 days after the date of receipt of the application for designation by the Secretary of the Commission. The 90-day period shall begin on the first business day (during

the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 38.3(b), the Commission will designate the applicant as a contract market during the 90-day period. If deemed appropriate by the Commission, the designation may be subject to such conditions as the Commission may stipulate.

(i) The applicant must demonstrate compliance with the criteria for designation of section 5(b) of the Act, the core principles for operation of section 5(d) of the Act and the provisions of this part 38;

(ii) The application must include the items described in § 38.3(a)(1)(ii) and (iii); and

(iii) The applicant must not amend or supplement the application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during the 90-day review period.

(b) *Termination of 90-day review*. (1) During the 90-day period for review pursuant to paragraph (a)(2) of this section, the Commission shall notify the applicant seeking designation that the Commission is terminating review under this section, and will review the application under the 180-day time period and procedures of section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete;

(ii) Fails in form or substance to meet the requirements of this part;

(iii) Raises novel or complex issues that require additional time for review; or

(iv) Is amended or supplemented in a manner that is inconsistent with § 38.3(a)(2)(iii).

(2) The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(3) The termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 38.3(a)(2)(iii).

(c) *Reinstatement of dormant designation*. Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) or (a)(2) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(d) *Delegation of authority*. (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, authority to notify the applicant seeking designation under section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (a)(2) of this section is terminated.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for withdrawal of application for designation*. An applicant for designation may withdraw its application submitted pursuant to paragraph (a)(1) or (a)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. Withdrawal of an application for designation shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for designation was pending with the Commission.

(f) *Request for vacation of designation*. A designated contract market may vacate its designation under section 7 of the Act by filing such a request with the Commission at its Washington, DC, headquarters. Vacation of designation shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

(g) *Guidance for applicants*. Appendix A to this part provides guidance on how the criteria for designation under section 5(b) of the Act can be satisfied. Appendix B to this part provides guidance on how the core principles of section 5(d) of the Act can be satisfied.

Issued in Washington, DC, on November 12, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04–25614 Filed 11–19–04; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 522

## Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone Acetate and Estradiol Benzoate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The supplemental NADA provides for the addition of statements to labeling of subcutaneous implants containing trenbolone acetate and estradiol benzoate warning against the use of these products in calves to be processed for veal.

**DATES:** This rule is effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 141–043 for SYNOVEX PLUS (trenbolone acetate and estradiol benzoate) and SYNOVEX CHOICE (trenbolone acetate and estradiol benzoate), two subcutaneous implants products used in steers and heifers fed in confinement for slaughter for increased rate of weight gain and/or improved feed efficiency. The supplemental NADA provides for the addition of statements to labeling warning against the use of these products in calves to be processed for veal. The supplemental application is approved as of October 28, 2004, and the regulations are amended in 21 CFR 522.2478 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

**List of Subjects in 21 CFR Part 522**

Animal drugs.

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

## PART 522–IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 522.2478 is amended by revising paragraphs (d)(1)(i)(C), (d)(1)(ii)(C), and (d)(2)(iii) to read as follows:

### § 522.2478 Trenbolone acetate and estradiol benzoate.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) *Limitations*. Implant subcutaneously in ear only. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(ii) * * *

(C) *Limitations*. Implant subcutaneously in ear only. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) * * *

(iii) *Limitations*. Implant subcutaneously in ear only. Not for subsequent breeding dairy or beef replacement heifers. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: November 10, 2004.

**Steven D. Vaughn,**

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

[FR Doc. 04–25878 Filed 11–19–04; 8:45 am]

BILLING CODE 4160–01–S

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 522

## Implantation or Injectable Dosage Form New Animal Drugs; Estradiol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental NADA provides for the addition of statements to labeling of subcutaneous implants containing estradiol warning against the use of these products in calves to be processed for veal.

**DATES:** This rule is effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to NADA 118–123 for ENCORE (estradiol) and COMPUDOSE (estradiol). The supplemental NADA provides for the addition of statements to labeling warning against the use of these products in calves to be processed for veal. The supplemental application is approved as of October 28, 2004, and the regulations are amended in 21 CFR 522.840 to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

**List of Subjects in 21 CFR Part 522**

Animal drugs.

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

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 522.840 is revised to read as follows:

### § 522.840 Estradiol.

(a) *Specifications*. Each silicone rubber implant contains 25.7 or 43.9 milligrams (mg) estradiol and is coated with not less than 0.5 mg oxytetracycline powder.

(b) *Sponsor*. See No. 021641 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.240 of this chapter.

(d) *Conditions of use*. For implantation in steers and heifers as follows:

(1) *Amount*. Insert one 25.7-mg implant every 200 days; insert one 43.9-mg implant every 400 days.

(2) *Indications for use*. For increased rate of weight gain in suckling and pastured growing steers; for improved feed efficiency and increased rate of weight gain in confined steers and heifers. No additional effectiveness may be expected from reimplanting in less than 200 days for the 25.7-mg implant or 400 days for the 43.9-mg implant.

(3) *Limitations.* For subcutaneous ear implantation in steers and heifers only. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: November 10, 2004.

**Steven D. Vaughn,**

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

[FR Doc. 04–25877 Filed 11–19–04; 8:45 am]

BILLING CODE 4160–01–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[OR–04–002; FRL–7835–2]**

## Approval and Promulgation of State Implementation Plans: Oregon

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA approves numerous revisions to the Oregon State Implementation Plan (SIP) in the State of Oregon Administrative Rules (OAR) relating to the inspection and maintenance (I/M) of motor vehicles. These revisions were submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, September 15, 2000, November 27, 2000, January 10, 2003, and April 22, 2004.

The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter CAA or Act).

EPA is also approving the re-numbering of the Motor Vehicle section of the Oregon Administrative Rules. Two non-SIP related rules are also removed from the SIP in this action.

**DATES:** This direct final rule will be effective on January 21, 2005, without further notice, unless EPA receives comment by December 22, 2004. If comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OR–04–002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *R10aircom@epa.gov.*
- Fax: (206)–553–0110.
- Mail: Office of Air, Waste, and Toxics, Environmental Protection Agency, Mail code: OAWT–107, 1200 Sixth Ave., Seattle, Washington 98101.
- Hand Delivery: Environmental Protection Agency, Office of Air, Waste, and Toxics, OAWT–107, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. OR–04–002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal 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 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 instructions on submitting comments, go to A. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* Publicly available docket materials are available in hard copy at the Office of Air, Waste, and Toxics, EPA Region 10, Mail code: OAQ–107, 1200 Sixth Ave., Seattle, Washington 98101; open from 8 a.m.—4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number is (206) 553–1463.

**FOR FURTHER INFORMATION CONTACT:** Wayne Elson, Office of Air, Waste and Toxics, EPA Region 10, Mail code: OAWT–107, 1200 Sixth Avenue, Seattle WA 98101, telephone number: (206) 553–1463, or e-mail address: *elson.wayne@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

The information in this section is organized as follows:

A. What Should I Consider as I Prepare My Comments for EPA?
B. What SIP Amendments Is EPA Approving?
C. What Are I/M Programs?
D. What Changes Have Been Made to Oregon's I/M Program That EPA Is Approving?
E. What Is the Enhanced Test Waiver and Why Is It Needed?
F. What Is a Qualified Household for the Enhanced Test Waiver?
G. Will This Waiver Affect Air Quality?
H. What Is On-Board Diagnostic (OBD) Testing?
I. What Is On-Site Vehicle Testing?
J. What Is Clean-Screen Testing?
K. What Is the Self-Service Test?
L. Are Clean Screen Testing and Self-Service Testing Required Tests?
M. Why Is EPA Taking No Action on Clean Screen Testing and the Self Service Test?
N. How Will These Approvals Change Ongoing Air Quality Planning in Oregon?

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

1. *Submitting Confidential Business Information (CBI).* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*B. What SIP Amendments Is EPA Approving?*

The following table outlines the submittals EPA received and is approving in this action:

| Date of submittal to EPA | Items revised |
|---|---|
| 11–5–1999 | —Renumbering of the Motor Vehicles Rule from Division 24 to Division 256 of the OAR. |
| 9–15–2000 | Submitted rule changes were superceded by rule revisions in later submittals listed below. |
| 11–27–2000 | —OAR 340–256–0355 Emissions Control Test Method for OBD Test Program.<br>—OAR 340–256–0440 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates.<br>—OAR 340–256–0465 Test Equipment Licensing Criteria for OBD Test Program. |
| 1–10–2003 | —OAR 340–256–0356 Emissions Control Test Method for On-Site Vehicle Testing for Automobile Dealerships. |
| 4–22–2004 | —OAR 340–256–0010 Definitions.<br>—OAR 340–256–0300 Scope.<br>—SIP Volume 2, Section 5.4 Motor Vehicle Inspection and Maintenance. |

The SIP revisions cover the addition of new rules and revisions to existing rules for I/M requirements in Division 256 Motor Vehicles (formerly Division 024). The submittal dated September 15, 2000 contained rules that were subsequently revised in later ODEQ submittals. Only the current version of each rule is being approved.

In addition to the rule revisions submitted by ODEQ, EPA is also approving rule renumbering for the Motor Vehicle Division 256 of the OAR. On November 5, 1999, ODEQ submitted a complete rule renumbering to EPA for approval into the SIP, with an effective date under State law of October 14, 1999. EPA approved portions of this submittal, but did not take action on Division 256 Motor Vehicles since the rules in this division had been subsequently revised by ODEQ. The rule renumbering is non-substantive.

EPA is removing the old rules (formerly Division 024) from the current SIP that are replaced and approved under the renumbering.

EPA is removing previously approved rules relating to noise emissions from the SIP in this action. These noise emissions rules were incorrectly approved into the SIP under a previous action. EPA also is removing the fee schedule for motor vehicle inspections.

Excess emissions rule revisions by the Lane Regional Air Pollution Authority (LRAPA) were submitted with the January 10, 2003 submittal. EPA is taking no action on the Excess Emissions Rules at this time.

ODEQ submitted two new rules for testing methods which include Clean Screen and Self Service testing. The rules state the possibility of implementation of this testing, but procedures and methods for implementation have not been developed and are currently not in place. Therefore, EPA is taking no action on these rules at this time.

The most salient aspects of approved rule changes include: revised rules for testing requirements based on vehicle model year, the introduction of the OBD test for 1996 and newer vehicles in the Portland and Medford area vehicle inspection programs, providing a waiver from the enhanced vehicle inspection testing requirements for vehicles owned by qualified households in the Portland vehicle inspection area, establishing an on-site vehicle testing program for used vehicles sold by auto dealers in the Portland and Medford areas, and revised rules for qualifications for testing personnel.

*C. What Are I/M Programs?*

In local areas I/M programs are designed to reduce motor vehicle emissions by requiring that vehicles periodically pass a tailpipe emissions test or, depending on the model year, a check of the OBD system. Vehicles emissions are reduced when vehicles are repaired in order to pass these tests.

*D. What Changes Have Been Made to Oregon's I/M Program That EPA Is Approving?*

Current SIP approved rules include the basic and enhanced test requirements. This approval adds the OBD test as a requirement for certain vehicles in the Portland Vehicle Inspection (VI) Area and Medford-Ashland Air Quality Maintenance Area (AQMA). The emission control test method for the OBD test and OBD test equipment licensing criteria are also included in these rule changes.

This approval also includes a waiver from the enhanced vehicle test for qualified households in the Portland VI Area. Households eligible for the waiver would still be required to take the basic emissions test. Qualifications for the waiver are based on household income.

EPA is also approving an on-site vehicle testing program for used vehicles sold by auto dealers in the Portland and Medford area. This is a voluntary program that allows on-site testing by ODEQ employees for manufacturer franchised auto dealers only.

This approval also includes revisions made to the criteria for qualifications for persons eligible to inspect motor vehicles to include qualifications for administering testing for new vehicle tests and test methods.

SIP Volume 2, Section 5.4 is a programmatic description of the Oregon I/M program including boundaries, performance standards, network type, tools, test frequency, quality control, waivers, and compliance, data collection, inspector training, and repair effectiveness. This description has been updated to reflect the changes to the program. EPA reviewed these changes and will approve this section.

*E. What Is the Enhanced Test Waiver and Why Is It Needed?*

This provision allows the waiver of some households from the enhanced vehicle emissions test. The waiver program is only for the Portland VI Area. The waiver would be granted based on household income. These households would still be required to take the basic emissions test. This waiver benefits households by reducing vehicle repair costs to meet emission standards. In a two-year pilot program, repair costs to meet the enhanced vehicle tests were higher than the cost of repairs to comply with the basic emissions test.

*F. What Is a Qualified Household for the Enhanced Test Waiver?*

A qualified household, under the enhanced test waiver program, has a net income of less than or equal to 1.3 times the Federal Poverty Guidelines for the year 2000. After the year 2000, the annual income requirement will be adjusted annually, using the Oregon Consumer Price Index for the Portland Metro Regional area.

*G. Will This Waiver Affect Air Quality?*

In order to amend the SIP to include this provision, the ODEQ must demonstrate that the waiver program will not result in an exceedance of air quality standards. The information collected from a two-year pilot waiver program has shown that the number of vehicles granted waivers under this program would have a negligible effect on air quality.

*H. What Is On-Board Diagnostic (OBD) Testing?*

OBD is a term describing a vehicle's on-board computer that monitors how certain vehicle components function. The OBD system alerts drivers of malfunctions in systems that affect exhaust emissions such as the oxygen sensor, exhaust gas re-circulation system, fuel system, catalytic converter, etc. The OBD system continuously monitors engine systems and detects problems early.

If a vehicle's computer system detects a malfunction, the computer stores a code that can aid in diagnosis of vehicle problems that can affect air quality. During emissions testing, a computer checks for these stored trouble codes by downloading the vehicle's computer, and the dashboard malfunction light is also checked.

*I. What Is On-Site Vehicle Testing?*

On-site testing is vehicle emissions testing that takes place at an auto dealer's location, instead of at a ODEQ vehicle testing facility. ODEQ will perform the on-site testing using a traveling van equipped with OBD testing equipment. The OBDII test will be given to 1996 and newer model year vehicles equipped with OBDII systems. If a vehicle fails the test, the vehicle must be repaired before being re-tested.

Auto dealers may elect to take vehicles to ODEQ centralized testing locations if they decide not to participate in the on-site testing.

*J. What Is Clean-Screen Testing?*

The clean screen test evaluates vehicle emissions while on the roadway to determine whether a vehicle has acceptable emissions. Clean screen testing may be administered using several methods. One technique would optically measure emissions using ultraviolet and infrared light beams directed across lane of traffic. Another technique would intercept a broadcast electronic OBD signal from a vehicle whose owner has volunteered for the program.

The clean screening test would be administered just prior to registration expiration. Clean vehicles would be issued a certificate of compliance and would not be required to undergo the traditional vehicle inspection test at a testing facility.

The clean-screen testing rule requires ODEQ to establish specific testing processes before implementing this type of testing. This testing program is developmental and the rule requires ODEQ develop documentation that this method would provide equal or greater accuracy in identifying vehicles that would pass or fail the required emission test.

*K. What Is the Self-Service Test?*

The self-service testing would provide a testing method for the vehicle owner or owner's representative to perform the emissions test at a designated location. The test performed will be either a remote sensing optical quantification of tailpipe pollutants, a remote or computer connected OBD test, or other means as developed by ODEQ.

The self-service test rule requires ODEQ to establish specific testing processes before implementing this type of testing. This testing program is developmental and the rule requires ODEQ develop documentation that this method would provide equal or greater accuracy in identifying vehicles that would pass or fail the required emission test.

*L. Are Clean Screen Testing and Self-Service Testing Required Tests?*

No. Both testing options are voluntary, and, if implemented, would be offered as an alternative to the standard emissions testing at ODEQ testing facilities. Vehicle owners would still be able to have their vehicles tested at the ODEQ test centers.

*M. Why Is EPA Taking No Action on Clean Screen Testing and the Self Service Test?*

EPA is taking no action on these rules at this time because procedures for these tests have not yet been developed, and the testing programs are not ready to implement on a wide scale. However, this does not prevent ODEQ from developing these testing programs and later submitting the procedures to EPA for approval into the SIP.

*N. How Will These Approvals Change Ongoing Air Quality Planning in Oregon?*

ODEQ is proposing revisions to the Oregon SIP to maintain air quality in compliance with federal air quality standards for carbon monoxide and ozone. The I/M program is an important and integral part of the ongoing air quality control measures of the SIP. EPA approval will support and strengthen the I/M program.

These rule changes provide additional vehicle testing options that could make vehicle testing more convenient. Improvements in customer service could increase participation in the I/M program.

## II. Summary of Action

*A. EPA Is Approving the Following Sections Into the SIP*

Chapter 340–256 Motor Vehicles Sections –0010, –0200, –0300, –0310, –0330, –0340, –0350, –0355, –0356, –0370, –0380, –0390, –0400, –0410, –0420, –0440, –0450, –0460, –0465, and –0470 and SIP Volume 2, Section 5.4.

*B. EPA Is Removing the Following Old Sections From the Current SIP Because They Are Replaced by the Rules in Section A Above*

Chapter 340 Division 024 Sections –0100, –0300, –0301, –0305, –0306, –0308, –0309, –0312, –0318, –0320, –0325, –0330, –0332, –0335, –0340, –0355, –0357, and –0360 and SIP Volume 2, Section 5.4.

*C. EPA Is Removing the Following Rules From the Current IBR'd SIP Because They Are Not Appropriate for Inclusion in the SIP*

Chapter 340 Division 024 Sections 0314 Motorcycle Noise Emission Control Test Method, 0337 Motor Vehicle Propulsion Exhaust Noise Standards, and 0307 Motor Vehicle Inspection Program Fee Schedule.

*D. EPA Is Taking No Action at This Time on the Following Rules*

Lane Regional Air Pollution Authority Excess Emissions Rules, OAR 340–256–0357 Emissions Control Test Method for Clean Screen Testing Program, and 340–356–0358 Emissions Control Test Method for Self-Service Testing Program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**

publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 21, 2005, without further notice unless the Agency receives adverse comments by December 22, 2004.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 21, 2005, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Oregon Notice Provision

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude Federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from Federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because Federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

## IV. Scope of EPA Approval

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative Rules within ''Indian Country'' as defined in 18 U.S.C. 1151.1 1 ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Therefore, this SIP approval does not extend to ''Indian Country'' in Oregon. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Oregon's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Oregon because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.1987(c). It is also consistent with EPA's approval of Oregon's title V operating permits program. *See* 59 FR 61820, 61827 (December 2, 1994) (interim approval does not extend to Indian Country); 60 FR 50106, 50106 (September 28, 1995) (full approval does not extend to Indian Country).

## V. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 26, 2004.

**Julie M. Hagensen,**

*Acting Regional Administrator, Region 10.*

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

## PART 52—[AMENDED]

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

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

## Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c) (142) to read as follows:

### § 52.1970 Identification of plan.

* * * * *

(c) * * *

(142) The Environmental Protection Agency (EPA) approves various amendments to the Oregon State Implementation Plan which are contained in four separate submittals to EPA, dated November 5, 1999, November 27, 2000, January 10, 2003 and April 19, 2004 which include revisions to the inspection and maintenance program.

(i) Incorporation by reference.

(A) The following sections of the Oregon Administrative Rules 340: 256–0200, 256–0310, 256–0330, 256–0340, 256–0350, 256–0370, 256–0380, 256–0390, 256–0400, 256–0410, 256–0420, 256–0450, 256–0460, and 256–0470, as effective October 14, 1999; 256–0355, 256–0440, and 256–0465, as effective October 25, 2000; 256–0356, as effective October 4, 2001; and 256–0010, 256–0300, as effective October 24, 2003.

(B) Remove the following old sections of the Oregon Administrative Rules 340 from the current incorporation by reference: 024–100, 024–300, 024–301, 024–305, 024–306, 024–307, 024–308, 024–309, 024–312, 024–314, 024–318, 024–320, 024–325, 024–330, 024–332, 024–335, 024–337, 024–340, 024–355, 024–357, and 024–360.

(ii) Additional Material:

(A) Oregon SIP Volume 2, Section 5.4, as effective October 24, 2003.

[FR Doc. 04–25629 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–U

---

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 2, 22, 24, 74, 78 and 90

**[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18, RM–9498; RM–10024; FCC 04–168]**

## Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission amends its rules to adopt objective technical standards defining ''unacceptable interference'' to non-cellular licensees operating in the 800 MHz band and procedures detailing 800 MHz licensees' responsibilities and expectations regarding abatement of such interference. The Commission also adopts rules reconfiguring the 800 MHz band and designating ten megahertz of spectrum in the 1.9 GHz band available for the provision of commercial mobile radio services (CMRS). The Commission took these steps to solve the problem of increasing interference to public safety communications in the 800 MHz band. These rules are intended to abate this interference as well as making additional spectrum available for the provision of new services.

**DATES:** Effective January 21, 2005, except for §§ 22.972, 22.973, 90.674, 90.675, 90.676 and 90.677 which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections.

**FOR FURTHER INFORMATION CONTACT:** Technical information: Brian Marenco, *Brian.Marenco@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal information: Roberto Mussenden, Esq. *Roberto.Mussenden@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This document summarizes the Federal Communications Commission's Report and Order, Fifth R&O, Fourth MO&O, and Order, FCC 04–168, adopted on July 8, 2004, and released on August 6, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://www.fcc.gov/wtb*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

### Summary of Report and Order

1. In the Report and Order, the Commission adopts changes to parts 2, 22 and 90 of the Commission's rules that were either proposed in or suggested in response to the Notice of Proposed Rule Making (NPRM) and subsequent Public Notices in this proceeding. The NPRM, released on March 15, 2002, 67 FR 16351–02 (April 5, 2002), sought to explore all available options and alternatives for improving the spectrum environment for public safety operations in the 800 MHz Band and to ensure that public safety agencies have access to adequate spectrum resources in the 800 MHz band to support their critical missions. On

September 6, 2002, the Wireless Telecommunications Bureau (Bureau) released a public notice inviting comment on a ''Consensus Proposal'' band plan submitted by seventeen parties (Consensus Parties) in a reply comment in the proceeding. On January 3, 2003, the Bureau sought comment on the supplement, setting forth additional information about the Consensus Proposal, as supplemented on December 24, 2002, by the Consensus Parties, 68 FR 6687–01 (February 10, 2003).

2. The following is a summary of our major decisions. In the Report and Order, we: (i) Define ''unacceptable interference'' in the 800 MHz band as a function of the threshold received power levels of desired signals. Specifically, ''unacceptable interference'' occurs when the signals from a cellular architecture station or stations, cause the carrier-to-noise plus interference ratio of a radio meeting TIA-equivalent Class A standards to degrade below 20 dB in an area in which the median measured received signal power of the desired signal is equal to or greater than −104 dBm for mobile units or −101 dBm for portable units. In the case of data radios, unacceptable interference occurs when the received signal power criteria, above, are met and the bit error rate of the radio exceeds the value specified by the radio's manufacturer for reliable operations; (ii) require Enhanced Specialized Mobile Radio (ESMR) and cellular telephone licensees, on request, to notify public safety and CII licensees prior to activating new or modified cells; (iii) define relative responsibilities of ESMR and cellular telephone licensees for abatement of unacceptable interference both pre- and post-band reconfiguration; (iv) reconfigure the 800 MHz band by:

- Moving the public safety NPSPAC channels from 821–824 MHz/866–869 MHz to 806–809 MHz/851–854 MHz.
- Relocate all systems now operating in the current General Category band segment at 806–809.75 MHz/851–854.75 MHz elsewhere in the band.
- Certain existing non-cellular B/ILT systems and non-cellular SMR systems will continue to operate on interleaved channels between 809.75–816 MHz/854.75–861 MHz.
- Public safety systems will continue to operate on interleaved channels between 809–815 MHz/854–860 MHz. No public safety licensee will be required to operate in the 815–816 MHz/860–861 MHz segment that we have designated the ''Expansion Band'' or in the 816–817 MHz/861–862 MHz segment that we have designated the ''Guard Band.'' Every public safety system will be relocated from the Expansion Band unless a public safety licensee exercises its option to remain there.
- Relocate Nextel and other ESMR licensees to the 817–824 MHz/862–869 MHz band. Nextel will vacate all channels it now uses in the 806–817 MHz/851–862 MHz band segment.
- Public safety and later, CII licensees will have exclusive access to all channels in the 809–809.75 MHz/854–854.75 MHz band segment as well as the channels vacated by Nextel in the interleaved portion of the band below 815 MHz/860 MHz for a limited period of time.
- Unless the subject of mutual agreement among affected, parties, other CMRS ESMR Operations in the 800 MHz may stay where they are, subject to a stringent non-interference obligation, but will have the following relocation options: (1) relocate to non-cellular portion of the 800 MHz band at Nextel's expense, as close to ESMR band as possible in 814 MHz–816 MHz Expansion band; or (2) relocate at Nextel's expense in ESMR spectrum which they would share with Nextel on a pro-rata basis.
- In some markets where both Southern LINC and Nextel offer ESMR service insufficient spectrum exists in the 816–824 MHz/861–869 band segment to accommodate both the incumbent ESMR licensees already operating there and new ESMR entrants migrating from the lower channels. In order not to unduly restrict the operations of incumbent ESMR licensees we define the ESMR band in those markets as the band segment 813.5–824 MHz/858.5–869 MHz. The Expansion Band in this area shall extend from 812.5–813.5 MHz/857.5–858.5 MHz. All licensees operating in the band segment 806–813.5 MHz/851–858.5 MHz shall be afforded the same protection against unacceptable interference as specified in the Report and Order;

(v) Adopt financial and licensing safeguards directed to ensure completion of band reconfiguration regardless of Nextel's financial condition and that Nextel does not reap a financial windfall from our actions; (vi) accept Nextel's relinquishment of its current spectrum rights in the 700 MHz Guard Band in forty markets and contemplate a Further Notice of Proposed Rulemaking to determine future use of this spectrum; (vii) in exchange for the spectrum Nextel is surrendering coupled with the uncertain costs it must incur to accomplish 800 MHz band reconfiguration, clear the 1.9 GHz band of Broadcast Auxiliary Service (BAS) incumbents and reimburse UTAM Inc., (UTAM) for a portion of the costs it has incurred in clearing the 1910–1920 MHz and the 1920–1930 MHz band segments, the Commission will modify certain Nextel licenses to provide Nextel with a nationwide authority to operate in ten megahertz of spectrum in the 1.9 GHz band; (viii) establish a mechanism by which an independent Transition Administrator oversees the completion of band reconfiguration and records certain costs incurred by Nextel in connection therewith; (ix) consolidate the B/ILT Pools in the 800 MHz and 900 MHz bands; (x) allow 900 MHz Private Land Mobile Radio (PLMR) licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use.

3. In the Fifth Report and Order (Fifth R&O), Fourth Memorandum Opinion and Order (Fourth MO&O), and Order the Commission adopts changes to parts 15, 24, 74 and 78 of the Commission's rules that were either proposed in or suggested in response to the NPRM in WT Docket 02–55 or proposed in or suggested in the Third Notice of Proposed Rule Making (Third NPRM) in ET Docket No. 00–258. The Third NPRM, released on February 10, 2003, 68 FR 12015–03 (March 13, 2003), sought comments on the reallocation of spectrum in the 1910–1920 MHz band that can be paired with spectrum in the 1990–2000 MHz band to support fixed and mobile services, including Advanced Wireless Services. In the Fifth R&O, the Fourth MO&O, and Order we: (i) Designate two paired five megahertz blocks in the 1910–1915 MHz and 1990–1995 MHz bands for licensed Fixed and Mobile services; (ii) make the five megahertz block at 1910–1915 MHz available by re-designating the band from Unlicensed Personal Communications Services (UPCS) use to licensed Fixed and Mobile services; adopting a reimbursement plan to compensate UTAM, Inc., for relocation expenses it has incurred in relocating incumbents from the band; and addressing several pending petitions for rulemakings and petitions for waivers relating to new use of the 1910–1915 MHz band; (iii) address how Nextel will participate in the existing relocation and reimbursement plan for incumbent BAS licensees in the 1990–2025 MHz band—which has already been reallocated for Fixed and Mobile services—given our decision to provide Nextel access to the 1990–1995 MHz band; (iv) address Nextel's obligations to relocate incumbent BAS licensees in the 1990–

2025 MHz band, as well as address several petitions for reconsideration and clarification regarding the existing BAS relocation plan, given our decision to provide Nextel access to the 1990–1995 MHz band (which has already been reallocated for Fixed and Mobile Services).

## I. Procedural Matters

### *A. Paperwork Reduction Act*

4. This Report and Order contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 21, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

### *B. Final Regulatory Flexibility Certification*

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM.[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA.[3] Three commenting parties specifically addressed the IRFA.[4] We discuss those comments below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[5]

#### Need for, and Objectives of the Order

6. In the Report and Order, we have concluded that reconfiguration of the 800 MHz band is essential, over the long term, to assure that critical public safety communications may be accommodated without unacceptable interference, as that term is defined in the Report and Order. Because increasing instances of interference to 800 MHz public safety communications systems made it imperative that we act to stem such interference without delay, we adopted rules that hold the involved ESMR and cellular telephone licensees strictly responsible for abating interference by application of a variety of technical remedies which have been subsumed in this proceeding under the rubric of *Enhanced Best Practices*. Specifically, the Commission took the following actions: (i) Adopted a new 800 MHz band plan that, after a transition period, will separate high-density ESMR systems in the band, principally those operated by Nextel, from public safety and other non-cellular 800 MHz operations; (ii) require Nextel to relinquish all of its 800 MHz spectrum holdings below 817 MHz/862 MHz resulting in an additional average of 4.5 megahertz of 800 MHz band spectrum becoming available to the public safety and critical infrastructure community; (iii) established a transition mechanism for band reconfiguration with minimal disruption to the operations of all affected 800 MHz incumbents during the transition period; (iv) required Nextel to pay all band reconfiguration costs of public safety and other 800 MHz incumbents that result from transition to the new band plan; (v) defined unacceptable interference as a function of threshold received power levels of desired signals; (vi) placed strict responsibility for abatement of unacceptable interference on the licensees whose systems are the source of such interference; (vii) required prior notification, upon request, of the activation or modification of ESMR and cellular telephone cells; (viii) established firm rules—including response times of twenty-four hours and abatement initiation time of forty-eight—for procedures to be used to identify, report and remedy instances of unacceptable interference; (ix) modified certain Nextel licenses to accommodate a nationwide allocation in the 1910–1915 MHz/1990–1995 MHz paired spectrum block, in exchange for Nextel's surrendering spectrum, and bearing the financial burden and risk of reconfiguring the 800 MHz band; (x) consolidated the Business and Industrial/Land Transportation Pools in the 800 MHz and 900 MHz bands, and; (xi) allowed 900 MHz Private Land Mobile Radio (PLMR) licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use.

7. The Commission has taken these actions to immediately stem increasing instances of interference to 800 MHz public safety communications systems. The Commission has long recognized that the nation's public safety community requires effective radio communications systems free of unacceptable interference if public safety agencies are to adequately protect the safety of lives and property. The actions taken by the Commission in the Report and Order create a suitable spectrum environment for public safety and Critical Infrastructure Industries communications systems operating in the 800 MHz band.

8. In the Fourth Memorandum Opinion and Order, we both grant and deny petitions for reconsideration and clarification of the Third Report and Order and Third Memorandum Opinion and Order. We grant petitions to the extent described herein and clarify several points relating to BAS operations by licensees operating on different channel plans during the transition to the new BAS channel plan at 2025–2110 MHz. We otherwise deny the petitions relating to BAS relocation issues in the 1990–2025 MHz band. We also no longer require BAS licensees in TV markets 31–210 to cease operation on channels 1 and 2 (1990–2008 MHz and 2008–2025 MHz, respectively) until they have been relocated to their final channel plan in the 2025–2110 MHz band, but otherwise retain our previously adopted relocation rules for MSS licensees. The changes we adopt are necessary to allow Nextel, as a new entrant in the 1990–2025 MHz band, to participate in the relocation process we had previously established for BAS incumbents.

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

9. Three parties submitted comments specifically in response to the IRFA: Business Autophones, Inc. (Business Autophones), Small Business in Telecommunications (SBT), and Skitronics, LLC (Skitronics).[6] Business Autophones opines that the Nextel Plan, which contemplated relocating B/ILT licensees from the 800 MHz band to the 700 MHz and 900 MHz at their own expense, would be financially devastating to small business B/ILT licensees and urges the Commission to

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* Improving Public Safety Commission in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, WT Docket No. 02–55, *Notice of Proposed Rulemaking*, 17 FCC Rcd 4873, 4927 (2002) (*NPRM*).

[3] *See id*. at 4920 ¶93.

[4] Business Autophones, Inc., Comments on IRFA (May 6, 2002) Skitronics, LLC, Comments on IRFA (May 6, 2002); Small Business in Telecommunications, Comments on IRFA (May 6, 2002).

[5] *See* 5 U.S.C. 04.

[6] Business Autophones, Inc., Comments on IRFA (May 6, 2002) Skitronics, LLC, Comments on IRFA (May 6, 2002); Small Business in Telecommunications, Comments on IRFA (May 6, 2002).

either abate interference on a case-by-case basis or adopt the plan proposed by NAM/MRFAC which reconfigured the band but did not relocate B/ILT licensees.[7] For the reasons described *infra* we have adopted a band plan that does not relocate B/ILT licensees to the 700 MHz and 900 MHz band and requires Nextel to finance any necessary relocation of B/ILT licensees.

10. Skitronics posits on the impact of four separate alternatives set forth in the NPRM on small businesses: (i) Skitronics echoes Business Autophones concerns about the effect of the proposal to relocate B/ILT licensees from the 800 MHz band to the 700 MHz and 900 MHz at their own expense.[8] As we discuss at ¶ 30 *infra*, we did not choose this alternative. (ii) Skitronics argues that Nextel's alternative proposal, one that would allow incumbent 800 MHz operators to remain in the band on a secondary status, would deleteriously affect small business SMR operators by impacting these business' growth prospects as well as their ability to guarantee continuous service to their customers.[9] We note that although Nextel offered this alternative in its original White Paper proposal, Nextel removed it as part of the plan it submitted as a member of the Consensus Parties. Therefore, we ceased to consider this alternative at that time and we have not chosen to enact that alternative as a rule. (iii) Skitronics argues that the Commission's consideration of moving 800 MHz incumbents to the 2.1 GHz imposes significant costs on small business SMR licensees since the propagation qualities of the 2.1 GHz spectrum make it unsuitable for SMR use and there is a lack of available equipment suitable for SMR operations in this band.[10] As in the case of the alternative of allowing SMR licensees to remain in the 800 MHz band on a secondary basis, this alternative was superseded by the alternative set forth by the Consensus Parties in the Consensus Plan and we have not chosen to move 800 MHz incumbents to the 2.1 GHz band. (iv) Skitronics contends that the alternative mentioned in the NPRM that has the least impact on small business is enforcement of existing rules against those licensees responsible for causing interference to public safety on a case-by-case basis.[11] For the reasons discussed at ¶ 32 *infra*, we declined to adopt this alternative.

11. Unlike the two other comments received in response to the IRFA, SBT focuses its comments on the adequacy of the IRFA in terms of its compliance with the RFA. Specifically, SBT makes the following arguments: (i) The IRFA does not describe the significant or potential economic impact of the NPRM on small entities as required by the RFA;[12] (ii) the IRFA omits any description of the problem to be rectified by the regulation to be promulgated or an objective for any proposed rule as required by the RFA;[13] (iii) the Commission either relied on outdated statistical sources in calculating the number of affected small licensees or failed to cite to the source(s) entirely;[14] (iv) SBT agrees with the IRFA's conclusion that the NPRM does not propose a rule that will entail additional reporting, record-keeping, and other compliance requirements because the NPRM does not, in fact, propose any rules.[15] However, in Section D infra we add new reporting and other requirements; (v) SBT urges the Commission to amend the NPRM's IRFA in any subsequent IRFA or FRFA if a substantive rule emerges from this proceeding;[16] (vi) SBT contends that the Commission should convert the NPRM to a Notice of Inquiry (NOI) and issue a second NPRM to propose specific rules;[17] (vii) with regard to SBT's comments, as an initial matter we believe that we do not need to issue a NOI in this proceeding because the IRFA's description of the problem of interference to public safety systems in the 800 MHz band is a sufficient description of the problem to be rectified in this proceeding.[18] Moreover, we believe our description of the two plans under consideration in the NPRM adequately described the rules under consideration.[19] We also note that the Consensus Parties filed a plan superseding one of the plans discussed in the NPRM on September 23, 2002 and the major revision of that new plan on December 24, 2002. Both of these plans, as well as the comments received in response to these plans, proposed substantive rules. Moreover, in the interest of ensuring a complete record, the Commission opened two additional notice and comment rounds to obtain public comment on these two plans. Our position, therefore, is that the Commission clearly stated its proposals either in the NPRM and IRFA or fully clarified them in the two subsequent notice and comment rounds that permitted full comment on subsequently proposed plans. Indeed, the Commission received the bulk of all comments in this proceeding subsequent to the comment period initiated in the NPRM. Finally, we note that in Section C, infra, we are using updated statistical sources to assess the impact of the rules we adopt today on small businesses.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

12. 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 business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that is: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rule changes adopted herein.

13. A ''small organization'' is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.[20] Nationwide, there are approximately 1.6 million small

[7] *See* Business Autophones Comments on IRFA at 2–3.

[8] Skitronics Comments on IRFA at 6–10.

[9] *Id.* at 10–11.

[10] *Id.* at 11–13.

[11] *Id.* at 4, 16.

[12] SBT Comments at 3–4 (*citing* 5 U.S.C. 603(a)).

[13] *Id.* at 4. According to SBT, the Commission's tentative conclusion that spectrum reallocation serves the public interest because it would resolve harmful interference to 800 MHz public safety licensees ''falls far short'' of satisfying the requirements of 5 U.S.C. 603(b)(1). *See id.*

[14] *Id.* at 5–10.

[15] *Id.* at 10–11. For the same reason, SBT concurs with the IRFA's conclusion that the NPRM does not propose any rule that duplicates, overlaps, or conflicts with other federal rules. *See id.* at 12.

[16] *Id.* at 11, 12. In addition, SBT recommends that the Commission amend the IRFA to comply with 5 U.S.C. 603(c)(3) by discussing alternatives to rules proposed by the Commission. *See id.* at 11. Once again, SBT reiterates that the Commission has not proposed any rules and therefore could not have discussed alternatives to such rules. *Id.* To the extent that the IRFA discusses alternative proposals for rule changes that were *submitted to* the Commission, SBT contends that such ''alternatives'' do not qualify as alternatives *proposed by* the Commission *Id.*

[17] *Id.* at 12–13. SBT believes that the Commission should use a NOI ''whenever it lacks information about the industry to be regulated or the exact nature of the problem to be addressed.'' *Id.* at 13.

[18] *See NPRM* at 4927.

[19] *Id.*

[20] 5 U.S.C. 601(4).

organizations.[21] We note that, according to SBA data, there are approximately 22.4 million small businesses nationwide.[22] We describe and estimate, below, the number of small entities'applicants, licensees, and radio equipment manufacturers'that may be affected by this Report and Order.

14. *Governmental Entities.* 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.'' [23] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[24] 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, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

15. *Wireless Telecommunications.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' [25] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[26] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[27] Thus, under this category and size standard, the majority of firms can be considered small.

16. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[28] The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons.[29] There are a total of approximately 127,540 licensees within these services.[30] With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

17. *Business, Industrial and Land Transportation Licensees.* At present, there are 3239 Business and Industrial/Land Transportation (I/LT) licensees that may be affected by this Report and Order.[31] The Commission does not require B/ILT licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many B/ILT licensees constitute small entities under this definition. Moreover, we note that B/ILT licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities.

18. *Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[32] In the context of both the 800 MHz and 900 MHz service, the SBA has approved the definitions of ''small entity'' and ''very small entity.'' [33] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz SMR band. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

19. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 1000 or fewer employees.[34] Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments [35] in this category.[36] Of

[21] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[22] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[23] 5 U.S.C. 601(5).

[24] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[25] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[26] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[27] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[28] *See* subparts A and B of part 90 of the Commission's Rules, 47 CFR 90.1–90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

[29] *See* 13 CFR 121.201 (NAICS Code 517212).

[30] There is no information currently available about the number within the 127,540 that have less than 1500 employees.

[31] This number is based on the Commission's licensing database.

[32] 47 CFR 90.814(b)(1).

[33] *See* Letter, dated Aug. 10, 1999, from A. Alvarez, Administrator, Small Business Administration to Tom Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

[34] 13 CFR 121.201, NAICS code 334220.

[35] The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the number given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census break-out data for firms or companies only gives the total number of such entities for 1997, which was 1,089.

[36] U.S. Census Bureau, *1997 Economic Census,* Industry Series: Manufacturing, ''Industry Statistics by Employment Size,'' Table 4, (issued August

Continued

those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.[37]

20. *Broadcast Auxiliary Service (BAS).* BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million;[38] (2) for Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million;[39] (3) for Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

21. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[40] must be included.[41] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[42] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations[43] are included.[44] Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

22. *Cable Antenna Relay Service (CARS).* CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than $12.5 million. According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.[45] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999.00.[46] Thus, under this standard, the majority of firms can be considered small.

23. *Geostationary, Non-Geostationary Orbit, Fixed Satellite, or Mobile Satellite Service Operators (including 2 GHz MSS systems).* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit, fixed-satellite or mobile-satellite service operators. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts.[47] According to Census Bureau data for 1997, there were 324 firms that operated for the entire year.[48] Of this total, 273 firms had annual receipts under $10 million, and an additional twenty-four firms had annual receipts of $10 million to $24,999,990.[49] Thus, under this size standard, the majority of firms can be considered small.

24. *Fixed Microwave Services.* Microwave services include common carrier,[50] private-operational fixed,[51] and broadcast auxiliary radio services.[52] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[53] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[54] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[55] Thus, under this size standard, majority of firms can be considered small.

25. We note that the number of firms does not necessarily track the number of

1999) NAICS code 334220. We note, however that the predominant manufacturers of 800 MHz equipment, Motorola and M/A COM Private Radio Systems, Inc. are not considered small businesses.

[37] We note, however that the predominant manufacturers of 800 MHz equipment, Motorola and M/A COM Private Radio Systems, Inc. are not considered small businesses.

[38] 13 CFR 121.201, NAICS code 515120.

[39] *Id.* NAICS code 515112.

[40] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[41] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size.'' 13 CFR 121.103(a)(4).

[42] FCC News Release, ''Broadcast Station Totals as of September 30, 2002'' (Nov. 6, 2002).

[43] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[44] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121.103(a)(4).

[45] 13 CFR 121.201, NAICS code 517510 (changed from 513220 in October 2002).

[46] *Id.*

[47] 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

[48] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipt Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 513340 (issued October 2000).

[49] *Id.*

[50] 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[51] Persons eligible under parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[52] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[53] 13 CFR 121.201, NAICS code 517212 (formerly 213322).

[54] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 217212 (issues Oct. 2000).

[55] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition. Of these licenses, approximately 14 are issued for frequencies in the Emerging Technology bands affected by this proceeding. This, assuming that these entities also qualify as small businesses, as many as 14 small business licensees could be affected by the rules we adopt. We note that these entities have been subject to relocation by UTAM under rules originally adopted in the Commission's *Emerging Technologies* proceeding. UTAM is the Commission's frequency coordinator for UPCS devices in the 1910–1930 MHz band. The *Fifth Report and Order* anticipates that these general relocation rules will continue to apply to FS microwave licensees and does not propose to modify the class of licensees that are subject to these relocation provisions.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. We expect that, at most, the rules adopted herein will result in nominal new reporting, recordkeeping, or other compliance requirements imposed on entities affected in this proceeding. The rules we adopt herein require that any Cellular Radiotelephone and/or ESMR licensee that receives an interference complaint from a public safety/CII licensee shall promptly respond to such complaint. Cellular Radiotelephone licensees, in conjunction ESMR licensees, shall establish an electronic means of receiving the initial complaint and shall respond on an ''as soon as possible'' basis and no later than 24 hours after receipt of initial notification. The purpose of this notification rule is to provide public safety/CII licensees a means to communicate to Cellular Radio Telephone and/or ESMR licensees instances of interference and for Cellular Radiotelephone and/or ESMR licensees to immediately initiate corrective action.

27. Additionally, the rules we adopt today provide that, upon request by a public safety/CII licensee, Cellular Radiotelephone and/or ESMR licensees must provide to the public safety/CII licensee the following information before any new cell sites are constructed or any existing cells are modified: (i) Location; (ii) effective radiated power; (iii) antenna height; and (iv) channels in use. The purpose of this rule is for informational purposes only and does not entitle the public safety/CII licensee to approve or disapprove the activation of a proposed cell site or to demand changes to the proposed technical parameters. The principal purpose of this rule is to facilitate a dialogue between Cellular Radiotelephone licensees and public safety/CII licensees regarding potential interference, identification of interference, and voluntary corrective measures.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.[56]

29. Our decision to reconfigure the 800 MHz band is generally size-neutral, but some aspects are beneficial to small entities for the following reasons: (i) Although there are significant short-term costs associated with band reconfiguration, it is the solution most likely to yield maximum interference protection benefits for the least cost over the long run. This cost savings are significant for small entities with limited resources; (ii) once implemented, a reconfigured band will reduce both the upfront amount of coordinated engineering work necessary to prevent interference and the burden of troubleshooting interference incidents on a case-by-case basis. This will allow small entities to utilize their scarce engineering resources more effectively.

30. We also considered proposals to reallocate (1) Nextel's 700 MHz Guard Band Block B spectrum, and the Upper 700 MHz band to public safety use; and (2) provide private radio licensees 2:1 access to 900 MHz spectrum. Our decision to decline to adopt these proposals was generally size-neutral but has the following impact on small entities: (i) Since the Upper 700 MHz band is designated for auction, our decision not to utilize this band will allow small entities to bid on it in the future. (ii) Because we contemplate a future rulemaking proceeding to determine the ultimate disposition of Nextel's 700 MHz Guard Band spectrum, we afford small businesses an opportunity to comment on the future use of this spectrum.

31. We have considered the costs of realignment and the limited resources of small entities, including public safety, in effectuating band realignment. We believe that our decision will not have a significant economic impact on small entities in this regard because the cost of 800 MHz realignment will be borne by Nextel (*i.e.*, Nextel will pay relocation costs). We reject the alternative of deferring final action on band reconfiguration, because deferral would increase the potential for increased interference to public safety systems because ESMR and Cellular telephone licensees would remain in close proximity to such systems while expanding their operations.

32. Although we have not codified the *Best Practices Guide,* we endorse the interference abatement strategies therein. However, when we considered the sole use of Enhanced Best Practices as an alternative to reconfiguring the 800 MHz band in its entirety, we found this alternative less effective and more costly over the long term than band reconfiguration, and therefore more likely to be harmful to smaller entities. Our finding in that regard rests on the following facts: (i) Addressing interference on a case-by-case basis is both labor-intensive and expensive, which puts smaller entities at risk due to their more limited resources; (ii) the transactional cost of applying Enhanced Best Practices as an exclusive remedy would increase as new public safety and other non-cellular systems came on line and ESMR and cellular telephone licensees increased the capacity of their systems by adding more cells; (iii) the increased cost and labor burden disproportionately affects public safety agencies, many of which are small entities operating with very limited human, technical and financial resources.

33. We have determined not to require public safety licensees to increase their signal strength. Such a requirement would impose a substantial burden on public safety licensees, including small entities, which would often continue to suffer from interference until the causes could be identified and until appropriate channels and sites for the construction of new base station facilities could be obtained.

34. Regarding our decision to permit negotiated agreements to swap or exchange channels as a means to resolve interference to public safety systems, we do not foresee any adverse impact on small entities. The channel swapping proposals to date have specified that

[56] *See* 5 U.S.C. 603(c)(1) through (c)(4).

Nextel will bear the costs thereof. To the extent that small entities bear channel swap expenses not assumed by Nextel, we believe, for the reasons discussed at ¶ 32 *supra*, the financial burden of these small-scale band reconfigurations should be less than the cost of reliance on Enhanced Best Practices for the long term abatement of unacceptable interference.

35. Regarding our decision to hold Cellular Radio Telephone and ESMR licensees strictly responsible for effectively abating actual or potential unacceptable interference to 800 MHz public safety systems in the shortest practicable time, we do not anticipate a significant burden on small entities. We recognize that our rule does not exempt small entities from its ambit. However, in eliminating the interference we afford licensees the flexibility to determine which system—ESMR, Cellular Telephone or CII/public safety—to modify and what particular technical parameters to change on these systems; and impose on the interfering licensee(s), the obligation to promptly implement such changes. Moreover, we note that small entities were generally not among the interfering parties in those instances of interference that were brought to our attention by parties in this proceeding. We considered the alternative of imposing system-wide, stringent technical limitations on ESMR and Cellular Telephone licensees; however, we found selection of that alternative unwarranted at this time. Such rules would have imposed a burden on all licensees, including small entities, which were not among those causing interference to 800 MHz public safety systems. In particular, we have heeded the filings of rural cellular telephone carriers who opposed imposition of out-of-band emission standards that would require them to add expensive equipment to their cell sites.

36. Regarding our adoption of rules establishing general standards and procedures to govern the abatement of interference to public safety systems, we recognize that they will apply equally to all licensees, including small entities, which cause interference to 800 MHz public safety systems. However, we do not anticipate any significant adverse impact on small entities. We adopted rules that were intentionally general in nature to confer considerable discretion on the parties involved in abating instances of interference to public safety systems. Moreover, as noted above, small entities were generally not among the interfering parties in those instances of interference that were brought to our attention by parties in this proceeding. To the extent that they can demonstrate that they are not contributing to the interference to the public safety systems, they will not be responsible for abating the interference. Therefore, the burden should be minimal for those small entities not contributing to the public safety interference problem in the 800 MHz band. The minimal burden imposed by these rules is necessary to ensure that critical public safety communications may be accommodated without unacceptable interference.

37. In this respect, we are mindful that a number of the public safety systems that are experiencing interference are small entities. We believe that the rules will impose a minimal burden on small public safety entities. First, because we will only require them to furnish certain necessary information to all licensees that may be responsible for causing the interference. Second, because this provision will assure them of timely responses to and analyses of their interference complaints. Ultimately, the burden of supplying this information will be significantly less than that associated with identifying each source of unacceptable interference and contacting such sources individually.

38. Regarding our decision to require notification of the activation of new or modified ESMR or cellular radiotelephone cells, we do not perceive any adverse impact on small entities. Indeed, the prior notification requirement will enable small entities, such as public safety/CII licensees, to take proactive, anticipatory steps to address potential interference. Without this requirement, public safety/CII licensees would first have to experience interference before taking recourse. Similarly, the requirement that Cellular Radiotelephone and/or ESMR licensees promptly initiate corrective actions after having been notified of interference by public safety/CII licensees minimizes the burden on small entities of having to endure prolonged periods of interference. Moreover, as noted above, small entities were generally not among the interfering parties in those instances of interference that were brought to our attention by parties in this proceeding.

39. Regarding our decision to consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pools, we perceive no adverse impact on small entities. This decision will allow any eligible Business or Industrial/Land Transportation entity to be licensed on the consolidated channels. This consolidation will improve spectrum efficiency, promote the use of advanced technologies by affording licensees more contiguous spectrum, and reduce regulatory burdens on all licensees, including small entities. The alternative of retaining separate pools for each service would subject licensees to the unnecessary burden of seeking waivers to permit intercategory sharing, which may have been comparatively more onerous for smaller entities to prepare and file.

40. Regarding our decision to allow 900 MHz PLMR licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use, we perceive no adverse impact on small entities. This decision will improve spectrum efficiency, promote the use of advanced technologies by affording licensees access to addition spectrum.

41. Regarding our decision to allocate the 1910–1915 MHz/1990–1995 MHz paired spectrum blocks to Nextel, we perceive no adverse impact on small entities. Redesignating this spectrum for Nextel's use, for example, will facilitate 800 MHz realignment, by, among other things, introducing an additional entity that can participate in funding the relocation costs of public safety, critical infrastructure, and private wireless entities, including small entities. Alternatively, maintaining this spectrum without applying our relocation principles will expose such entities to continued interference without sufficient spectrum and funding to achieve realignment. Further, we are satisfied that our decision will not adversely impact BAS, UPCS, MSS, and microwave interests on account of expenditures in this spectrum. As noted in the *Report and Order*, Nextel has agreed to reimburse these interests or pay the upfront costs to relocate incumbents in the manner provided by our Rules, and we will hold Nextel to that agreement.

Report to Congress

42. The Commission will send a copy of this *Report and Order, Fifth R&O, Fourth MO&O, and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Report and Order, Fifth R&O, Fourth MO&O, and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Small Business Administration

43. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order, Fifth R&O, Fourth MO&O, and Order* including the

Regulatory Flexibility Certification and to the Chief Counsel for Advocacy of the Small Business Administration.

44. Pursuant to the authority of Sections 1, 4(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(f) and (r), 309, 316, and 332, parts 2, 15, 22, 24, 74, 78, and 90 of the Commission's rules, 47 CFR parts 2, 22, 24, 74, 78, and 90, is amended as set forth in Rule Changes, January 21, 2005 except for §§ 22.972, 22.973, 90.674, 90.675, 90.676, and 90.677 which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections.

**List of Subjects**

*47 CFR Part 2*

Frequency Allocations, General Rules and Regulations, Radio.

*47 CFR Parts 22 and 90*

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

*47 CFR Part 24*

Communications common carriers.

*47 CFR Part 74*

Radio.

*47 CFR Part 78*

Cable television, Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble 47 CFR parts 2, 22, 24, 74, 78, and 90 are amended as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 38 and 39.

**§ 2.106 Table of Frequency Allocations.**

BILLING CODE 6712–01–P

| | | | | | |
|---|---|---|---|---|---|
| 5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311 5.312 | | | | 776-794<br>FIXED<br>MOBILE<br>BROADCASTING<br><br>NG115 NG128 NG159 | Wireless Communications (27)<br>Broadcast Radio (TV) (73)<br>Auxiliary Broadcasting (74)<br>Private Land Mobile (90) |
| 790-862<br>FIXED<br>BROADCASTING | 5.293 5.309 5.311 | | | 794-806<br>FIXED<br>MOBILE<br><br>NG115 NG128 NG158 NG159 | Auxiliary Broadcasting (74)<br>Private Land Mobile (90) |
| | 806-890<br>FIXED<br>MOBILE<br>BROADCASTING | | | 806-809<br>LAND MOBILE<br><br>NG31 | Private Land Mobile (90) |
| | | | | 809-824<br>FIXED<br>LAND MOBILE<br><br>NG31 | Public Mobile (22)<br>Private Land Mobile (90) |
| 5.312 5.314 5.315 5.316 5.319 5.321 | | | | 824-849<br>FIXED<br>LAND MOBILE<br><br>NG151 | Public Mobile (22) |
| See next page for 862-890 MHz | 5.317 5.318 | 5.149 5.305 5.306 5.307 5.311 5.320 | | See next page for 849-890 MHz | See next page for 849-890 MHz |

| 849-941 MHz (UHF) | | | | | Page 39 |
|---|---|---|---|---|---|
| International Table | | | United States Table | | FCC Rule Part(s) |
| Region 1 | Region 2 | Region 3 | Federal Government | Non-Federal Government | |
| See previous page for 790-862 MHz | See previous page for 806-890 MHz | See previous page for 610-890 MHz | See previous page for 614-890 MHz | 849-851<br>AERONAUTICAL MOBILE | Public Mobile (22) |
| | | | | 851-854<br>LAND MOBILE | Private Land Mobile (90) |
| 862-890<br>FIXED<br>MOBILE except aeronautical mobile<br>BROADCASTING 5.322<br><br>5.319 5.323 | | | | 854-869<br>FIXED<br>LAND MOBILE<br><br>NG31 | Public Mobile (22)<br>Private Land Mobile (90) |
| | | | | 869-894<br>FIXED<br>LAND MOBILE<br><br>US116 US268 NG151 | Public Mobile (22) |
| 890-942<br>FIXED<br>MOBILE except aeronautical mobile 5.317A<br>BROADCASTING 5.322<br>Radiolocation | 890-902<br>FIXED<br>MOBILE except aeronautical mobile 5.317A<br>Radiolocation<br><br>5.318 5.325 | 890-942<br>FIXED<br>MOBILE 5.317A<br>BROADCASTING<br>Radiolocation | 890-902<br><br>US116 US268 G2 | 894-896<br>AERONAUTICAL MOBILE<br><br>US116 US268 | |
| | | | | 896-901<br>FIXED<br>LAND MOBILE<br><br>US116 US268 | Private Land Mobile (90) |
| | | | | 901-902<br>FIXED<br>MOBILE<br><br>US116 US268 | Personal Communications (24) |

BILLING CODE 6712–01–C

## PART 22—PUBLIC MOBILE SERVICES

■ 3. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 222, 303, 309 and 332.

■ 4. Add §§ 22.970 through 22.973 to subpart H to read as follows:

### § 22.970 Unacceptable interference to Part 90 non-cellular 800 MHz licensees from cellular radiotelephone or Part 90 ESMR systems.

(a) *Definition*. Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular part 90 of this chapter licensees in the 800 MHz band will be deemed to occur when the below conditions are met:

(1) A transceiver at a site at which interference is encountered:

(i) Is in good repair and operating condition, and is receiving:

(A) A median desired signal of −104 dBm or higher, as measured at the R.F. input of the receiver of a mobile unit; or

(B) A median desired signal of −101 dBm or higher, as measured at the R.F. input of the receiver of a portable *i.e.* hand-held unit; and, either

(ii) Is a voice transceiver:

(A) With manufacturer published performance specifications for the receiver section of the transceiver equal to, or exceeding, the minimum standards set out in paragraph (b) of this section, below; and;

(B) Receiving an undesired signal or signals which cause the measured Carrier to Noise plus interference (C/(I+N)) ratio of the receiver section of said transceiver to be less than 20 dB, or,

(iii) Is a non-voice transceiver receiving an undesired signal or signals which cause the measured bit error rate (BER) (or some comparable specification) of the receiver section of said transceiver to be more than the value reasonably designated by the manufacturer.

(2) Provided, however, that if the receiver section of the mobile or portable voice transceiver does not conform to the standards set out in paragraph (b) of this section, then that transceiver shall be deemed subject to unacceptable interference only at sites where the median desired signal satisfies the applicable threshold measured signal power in paragraph (a)(1)(i) of this section after an upward adjustment to account for the difference in receiver section performance. The upward adjustment shall be equal to the increase in the desired signal required to restore the receiver section of the subject transceiver to the 20 dB C/(I+N) ratio of paragraph (a)(1)(ii)(B) of this section. The adjusted threshold levels shall then define the minimum measured signal power(s) in lieu of paragraphs (a)(1)(i) of this section at which the licensee using such non-compliant transceiver is entitled to interference protection.

(b) *Minimum receiver requirements*. Voice transceivers capable of operating in the 806–824 MHz portion of the 800 MHz band shall have the following minimum performance specifications in order for the system in which such transceivers are used to claim entitlement to full protection against unacceptable interference (See paragraph (a) (2) of this section).

(1) Voice units intended for mobile use: 75 dB intermodulation rejection ratio; 75 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

(2) Voice units intended for portable use: 70 dB intermodulation rejection ratio; 70 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

### § 22.971 Obligation to abate unacceptable interference.

(a) *Strict responsibility*. Any licensee who, knowingly or unknowingly, directly or indirectly, causes or contributes to causing unacceptable interference to a non-cellular Part 90 licensee in the 800 MHz band, as defined in § 22.970 shall be strictly accountable to abate the interference, with full cooperation and utmost diligence, in the shortest time practicable. Interfering licensees shall consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in § 22.972. This strict responsibility obligation applies to all forms of interference, including out-of-band emissions and intermodulation.

(b) *Joint and several responsibility*. If two or more licensees knowingly or unknowingly, directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular part 90 of this chapter licensee in the 800 MHz band, as defined in § 22.970, such licensees shall be jointly and severally responsible for abating interference, with full cooperation and utmost diligence, in the shortest practicable time.

(1) This joint and several responsibility rule requires interfering licensees to consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in § 22.972(c). This joint and several responsibility rule applies to all forms of interference, including out-of-band emissions and intermodulation.

(2) Any licensee that can show that its signal does not directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular part 90 of this chapter licensee in the 800 MHz band, as defined in this chapter, shall not be held responsible for resolving unacceptable interference. Notwithstanding, any licensee that receives an interference complaint from a public safety/CII licensee shall respond to such complaint consistent with the interference resolution procedures set forth in this chapter.

### § 22.972 Interference resolution procedures.

(a) *Initial notification*. (1) Cellular Radiotelephone licensees may receive initial notification of interference from non-cellular part 90 of this chapter licensees in the 800 MHz band pursuant to § 90.674(a) of this chapter.

(2) Cellular Radiotelephone licensees, in conjunction with part 90 ESMR licensees, shall establish an electronic means of receiving the initial notification described in § 90.674(a) of this chapter. The electronic system must be designed so that all appropriate Cellular Radiotelephone licensees and part 90 ESMR licensees can be contacted about the interference incident with a single notification. The electronic system for receipt of initial notification of interference complaints must be operating no later than February 22, 2005.

(3) Cellular Radiotelephone licensees must respond to the initial notification described in § 90.674(a) of this chapter, as soon as possible and no later than 24 hours after receipt of notification from a part 90 public safety/CII licensee. This response time may be extended to 48 hours after receipt from other part 90 non-cellular licensees provided affected communications on these systems are not safety related.

(b) *Interference analysis*. Cellular Radiotelephone licensees—who receive an initial notification described in § 90.674(a) of this chapter—shall perform a timely analysis of the interference to identify the possible source. Immediate on-site visits may be conducted when necessary to complete timely analysis. Interference analysis must be completed and corrective action initiated within 48 hours of the initial complaint from a part 90 of this chapter public safety/CII licensee. This response time may be extended to 96 hours after the initial complaint from other part 90 of this chapter non-cellular licensees provided affected communications on these systems are not safety related.

Corrective action may be delayed if the affected licensee agrees in writing (which may be, but is not required to be, recorded via e-mail or other electronic means) to a longer period.

(c) *Mitigation steps.* (1) All Cellular Radiotelephone and part 90 of this chapter ESMR licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. Cellular Radiotelephone licensees found to contribute to unacceptable interference, as defined in § 22.970, shall resolve such interference in the shortest time practicable. Cellular Radiotelephone licensees and part 90 of this chapter ESMR licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of the Cellular Radiotelephone and/or part 90 of this chapter ESMR licensees, whose affirmative measures may include, but not be limited to, the following techniques:

(i) Increasing the desired power of the public safety/CII signal;

(ii) Decreasing the power of the part 90 ESMR and/or Cellular Radiotelephone system signal;

(iii) Modifying the part 90 ESMR and/or Cellular Radiotelephone system antenna height;

(iv) Modifying the part 90 ESMR and/or Cellular Radiotelephone system antenna characteristics;

(v) Incorporating filters into part 90 ESMR and/or Cellular Radiotelephone transmission equipment;

(vi) Permanently changing part 90 ESMR and/or Cellular Radiotelephone frequencies; and

(vii) Supplying interference-resistant receivers to the affected public safety/CII licensee(s). If this technique is used, in all circumstances, Cellular Radiotelephone and/or part 90 of this chapter ESMR licensees shall be responsible for all costs thereof.

(2) Whenever short-term interference abatement measures prove inadequate, the affected part 90 of this chapter non-cellular licensee shall, consistent with but not compromising safety, make all necessary concessions to accepting interference until a longer-term remedy can be implemented.

(3) *Discontinuing operations when clear imminent danger exists.* When a part 90 of this chapter public safety licensee determines that a continuing presence of interference constitutes a clear and imminent danger to life or property, the licensee causing the interference must discontinue the associated operation immediately, until a remedy can be identified and applied. The determination that a continuing presence exists that constitutes a clear and imminent danger to life or property, must be made by written statement that:

(i) Is in the form of a declaration, notarized affidavit, or statement under penalty or perjury, from an officer or executive of the affected public safety licensee;

(ii) Thoroughly describes the basis of the claim of clear and imminent danger;

(iii) Was formulated on the basis of either personal knowledge or belief after due diligence;

(iv) Is not proffered by a contractor or other third party; and

(v) Has been approved by the Chief of the Wireless Telecommunication Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Wireless Telecommunications Bureau.

**§ 22.973 Information exchange.**

(a) *Prior notification.* Public safety/CII licensees may notify a part 90 ESMR or cellular radiotelephone licensee that they wish to receive prior notification of the activation or modification of part 90 ESMR or cellular radiotelephone cell sites in their area. Thereafter, the part 90 ESMR or cellular radiotelephone licensee must provide the following information to the public safety/CII licensee at least 10 business days before a new cell site is activated or an existing cell site is modified:

(1) Location;

(2) Effective radiated power;

(3) Antenna height;

(4) Channels available for use.

(b) *Purpose of prior notification.* The prior coordination of cell sites is for informational purposes only. Public safety/CII licensees are not afforded the right to accept or reject the activation of a proposed cell or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

(1) Allow a public safety licensee to advise the part 90 of this chapter ESMR or Cellular Radiotelephone licensee whether it believes a proposed cell will generate unacceptable interference;

(2) Permit Cellular Radiotelephone or part 90 of this chapter ESMR licensees to make voluntary changes in cell parameters when a public safety licensee alerts them to possible interference; and

(3) Rapidly identify the source if interference is encountered when the cell is activated.

## PART 24—PERSONAL COMMUNICATIONS SERVICES

■ 5. The authority citation for part 24 continues to read as follows:

**Authority:** Sections 47 U.S.C. 154, 301, 302, 303, 309 and 332.

■ 6. Amend § 24.203 by revising paragraph (b) and adding paragraph (d) to read as follows:

**§ 24.203 Construction requirements.**

* * * * *

(b) Licensees of 10 MHz blocks except for the 1910–1915 MHz and 1990–1995 MHz, including 10 MHz C block licenses reconfigured pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82, Sixth Report and Order, FCC 00–313, and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket 97–82, 12 FCC Rcd 16436 (1997), as modified by Order on Reconsideration of the Second Report and Order, WT Docket 97–82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

(d) Licensees in the paired 1910–1915 MHz and 1990–1995 MHz bands must make a showing of ''substantial service'' in their license area within ten years of the date of initial license issuance or renewal. ''Substantial service'' is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this

requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

■ 7. Amend § 24.229 by adding paragraph (c) to read as follows:

**§ 24.229 Frequencies.**

* * * * *

(c) The paired frequency blocks 1910–1915 MHz and 1990–1995 MHz are available for assignment in the 175 Economic Areas defined in § 90.7 of this chapter. The 1910–1915 MHz block shall be used for mobile/portable station transmissions while the 1990–1995 MHz block shall be used for base station transmissions.

■ 8. Amend § 24.247 by adding paragraph (c) to read as follows:

**§ 24.247 Triggering a reimbursement obligation.**

* * * * *

(c) Any new entrants granted licenses for the 1910–1915 MHz band must reimburse UTAM a pro rata share of its total expenses incurred by UTAM as of the date that the new entrants gain access to the band. The percent required by new entrants to pay shall be calculated based upon the amount of spectrum granted to the new entrant as compared to the total amount of spectrum UTAM is responsible for clearing of incumbents (20 megahertz), and must be paid before a new entrant begins operations in the band. For example, if a new entrant obtains a license for 5 megahertz of spectrum in this band, it is required to reimburse UTAM one-quarter of UTAM's total costs to date on a pro rata shared basis. New entrants will be responsible for the actual costs associated with future relocation activities in their licensed spectrum, but will be entitled to seek reimbursement from UTAM for the proportion of those band clearing costs that benefit users of the 1915–1930 MHz band.

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

■ 9. 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.

■ 10. Amend § 74.602 by revising paragraph (a)(3)(iii) to read as follows:

**§ 74.602 Frequency assignment.**

(a) * * *

(3) * * *

(iii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees will be required to use the Band A channel plan in paragraph (a)(3)(i) of this section after completion of relocation by an Emerging Technologies licensee in accordance with § 74.690 or § 78.40. Licensees declining relocation may continue to use their existing channel plan but must discontinue use of the 1990–2025 MHz band when they indicate to an Emerging Technologies licensee, acting pursuant to § 74.690 or § 78.40 of this chapter, that they decline to be relocated.

* * * * *

■ 11. Amend § 74.690 by revising paragraphs (b), (c)(2), (c)(3), (d) and the introductory text of paragraph (e), and to remove and reserve section (e)(1)(ii) to read as follows:

**§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.**

(a) * * *

(b) An Existing Licensee in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until the Existing Licensee's operations are relocated by a New Entrant, are discontinued under the terms of paragraph (a) of this section, or become secondary under the terms of paragraph (e)(6) of this section or the Existing Licensee indicates to a New Entrant that it declines to be relocated.

(c) * * *

(2) The New Entrant completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television Transmission Service frequencies and frequency coordination.

(3) The New Entrant builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff. If, within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the New Entrant must remedy the defects.

(e) Subject to the terms of this paragraph (e), the relocation of Existing Licensees will be carried out by MSS licensees in the following manner:

(1) * * *

(ii) [Reserved]

* * * * *

## PART 78—CABLE TELEVISION RELAY SERVICE

■ 12. The authority citation for part 78 continues to read as follows:

**Authority:** Sections 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 13. Amend § 78.40 by revising paragraphs (b), (c)(2), (c)(3), (e) and the introductory text of paragraph (f), and by removing and reserving paragraph (f)(1)(ii) to read as follows:

**§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.**

(a) * * *

(b) Existing Licensees in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until a New Entrant completes relocation of the Existing Licensee's operations or the Existing Licensee indicates to a New Entrant that it declines to be relocated.

(c) * * *

(2) The New Entrant completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Cable Television Relay Service frequencies and frequency coordination.

(3) The New Entrant builds the replacement system and tests it for comparability with the existing system.

* * * * *

(e) If, within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the New Entrant must remedy the defect.

(f) Subject to the terms of this paragraph (f), the relocation of Existing Licensees will be carried out by MSS licensees in the following manner:

* * * * *

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 14. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 15. Amend § 90.7 by adding the following definitions in alphabetical order to read as follows:

**§ 90.7 Definitions.**

*Cellular System (800 MHz).* In the 806–817 MHz/851–862 MHz band, a cellular system is defined as a high-density system which:

(1) Has more than five overlapping interactive sites featuring hand-off capability; and

(2) Any one of such sites has an antenna height of less than 30.4 meters (100 feet) above ground level with an antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.

* * * * *

*Critical Infrastructure Industry (CII).* Private internal radio services operated by State, local governments and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.

* * * * *

*Enhanced Specialized Mobile Radio System (ESMR).* A specialized mobile radio (SMR) system operating in the 800 MHz band which employs an 800 MHz cellular system as defined in this section.

* * * * *

■ 16. Section 90.16 is revised to read as follows:

**§ 90.16 Public Safety National Plan.**

The Commission has established a National Plan which specifies special policies and procedures governing the Public Safety Pool (formally Public Safety Radio Services and the Special Emergency Radio Service). The National Plan is contained in the Report and Order in General Docket No. 87–112. The principal spectrum resource for the National Plan is the 806–809 MHz and the 851–854 MHz bands at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''border regions''). In the border regions, the principal spectrum for the National Plan may be different. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the spectrum designated for the National Plan until a regional plan for the area has been accepted by the Commission.

■ 17. Amend § 90.20(c)(3) by removing frequency bands ''806 to 824'' and ''851 to 859'' and by adding in its place ''806 to 821'' and ''851 to 862'' and by revising paragraph (d)(69) to read as follows:

**§ 90.20 Public Safety Pool.**

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

| Frequency or band | Class of station(s) | Limitations | Coordinator |
|---|---|---|---|
| * | * | * | * |
| 806 to 817 | .....do | 69 | |
| 851 to 862 | Base or mobile | 69 | |
| * | * | * | * |

(d) * * *

(69) Subpart S of this part contains rules for assignment of frequencies in the 806–817 MHz and 851–862 MHz bands.

* * * * *

■ 18. Amend § 90.35(b)(3) by removing frequency bands ''806 to 821'' and ''851 to 869'' and by adding in its place ''809 to 824'' and ''854 to 869'' and by revising paragraph (c)(71) to read as follows:

**§ 90.35 Industrial/Business Pool.**

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

| Frequency or band | Class of station(s) | Limitations | Coordinator |
|---|---|---|---|
| * | * | * | * |
| 809 to 824 | Mobile | 71 | |
| 854 to 869 | Base or mobile | 71 | |
| * | * | * | * |

(c) * * *

(71) Subpart S of this part contains rules for assignment of frequencies in the 809–824/854–869 and 896–901/935–940 MHz bands.

* * * * *

■ 19. Amend § 90.209(b)(5) by removing frequency bands ''806–821/851–866'' and ''821–824/866–869'' and by adding in its place ''806–809/851–854'' and ''809–824/854–869'' to read as follows:

**§ 90.209 Bandwidth limitations.**

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

| Frequency band (MHz) | Channel spacing (kHz) | Authorized bandwidth (kHz) |
|---|---|---|
| * * * * * | * | * |
| 806–809/851–854 | 12.5 | 20 |
| 809–824/854–869 | 25 | 20 |
| * * * * * | * | * |

* * * * *

■ 20. In § 90.210, revise the table by removing frequency bands ''806–821/851–866'' [3] and ''821–824/866–869'' and by adding in its place ''806–809/851–854'' and ''809–824/854–869'' [3] to read as follows:

**§ 90.210 Emission masks.**

* * * * *

APPLICABLE EMISSION MASKS

| Frequency band (MHz) | Mask for equipment with audio low pass filter | Mask for equipment without audio low pass filter |
|---|---|---|
| * * * * * | * | * |
| 806–809/851–854 | B | H |
| 809–824/854–869 [3] | B | G |
| * * * * * | * | * |

* * * * *

[3] ESMR systems shall comply with the emission mask provisions of § 90.691.

* * * * *

■ 21. Amend § 90.213(a) by removing frequency bands ''806–821'', ''821–824'', ''851–866'', ''866–869'' and by adding in its place ''806–809'', ''809–824'', ''851–854'', ''854–869'' to read as follows:

**§ 90.213 Frequency stability.**

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

| Frequency range (MHz) | Fixed and base stations | Mobile stations | |
|---|---|---|---|
| | | Over 2 watts output power | 2 watts or less output power |
| * * * * * | * | | * |
| 806–809 | [14] 1.0 | 1.5 | 1.5 |
| 809–824 | [14] 1.5 | 2.5 | 2.5 |
| 851–854 | 1.0 | 1.5 | 1.5 |
| 854–869 | 1.5 | 2.5 | 2.5 |
| * * * * * | * | | * |

* * * * *

■ 22. Amend § 90.607 by revising paragraph (e) to read as follows:

**§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.**

* * * * *

(e) All applicants for frequencies governed by this subpart are subject to the frequency coordination requirements of § 90.175(b) except applicants requesting frequencies for EA-based SMR operations in the 806–824 MHz/851–869 MHz band or 896–901 MHz/935–940 MHz band.

■ 23. Amend § 90.609 by revising paragraph (c) to read as follows:

**§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.**

* * * * *

(c) Licensees of constructed systems in any category are permitted to make partial assignments of an authorized grant to an applicant proposing to create a new system or to an existing licensee that has loaded its system to 70 mobiles per channel and is expanding that system. An applicant authorized to expand an existing system or to create a new system with frequencies from any category obtained through partial assignment will receive the assignor's existing license expiration date and loading deadline for the frequencies that are assigned. A licensee that makes a

partial assignment of a station's frequencies will not be authorized to obtain additional frequencies for that station for a period of one year from the date of the partial assignment.

* * * * *

■ 24. Section 90.613 is revised to read as follows:

**§ 90.613 Frequencies available.**

The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station transmitting frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. Only the base station transmitting frequency of each pair is listed in the following tables.

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS

| Channel No. | Base frequency (MHz) |
|---|---|
| 1 | 851.0125 |
| 2 | .0375 |
| 3 | .0500 |
| 4 | .0625 |
| 5 | .0750 |
| 6 | .0875 |
| 7 | .1000 |
| 8 | .1125 |
| 9 | .1250 |
| 10 | .1375 |
| 11 | .1500 |
| 12 | .1625 |
| 13 | .1750 |
| 14 | .1875 |
| 15 | .2000 |
| 16 | .2125 |
| 17 | .2250 |
| 18 | .2375 |
| 19 | .2500 |
| 20 | .2625 |
| 21 | .2750 |
| 22 | .2875 |
| 23 | .3000 |
| 24 | .3125 |
| 25 | .3250 |
| 26 | .3375 |
| 27 | .3500 |
| 28 | .3625 |
| 29 | .3750 |
| 30 | .3875 |
| 31 | .4000 |
| 32 | .4125 |
| 33 | .4250 |
| 34 | .4375 |
| 35 | .4500 |
| 36 | .4625 |
| 37 | .4750 |
| 38 | .4875 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 39 | .5125 |
| 40 | .5375 |
| 41 | .5500 |
| 42 | .5625 |
| 43 | .5750 |
| 44 | .5875 |
| 45 | .6000 |
| 46 | .6125 |
| 47 | .6250 |
| 48 | .6375 |
| 49 | .6500 |
| 50 | .6625 |
| 51 | .6750 |
| 52 | .6875 |
| 53 | .7000 |
| 54 | .7125 |
| 55 | .7250 |
| 56 | .7375 |
| 57 | .7500 |
| 58 | .7625 |
| 59 | .7750 |
| 60 | .7875 |
| 61 | .8000 |
| 62 | .8125 |
| 63 | .8250 |
| 64 | .8375 |
| 65 | .8500 |
| 66 | .8625 |
| 67 | .8750 |
| 68 | .8875 |
| 69 | .9000 |
| 70 | .9125 |
| 71 | .9250 |
| 72 | .9375 |
| 73 | .9500 |
| 74 | .9625 |
| 75 | .9750 |
| 76 | .9875 |
| 77 | 852.0125 |
| 78 | .0375 |
| 79 | .0500 |
| 80 | .0625 |
| 81 | .0750 |
| 82 | .0875 |
| 83 | .1000 |
| 84 | .1125 |
| 85 | .1250 |
| 86 | .1375 |
| 87 | .1500 |
| 88 | .1625 |
| 89 | .1750 |
| 90 | .1875 |
| 91 | .2000 |
| 92 | .2125 |
| 93 | .2250 |
| 94 | .2375 |
| 95 | .2500 |
| 96 | .2625 |
| 97 | .2750 |
| 98 | .2875 |
| 99 | .3000 |
| 100 | .3125 |
| 101 | .3250 |
| 102 | .3375 |
| 103 | .3500 |
| 104 | .3625 |
| 105 | .3750 |
| 106 | .3875 |
| 107 | .4000 |
| 108 | .4125 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 109 | .4250 |
| 110 | .4375 |
| 111 | .4500 |
| 112 | .4625 |
| 113 | .4750 |
| 114 | .4875 |
| 115 | .5125 |
| 116 | .5375 |
| 117 | .5500 |
| 118 | .5625 |
| 119 | .5750 |
| 120 | .5875 |
| 121 | .6000 |
| 122 | .6125 |
| 123 | .6250 |
| 124 | .6375 |
| 125 | .6500 |
| 126 | .6625 |
| 127 | .6750 |
| 128 | .6875 |
| 129 | .7000 |
| 130 | .7125 |
| 131 | .7250 |
| 132 | .7375 |
| 133 | .7500 |
| 134 | .7625 |
| 135 | .7750 |
| 136 | .7875 |
| 137 | .8000 |
| 138 | .8125 |
| 139 | .8250 |
| 140 | .8375 |
| 141 | .8500 |
| 142 | .8625 |
| 143 | .8750 |
| 144 | .8875 |
| 145 | .9000 |
| 146 | .9125 |
| 147 | .9250 |
| 148 | .9375 |
| 149 | .9500 |
| 150 | .9625 |
| 151 | .9750 |
| 152 | .9875 |
| 153 | .853.0125 |
| 154 | .0375 |
| 155 | .0500 |
| 156 | .0625 |
| 157 | .0750 |
| 158 | .0875 |
| 159 | .1000 |
| 160 | .1125 |
| 161 | .1250 |
| 162 | .1375 |
| 163 | .1500 |
| 164 | .1625 |
| 165 | .1750 |
| 166 | .1875 |
| 167 | .2000 |
| 168 | .2125 |
| 169 | .2250 |
| 170 | .2375 |
| 171 | .2500 |
| 172 | .2625 |
| 173 | .2750 |
| 174 | .2875 |
| 175 | .3000 |
| 176 | .3125 |
| 177 | .3250 |
| 178 | .3375 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 179 | .3500 |
| 180 | .3625 |
| 181 | .3750 |
| 182 | .3875 |
| 183 | .4000 |
| 184 | .4125 |
| 185 | .4250 |
| 186 | .4375 |
| 187 | .4500 |
| 188 | .4625 |
| 189 | .4750 |
| 190 | .4875 |
| 191 | .5000 |
| 192 | .5125 |
| 193 | .5250 |
| 194 | .5375 |
| 195 | .5500 |
| 196 | .5625 |
| 197 | .5750 |
| 198 | .5875 |
| 199 | .6000 |
| 200 | .6125 |
| 201 | .6250 |
| 202 | .6375 |
| 203 | .6500 |
| 204 | .6625 |
| 205 | .6750 |
| 206 | .6875 |
| 207 | .7000 |
| 208 | .7125 |
| 209 | .7250 |
| 210 | .7375 |
| 211 | .7500 |
| 212 | .7625 |
| 213 | .7750 |
| 214 | .7875 |
| 215 | .8000 |
| 216 | .8125 |
| 217 | .8250 |
| 218 | .8375 |
| 219 | .8500 |
| 220 | .8625 |
| 221 | .8750 |
| 222 | .8875 |
| 223 | .9000 |
| 224 | .9125 |
| 225 | .9250 |
| 226 | .9375 |
| 227 | .9500 |
| 228 | .9625 |
| 229 | .9750 |
| 230 | .9875 |
| 231 | 854.0125 |
| 232 | .0375 |
| 233 | .0625 |
| 234 | .0875 |
| 235 | .1125 |
| 236 | .1375 |
| 237 | .1625 |
| 238 | .1875 |
| 239 | .2125 |
| 240 | .2375 |
| 241 | .2625 |
| 242 | .2875 |
| 243 | .3125 |
| 244 | .3375 |
| 245 | .3625 |
| 246 | .3875 |
| 247 | .4125 |
| 248 | .4375 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 249 | .4625 |
| 250 | .4875 |
| 251 | .5125 |
| 252 | .5375 |
| 253 | .5625 |
| 254 | .5875 |
| 255 | .6125 |
| 256 | .6375 |
| 257 | .6625 |
| 258 | .6875 |
| 259 | .7125 |
| 260 | .7375 |
| 261 | .7625 |
| 262 | .7875 |
| 263 | .8125 |
| 264 | .8375 |
| 265 | .8625 |
| 266 | .8875 |
| 267 | .9125 |
| 268 | .9375 |
| 269 | .9625 |
| 270 | .9875 |
| 271 | 855.0125 |
| 272 | .0375 |
| 273 | .0625 |
| 274 | .0875 |
| 275 | .1125 |
| 276 | .1375 |
| 277 | .1625 |
| 278 | .1875 |
| 279 | .2125 |
| 280 | .2375 |
| 281 | .2625 |
| 282 | .2875 |
| 283 | .3125 |
| 284 | .3375 |
| 285 | .3625 |
| 286 | .3875 |
| 287 | .4125 |
| 288 | .4375 |
| 289 | .4625 |
| 290 | .4875 |
| 291 | .5125 |
| 292 | .5375 |
| 293 | .5625 |
| 294 | .5875 |
| 295 | .6125 |
| 296 | .6375 |
| 297 | .6625 |
| 298 | .6875 |
| 299 | .7125 |
| 300 | .7375 |
| 301 | .7625 |
| 302 | .7875 |
| 303 | .8125 |
| 304 | .8375 |
| 305 | .8625 |
| 306 | .8875 |
| 307 | .9125 |
| 308 | .9375 |
| 309 | .9625 |
| 310 | .9875 |
| 311 | 856.0125 |
| 312 | .0375 |
| 313 | .0625 |
| 314 | .0875 |
| 315 | .1125 |
| 316 | .1375 |
| 317 | .1625 |
| 318 | .1875 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 319 | .2125 |
| 320 | .2375 |
| 321 | .2625 |
| 322 | .2875 |
| 323 | .3125 |
| 324 | .3375 |
| 325 | .3625 |
| 326 | .3875 |
| 327 | .4125 |
| 328 | .4375 |
| 329 | .4625 |
| 330 | .4875 |
| 331 | .5125 |
| 332 | .5375 |
| 333 | .5625 |
| 334 | .5875 |
| 335 | .6125 |
| 336 | .6375 |
| 337 | .6625 |
| 338 | .6875 |
| 339 | .7125 |
| 340 | .7375 |
| 341 | .7625 |
| 342 | .7875 |
| 343 | .8125 |
| 344 | .8375 |
| 345 | .8625 |
| 346 | .8875 |
| 347 | .9125 |
| 348 | .9375 |
| 349 | .9625 |
| 350 | .9875 |
| 351 | 857.0125 |
| 352 | .0375 |
| 353 | .0625 |
| 354 | .0875 |
| 355 | .1125 |
| 356 | .1375 |
| 357 | .1625 |
| 358 | .1875 |
| 359 | .2125 |
| 360 | .2375 |
| 361 | .2625 |
| 362 | .2875 |
| 363 | .3125 |
| 364 | .3375 |
| 365 | .3625 |
| 366 | .3875 |
| 367 | .4125 |
| 368 | .4375 |
| 369 | .4625 |
| 370 | .4875 |
| 371 | .5125 |
| 372 | .5375 |
| 373 | .5625 |
| 374 | .5875 |
| 375 | .6125 |
| 376 | .6375 |
| 377 | .6625 |
| 378 | .6875 |
| 379 | .7125 |
| 380 | .7375 |
| 381 | .7625 |
| 382 | .7875 |
| 383 | .8125 |
| 384 | .8375 |
| 385 | .8625 |
| 386 | .8875 |
| 387 | .9125 |
| 388 | .9375 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 389 | .9625 |
| 390 | .9875 |
| 391 | 858.0125 |
| 392 | .0375 |
| 393 | .0625 |
| 394 | .0875 |
| 395 | .1125 |
| 396 | .1375 |
| 397 | .1625 |
| 398 | .1875 |
| 399 | .2125 |
| 400 | .2375 |
| 401 | .2625 |
| 402 | .2875 |
| 403 | .3125 |
| 404 | .3375 |
| 405 | .3625 |
| 406 | .3875 |
| 407 | .4125 |
| 408 | .4375 |
| 409 | .4625 |
| 410 | .4875 |
| 411 | .5125 |
| 412 | .5375 |
| 413 | .5625 |
| 414 | .5875 |
| 415 | .6125 |
| 416 | .6375 |
| 417 | .6625 |
| 418 | .6875 |
| 419 | .7125 |
| 420 | .7375 |
| 421 | .7625 |
| 422 | .7875 |
| 423 | .8125 |
| 424 | .8375 |
| 425 | .8625 |
| 426 | .8875 |
| 427 | .9125 |
| 428 | .9375 |
| 429 | .9625 |
| 430 | .9875 |
| 431 | 859.0125 |
| 432 | .0375 |
| 433 | .0625 |
| 434 | .0875 |
| 435 | .1125 |
| 436 | .1375 |
| 437 | .1625 |
| 438 | .1875 |
| 439 | .2125 |
| 440 | .2375 |
| 441 | .2625 |
| 442 | .2875 |
| 443 | .3125 |
| 444 | .3375 |
| 445 | .3625 |
| 446 | .3875 |
| 447 | .4125 |
| 448 | .4375 |
| 449 | .4625 |
| 450 | .4875 |
| 451 | .5125 |
| 452 | .5375 |
| 453 | .5625 |
| 454 | .5875 |
| 455 | .6125 |
| 456 | .6375 |
| 457 | .6625 |
| 458 | .6875 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 459 | .7125 |
| 460 | .7375 |
| 461 | .7625 |
| 462 | .7875 |
| 463 | .8125 |
| 464 | .8375 |
| 465 | .8625 |
| 466 | .8875 |
| 467 | .9125 |
| 468 | .9375 |
| 469 | .9625 |
| 470 | .9875 |
| 471 | 860.0125 |
| 472 | .0375 |
| 473 | .0625 |
| 474 | .0875 |
| 475 | .1125 |
| 476 | .1375 |
| 477 | .1625 |
| 478 | .1875 |
| 479 | .2125 |
| 480 | .2375 |
| 481 | .2625 |
| 482 | .2875 |
| 483 | .3125 |
| 484 | .3375 |
| 485 | .3625 |
| 486 | .3875 |
| 487 | .4125 |
| 488 | .4375 |
| 489 | .4625 |
| 490 | .4875 |
| 491 | .5125 |
| 492 | .5375 |
| 493 | .5625 |
| 494 | .5875 |
| 495 | .6125 |
| 496 | .6375 |
| 497 | .6625 |
| 498 | .6875 |
| 499 | .7125 |
| 500 | .7375 |
| 501 | .7625 |
| 502 | .7875 |
| 503 | .8125 |
| 504 | .8375 |
| 505 | .8625 |
| 506 | .8875 |
| 507 | .9125 |
| 508 | .9375 |
| 509 | .9625 |
| 510 | .9875 |
| 511 | 861.0125 |
| 512 | .0375 |
| 513 | .0625 |
| 514 | .0875 |
| 515 | .1125 |
| 516 | .1375 |
| 517 | .1625 |
| 518 | .1875 |
| 519 | .2125 |
| 520 | .2375 |
| 521 | .2625 |
| 522 | .2875 |
| 523 | .3125 |
| 524 | .3375 |
| 525 | .3625 |
| 526 | .3875 |
| 527 | .4125 |
| 528 | .4375 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 529 | .4625 |
| 530 | .4875 |
| 531 | .5125 |
| 532 | .5375 |
| 533 | .5625 |
| 534 | .5875 |
| 535 | .6125 |
| 536 | .6375 |
| 537 | .6625 |
| 538 | .6875 |
| 539 | .7125 |
| 540 | .7375 |
| 541 | .7625 |
| 542 | .7875 |
| 543 | .8125 |
| 544 | .8375 |
| 545 | .8625 |
| 546 | .8875 |
| 547 | .9125 |
| 548 | .9375 |
| 549 | .9625 |
| 550 | .9875 |
| 551 | 862.0125 |
| 552 | .0375 |
| 553 | .0625 |
| 554 | .0875 |
| 555 | .1125 |
| 556 | .1375 |
| 557 | .1625 |
| 558 | .1875 |
| 559 | .2125 |
| 560 | .2375 |
| 561 | .2625 |
| 562 | .2875 |
| 563 | .3125 |
| 564 | .3375 |
| 565 | .3625 |
| 566 | .3875 |
| 567 | .4125 |
| 568 | .4375 |
| 569 | .4625 |
| 570 | .4875 |
| 571 | .5125 |
| 572 | .5375 |
| 573 | .5625 |
| 574 | .5875 |
| 575 | .6125 |
| 576 | .6375 |
| 577 | .6625 |
| 578 | .6875 |
| 579 | .7125 |
| 580 | .7375 |
| 581 | .7625 |
| 582 | .7875 |
| 583 | .8125 |
| 584 | .8375 |
| 585 | .8625 |
| 586 | .8875 |
| 587 | .9125 |
| 588 | .9375 |
| 589 | .9625 |
| 590 | .9875 |
| 591 | 863.0125 |
| 592 | .0375 |
| 593 | .0625 |
| 594 | .0875 |
| 595 | .1125 |
| 596 | .1375 |
| 597 | .1625 |
| 598 | .1875 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 599 | .2125 |
| 600 | .2375 |
| 601 | .2625 |
| 602 | .2875 |
| 603 | .3125 |
| 604 | .3375 |
| 605 | .3625 |
| 606 | .3875 |
| 607 | .4125 |
| 608 | .4375 |
| 609 | .4625 |
| 610 | .4875 |
| 611 | .5125 |
| 612 | .5375 |
| 613 | .5625 |
| 614 | .5875 |
| 615 | .6125 |
| 616 | .6375 |
| 617 | .6625 |
| 618 | .6875 |
| 619 | .7125 |
| 620 | .7375 |
| 621 | .7625 |
| 622 | .7875 |
| 623 | .8125 |
| 624 | .8375 |
| 625 | .8625 |
| 626 | .8875 |
| 627 | .9125 |
| 628 | .9375 |
| 629 | .9625 |
| 630 | .9875 |
| 631 | 864.0125 |
| 632 | .0375 |
| 633 | .0625 |
| 634 | .0875 |
| 635 | .1125 |
| 636 | .1375 |
| 637 | .1625 |
| 638 | .1875 |
| 639 | .2125 |
| 640 | .2375 |
| 641 | .2625 |
| 642 | .2875 |
| 643 | .3125 |
| 644 | .3375 |
| 645 | .3625 |
| 646 | .3875 |
| 647 | .4125 |
| 648 | .4375 |
| 649 | .4625 |
| 650 | .4875 |
| 651 | .5125 |
| 652 | .5375 |
| 653 | .5625 |
| 654 | .5875 |
| 655 | .6125 |
| 656 | .6375 |
| 657 | .6625 |
| 658 | .6875 |
| 659 | .7125 |
| 660 | .7375 |
| 661 | .7625 |
| 662 | .7875 |
| 663 | .8125 |
| 664 | .8375 |
| 665 | .8625 |
| 666 | .8875 |
| 667 | .9125 |
| 668 | .9375 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 669 | .9625 |
| 670 | .9875 |
| 671 | 865.0125 |
| 672 | .0375 |
| 673 | .0625 |
| 674 | .0875 |
| 675 | .1125 |
| 676 | .1375 |
| 677 | .1625 |
| 678 | .1875 |
| 679 | .2125 |
| 680 | .2375 |
| 681 | .2625 |
| 682 | .2875 |
| 683 | .3125 |
| 684 | .3375 |
| 685 | .3625 |
| 686 | .3875 |
| 687 | .4125 |
| 688 | .4375 |
| 689 | .4625 |
| 690 | .4875 |
| 691 | .5125 |
| 692 | .5375 |
| 693 | .5625 |
| 694 | .5875 |
| 695 | .6125 |
| 696 | .6375 |
| 697 | .6625 |
| 698 | .6875 |
| 699 | .7125 |
| 700 | .7375 |
| 701 | .7625 |
| 702 | .7875 |
| 703 | .8125 |
| 704 | .8375 |
| 705 | .8625 |
| 706 | .8875 |
| 707 | .9125 |
| 708 | .9375 |
| 709 | .9625 |
| 710 | .9875 |
| 711 | 866.0125 |
| 712 | .0375 |
| 713 | .0625 |
| 714 | .0875 |
| 715 | .1125 |
| 716 | .1375 |
| 717 | .1625 |
| 718 | .1875 |
| 719 | .2125 |
| 720 | .2375 |
| 721 | .2625 |
| 722 | .2875 |
| 723 | .3125 |
| 724 | .3375 |
| 725 | .3625 |
| 726 | .3875 |
| 727 | .4125 |
| 728 | .4375 |
| 729 | .4625 |
| 730 | .4875 |
| 731 | .5125 |
| 732 | .5375 |
| 733 | .5625 |
| 734 | .5875 |
| 735 | .6125 |
| 736 | .6375 |
| 737 | .6625 |
| 738 | .6875 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 739 | .7125 |
| 740 | .7375 |
| 741 | .7625 |
| 742 | .7875 |
| 743 | .8125 |
| 744 | .8375 |
| 745 | .8625 |
| 746 | .8875 |
| 747 | .9125 |
| 748 | .9375 |
| 749 | .9625 |
| 750 | .9875 |
| 751 | 867.0125 |
| 752 | .0375 |
| 753 | .0625 |
| 754 | .0875 |
| 755 | .1125 |
| 756 | .1375 |
| 757 | .1625 |
| 758 | .1875 |
| 759 | .2125 |
| 760 | .2375 |
| 761 | .2625 |
| 762 | .2875 |
| 763 | .3125 |
| 764 | .3375 |
| 765 | .3625 |
| 766 | .3875 |
| 767 | .4125 |
| 768 | .4375 |
| 769 | .4625 |
| 770 | .4875 |
| 771 | .5125 |
| 772 | .5375 |
| 773 | .5625 |
| 774 | .5875 |
| 775 | .6125 |
| 776 | .6375 |
| 777 | .6625 |
| 778 | .6875 |
| 779 | .7125 |
| 780 | .7375 |
| 781 | .7625 |
| 782 | .7875 |
| 783 | .8125 |
| 784 | .8375 |
| 785 | .8625 |
| 786 | .8875 |
| 787 | .9125 |
| 788 | .9375 |
| 789 | .9625 |
| 790 | .9875 |
| 791 | 868.0125 |
| 792 | .0375 |
| 793 | .0625 |
| 794 | .0875 |
| 795 | .1125 |
| 796 | .1375 |
| 797 | .1625 |
| 798 | .1875 |
| 799 | .2125 |
| 800 | .2375 |
| 801 | .2625 |
| 802 | .2875 |
| 803 | .3125 |
| 804 | .3375 |
| 805 | .3625 |
| 806 | .3875 |
| 807 | .4125 |
| 808 | .4375 |

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

| Channel No. | Base frequency (MHz) |
|---|---|
| 809 | .4625 |
| 810 | .4875 |
| 811 | .5125 |
| 812 | .5375 |
| 813 | .5625 |
| 814 | .5875 |
| 815 | .6125 |
| 816 | .6375 |
| 817 | .6625 |
| 818 | .6875 |
| 819 | .7125 |
| 820 | .7375 |
| 821 | .7625 |
| 822 | .7875 |
| 823 | .8125 |
| 824 | .8375 |
| 825 | .8625 |
| 826 | .8875 |
| 827 | .9125 |
| 828 | .9375 |
| 829 | .9625 |
| 830 | .9875 |

■ 25. Amend Subpart S by adding § 90.614 to read as follows:

**§ 90.614 Cellular and non-cellular portions of 806–824/851–869 MHz band for non-border areas.**

The 806–824/851–869 MHz band (''800 MHz band'') will be divided as follows at locations farther than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''non-border areas''):

(a) 800 MHz cellular systems—as defined in § 90.7—are prohibited from operating on channels 1–550 in non-border areas.

(b) 800 MHz cellular systems—as defined in § 90.7—are permitted to operate on channels 551–830 in non-border areas.

(c) In the following counties and parishes, 800 MHz cellular systems—as defined in § 90.7—are permitted to operate on channels 411–830:

*Alabama:* Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Shelby, St Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

*Florida:* Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, Washington.

*Georgia:* Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Catoosa, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth.

*Louisiana:* Catahoula, Concordia, Madison, Tensas.

*Mississippi:* Adams, Alcorn, Amite, Attala, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lee, Lincoln, Lowndes, Madison, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Pontotoc, Prentiss, Rankin, Scott, Simpson, Smith, Stone, Tippah, Tishomingo, Union, Walthall, Warren, Wayne, Webster, Wilkinson, Winston, Yazoo.

*North Carolina:* Cherokee, Clay, Graham, Jackson, Macon.

*South Carolina:* Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Edgefield, Greenwood, Hampton, Jasper, McCormick, Oconee.

*Tennessee:* Bledsoe, Bradley, Franklin, Giles, Hamilton, Hardin, Lawrence, Lincoln, Marion, McMinn, McNairy, Meigs, Monroe, Moore, Polk, Rhea, Sequatchie, Wayne.

■ 26. Section 90.615 is revised to read as follows:

**§ 90.615 Individual channels available in the General Category in 806–824/851–869 MHz band.**

The General Category will consist of channels 231–260 at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border.

(a) Channels 231–260 will be available only to eligible applicants in the Public Safety Category until January 21, 2008. These same channels will be available only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from January 21, 2008.

(b) All entities will be eligible for licensing on Channels 231–260 after January 20, 2010.

■ 27. Revise § 90.617 to read as follows:

**§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.**

Except for the counties and parishes listed in § 90.614(c), the following channels will be available at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''non-border areas''). The channels in the counties and parishes listed in § 90.614(c) will be available in accordance with an agreement between Southern LINC and Nextel Communications, Inc. The agreement will be approved by the Chief of the Wireless Telecommunications Bureau.

(a) The channels listed in Table 1 and paragraph (a)(1) of this section are available for non-cellular operations to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio Systems will not be authorized in this category. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS

[70 channels]

| Group No. | Channel Nos. |
|---|---|
| 269 | 269–289–311–399–439 |

TABLE 1.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS—Continued

[70 channels]

| Group No. | Channel Nos. |
|---|---|
| 270 | 270–290–312–400–440 |
| 279 | 279–299–319–339–359 |
| 280 | 280–300–320–340–360 |
| 309 | 309–329–349–369–389 |
| 310 | 310–330–350–370–390 |
| 313 | 313–353–393–441–461 |
| 314 | 314–354–394–448–468 |
| 321 | 321–341–361–381–419 |
| 328 | 328–348–368–388–420 |
| 351 | 351–379–409–429–449 |
| 332 | 352–380–410–430–450 |
| Single Channels | 391, 392, 401, 408, 421, 428, 459, 460, 469, 470 |

(1) Channel numbers 1–230 are also available to eligible applicants in the Public Safety Category in non-border areas. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16).

(2) [Reserved]

(b) Unless otherwise specified, the channels listed in Table 2 are available for non-cellular operations to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). 800 MHz cellular systems, as defined in § 90.7, are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(e).

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS

[100 channels]

| Group No. | Channel Nos. |
|---|---|
| 322 | 322–362–402–442–482 |
| 323 | 323–363–403–443–483 |
| 324 | 324–364–404–444–484 |

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS—Continued

[100 channels]

| Group No. | Channel Nos. |
|---|---|
| 325 | 325–365–405–445–485 |
| 326 | 326–366–406–446–486 |
| 327 | 327–367–407–447–487 |
| 342 | 342–382–422–462–502 |
| 343 | 343–383–423–463–503 |
| 344 | 344–384–424–464–504 |
| 345 | 345–385–425–465–505 |
| 346 | 346–386–426–466–506 |
| 347 | 347–387–427–467–507 |
| Single Channels | 261, 271, 281, 291, 301, 262, 272, 282, 292, 302, 263, 273, 283, 293, 303, 264, 274, 284, 294, 304, 265, 275, 285, 295, 305, 266, 276, 286, 296, 306, 267, 277, 287, 297, 307, 268, 278, 288, 298, 308 |

(c) The channels listed in Table 3 are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for intercategory sharing as indicated in § 90.621(e).

For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table.

TABLE 3.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 896–901/935–940 MHZ BAND CHANNELS

[199 channels]

| Channel Nos. | |
|---|---|
| 11–12–13–14–15 | 211–212–213–214–215 |
| 16–17–18–19–20 | 216–217–218–219–220 |
| 31–32–33–34–35 | 231–232–233–234–235 |
| 36–37–38–39–40 | 236–237–238–239–240 |
| 51–52–53–54–55 | 251–252–253–254–255 |
| 56–57–58–59–60 | 256–257–258–259–260 |

TABLE 3.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 896–901/935–940 MHZ BAND CHANNELS—Continued

[199 channels]

| | |
|---|---|
| 71–72–73–74–75 | 271–272–273–274–275 |
| 76–77–78–79–80 | 276–277–278–279–280 |
| 91–92–93–94–95 | 291–292–293–294–295 |
| 96–97–98–99–100 | 296–297–298–299–300 |
| 111–112–113–114–115. | 311–312–313–314–315 |
| 116–117–118–119–120. | 316–317–318–319–320 |
| 131–132–133–134–135. | 331–332–333–334–335 |
| 136–137–138–139–140. | 336–337–338–339–340 |
| 151–152–153–154–155. | 351–352–353–354–355 |
| 156–157–158–159–160. | 356–357–358–359–360 |
| 171–172–173–174–175. | 371–372–373–374–375 |
| 176–177–178–179–180. | 376–377–378–379–380 |
| 191–192–193–194–195. | 391–392–393–394–395 |
| 196–197–198–199–200. | 396–397–398–399 |

(d) Unless otherwise specified, the channels listed in Tables 4A and 4B are available for non-cellular operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz cellular systems, as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. The spectrum blocks listed in Table 4A are available for EA-based services (as defined by § 90.681) prior to January 21, 2005. No new EA-based services will be authorized after January 21, 2005. EA-based licensees who operate non-cellular systems prior to January 21, 2005 may choose to remain on these channels in the non-cellular portion of the 800 MHz band (as defined in § 90.614). These licensees may continue to operate non-cellular systems and will be grandfathered indefinitely. The channels listed in Table 4B will be available for site-based licensing after January 21, 2005 in any Economic Area where no EA-based licensee is authorized for these channels.

TABLE 4A.—EA-BASED SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS FOR NON-CELLULAR OPERATIONS AVAILABLE PRIOR TO JANUARY 21, 2005

[80 channels]

| Spectrum block | Channel Nos. |
|---|---|
| G | 311–351–391–431–471 |
| H | 312–352–392–432–472 |
| I | 313–353–393–433–473 |
| J | 314–354–394–434–474 |
| K | 315–355–395–435–475 |
| L | 316–356–396–436–476 |
| M | 317–357–397–437–477 |
| N | 318–358–398–438–478 |
| O | 331–371–411–451–491 |
| P | 332–372–412–452–492 |
| Q | 333–373–413–453–493 |
| R | 334–374–414–454–494 |
| S | 335–375–415–455–495 |
| T | 336–376–416–456–496 |
| U | 337–377–417–457–497 |
| V | 338–378–418–458–498 |

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS FOR NON-CELLULAR OPERATIONS AVAILABLE FOR SITE-BASED LICENSING AFTER JANUARY 21, 2005

[80 channels]

| Spectrum block | Channel Nos. |
|---|---|
| 315 | 315–355–395–435–475 |
| 316 | 316–356–396–436–476 |
| 317 | 317–357–397–437–477 |
| 318 | 318–358–398–438–478 |
| 331 | 331–371–411–451–491 |
| 332 | 332–372–412–452–492 |
| 333 | 333–373–413–453–493 |
| 334 | 334–374–414–454–494 |
| 335 | 335–375–415–455–495 |
| 336 | 336–376–416–456–496 |

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS FOR NON-CELLULAR OPERATIONS AVAILABLE FOR SITE-BASED LICENSING AFTER JANUARY 21, 2005—Continued

[80 channels]

| Spectrum block | Channel Nos. |
|---|---|
| 337 | 337–377–417–457–497 |
| 338 | 338–378–418–458–498 |
| Single Channels | 431, 432, 433, 434, 471, 472, 473, 474, 479, 480, 481, 488, 489, 490, 499, 500, 501, 508, 509, 510 |

(e) The Channels listed in § 90.614(b) and (c) are available to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees which employ an 800 MHz cellular system, as defined in § 90.7, are permitted to operate on these channels in non-border areas. ESMR licensees authorized prior to January 21, 2005 may continue to operate, if they so choose, on the channels listed in Table 5. These licensees will be grandfathered indefinitely.

TABLE 5.—ESMR CATEGORY 816–821/861–866 MHZ BAND CHANNELS FOR CELLULAR OPERATIONS IN NON-BORDER AREAS AVAILABLE PRIOR TO JANUARY 21, 2005

[200 channels]

| Spectrum block | Channel Nos. |
|---|---|
| A | 511 through 530 |
| B | 531 through 590 |
| C | 591 through 710 |

(f) The channels listed in Tables 6 are available for operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in non-border areas. The spectrum blocks listed below are available for EA-based services according to § 90.681.

TABLE 6.—SMR CATEGORY 896–901/935–940 MHZ BAND CHANNELS

[200 channels]

| Block | Channel Nos. |
|---|---|
| A | 1–2–3–4–5–6–7–8–9–10 |
| B | 21–22–23–24–25–26–27–28–29–30 |

TABLE 6.—SMR CATEGORY 896–901/935–940 MHZ BAND CHANNELS—Continued

[200 channels]

| Block | Channel Nos. |
|---|---|
| C | 41–42–43–44–45–46–47–48–49–50 |
| D | 61–62–63–64–65–66–67–68–69–70 |
| E | 81–82–83–84–85–86–87–88–89–90 |
| F | 101–102–103–104–105–106–107–108–109–110 |
| G | 121–122–123–124–125–126–127–128–129–130 |
| H | 141–142–143–144–145–146–147–148–149–150 |
| I | 161–162–163–164–165–166–167–168–169–170 |
| J | 181–182–183–184–185–186–187–188–189–190 |
| K | 201–202–203–204–205–206–207–208–209–210 |
| L | 221–222–223–224–225–226–227–228–229–230 |
| M | 241–242–243–244–245–246–247–248–249–250 |
| N | 261–262–263–264–265–266–267–268–269–270 |
| O | 281–282–283–284–285–286–287–288–289–290 |
| P | 301–302–303–304–305–306–307–308–309–310 |
| Q | 321–322–323–324–325–326–327–328–329–330 |
| R | 341–342–343–344–345–346–347–348–349–350 |
| S | 361–362–363–364–365–366–367–368–369–370 |
| T | 381–382–383–384–385–386–387–388–389–390 |

(g) Channels below 470 listed in Tables 2 and 4B which are vacated by ESMR licensees after January 21, 2005 are available only to eligible applicants in the Public Safety Category until January 21, 2008. These same channels will be available only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from January 21, 2008 until January 20, 2010. After January 20, 2010 these channels will revert back to their original pool categories.

(h) Channels below 470 listed in Tables 2 and 4B which are vacated by licensees relocating to Channels 511–550 after January 21, 2005 are available only to eligible applicants in the Public Safety Category until January 21, 2008. These same channels will be available only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from January 21, 2008 until January 20, 2010. After January 20, 2010 these channels will revert back to their original pool categories.

(i) Special Mobilized Radio Systems licensees who operate non-cellular systems on any of the public safety channels listed in Table 1 prior to January 21, 2005 are grandfathered and may continue to operate on these channels indefinitely. These grandfathered licensees will be prohibited from operating 800 MHz cellular systems as defined in § 90.7. Site-based licensees who are grandfathered on any of the public safety channels listed in Table 1 may modify their license only if they obtain concurrence from a certified public safety coordinator in accordance with § 90.175(c). Grandfathered EA-based licensees, however, are exempt from any of the frequency coordination requirements of § 90.175 as long as their operations remain within the Economic Area defined by their license in accordance with the requirements of § 90.683(a).

(j) Licensees operating ESMR systems in the non-cellular portion of the band (as defined in § 90.614) prior to January 21, 2005 may elect to continue operating in the non-cellular portion of the band. These licensees will be permitted to continue operating 800 MHz cellular systems (as defined in § 90.7) in the non-cellular portion of the band. These licensees will be grandfathered indefinitely subject to the provisions of §§ 90.673, 90.674 and 90.675.

(k) Licensees may operate systems other than 800 MHz cellular systems (as defined in § 90.7) on Channels 511–550 at any location vacated by an EA-based SMR licensee. For operations on these channels, unacceptable interference (as defined in § 22.970 of this chapter and § 90.672) will be deemed to occur only at sites where the following median desired signals are received (rather than those specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i)). The minimum required median desired signal, as measured at the R.F. input of the receiver, will be as follows:

(1) Mobile units:

(i) For channels 511 to 524—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 534—the minimum median desired signal level shall increase linearly from the values specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) to −70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

(2) Portable units:

(i) For channels 511 to 524—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 530—the minimum median desired signal level shall increase linearly from the values specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) to −80 dBm;

(iii) For channels 530 to 534—the minimum median desired signal level shall increase linearly from −80 dBm to −70 dBm;

(iv) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

■ 28. Amend § 90.619 by revising the section heading and paragraphs (a), (b), (c) and (d) introductory text to read as follows.

**§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.**

(a) *Use of Frequencies in 800 MHz Band in Mexico Border Region.* All operations in the 806–824/851–869 MHz band within 110 km (68.4 miles) of the U.S./Mexico border (''Mexico border region'') shall be in accordance with international agreements between the U.S. and Mexico. Channels 231–710 are offset 12.5 kHz lower in frequency than those specified in the table in § 90.613. Stations located on Mt. Lemmon, serving the Tucson, AZ area, will only be authorized offset frequencies.

(b) *Use of Frequencies in 900 MHz Band in Mexico Border Region.* All operations in the 896–901/935–940 MHz band within the Mexico border region shall be in accordance with international agreements between the U.S. and Mexico.

(1) The channels listed in Table 1 below are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). These frequencies are available within the Mexico border region. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies.

For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table. Channels numbered above 200 may be used only subject to the power flux density limits stated in paragraph (a)(2) of this section:

TABLE 1.—UNITED STATES/MEXICO BORDER AREA, BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 896–901/935–940 MHZ BAND

[199 Channels]

| Channel Nos. | |
|---|---|
| 11–12–13–14–15 | 131–132–133–134–135 |
| 16–17–18–19–20 | 136–137–138–139–140 |
| 31–32–33–34–35 | 231–232–233–234–235 |
| 36–37–38–39–40 | 236–237–238–239–240 |
| 51–52–53–54–55 | 171–172–173–174–175 |
| 56–57–58–59–60 | 176–177–178–179–180 |
| 71–72–74–75 | 271–272–273–274–275 |
| 76–77–78–79–80 | 276–277–278–279–280 |
| 91–92–93–94–95 | 211–212–213–214–215 |
| 96–97–98–99–100 | 216–217–218–219–220 |
| 111–112–113–114–115 | 311–312–313–314–315 |
| 116–117–118–119–120 | 316–317–318–319–320 |
| 151–152–153–154–155 | 351–352–353–354–355 |
| 156–157–158–159–160 | 356–357–358–359–360 |
| 191–192–193–194–195 | 391–392–393–394–395 |
| 196–197–198–199–200 | 396–397–398–399 |
| 251–252–253–254–255 | 331–332–333–334–335 |
| 256–257–258–259–260 | 336–337–338–339–340 |
| 291–292–293–294–295 | 371–372–373–374–375 |
| 296–297–298–299–300 | 376–377–378–379–380 |

(2) The channels listed in Table 2 of this section are available for operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in the Mexico border region. The spectrum blocks listed in the table below are available for EA-based services according to § 90.681.

TABLE 2.—UNITED STATES-MEXICO BORDER AREA, SMR CATEGORY 896–901/935–940 MHZ BAND

[200 Channels]

| Block | Channel Nos. |
|---|---|
| A ..... | 1–2–3–4–5–6–7–8–9–10 |
| B ..... | 21–22–23–24–25–26–27–28–29–30 |
| C ..... | 41–42–43–44–45–46–47–48–49–50 |
| D ..... | 61–62–63–64–65–66–67–68–69–70 |
| E ..... | 81–82–83–84–85–86–87–88–89–90 |
| F ..... | 101–102–103–104–105–106–107–108–109–110 |
| G ..... | 121–122–123–124–125–126–127–128–129–130 |
| H ..... | 141–142–143–144–145–146–147–148–149–150 |
| I ..... | 161–162–163–164–165–166–167–168–169–170 |
| J ..... | 181–182–183–184–185–186–187–188–189–190 |
| K ..... | 201–202–203–204–205–206–207–208–209–210 |
| L ..... | 221–222–223–224–225–226–227–228–229–230 |
| M ..... | 241–242–243–244–245–246–247–248–249–250 |
| N ..... | 261–262–263–264–265–266–267–268–269–270 |
| O ..... | 281–282–283–284–285–286–287–288–289–290 |
| P ..... | 301–302–303–304–305–306–307–308–309–310 |
| Q ..... | 321–322–323–324–325–326–327–328–329–330 |
| R ..... | 341–342–343–344–345–346–347–348–349–350 |
| S ..... | 361–362–363–364–365–366–367–368–369–370 |
| T ..... | 381–382–383–384–385–386–387–388–389–390 |

Channels numbered above 200 may only be used subject to the power flux density limits at or beyond the Mexico border as stated in paragraph (4) of this section.

(3) The specific channels that are available for licensing in the band 896–901/935–940 MHz within the Mexico border region are subject to Effective Radiated Power (ERP) and Antenna Height limitations as indicated in Table 3 below.

TABLE 3.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO ANTENNA HEIGHTS OF BASE STATIONS IN THE 896–901/935–940 MHZ BANDS WITHIN 110 KILOMETERS (68.4 MILES) OF THE MEXICAN BORDER

| Antenna height above mean sea level | | ERP in watts (maximum) |
|---|---|---|
| Meters | Feet | |
| 0–503 ..... | 0–1650 | 500 |
| 504–609 ..... | 1651–2000 | 350 |
| 610–762 ..... | 2001–2500 | 200 |
| 764–914 ..... | 2501–3000 | 140 |
| 915–1066 ..... | 3001–3500 | 100 |

TABLE 3.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO ANTENNA HEIGHTS OF BASE STATIONS IN THE 896–901/935–940 MHZ BANDS WITHIN 110 KILOMETERS (68.4 MILES) OF THE MEXICAN BORDER—Continued

| Antenna height above mean sea level | | ERP in watts (maximum) |
|---|---|---|
| Meters | Feet | |
| 1067–1219 ..... | 3501–4000 | 75 |
| 1220–1371 ..... | 4000–4500 | 70 |
| 1372–1523 ..... | 4501–5000 | 65 |
| Above 1523 ..... | Above 5000 | 5 |

(4) All channels in the 896–901/935–940 MHz band are available for assignment to U.S. stations within the Mexico border region if the maximum power flux density (pfd) of the station's transmitted signal at any point at or beyond the border does not exceed −107 dB (W/m²). The spreading loss must be calculated using the free space formula taking into account any antenna discrimination in the direction of the border. Authorizations for stations using channels allotted to Mexico on a primary basis will be secondary to Mexican operations and conditioned to require that licensees take immediate action to eliminate any harmful interference resulting from the station's transmitted signal exceeding −107 dB (W/m²).

(c) *Use of 800 MHz Band in Canada Border Region.* All operations in the 806–824/851–869 MHz band within 140 km (87 miles) of the U.S./Canada border (''Canada border region'') shall be in accordance with international agreements between the U.S. and Canada.

(d) *Use of 900 MHz Band in Canada Border Region.* All operations in the 896–901/935–940 MHz band within the Canada border region shall be in accordance with international agreements between the U.S. and Canada. The following criteria shall govern the assignment of frequency pairs (channels) in the 896–901/935–940 MHz band for stations located in the U.S./Canada border area. They are available for assignments for conventional or trunked systems in accordance with applicable sections of this subpart.

* * * * *

■ 29. Amend § 90.621 by revising paragraphs (a), (b) introductory text, (b)(1), (b)(3), (c), (e) introductory text, (e)(1), (e)(2) introductory text, (e)(2)(i), (e)(2)(ii), (f), (g) and (h) to read as follows:

**§ 90.621 Selection and assignment of frequencies.**

(a) Applicants for frequencies in the Public Safety and Business/Industrial/Land Transportation Categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMR Category must request specific frequencies by including in their applications the frequencies requested.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be assigned frequencies solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks G through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (see § 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks G through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 169 km (105 mi).

Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks G through V that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

*Note:* Coordinates are referenced to North American Datum 1983 (NAD83).

| Site name | North latitude | West longitude |
|---|---|---|
| Mount Constitution | 48° 40′ 47.4″ | 122° 50′ 28.7″ |
| Lyman Mountain | 48° 35′ 41.4″ | 122° 09′ 39.6″ |
| Cultus Mountain | 48° 25′ 30.4″ | 122° 08′ 58.5″ |
| Gunsite Ridge | 48° 03′ 22.4″ | 121° 51′ 41.5″ |
| Gold Mountain | 47° 32′ 51.3″ | 122° 46′ 56.5″ |
| Buck Mountain | 47° 47′ 05.3″ | 122° 59′ 34.6″ |
| Cougar Mountain | 47° 32′ 39.4″ | 122° 06′ 34.4″ |
| Squak Mountain | 47° 30′ 14.4″ | 122° 03′ 34.4″ |
| Tiger Mountain | 47° 30′ 13.4″ | 121° 58′ 32.4″ |
| Devils Mountain | 48° 21′ 52.4″ | 122° 16′ 06.6″ |
| McDonald Mountain | 47° 20′ 11.3″ | 122° 51′ 30.5″ |
| Maynard Hill | 48° 00′ 58.3″ | 122° 55′ 35.6″ |
| North Mountain | 47° 19′ 07.3″ | 123° 20′ 48.6″ |
| Green Mountain | 47° 33′ 40.3″ | 122° 48′ 31.5″ |
| Capitol Peak | 46° 58′ 21.3″ | 123° 08′ 21.5″ |
| Rattlesnake Mountain | 47° 28′ 09.4″ | 121° 49′ 17.4″ |
| Three Sisters Mountain | 47° 07′ 19.4″ | 121° 53′ 34.4″ |
| Grass Mountain | 47° 12′ 14.1″ | 121° 47′ 42.4″ |
| Spar Pole Hill | 47° 02′ 51.4″ | 122° 08′ 39.4″ |

* * * * *

(c) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16) and Business/Industrial/Land Transportation categories which have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

* * * * *

(e) Frequencies in the 809–817/854–862 MHz bands listed as available for eligibles in the Public Safety and Business/Industrial/Land Transportation Categories are available for inter-category sharing under the following conditions:

(1) Channels in the Public Safety and Business/Industrial/Land Transportation categories will be available to eligible applicants in those categories only if there are no frequencies in their own category and no public safety systems are authorized on those channels under consideration to be shared.

(2) Notwithstanding paragraph (e)(5) of this section, licensees of channels in the Business/Industrial/Land Transportation category may request a modification of the license, see § 1.947 of this chapter, to authorize use of the channels for commercial operation. The licensee may also, at the same time or thereafter, seek authorization to transfer or assign the license, see § 1.948 of this chapter, to any person eligible for licensing in the General or SMR categories. Applications submitted pursuant to this paragraph must be filed in accordance with the rules governing other applications for commercial channels, and will be processed in accordance with those rules. Grant of requests submitted pursuant to this paragraph is subject to the following conditions:

(i) A licensee that modifies its license to authorize commercial operations will not be authorized to obtain additional 800 MHz Business/Industrial/Land Transportation category channels for sites located within 113 km (70 mi.) of the station for which the license was modified, for a period of one year from the date the license is modified. This provision applies to the licensee, its controlling interests and their affiliates, as defined in § 1.2110 of this chapter.

(ii) With respect to licenses the initial application for which was filed on or after November 9, 2000, requests submitted pursuant to paragraph (e)(2) of this section may not be filed until five years after the date of the initial license grant. In the case of a license that is modified on or after November 9, 2000 to add 800 MHz Business/Industrial/Land Transportation frequencies or to add or relocate base stations that expand the licensee's interference contour, requests submitted pursuant to paragraph (e)(2) of this section for these frequencies or base stations may not be filed until five years after such modification.

* * * * *

(f) Licensees of channels in the Business/Industrial/Land Transportation Categories in the 896–901/935–940 MHz bands may request a modification of the license, *see* § 1.947 of this chapter, to authorize use of the channels for commercial operation. The licensee may also, at the same time, or thereafter, seek authorization to transfer or assign the license, *see* § 1.948 of this chapter, to any person eligible for licensing in the General or SMR categories. Applications submitted pursuant to this paragraph must be filed in accordance with the rules governing other applications for commercial channels, and will be processed in accordance with those rules.

(g) Applications for Public Safety systems (both trunked and conventional) in the 806–809/851–854 MHz bands will be assigned and protected based on the criteria established in the appropriate regional plan. See § 90.16 and the Report and Order in General Docket 87–112.

(h) Channel numbers 511–520, 551–560, 591–600, 631–640, and 671–680 are allocated for Basic Exchange Telecommunications Radio Service as described in § 22.757 of this chapter. The FCC has proposed to remove these channels from the rural radiotelephone service in WT Docket No. 03–103 (FCC 03–95) released April 28, 2003 (68 FR 4403 July 25, 2003) which is pending.

**§ 90.629 [Amended]**

■ 30. Remove and reserve § 90.629 paragraph (d).

■ 31. Amend § 90.631 by revising paragraph (b) to read as follows:

**§ 90.631 Trunked systems loading, construction and authorization requirements.**

* * * * *

(b) Each applicant for a non-SMR trunked system must certify that a minimum of seventy (70) mobiles for each channel authorized will be placed into operation within five (5) years of the initial license grant. Except for SMR systems licensed in the 809–816/854–861 MHz band and as indicated in paragraph (i) of this section, if at the end of five (5) years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorizations for trunked channels not loaded to seventy (70) mobile stations cancel automatically at a rate that allows the licensee to retain one channel for every one hundred (100) mobiles loaded, plus one additional channel. If a trunked system has channels from more than one category, General Category channels are the first channels considered to cancel automatically. All non-SMR licensees initially authorized before June 1, 1993, that are within their original license term, or SMR licensees that are within the term of a two-year authorization granted in accordance with paragraph (i) of this section, are subject to this condition. A licensee that has authorized channels cancelled due to failure to meet the loading requirements of this section will not be authorized additional channels to expand that same system for a period of six months from the date of cancellation.

* * * * *

■ 32. Amend § 90.645 by revising paragraph (g) to read as follows:

**§ 90.645 Permissible operations.**

* * * * *

(g) Up to five (5) contiguous 809–816/854–861 band channels as listed in §§ 90.615, 90.617, and 90.619 may be authorized after justification for systems requiring more than the normal single channel bandwidth. If necessary, licensees may trade channels amongst themselves in order to obtain contiguous frequencies. Notification of such proposed exchanges shall be made to the appropriate frequency coordinator(s) and to the Commission by filing an application for license modification.

* * * * *

■ 33. Add §§ 90.672 through 90.677 to subpart S and add an undesignated center heading before § 90.672 to read as follows:

**Procedures and Process—Unacceptable Interference**

**§ 90.672 Unacceptable interference to non-cellular 800 MHz licensees from ESMR or Part 22 Cellular Radiotelephone systems.**

(a) *Definition.* Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular licensees in the 800 MHz band will be deemed to occur when the below conditions are met:

(1) A transceiver at a site at which interference is encountered:

(i) Is in good repair and operating condition, and is receiving:

(A) A median desired signal of −104 dBm or higher, as measured at the R.F. input of the receiver of a mobile unit; or

(B) A median desired signal of −101 dBm or higher, as measured at the R.F. input of the receiver of a portable *i.e.* hand-held unit; and, either

(ii) Is a voice transceiver:

(A) With manufacturer published performance specifications for the receiver section of the transceiver equal to, or exceeding, the minimum standards set out in paragraph (b) of this section, and;

(B) Receiving an undesired signal or signals which cause the measured Carrier to Noise plus Interference (C/(I+N)) ratio of the receiver section of said transceiver to be less than 20 dB, or;

(iii) Is a non-voice transceiver receiving an undesired signal or signals which cause the measured bit error rate (BER) (or some comparable specification) of the receiver section of said transceiver to be more than the value reasonably designated by the manufacturer.

(2) Provided, however, that if the receiver section of the mobile or portable voice transceiver does not conform to the standards set out in paragraph (b) of this section, then that transceiver shall be deemed subject to unacceptable interference only at sites where the median desired signal satisfies the applicable threshold measured signal power in paragraphs (a)(1)(i) of this section after an upward adjustment to account for the difference in receiver section performance. The upward adjustment shall be equal to the increase in the desired signal required to restore the receiver section of the subject transceiver to the 20 dB C/(I+N) ratio of paragraph (a)(1)(ii)(B) of this section. The adjusted threshold levels shall then define the minimum measured signal power(s) in lieu of paragraphs (a)(1)(i) of this section at which the licensee using such non-compliant transceiver is entitled to interference protection.

(b) *Minimum Receiver Requirements.* Voice transceivers capable of operating in the 806–824 MHz portion of the 800 MHz band shall have the following minimum performance specifications in order for the system in which such transceivers are used to claim entitlement to full protection against unacceptable interference. (See paragraph (a)(2) of this section.)

(1) Voice units intended for mobile use: 75 dB intermodulation rejection ratio; 75 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

(2) Voice units intended for portable use: 70 dB intermodulation rejection ratio; 70 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

**§ 90.673 Obligation to abate unacceptable interference.**

(a) *Strict Responsibility.* Any licensee who, knowingly or unknowingly, directly or indirectly, causes or contributes to causing unacceptable interference to a non-cellular licensee in the 800 MHz band, as defined in this chapter, shall be strictly accountable to abate the interference, with full cooperation and utmost diligence, in the shortest time practicable. Interfering licensees shall consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in this chapter. This strict responsibility obligation applies to all forms of interference, including out-of-band emissions and intermodulation.

(b) *Joint and Several Responsibility.* If two or more licensees knowingly or unknowingly, directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular licensee in the 800 MHz band, as defined in this chapter, such licensees shall be jointly and severally responsible for abating interference, with full cooperation and utmost diligence, in the shortest practicable time. This joint and several responsibility rule requires interfering licensees to consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in this chapter. This joint and several responsibility rule applies to all forms of interference, including out-of-band emissions and intermodulation.

(1) This joint and several responsibility rule requires interfering licensees to consider all feasible interference abatement measures, including, but not limited to, the

remedies specified in the interference resolution procedures set forth in § 90.674(c). This joint and several responsibility rule applies to all forms of interference, including out-of-band emissions and intermodulation.

(2) Any licensee that can show that its signal does not directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular licensee in the 800 MHz band, as defined in this chapter, shall not be held responsible for resolving unacceptable interference. Notwithstanding, any licensee that receives an interference complaint from a public safety/CII licensee shall respond to such complaint consistent with the interference resolution procedures set forth in this chapter.

**§ 90.674 Interference resolution procedures before, during and after band reconfiguration.**

(a) *Initial Notification*. Any non-cellular licensee operating in the 806–824/851–869 MHz band who reasonably believes it is receiving harmful interference, as described in § 90.672, shall provide an initial notification of the interference incident. This initial notification of an interference incident shall be sent to all part 22 Cellular Radiotelephone licensees and ESMR licensees who operate cellular base stations (''cell sites'') within 1,524 meters (5,000 feet) of the interference incident.

(1) The initial notification of interference shall include the following information on interference:

(i) The specific geographical location where the interference occurs, and the time or times at which the interference occurred or is occurring;

(ii) A description of its scope and severity, including its source, if known;

(iii) The relevant Commission licensing information of the party suffering the interference; and

(iv) A single point of contact for the party suffering the interference.

(2) ESMR licensees, in conjunction with part 22 Cellular Radiotelephone licensees, shall establish an electronic means of receiving the initial notification described in paragraph (a)(1) of this section. The electronic system must be designed so that all appropriate 800 MHz ESMR and part 22 Cellular Radiotelephone licensees can be contacted about the interference incident with a single notification. The electronic system for receipt of initial notification of interference complaints must be operating no later than February 22, 2005.

(3) ESMR licensees must respond to the initial notification described in paragraph (a)(1) of this section, as soon as possible and no later than 24 hours of receipt of notification from a public safety/CII licensee. This response time may be extended to 48 hours after receipt from other non-cellular licensees provided affected communications on these systems are not safety related.

(b) *Interference analysis*. ESMR licensees—who receive an initial notification described in paragraph (a) of this section—shall perform a timely analysis of the interference to identify the possible source. Immediate on-site visits may be conducted when necessary to complete timely analysis. Interference analysis must be completed and corrective action initiated within 48 hours of the initial complaint from a public safety/CII licensee. This response time may be extended to 96 hours after the initial complaint from other non-cellular licensees provided affected communications on these systems are not safety related. Corrective action may be delayed if the affected licensee agrees in writing (which may be, but is not required to be, recorded via e-mail or other electronic means) to a longer period.

(c) *Mitigation Steps*. (1) All ESMR and part 22 Cellular Radiotelephone licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. ESMR licensees found to contribute to harmful interference, as defined in § 90.672, shall resolve such interference in the shortest time practicable. ESMR and part 22 Cellular Radiotelephone licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of involved ESMR and/or part 22 Cellular Radiotelephone licensees, whose affirmative measures may include, but not be limited to, the following techniques:

(i) Increasing the desired power of the public safety signal;

(ii) Decreasing the power of the ESMR and/or part 22 Cellular Radiotelephone signal;

(iii) Modifying the ESMR and/or part 22 Cellular Radiotelephone systems antenna height;

(iv) Modifying the ESMR and/or part 22 Cellular Radiotelephone system antenna characteristics;

(v) Incorporating filters into ESMR and/or part 22 Cellular Radiotelephone system transmission equipment;

(vi) Permanently changing ESMR and/or part 22 Cellular Radiotelephone system frequencies; and

(vii) Supplying interference-resistant receivers to the affected public safety licensee(s). If this technique is used, in all circumstances, the ESMR and/or part 22 Cellular Radiotelephone licensees shall be responsible for all costs thereof.

(2) Whenever short-term interference abatement measures prove inadequate, the affected licensee shall, consistent with but not compromising safety, make all necessary concessions to accepting interference until a longer-term remedy can be implemented.

(3) *Discontinuing operations when clear and imminent danger exists*. When a public safety licensee determines that a continuing presence of interference constitutes a clear and imminent danger to life or property, the licensee causing the interference must discontinue the associated operation immediately, until a remedy can be identified and applied. The determination that a continuing presence exists that constitutes a clear and imminent danger to life or property, must be made by written statement that:

(i) Is in the form of a declaration, notarized affidavit, or statement under penalty or perjury, from an officer or executive of the affected public safety licensee;

(ii) Thoroughly describes the basis of the claim of clear and imminent danger;

(iii) Was formulated on the basis of either personal knowledge or belief after due diligence;

(iv) Is not proffered by a contractor or other third party; and

(v) Has been approved by the Chief of the Wireless Telecommunication Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Wireless Telecommunications Bureau.

**§ 90.675 Information exchange.**

(a) *Prior Coordination*. Public safety/CII licensees may notify an ESMR or part 22 Cellular Radiotelephone licensee that they wish to receive prior notification of the activation or modification of ESMR or part 22 Cellular Radiotelephone cell sites in their area. Thereafter, the ESMR or part 22 Cellular Radiotelephone licensee must provide the following information

to the public safety/CII licensee at least 10 business days before a new cell site is activated or an existing cell site is modified:

(1) Location;

(2) Effective radiated power;

(3) Antenna height;

(4) Channels available for use.

(b) *Purpose of Prior Coordination*. The coordination of cell sites is for informational purposes only: public safety/CII licensees are not afforded the right to accept or reject the activation of a proposed cell or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

(1) Allow a public safety/CII licensee to advise the ESMR or part 22 Cellular Radiotelephone licensee whether it believes a proposed cell will generate unacceptable interference;

(2) Permit ESMR or part 22 Cellular Radiotelephone licensees to make voluntary changes in cell parameters when a public safety licensee alerts them to possible interference; and

(3) Rapidly identify the source if interference is encountered when the cell is activated.

(c) *Public Safety Information Exchange*. (1) Upon request by an ESMR or part 22 Cellular Radiotelephone licensee, public safety/CII licensees who operate radio systems in the 806–824/851–869 MHz shall provide the operating parameters of their radio system to the ESMR or part 22 Cellular Radiotelephone licensee.

(2) Public safety licensees who perform the information exchange as described in this section must notify the appropriate ESMR and part 22 Cellular Radiotelephone licensees prior to any technical changes to their radio system.

**§ 90.676 Transition administrator for reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.**

The Transition Administrator will be an independent party with no financial interest in any 800 MHz licensee; and will be selected by a committee representative of 800 MHz licensees. The Transition Administrator will serve both a ministerial role and a function similar to a special master in a judicial proceeding.

(a) The duties of the Transition Administrator will include, but not be limited to:

(1) Obtaining estimates from licensees regarding the cost of reconfiguring their systems and ensuring that estimates contain a firm work schedule. The Transition Administrator will retain copies of all estimates and make them available to the Commission on request.

(2) Mediating disputes regarding cost estimates for reconfiguring a system.

(3) Issuing the Draw Certificate to authorize and instruct the Letter of Credit Trustee to draw down on the Letter of Credit to pay relocation costs in connection with reconfiguring a licensee's system.

(4) Establishing a relocation schedule on a NPSPAC region-by-region basis, prioritizing the regions on the basis of population. However, should a given region be encountering unusually severe amounts of unacceptable interference, that region may be moved up in priority. Any party disputing such a change in priority may refer the matter to the Chief of the Public Safety and Critical Infrastructure Division, who hereby is delegated the authority to resolve such disputes. The Transition Administrator may direct that adjoining regions be reconfigured simultaneously when conditions so require.

(5) The Transition Administrator will coordinate relocation of a NPSPAC Region's NPSPAC channels with the relevant Regional Planning Committee(s) prior to commencing band reconfiguration in a NPSPAC Region.

(b) Once band reconfiguration commences in a given NPSPAC Region, the Transition Administrator will;

(1) Monitor the retuning schedule and resolve any schedule delays or refer same to the Public Safety and Critical Infrastructure Division for resolution;

(2) Coordinate with adjoining NPSPAC Regions to ensure that interference is not being caused to their existing facilities from relocated stations;

(3) Provide quarterly progress reports to the Commission in such detail as the Commission may require and include, with such reports, certifications by Nextel and the relevant licensees that relocation has been completed and that both parties agree on the amount received from the letter of credit proceeds in connection with relocation of the licensees' facilities. The report shall include description of any disputes that have arisen and the manner in which they were resolved. These quarterly reports need not be audited;

(4) Provide to the Public Safety and Critical Infrastructure Division, on the anniversary of January 21, 2005, an audited statement of relocation funds expended to date, including salaries and expenses of Transition Administrator;

(5) Facilitate resolution of disputes by mediation; or referral of the parties to alternative dispute resolution services;

(c) The Transition Administrator may not serve as the repository of funds used in band reconfiguration, excepting such sums as Nextel may pay for the Transition Administrator's services. Moreover, the Transition Administrator will not be certified by the Commission as a frequency coordinator.

**§ 90.677 Reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.**

In order to facilitate reconfiguration of the 806–824/851–869 MHz band (''800 MHz band'') to separate cellular systems from non-cellular systems, Nextel Communications, Inc. (Nextel) may relocate incumbents within the 800 MHz band by providing ''comparable facilities.'' For the limited purpose of band reconfiguration, the provisions of § 90.157 shall not apply and inter-category sharing will be permitted under all circumstances. Such relocation is subject to the following provisions:

(a) Within thirty days of Commission approval of the Transition Administrator, the Transition Administrator described in § 90.676 will provide the Commission with a schedule detailing when band reconfiguration shall commence for each NPSPAC Region. The plan should also detail—by NPSPAC Region—which relocation option each non-Nextel ESMR licensees has chosen. The Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau will finalize and approve such a plan. The schedule shall provide for completion of band reconfiguration in no more than thirty-six months following release of a public notice announcing the start date of reconfiguration in the first NPSPAC region. Relocation will commence according to the schedule set by the Transition Administrator but all systems must have commenced reconfiguration within thirty months of release of a public notice announcing the start date of reconfiguration in the first NPSPAC region.

(b) *Voluntary negotiations*. Thirty days before the start date for each NPSPAC region, the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau will issue a public notice initiating a three-month voluntary negotiation period. During this voluntary negotiation period, Nextel and all incumbents may negotiate any mutually agreeable relocation agreement. Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator.

(c) *Mandatory negotiations*. If no agreement is reached by the end of the voluntary period, a three-month

mandatory negotiation period will begin during which both Nextel and the incumbents must negotiate in ''good faith.'' Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator. All parties are charged with the obligation of utmost ''good faith'' in the negotiation process. Among the factors relevant to a ''good-faith'' determination are:

(1) Whether the party responsible for paying the cost of band reconfiguration has made a *bona fide* offer to relocate the incumbent to comparable facilities;

(2) The steps the parties have taken to determine the actual cost of relocation to comparable facilities; and

(3) Whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party. The Transition Administrator may schedule mandatory settlement negotiations and mediation sessions and the parties must conform to such schedules.

(d) *Transition Administrator*. If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator who shall mediate and attempt to resolve them within thirty working days. If disputed issues remain thirty days after the end of the mandatory negotiation period; the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, *de novo*.

(e) *Waiver Requests*. Incumbents who wish not to relocate according to the schedule may petition the Commission for a waiver of the relocation obligation. Such a waiver would only be granted on a strict non-interference basis.

(f) *Comparable Facilities*. The replacement system provided to an incumbent must be at least equivalent to the existing 800 MHz system with respect to the four factors described in § 90.699(d) part.

(g) *Information Exchange*. Absent agreement between parties, the Transition Administrator will be responsible for determining the information that relocating incumbents must supply in support of a relocation agreement.

(h) The relevant Regional Planning Committee shall be informed of any proposed changes to any NPSPAC channel.

■ 34. Amend subpart S by revising the undesignated center heading before § 90.681 to read as follows:

**Policies Governing the Licensing and Use of EA-Based SMR Systems in the 809–824/851–869 MHz Band**

■ 35. Revise § 90.681 to read as follows:

**§ 90.681 EA-based SMR service areas.**

EA licenses in for channels 711 through 830 and Spectrum Blocks A through V listed in Tables 4 and 5 of § 90.617 are available in 175 Economic Areas (EAs) as defined in § 90.7.

■ 36. Amend § 90.683 by revising paragraph (a) introductory text to read as follows:

**§ 90.683 EA-based SMR system operations.**

(a) EA-based licensees authorized in the 809–824/854–869 MHz band pursuant to § 90.681 of this part may construct and operate base stations using any of the base station frequencies identified in their spectrum block anywhere within their authorized EA, provided that:

* * * * *

■ 37. Amend § 90.685 by revising paragraphs (a) and (b) to read as follows:

**§ 90.685 Authorization, construction and implementation of EA licenses.**

(a) EA licenses in the 809–824/854–869 MHz band will be issued for a term not to exceed ten years. Additionally, EA licensees generally will be afforded a renewal expectancy only for those stations put into service after August 10, 1996.

(b) EA licensees in the 809–824/854–869 MHz band must, within three years of the grant of their initial license, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years of the grant of their initial license. Alternatively, EA licensees in Channel blocks G through V in the 809–824/854–869 MHz band must provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: ''Service which is sound, favorable, and substantially above a level of mediocre service.''

* * * * *

■ 38. Revise § 90.687 to read as follows:

**§ 90.687 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 809–824/854–869 MHz band.**

An SMR license initially authorized on any of the channels listed in Tables 4 and 5 of § 90.617 may transfer or assign its channel(s) to another entity subject to the provisions of § 1.948 of this chapter and § 90.609(b). If the proposed transferee or assignee is the EA licensee for the spectrum block to which the channel is allocated, such transfer or assignment presumptively will be deemed to be in the public interest. However, such presumption will be rebuttable.

■ 39. Amend § 90.693 by revising paragraphs (a), (c), and (d)(2) to read as follows:

**§ 90.693 Grandfathering provisions for incumbent licensees.**

(a) *General provisions*. These provisions apply to ''incumbent licensees,'' all 800 MHz licensees authorized in the 809–821/854–866 MHz band who obtained licenses or filed applications on or before December 15, 1995.

* * * * *

(c) *Special provisions for spectrum blocks G through V*. Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The originally-licensed contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends

only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in § 1.947(b) of this chapter, the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(d) * * *

(2) *Special Provisions for Spectrum Blocks G through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

[FR Doc. 04–24840 Filed 11–19–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 22, 24, 74, 78 and 90

**[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18, RM–9498; RM–10024; FCC 04–253]**

### The 800 MHz Public Safety Interference Proceeding; Extension of Deadlines

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; extension of compliance deadlines.

**SUMMARY:** The Federal Communications Commission extends certain deadlines set out in the Commission's initial *800 MHz Report and Order* (*Order*) released on August 6, 2004. The summary of the order and the rules issued pursuant to the order are published in the Rules and Regulations section in this issue. The Commission extended the deadlines in order to afford interested parties to the proceeding additional time to comply with certain deadlines that are set forth in the full text version of the *Order*, released August 6, 2004.

**DATES:** The deadlines, as described in **SUPPLEMENTARY INFORMATION**, are extended an additional forty-five (45) days. For example, actions that previously were required within thirty (30) or sixty (60) days of **Federal Register** publication of the *Order* are now required by February 7, 2005, or March 7, 2005, respectively. The Commission is not deferring the effective date of the rules in this proceeding published elsewhere in this issue.

**ADDRESSES:** All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. One (1) courtesy copy must be delivered to Roberto Mussenden, Esq. at the Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, SW., Suite 5–C140, Washington, DC 20554, or via e-mail, *roberto.mussenden@fcc.gov*, and one (1) copy must be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail, *http://www.bcpiweb.com*.

**FOR FURTHER INFORMATION CONTACT:** John Evanoff, Esq. or Roberto Mussenden, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released by the Federal Communications Commission on October 22, 2004, extending certain deadlines set forth in the *Order*.

1. The extension of deadlines was prompted in order to avoid uncertainty for Nextel Communications, Inc. (Nextel) and certain other 800 MHz licensees, while the Commission seeks expedited comment on issues raised in certain *ex parte* presentations. The request for comments is designed to develop a full and complete record and to further the effective implementation of the 800 MHz band reconfiguration process. These issues are published in the Proposed Rules section of this issue. Therefore, the Commission believes it is appropriate to provide affected parties additional time in which to comply with certain deadlines set forth in the *Order*, released on August 6, 2004, a summary of which is published in the Rules and Regulations section of this issue. For this reason, with the exception of the statutory deadlines for filing petitions for reconsideration and for seeking judicial review of the *Order*, the Commission extends these deadlines by 45 days. For example, actions that previously were required within thirty (30) or sixty (60) days of **Federal Register** publication of the *800 MHz Report and Order* are now required by February 7, 2005, or March 7, 2005, respectively. The Commission is not deferring the effective date of the rules in this proceeding published elsewhere in this issue. Specifically, the Commission extends the following deadlines an additional 45 days:

2. The Commission extends the deadlines contained in paragraph 342 of the *Order*. Paragraph 342 of the *Order* provides that:

''pursuant to Section 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 309, and 316, the licenses of all 800 MHz band licensees (including, but not limited to, Nextel Communications, Inc.), are hereby modified as specified in this Report and Order; provided, however, that in the event Nextel rejects any of the conditions for modification required in this Report and Order, all the modifications of all the 800 MHz licenses specified in this Report and Order are suspended unless and until the Commission orders otherwise. Nextel will be deemed to have rejected such conditions (a) unless it files with the Commission a written acceptance of all such conditions within thirty days of the publication of this Report and Order in the **Federal Register**, or (b) if it files a judicial appeal of this Report and Order within thirty days of the publication of this Report and Order in the **Federal Register**. Pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 316(a)(1), publication of this Report and Order in the **Federal Register** shall constitute notification in writing of our Order modifying Nextel's 800 MHz licenses and those of all other 800 MHz licenses, and of the grounds and reasons therefore, and Nextel and these other 800 MHz licensees shall have thirty days from the date of such publication to protest such Order.''

3. The Commission extends the deadlines contained and referenced in paragraph 344 of the *Order* (as amended by the *Second Erratum* in this docket released October 6, 2004). Paragraph 344, as amended, provides that:

''within sixty days of the publication of this *Report and Order* in the **Federal Register**, Nextel shall comply with the following conditions precedent to its operations on the 1.9 GHz band:

- Nextel shall certify that it has obtained an irrevocable letter of credit, in all material

respects identical to that contained in Appendix E hereto, which provides assurances that $2.5 billion will be available for band reconfiguration, notwithstanding the financial condition of Nextel, or its successor(s).

• Nextel shall specify on the initial letter of credit and any subsequent letters of credit, a Trustee, acceptable to the Commission, which shall draw upon and disburse funds in accordance with the terms thereof and the Transition Administrator's instructions. Further, on the occasion of a material breach by Nextel of its obligations hereunder, as declared by the Commission, said trustee shall receive the remaining balance of the letter(s) of credit to hold in trust and disburse in accordance with the terms of this *Report and Order*. Said funds shall be devoted exclusively to reconfiguration of the 800 MHz band except as otherwise provided in this *Report and Order*.

• Nextel shall deliver an opinion letter from counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.* (the ''Bankruptcy Code''), in which Nextel is the debtor, the bankruptcy court would not treat the Letter of Credit or proceeds of the Letter of Credit as property of Nextel's bankruptcy estate under Section 541 of the Bankruptcy Code. The scope of the opinion letter must also cover such other opinions as the Commission shall request. The opinion letter must contain detailed legal analysis of the basis of counsel's opinion. A draft opinion letter must be submitted for review and approval by the Commission's Office of General Counsel prior to issuance of the letter. Bankruptcy counsel, and, if applicable, counsel's firm, must have a Martindale-Hubbell rating of ''A/V'' and must satisfy the Commission in all other respects.

• Nextel shall provide a letter or letters, in content satisfactory to the Commission, from any and all parties having a financial or equitable interest in any existing or proposed 800 MHz system, whether in the United States, Mexico or Canada, and connected in any way to Nextel by way of being a subsidiary, partner, or otherwise; to the effect that such parties are bound to perform the obligations imposed on Nextel herein to the extent such obligations are necessary or desirable in the completion of reconfiguration of the 800 MHz band.

• Nextel shall obtain the Commission's approval of all documents it submits pursuant to this paragraph.

• Nextel shall file with the Commission an acknowledgement that meets the requirements of paragraph 87 *supra*.''

4. The Commission extends the deadline contained in paragraph 345 of the *Order* (as numbered in the *Second Erratum* released October 6, 2004). Paragraph 345, as numbered, provides that that ''within thirty days of the publication of this *Report and Order* in the **Federal Register**, Nextel and Southern LINC shall deliver to the Commission an agreement for the channel distribution for all 800 MHz licensees in the areas shown in Appendix G.''

5. The Commission extends the Broadcast Auxiliary Service (BAS) relocation deadlines set out in paragraph 346 of the *Order* (as numbered in the *Second Erratum* released October 6, 2004). Paragraph 346 provides that, Nextel's modified licenses authorizing operations within the 1.9 GHz band are conditioned on several requirements, including:

''Nextel shall certify to the Commission that all BAS facilities have been relocated within thirty months after the effective date of this *Report and Order*. If Nextel fails to meet this benchmark, for reasons that Nextel could reasonably have avoided, the Commission will determine whether forfeitures should be imposed and/or whether Nextel licenses, including, but not limited to, its 1.9 GHz licenses, should be revoked.''

6. The Commission extends the BAS relocation deadlines set forth in Paragraph 352 of the *Order* (as numbered in the *Second Erratum* released on October 6, 2004). Paragraph 352 provides that, ''as a condition on Nextel's 1.9 GHz licenses, Nextel shall, as described herein, relocate all BAS licensees in the 1990–2025 MHz band within thirty months after the effective date of this *Report and Order*.'' In this connection, Section 352 provides that Nextel shall comply with certain requirements, which include, but are not limited to:

• ''Nextel shall file with the Commission and copy the MSS licensees within thirty days after the effective date of this *Report and Order* its plan for the relocation of BAS operations in the markets that will be relocated during stage one (*i.e.*, relocations made within eighteen months after the effective date of this *Report and Order*).''

• ''Nextel shall follow a negotiation period for stage one relocations that ends May 31, 2005 and that ends March 31, 2006 for stage two relocations (*i.e.*, relocations made within thirty months after the effective date of this Report and Order).''

• ''Nextel shall file progress reports within twelve months and twenty-four months after the effective date of this *Report and Order* on the status of the transition, including identifying the markets that will be relocated during stage one, and all remaining markets that will be relocated during stage two.''

• ''Nextel shall certify to the Commission that all BAS facilities have been relocated within thirty months after the effective date of this *Report and Order*. If Nextel fails to meet this benchmark, for reasons that Nextel could reasonably have avoided, the Commission will determine whether forfeitures should be imposed and/or whether Nextel licenses, including, but not limited to, its 1.9 GHz licenses, should be revoked.''

• ''Nextel shall be entitled to seek reimbursement from MSS licensees that have entered the band for the MSS licensee's pro rata share of Nextel's costs to clear the top thirty markets and relocate all fixed BAS facilities, regardless of market size, incurred during the thirty-six month reconfiguration process. Nextel shall be required to inform the Commission and MSS licensees on whether it will or will not seek reimbursement from MSS licensees within twelve months after the effective date of this *Report and Order*.''

7. This extension does not apply to the statutory deadlines for filing petitions for reconsideration and for seeking judicial review of the *Order*. Also, the Commission is not deferring the effective date of the rules set forth in Appendix C of the initial *Order* and published elsewhere in the Rules and Regulations section of this issue, including the effective dates of technical standards and procedural mechanisms adopted in the *Order* to abate unacceptable interference.

Federal Communications Commission.

**Michael J. Wilhelm,**

*Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission.*

[FR Doc. 04–25806 Filed 11–19–04; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF DEFENSE

## 48 CFR Part 211

## Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update the Internet address for DoD specifications and standards.

**EFFECTIVE DATE:** November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

### List of Subjects in 48 CFR Part 211

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR Part 211 is amended as follows:

■ 1. The authority citation for 48 CFR Part 211 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 211—DESCRIBING AGENCY NEEDS

**211.201 [Amended]**

■ 2. Section 211.201 is amended in paragraph (d) introductory text by removing ''*http://assist.daps.mil*'' and adding in its place ''*http://assist.daps.dla.mil*''.

[FR Doc. 04–25809 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

---

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 217 and 219

**[DFARS Case 2003–D092]**

## Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Businesses and Leader Company Contracting

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise text pertaining to DoD review of small business subcontracting plans, and to remove text pertaining to leader company contracting. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D092.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes—

- Remove DFARS Subpart 217.4, which addresses the participation of small disadvantaged business concerns in leader company contracting. DoD rarely uses leader company contracting. Incentives for major DoD contractors to assist small disadvantaged business concerns are provided through the DoD Pilot Mentor-Protégé Program, in accordance with DFARS Subpart 219.71 and Appendix I.
- Lower the approval level at DFARS 219.705–4(d), from two levels above the contracting officer to one level above the contracting officer, for small business subcontracting plans that contain a small disadvantaged business goal of less than five percent.

DoD published a proposed rule at 69 FR 21996 on April 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes text that is seldom used and revises review procedures that are internal to DoD.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 217 and 219

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR Parts 217 and 219 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 217 and 219 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## PART 217—SPECIAL CONTRACTING METHODS

### Subpart 217.4—[Removed]

■ 2. Subpart 217.4 is removed.

## PART 219—SMALL BUSINESS PROGRAMS

■ 3. Section 219.705–4 is amended in paragraph (d) by revising the second sentence to read as follows:

**219.705–4 Reviewing the subcontracting plan.**

(d) * * * A small disadvantaged business goal of less than five percent must be approved one level above the contracting officer.

[FR Doc. 04–25825 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

---

## DEPARTMENT OF DEFENSE

## 48 CFR Part 219

**[DFARS Case 2003–D105]**

## Defense Federal Acquisition Regulation Supplement; Contracting for Architect-Engineer Services

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1427 of the National Defense Authorization Act for Fiscal Year 2004. Section 1427 increases, from $85,000 to $300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns.

**DATES:** Effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2003–D105.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD published an interim rule at 69 FR 31909 on June 8, 2004, to implement Section 1427 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 1427 amended 10 U.S.C. 2855 to increase, from $85,000 to $300,000, the threshold below which acquisitions for architect-

engineer services for military construction or family housing projects are set aside for small business concerns. DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized as follows:

This rule finalizes an interim DFARS rule published on June 8, 2004, to implement Section 1427 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 1427 amended 10 U.S.C. 2855 to increase, from $85,000 to $300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns. DoD received no public comments on the initial regulatory flexibility analysis or the interim DFARS rule. Therefore, DoD has adopted the interim rule as a final rule without change. The rule will benefit small entities that perform architect-engineer services by increasing opportunities for these entities to receive DoD contract awards.

A copy of the analysis may be obtained from the point of contact specified herein.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 219

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 219, which was published at 69 FR 31909 on June 8, 2004, is adopted as a final rule without change.

[FR Doc. 04–25814 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

## 48 CFR Part 224

**[DFARS Case 2003–D038]**

## Defense Federal Acquisition Regulation Supplement; Protection of Privacy and Freedom of Information

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to delete text pertaining to the applicability of the Privacy Act to certain contractor records. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2003–D038.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The rule deletes DFARS 224.102, which specifies that the Privacy Act (5 U.S.C. 552a) does not apply to certain contractor records. The DFARS text is unnecessary, because this issue is adequately addressed in DoD Regulation 5400.11–R, Department of Defense Privacy Program, which is referenced in DFARS 224.103.

DoD published a proposed rule at 69 FR 8152 on February 23, 2004. DoD received one comment in response to the proposed rule, and that comment supported the rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because deletion of the DFARS text does not represent a change in DoD policy. Applicability of the Privacy Act is adequately addressed in other DoD publications.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 224

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR part 224 is amended as follows:

■ 1. The authority citation for 48 CFR part 224 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

**224.102 [Removed]**

■ 2. Section 224.102 is removed.

[FR Doc. 04–25827 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 227 and 252

**[DFARS Case 2003–D104]**

## Defense Federal Acquisition Regulation Supplement; Written Assurance of Technical Data Conformity

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 844 of

the National Defense Authorization Act for Fiscal Year 2004. Section 844 eliminated the requirement for a contractor to furnish written assurance that technical data delivered to the Government is complete and accurate and satisfies the requirements of the contract.

**DATES:** Effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2003–D104.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD published an interim rule at 69 FR 31911 on June 8, 2004, to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 844 amended 10 U.S.C. 2320(b) to eliminate the requirement for contractors to furnish written assurance that delivered technical data is complete and accurate and satisfies the requirements of the contract. The interim rule removed the clause at DFARS 252.227–7036, Declaration of Technical Data Conformity, which implemented the previous statutory requirement. Three respondents submitted comments on the interim rule. All respondents supported the rule. One respondent also recommended that the change be made retroactive to reduce paperwork requirements for contracts currently in effect. DoD has made no change to the rule as a result of this comment. The interim rule became effective upon publication, on June 8, 2004. Consistent with FAR 1.108(d), the rule applies to solicitations issued on or after the effective date, but contracting officers may, at their discretion, apply the change to any existing contract with appropriate consideration.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because elimination of the requirement for a contractor to provide written assurance of technical data conformity does not diminish the contractor's obligation to provide technical data that is complete and accurate and in compliance with contract requirements.

### C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.227–7036, Declaration of Technical Data Conformity, were previously approved by the Office of Management and Budget under Control Number 0704–0369. Elimination of the clause has reduced estimated annual public reporting burden by 126,886 hours (estimated 507,545 declarations annually at .25 hours per declaration).

### List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Parts 227 and 252, which was published at 69 FR 31911 on June 8, 2004, is adopted as a final rule without change.

[FR Doc. 04–25823 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

---

## DEPARTMENT OF DEFENSE

## 48 CFR Part 235

**[DFARS Case 2003–D058]**

## Defense Federal Acquisition Regulation Supplement; Removal of Obsolete Research and Development Contracting Procedures

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to delete obsolete procedures for research and development contracting. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2003–D058.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The rule deletes DFARS Subpart 235.70, Research and Development Streamlined Contracting Procedures. This subpart contains procedures for acquiring research and development using a standard solicitation and contract format and the capabilities of the World Wide Web. These procedures have become obsolete, due to further advances in technology since their creation.

DoD published a proposed rule at 69 FR 8157 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes research and development contracting procedures that are no longer in use.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 235**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR Part 235 is amended as follows:

■ 1. The authority citation for 48 CFR Part 235 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

### Subpart 235.70—[Removed]

■ 2. Subpart 235.70 is removed.

[FR Doc. 04–25824 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

---

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 251 and 252

**[DFARS Case 2003–D045]**

### Defense Federal Acquisition Regulation Supplement; Contractor Use of Government Supply Sources

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contractor use of Government supply sources. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Effective November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Cohen, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2003–D045.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

• Deletion of text at DFARS 251.102 containing procedures for authorizing a contractor to use Government supply sources. Text on this subject has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi*.

• Deletion of text at DFARS 251.105 regarding contractor payment for purchases from Government supply sources. This subject is addressed in the clause at DFARS 252.251–7000 as amended by this rule.

DoD published a proposed rule at 69 FR 8159 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes address procedural matters that apply only when a contractor is authorized to use Government supply sources.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 251 and 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR Parts 251 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 251 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 2. Section 251.102 is revised to read as follows:

**251.102 Authorization to use Government supply sources.**

(e) When authorizing contractor use of Government supply sources, follow the procedures at PGI 251.102.

(3)(ii) The contracting officer may also authorize the contractor to use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

(f) The authorizing agency is also responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor that is indebted to DoD and has failed to pay proper invoices in a timely manner.

**251.105 [Removed]**

■ 3. Section 251.105 is removed.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.251–7000 is amended as follows:

■ a. By revising the clause date to read ''(NOV 2004)'';

■ b. In paragraph (c)(4) by revising the second sentence; and

■ c. In paragraph (c)(4) by adding a new sentence after the second sentence. The revised and added text reads as follows:

**252.251–7000 Ordering from government supply sources.**

* * * * *

(c) * * *

(4) * * * For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice. The Contractor shall annotate each invoice with the date of receipt. * * *

* * * * *

[FR Doc. 04–25826 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Parts 222 and 229

**[Docket No. FRA–1999–6439, Notice No. 13]**

**RIN 2130–AA71**

### Use of Locomotive Horns at Highway-Rail Grade Crossings

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Interim final rule; change of effective date.

**SUMMARY:** On December 18, 2003, FRA published an Interim Final Rule (IFR) in the **Federal Register** (68 FR 70586) addressing the use of locomotive horns at highway-rail grade crossings. As FRA was interested in receiving public comments on all aspects of the IFR, FRA held a public hearing in Washington, DC on February 4, 2004 and extended the comment period from the originally scheduled deadline of February 17, 2004 to April 19, 2004. However, by the close of the extended comment period, FRA had received more than 1,400 comments on the IFR and Environmental Impact Statement. Given the extensive amount of time needed to review and analyze the comments received, FRA will be unable to issue a final rule before the IFR effective date of December 18, 2004. Therefore, FRA is issuing this document to announce the change of the IFR effective date.

**DATES:** The effective date of the IFR published at 68 FR 70856 is changed from December 18, 2004 to April 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone (202) 493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone (202) 493–6038).

**SUPPLEMENTARY INFORMATION:** This document changes the IFR effective date to April 1, 2005. Therefore, any requirements imposed by the IFR that pertain to 49 CFR parts 222 and 229 and would have taken effect before April 1, 2005 need not be complied with before that date. This document does not, however, modify any IFR requirements that are scheduled to take effect on or after April 1, 2005.

As the provisions of the IFR remain subject to further modification under the terms of the final rule, FRA intends to issue the final rule prior to April 1, 2005. Thus, this change of the IFR effective date will give public authorities additional time within which to establish the necessary conditions that will permit them to continue or establish quiet zones within their respective jurisdictions.

In order to address the concerns of communities that have been anxiously awaiting the issuance of the final rule, the provisions of the final rule for quiet zone-related administrative matters will become effective 30 days after publication of the final rule. Therefore, public authorities will be permitted to submit quiet zone applications and/or notification packages 30 days after the final rule is published. However, the provisions of the final rule which require railroads to sound the locomotive horn when approaching and entering public highway-rail grade crossings will not take effect until April 1, 2005. This delay should give communities additional time within which to come into compliance with the requirements of the final rule before routine locomotive horn sounding is initiated at public grade crossings within the area.

Issued in Washington, DC, on November 17, 2004.

**Betty Monro,**

*Acting Administrator.*

[FR Doc. 04–25900 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–06–U

# Proposed Rules

Federal Register
Vol. 69, No. 224
Monday, November 22, 2004

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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 23

**[Docket No. CE214; Notice No. 23–04–02–SC]**

## Special Conditions: Thielert Aircraft Engines GmbH, Cessna Model 172 Series; Diesel Cycle Engine Using Turbine (Jet) Fuel

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This proposes special conditions for the Cessna 172 series airplane. This airplane, as modified by Thielert Aircraft Engines GmbH, will have a novel or unusual design feature(s) associated with the installation of a diesel cycle engine utilizing turbine (jet) fuel. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for installation of this new technology engine. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the exiting airworthiness standards.

**DATES:** Comments must be received on or before December 22, 2004.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE214, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE214. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Pete Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE214.'' The postcard will be date stamped and returned to the commenter.

### Background

On February 11, 2002, Thielert Aircraft Engines GmbH, of Lichtenstein, Germany applied for a supplemental type certificate to install a diesel cycle engine utilizing turbine (jet) fuel in the Cessna Model 172. The Cessna Model 172, currently approved under Type Certificate No. 3A12 is a four-place, high wing, fixed tricycle landing gear, conventional planform airplane. The Cessna 172 airplanes to be modified have gross weights in the range of 2300 to 2558 pounds in the normal category. The affected series of airplanes have been equipped with various gasoline reciprocating engines of 160 to 180 horsepower.

In anticipation of the reintroduction of diesel engine technology into the small airplane fleet, the FAA issued Policy Statement PS–ACE100–2002–004 on May 15, 2003, which identified areas of technological concern involving introduction of new technology diesel engines into small airplanes. For a more detailed summary of the FAA's development of diesel engine requirements, refer to this policy.

The general areas of concern involved the power characteristics of the diesel engines, the use of turbine fuel in an airplane class that has typically been powered by gasoline fueled engines, the vibration characteristics and failure modes of diesel engines. These concerns were identified after review of the historical record of diesel engine use in aircraft and a review of the 14 CFR part 23 regulations, which identified specific regulatory areas that needed to be elevated for applicability to diesel engine installations. These concerns are not considered universally aplicable to all types of possible diesel engines and diesel engine installations. However, after review of the Thielert installation, the Thielert engine type, and the requirements applied by the Lufthart Bundesamt, and applying the provisions of the diesel policy, the FAA proposed these fuel system and engine related special conditions. Other special conditions issued in a separate notice included special conditions for HIRF and application of § 23.1309 provisions to the Full Authority Digital Engine Control (FADEC).

### Type Certification Basis

Under the provisions of § 21.101, Thielert Aircraft Engines GmbH must show that the Cessna Model 172, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 3A13 or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. 3A13 are as follows:

The certification basis of models 172K, 172L, 172M, 172N, and 172P is:

Part 3 of the Civil Air Regulations effective November 1, 1949, as amended by 3–1 through 3–12. In addition, effective S/N 17271035 and on, 14 CFR part 23, § 23.1559, effective March 1, 1978. 14 CFR part 36, dated December 1, 1969, plus Amendments 36–1 through 36–5 for Model 172N; 14 CFR part 36, dated December 1, 1969, plus Amendments 36–1 through 36–12 for Model 172P through 172Q. In addition, effective S/N 17276260 and on, 14 CFR

part 23, § 23.1545(a), Amendment 23–23, dated December 1, 1978, including:

Equivalent Safety Items for:

Airspeed Indicator—CAR 3.757

Operating Limitations—CAR 3.778(a)

The certification basis for the model 172R is:

Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–6, eccept as follows:

14 CFR part 23, §§ 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563, as amended by Amendment 23–7. 14 CFR part 23, §§ 23.807 and 23.1524, as amended by Amendment 23–10. 14 CFR part 23, §§ 23.507; 23.771; 23.853(a), (b) and (c); and 23.1365, as amended by Amendment 23–14. 14 CFR part 23, § 23.951, as amended by Amendment 23–15. 14 CFR part 23, §§ 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322, as amended by Amendment 23–17. 14 CFR part 23, § 23.1301, as amended by Amendment 23–20. 14 CFR part 23, §§ 23.1353; and 23.1559, as amended by Amendment 23–21. 14 CFR part 23, §§ 23.603; 23.605; 23.613; 23.1329 and 23.1545, as amended by Amendment 23–23. 14 CFR part 23, §§ 23.441 and 23.1549, as amended by Amendment 23–28. 14 CFR part 23, §§ 23.779 and 23.781, as amended by Amendment 23–33. 14 CFR part 23, §§ 23.1; 23.51 and 23.561, as amended by Amendment 23–34. 14 CFR part 23, §§ 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831, as amended by Amendment 23–42. 14 CFR part 23, §§ 23.961; 23.1093; 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385, as amended by Amendment 23–43. 14 CFR part 23.562(a), 23.562(b)2, 23.562(c)1, 23.562(c)2, 23.562(c)3, and 23.562(c)4, as amended by Amendment 23–44. 14 CFR part 23, §§ 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731, as amended by Amendment 23–45; and 14 CFR part 36, dated December 1, 1969, as amended by Amendments 36–1 through 36–21.

Equivalent Safety Items for:

Induction System Icing Protection—14 CFR 23.1093

Throttle Control—14 CFR 23.1143(g)

Mixture Control—14 CFR 23.1147(b)

The type certification basis for the modified airplanes is as stated previously with the following modifications: The certification basis for the model 172S is:

Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–6, except as follows:

14 CFR part 23, §§ 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563, as amended by Amendment 23–7. 14 CFR part 23, §§ 23.807 and 23.1524, as amended by Amendment 23–10. 14 CFR part 23, §§ 23.507; 23.771; 23.853(a), (b) and (c); and 23.1365, as amended by Amendment 23–14. 14 CFR part 23, § 23.951, as amended by Amendment 23–15. 14 CFR part 23, §§ 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322, as amended by Amendment 23–17. 14 CFR part 23, § 23.1301, as amended by Amendment 23–20. 14 CFR part 23, §§ 23.1353 and 23.1559, as amended by Amendment 23–21. 14 CFR part 23, §§ 23.603; 23.605; 23.613; 23.1329 and 23.1545, as amended by Amendment 23–23. 14 CFR part 23, §§ 23.441 and 23.1549, as amended by Amendment 23–28. 14 CFR part 23, §§ 23.779 and 23.781, as amended by Amendment 23–33. 14 CFR part §§ 23.1; 23.51 and 23.561, as amended by Amendment 23–34. 14 CFR part 23, §§ 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831, as amended by Amendment 23–42. 14 CFR part 23, §§ 23.961; 23.1093; 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385, as amended by Amendment 23–43. 14 CFR part 23, §§ 23.562(a); 23.562(b)2; 23.562(c)1; 23.562(c)2; 23.562(c)3; and 23.562(c)4, as amended by Amendment 23–42. 14 CFR part 23, §§ 23.961; 23.1093; 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385, as amended by Amendment 23–43. 14 CFR part 23, §§ 23.562(a); 23.562(b)2; 23.562(c)1; 23.562(c)2; 23.562(c)3; and 23.562(c)4, as amended by Amendment 23–44. 14 CFR part 23, §§ 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731, as amended by Amendment 23–45.

14 CFR part 36, dated December 1, 1969, as amended by Amendments 36–1 through 36–21.

Equivalent Safety Items for:

Induction System Icing Protection—14 CFR 23.1093

Throttle Control—14 CFR 23.1143(g)

Mixture Control—14 CFR 23.1147(b)

14 CFR part 23, at Amendment level 23–51, applicable to the areas of change:

14 CFR part 23, §§ 23.1; 23.3; 23.21; 23.23; 23.25; 23.29; 23.33; 23.45; 23.49; 23.51; 23.53; 23.63; 23.65; 23.69; 23.71; 23.73; 23.77; 23.141; 23.143; 23.145; 23.151; 23.153; 23.155; 23.171; 23.173; 23.175; 23.177; 23.201; 23.221; 23.231; 23.251; 23.301; 23.303; 23.305; 23.307; 23.321; 23.335; 23.337; 23.341; 23.343; 23.361; 23.363; 23.371; 23.572; 23.573; 23.574; 23.601; 23.603; 23.605; 23.607; 23.609; 23.611; 23.613; 23.619; 23.621; 23.623; 23.625; 23.627; 23.629; (at Amendment 23–6 for Cessna 172 models R and S; Civil Aviation Regulation 3.159 applies to all other models); 23.773; 23.777; 23.777(d); 23.779; 23.779(d); 23.781; 23.831; 23.863; 23.865; 23.867; 23.901; 23.901(d)(1); 23.903; 23.905; 23.907; 23.909; 23.925; 23.929; 23.939; 23.943; 23.951; 23.951(c); 23.954; 23.955; 23.959; 23.961; 23.963; 23.965; 23.967; 23.969; 23.971; 23.973; 23.973(f); 23.975; 23.977; 23.991; 23.993; 23.994; 23.995; 23.997; 23.997(a)(2), in place of §§ 23.997(a)(1); 23.999; 23.1011; 23.1013; 23.1015; 23.1017; 23.1019; 23.1021; 23.1023; 23.1041; 23.1043; 23.1047; 23.1061; 23.1063; 23.1091; 23.1093; 23.1103; 23.1107; 23.1121; 23.1123; 23.1141; 23.1143; 23.1145; 23.1163; 23.1165; 23.1181; 23.1182; 23.1183; 23.1191; 23.1193; 23.1301; 23.1305; 23.1309; 23.1311; 23.1321; 23.1322; 23.1327; 23.1331; 23.1337; 23.1351; 23.1353; 23.1357; 23.1359; 23.1361; 23.1365; 23.1367; 23.1381; 23.1431; 23.1461; 23.1501; 23.1519; 23.1521; 23.1527; 23.1529; 23.1541; 23.1543; 23.1549; 23.1551; 23.1555; 23.1557; 23.1567; 23.1581; 23.1583; 23.1585; 23.1587; and 23.1589.

Equivalent levels of safety for:

Cockpit controls—23.777(d)

Motion and effect of cockpit controls—23.779(b)

Liquid Cooling—23.1061

Ignition switches—23.1145

The type certification basis includes exemption, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The type certification basis for the modified airplanes is as stated previously with the following modifications:

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 23) do not contain adequate or appropriate safety standards for the Cessna Model 172 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 172 must comply with the part 23 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in § 11.19, are issued in

accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

## Novel or Unusual Design Features

The Cessna Model 172 will incorporate the following novel or unusual design features: The Cessna Model 172, as modified by Thielert Aircraft Engines GmbH, will incorporate an aircraft diesel engine utilizing turbine (jet) fuel.

## Applicability

As dicussed above, these special conditions are applicable to the Cessna Model 172. Should Thielert Aircraft Engines GmbH apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. 3A13 to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

## Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

## Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

## Discussion

The major concerns identified in the development of FAA policy deal with the installation of the diesel engine and its vibration levels under normal operating conditions and with one cylinder inoperative, the accommodation of turbine fuels in airplane systems that have generally evolved based on gasoline requirements, the anticipated use of a FADEC to control the engine, and the appropriate limitations and indications for a diesel engine powered airplane. The general concerns associated with the Thielert modification are as follows:

Installation and Vibration Requirements
Fuel and Fuel System Related Requirements
FADEC and Electrical System Requirements
Limitations and Indications

*Installation and Vibration Requirements:* These special conditions include requirements similar to the requirements of § 23.901(d)(1) for turbine engines. In addition to the requirements of § 23.901 applied to reciprocating engines, the applicant will be required to construct and arrange each diesel engine installation to result in vibration characteristics that do not exceed those established during the type certification of the engine; and do not exceed vibration characteristics that a previously certificated airframe structure has been approved for, unless such vibration characteristics are shown to have no effect on safety or continued airworthiness. The engine limit torque design requirements as specified in § 23.361 are also modified.

An additional requirement to consider vibration levels and/or effects of an inoperative cylinder was imposed. Also, a requirement to evaluate the engine design for the possibility of, or effect of, liberating high-energy engine fragments, in the event of a catastrophic engine failure, was added.

*Fuel and Fuel System Related Requirements:* Due to the use of turbine fuel, this airplane must comply with the requirements in § 23.951(c).

Section 23.961 will be complied with using the turbine fuel requirements. These requirements will be substantiated by flight-testing as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

This special condition specifically requires testing to show compliance to § 23.961 and adds the possibility of testing non-aviation diesel fuels.

To ensure fuel system compatability and reduce the possibility of misfueling, and discounting the first clause of § 23.973(f) referring to turbine engines, the applicant will comply with § 23.973(f).

Due to the use of turbine fuel, the applicant will comply with § 23.977(a)(2), and § 23.977(a)(1) will not apply. ''Turbine engines'' will be interpreted to mean ''aircraft diesel engine'' for this requirement. An additional requirement to consider the possibility of fuel freezing was imposed.

Due to the use of turbine fuel, the applicant will comply with § 23.1305(c)(8).

Due to the use of turbine fuel, the applicant must comply with § 23.1557(c)(1)(ii). Section 23.1557(c)(1)(ii) will not apply. ''Turbine engine'' is interpreted to mean ''aircraft diesel engine'' for this requirement.

*FADEC and Electrical System Requirements:* The electrical system must comply with the following:

- In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.
- The transition from the actual engine net (FADEC) to the remaining electrical system with the consumer's avionics, communication etc. should be made by a single point only. If several transitions (*e.g.*, for redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.
- There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.
- In case of loss of alternator power the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot.
- FADEC, alternator and battery must be interconnected in an appropriate way, so that in case of loss of battery power, the supply of the FADEC is guaranteed by the alternator.

*Limitations and Indications:* Section 23.1305(a) and § 23.1305(b)(2) will apply, except that propeller revolutions per minute (RPM) will be displayed. Sections 23.1305(b)(4), 23.1305(b)(5) and 23.1305(b)(7) are deleted. Additional critical engine parameters for this installation that will be displayed include the following:

(1) Power setting, in percentage, and
(2) Fuel temperature.

Due to the use of turbine fuel, the requirements for § 23.1521(d), as applicable to fuel designation for turbine engines, will apply.

## The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Cessna Model 172 airplanes modified by Thielert Aircraft Engines GmbH.

*1. Engine Torque (Provisions Similar to § 23.361, Paragraphs (b)(1) and (c)(3))*

(a) For diesel engine installations, the engine mounts and supporting structure must be designed to withstand the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.

The effects of sudden engine stoppage may alternately be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable load levels are not imposed on the previously certificated structure.

(b) The limit engine torque to be considered under paragraph 14 CFR part 23, § 23.361(a) must be obtained by multiplying the mean torque by a factor of four for diesel cycle engines.

(1) If a factor of less than four is utilized, it must be shown that the limit torque imposed on the engine mount is consistent with the provisions of § 23.361(c), that is, it must be shown that the utilization of the factors listed in § 23.361(c)(3) will result in limit torques being imposed on the mount that are equivalent or less than those imposed by a conventional gasoline reciprocating engine.

*2. Powerplant—Installation (Provisions Similar to § 23.901(d)(1) for Turbine Engines)*

Considering the vibration characteristics of diesel engines, the applicant must comply with the following:

(a) Each diesel engine installation must be constructed and arranged to result in vibration characteristics that—

(1) Do not exceed those established during the type certification of the engine; and

(2) Do not exceed vibration characteristics that a previously certificated airframe structure has been approved for—

(i) Unless such vibration characteristics are shown to have no effect on safety or continued airworthiness, or

(ii) Unless mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

*3. Powerplant—Fuel System—Fuel System With Water Saturated Fuel (Compliance With § 23.951 requirements)*

Considering the fuel types used by diesel engines, the applicant must comply with the following:

Each fuel system for a diesel engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80 °F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

Methods of compliance that are acceptable for turbine engine fuel systems requirements of § 23.951(c) are also considered acceptable for this requirement.

*4. Powerplant—Fuel System—Fuel System Hot Weather Operation (Compliance With § 23.961 Requirements)*

In place of compliance with § 23.961, the applicant must comply with the following:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, or for aircraft equipped with diesel cycle engines that use turbine or diesel type fuels, the initial temperature must be 110 °F, −0°, +5° or the maximum outside air temperature for which approval is requested, whichever is more critical.

The fuel system must be in an operational configuration that will yield the most adverse, that is, conservative results.

To comply with this requirement, the applicant must use the turbine fuel requirements and must substantiate these by flight-testing, as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

*5. Powerplant—Fuel System—Fuel Tank Filler Connection (Compliance With § 23.973(f) Requirements)*

In place for compliance with § 23.973(e) and (f), the applicant must comply with the following:

For airplanes that operate on turbine or diesel type fuels, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

*6. Powerplant—Fuel System—Fuel Tank Outlet (Compliance With § 23.977 Requirements)*

In place of compliance with § 23.977(a)(1) and (a)(2), the applicant will comply with the following:

There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must, for diesel engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

*7. Powerplant—Powerplant Controls and Accessories—Engine Ignition Systems (Compliance With § 23.1165 Requirements)*

Considering that the FADEC provides the same function as an ignition system for this diesel engine, in place of compliance to § 23.1165, the applicant will comply with the following:

The electrical system must comply with the following requirements:

(a) In case of failure of one power supply of the electrical system, there will be no significant engine power changes. The electrical power supply to the FADEC must remain stable in such a failure.

(b) The transition from the actual engine electrical network (FADEC network) to the remaining electrical system should be made at a single point only. If several transitions (for example, redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.

(c) There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.

(d) In case of loss of alternator power the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot. This period must be at least 120 minutes.

(e) FADEC, alternator and battery must be interconnected in an appropriate way, so that in case of loss of battery power, the supply of the FADEC is guaranteed by the alternator.

*8. Equipment—General—Powerplant Instruments (Compliance With § 23.1305 Requirements)*

In place of compliance with § 23.1305, the applicant will comply with the following: The following are required powerplant instruments:

(a) A fuel quantity indicator for each fuel tank, installed in accordance with § 23.1337(b).

(b) An oil pressure indicator.

(c) An oil temperature indicator.

(d) A tachometer indicating propeller speed.

(d) A coolant temperature indicator.

(f) An indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

Alternately, no indicator is required if the engine can operate normally for a specified period with the fuel strainer exposed to the maximum fuel contamination as specified in MIL–

5007D and provisions for replacing the fuel filter at this specified period (or a shorter period) are included in the maintenance scheduled for the engine installation.

(g) Power setting, in percentage.

(h) Fuel temperature.

(i) Fuel flow (engine fuel consumption).

*9. Operating Limitations and Information—Powerplant Limitations—Fuel Grade or Designation (Compliance With § 23.1521(d) Requirements)*

Instead of compliance with § 23.1521(d), the applicant must comply with the following:

The minimum fuel designation (for diesel engines) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of § 23.1521.

*10. Markings and Placards—Miscellaneous Markings and Placards—Fuel, Oil, and Coolant Filler Openings (Compliance With § 23.1557(c)(1) Requirements)*

Instead of compliance with § 23.1557(c)(1), the applicant must comply with the following:

Fuel filler openings must be marked at or near the filler cover with—

For diesel engine-powered airplanes—

(a) The words ''Jet Fuel''; and

(b) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(c) A warning placard or note that states the following or similar:

''Warning—this airplane equipped with an aircraft diesel engine, service with approved fuels only.''

The colors of this warning placard should be black and white.

*11. Powerplant—Fuel System—Fuel-Freezing*

If the fuel in the tanks cannot be shown to flow suitably under all possible temperature conditions, then fuel temperature limitations are required. These will be considered as part of the essential operating parameters for the aircraft and must be limitations.

(1) The takeoff temperature limitation must be determined by testing or analysis to define the minimum cold-soaked temperature of the fuel that the airplane can operate on.

(2) The minimum operating temperature limitation must be determined by testing to define the minimum operating temperature acceptable after takeoff (with minimum takeoff temperature established in (1) above).

*12. Powerplant Installation—Vibration Levels*

Vibration levels throughout the engine operating range must be evaluated and:

(1) Vibration levels *imposed on the airframe* must be less than or equivalent to those of the gasoline engine; or

(2) Any vibration level that is higher than that imposed on the airframe by the replaced gasoline engine must be considered in the modification and the effects on the technical areas covered by the following paragraphs must be investigated: 14 CFR part 23, §§ 23.251; 23.613; 23.627; 23.629 (or CAR 3.159, as applicable to various models); 23.572; 23.573; 23.574 and 23.901.

Vibration levels imposed on the airframe can be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

*13. Powerful Installation—One Cylinder Inoperative*

It must be shown by test or analysis, or by a combination of methods, that the airframe can withstand the shaking or vibratory forces imposed by the engine if a cylinder becomes inoperative. Diesel engines of conventional design typically have extremely high levels of vibration when a cylinder become inoperative. Data must be provided to the airframe installer/modifier so either appropriate design considerations or operating procedures, or both, can be developed to prevent airframe and propeller damage.

*14. Powerplant Installation—High Energy Engine Fragments*

It may be possible for diesel engine cylinders (or portions thereof) to fail and physically separate from the engine at high velocity (due to the high internal pressures). This failure mode will be considered possible in engine designs with removable cylinders or other non-integral block designs. The following is required.

(1) It must be shown that the engine construction type (massive or integral block with nonremovable cylinders) is inherently resistant to liberating high energy fragments in the event of a catastrophic engine failure; or,

(2) It must be shown by the design of the engine, that engine cylinders, other engine components or portions thereof (fragments) cannot be shed or blown off of the engine in the event of a catastrophic engine failure; or

(3) It must be shown that all possible liberated engine parts or components do not have adequate energy to penetrate engine cowlings; or

(4) Assuming infinite fragment energy, and analyzing the trajectory of the probable fragments and components, any hazard due to liberated engine parts or components will be minimized and the possibility of crew injury is eliminated. Minimization must be considered during initial design and not presented as an analysis after design completion.

Issued in Kansas City, Missouri, on November 1, 2004.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–25697 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–M

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19444; Directorate Identifier 2004–CE–33–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pacific Aerospace Corporation, Ltd. Model 750XL Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Pacific Aerospace Corporation, Ltd. (Pacific Aerospace) Model 750XL airplanes. This proposed AD would require you to replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for New Zealand. We are issuing this proposed AD to replace the above identified rivets on the aileron pushrod ends and elevator control pushrod ends, which, if not replaced, could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

**DATES:** We must receive any comments on this proposed AD by December 27, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the

instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

• *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.

To get the service information identified in this proposed AD, contact Pacific Aerospace Corporation, Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: 64 7 843 6144; facsimile: 64 7 843 6134.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. This is docket number FAA–2004–19444.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 302, Kansas City, MO 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19444; Directorate Identifier 2004–CE–33–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. 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 who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19444. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

## Docket Information

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard 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*. The comments will be available in the AD docket shortly after the DMS receives them.

## Discussion

*What events have caused this proposed AD?* The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, recently notified FAA that an unsafe condition may exist on all Pacific Aerospace Corporation, Ltd. (Pacific Aerospace) Model 750XL airplanes. The CAA reports occurrences of loose type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends on Model 750XL airplanes in service in New Zealand.

*What is the potential impact if FAA took no action?* Any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

*Is there service information that applies to this subject?* Pacific Aerospace has issued Mandatory Service Bulletin No. PACSB/XL/007, dated June 22, 2004.

*What are the provisions of this service information?* The service bulletin includes procedures for:

—Inspecting for any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends; and

—Replacing any type TLP–D or TLED rivets found on the aileron pushrod ends and elevator control pushrod ends with new Cherry Max 3213–4–2 or 3243–4–2 (oversize nominal ⅛-inch) rivets.

*What action did the CAA take?* The CAA classified this service bulletin as mandatory and issued New Zealand AD Number DCA/40XL/1, dated June 24, 2004, to ensure the continued airworthiness of these airplanes in New Zealand.

*Did the CAA inform the United States under the bilateral airworthiness agreement?* These Pacific Aerospace Model 750XL airplanes are manufactured in New Zealand and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above.

## FAA's Determination and Requirements of This Proposed AD

*What has FAA decided?* We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pacific Aerospace Model 750XL airplanes of the same type design that are registered in the United States, we are proposing AD action to replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends, which, if not replaced, could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

*What would this proposed AD require?* This proposed AD would require you to replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs 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 would this proposed AD impact?* We estimate that

this proposed AD affects 6 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to do this proposed replacement of any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. Operators |
|---|---|---|---|
| 6 workhours × $65 per hour = $390 ..... | $37 for 100 Cherry Max 3213–4–2 or 3243–4–2 (oversize nominal ⅛-inch) rivets. | $427 | $427 × 6 = $3,562. |

The Cherry Max 3213–4–2 or 3243–4–2 rivets are available in a specially sealed 100-count package. The costs above cover this 100-count package although you may need less than 100 rivets.

## Regulatory Findings

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

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed 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 proposed AD 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 ''AD Docket FAA–2004–19444; Directorate Identifier 2004–CE–33–AD'' in your request.

This proposed rulemaking is promulgated under the authority in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with prescribing minimum standards required in the interest of safety for the design of aircraft. This proposed regulation is within the scope of that authority since it corrects an unsafe condition in the design of the aircraft caused by type TLP–D or TLED rivets, which, if not replaced, could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Pacific Aerospace Corporation, Ltd.:** Docket No. FAA–2004–19444; Directorate Identifier 2004–CE–33–AD

*When Is the Last Date I can Submit Comments on This Proposed AD?*

(a) We must receive comments on This proposed airworthiness directive (AD) by December 27, 2004.

*What Other ADs are Affected by This Action?*

(b) None.

*What Airplanes are Affected by This AD?*

(c) This AD affects Model 750XL airplanes, all serial numbers, that are certificated in any category.

*What Is the Unsafe Condition Presented in This AD?*

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for New Zealand. The actions specified in this AD are intended to replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends, which, if not replaced, could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends with a new Cherry Max 3213–4–2 or 3243–4–2 (oversize nominal ⅛-inch) rivet. | With 50 hours time-in-service (TIS) after the effective date of this AD, unless already done. | Follow the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Corporation Mandatory Service Bulletin No. PACSB/XL/007, dated June 22, 2004. |
| (2) Do not install: (i) any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends; or (ii) any aileron pushrods or elevator control pushrods with type TLP–D or TLED rivets on the ends. | As of the effective date of this AD ..... | Not Applicable. |

*May I Request an Alternative Method of Compliance?*

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane

Directorate, 901 Locust, Room 302, Kansas City, MO 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

*Is There Other Information That Relates to This Subject?*

(g) New Zealand Airworthiness Directive Number DCA/40XL/1, dated June 24, 2004, also addresses the subject of this AD.

*May I Get Copies of the Documents Referenced in This AD?*

(h) To get copies of the documents referenced in this AD, contact Pacific Aerospace Corporation, Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: 64 7 843 6144; facsimile: 64 7 843 6134. 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, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2004–19444.

Issued in Kansas City, Missouri, on November 15, 2004.

**Scott L. Sedgwick,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–25795 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19648; Directorate Identifier 2004–NE–31–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Corporation (formerly Allison Engine Company) 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W Turboprop and Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) (formerly Allison Engine Company) 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W turboprop and turboshaft engines that do not have turbine energy absorbing ring, part number (P/N) 23035175, installed. This proposed AD would require installation of a turbine energy absorbing ring in the plane of the 1st stage turbine wheel. This proposed AD may also require installation of 1st stage turbine nozzles, 2nd stage turbine nozzles, and a gas producer support assembly, all modified to allow for installation of the turbine energy absorbing ring. This proposed AD results from an unacceptable rate of uncontained 1st stage turbine wheel failures. We are proposing this AD to minimize the risk of uncontained 1st stage turbine wheel fragments from causing damage to the aircraft or damage to the second engine on twin-engine installations which could lead to loss of control and loss of the aircraft.

**DATES:** We must receive any comments on this proposed AD by January 21, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Melissa T. Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–8110; fax (847) 294–7834.

**SUPPLEMENTARY INFORMATION:**

### Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we post new AD actions on the DMS and assign a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form ''Docket No. FAA–200X–XXXXX.'' Each DMS docket also lists the Directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

### Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19648; Directorate Identifier 2004–NE–31–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the AD Docket

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

### Discussion

RRC conducted an analysis of uncontained 1st stage turbine wheel failures and the effects on aircraft. The 1st stage turbine wheel can fail as a result of in-service damage or gas producer tiebolt failure. The in-service damage is caused primarily by thermal fatigue to the turbine wheels during hot starts but has also been linked to improper alignment of the combustion liner and oil fires.

The manufacturer developed a turbine energy absorbing ring to render turbine wheel fragments non-hazardous. We have determined the present rate of hazardous 1st stage turbine wheel

failures is unacceptable. This condition, if not corrected, could result in hazardous uncontained 1st stage turbine wheel fragments causing damage to the airframe and the second engine on twin-engine installations which could lead to loss of control and loss of the aircraft.

### Relevant Service Information

We have reviewed and approved the technical contents of RRC Alert Commercial Engine Bulletin No. CEB–A–1255, Revision 4, dated September 29, 2004, that describes procedures for installing a turbine energy absorbing ring in the plane of the 1st stage turbine wheel. We have also reviewed and approved the technical contents of RRC Alert Commercial Engine Bulletin No. CEB–A–1254, Revision 3, dated May 21, 2004, that describes procedures for modifying and installing a certain P/N gas producer support assembly. We have also reviewed and approved the technical contents of RRC Alert Commercial Engine Bulletin No. CEB–A–1253, Revision 4, dated May 21, 2004, that describes procedures for modifying and installing a certain P/N 1st stage turbine nozzle, and certain P/N 2nd stage turbine nozzle. The actions required by RRC Alert Commercial Engine Bulletin No. CEB–A–1254 and No. CEB–A–1253, if necessary, must be done before or simultaneously with the actions of Alert Commercial Engine Bulletin No. CEB–A–1255.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require installation of a turbine energy absorbing ring. The proposed AD would require that these actions be done using Alert Commercial Engine Bulletin No. CEB–A–1255.

### Costs of Compliance

There are about 13,299 RRC 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W turboprop and turboshaft engines of the affected design in the worldwide fleet. We estimate that 5,000 engines installed on helicopters of U.S. registry require the installation of a turbine energy absorbing ring. Of those 5,000 engines, we also estimate that 4,000 engines require installation of a gas producer support assembly, 1st stage turbine nozzle, and 2nd stage turbine nozzle. It takes about 16 work hours per engine to install the turbine energy absorbing ring, 35 work hours to install the gas producer support assembly, and 20 work hours to install the 1st stage turbine nozzle, and 2nd stage turbine nozzle. The average labor rate is $65 per work hour. Required turbine energy absorbing rings cost about $10,765 per engine. Required gas producer support assemblies cost about $2,500 per engine. Required 1st stage turbine nozzles and 2nd stage turbine nozzles cost about $1,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $87,325,000.

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Rolls-Royce Corporation (formerly Allison Engine Company):** Docket No. FAA–2004–19648; Directorate Identifier 2004–NE–31–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 21, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Rolls-Royce Corporation (RRC) (formerly Allison Engine Company) 250–B17B, –B17C, –B17D, –B17E, –C20, –C20B, –C20F, –C20J, –C20S, and –C20W turboprop and turboshaft engines that do not have turbine energy absorbing ring, part number 23035175, installed. These engines are installed on, but not limited to, the following aircraft:

Agusta A109
Agusta A109A
Agusta A109A II
B–N Group BN–2T
Bell 206A
Bell 206B
Bell 206L
Eurocopter Deutchland BO–105C
Eurocopter Deutchland BO–105S
Eurocopter France AS355E
Eurocopter France AS355F
Eurocopter France AS355F1
Eurocopter France AS355F2
FH–1100 Manufacturing Corp FH–1100
MDHI 369D
MDHI 369E
MDHI 369HM
MDHI 369HS
MDHI 369HE
SIAI Marchetti s.r.l. SF600

**Unsafe Condition**

(d) This AD results from an unacceptable rate of uncontained 1st stage turbine wheel failures. We are issuing this AD to minimize the risk of uncontained 1st stage turbine wheel fragments from causing damage to the aircraft or damage to the second engine on twin-engine installations which could lead to loss of control and loss of the aircraft.

**Compliance**

(e) You are responsible for having the actions required by this AD performed at the next time the gas producer turbine rotor is disassembled for any reason, or within 1,750 hours time-since-last-overhaul, time-since-new, time-since-last-heavy-maintenance, or time-since-last-hot section inspection after the effective date of this AD, whichever occurs first, but no later than October 31, 2011, unless already done.

**Required Actions**

(f) If not already installed, install a modified gas producer support assembly to provide installation of the turbine energy absorbing ring. Use paragraph 2. of RRC Alert Commercial Engine Bulletin No. CEB–A–1254, Revision 3, dated May 21, 2004, to do the modification and installation.

(g) If not already installed, install a modified 1st stage turbine nozzle, 2nd stage turbine nozzle, and gas producer support assembly to provide installation of the turbine energy absorbing ring. Use paragraph 2. of RRC Alert Commercial Engine Bulletin

No. CEB–A–1253, Revision 4, dated May 21, 2004, to do the modification and installation.

(h) Install a turbine energy absorbing ring in the plane of the 1st stage turbine wheel. Use paragraphs 2.A. and 2.B. of RRC Alert Commercial Engine Bulletin No. CEB–A–1255, Revision 4, dated September 29, 2004, to do the installation.

**Alternative Methods of Compliance**

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

**Related Information**

(j) None.

Issued in Burlington, Massachusetts, on November 16, 2004.

**Jay J. Pardee,**

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

[FR Doc. 04–25794 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–256–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes, that would have required initial and repetitive inspections of certain frame stiffeners to detect cracking. If any cracking was found, that proposal would have required replacement of the stiffener with a new, reinforced stiffener. Replacement of the stiffener would constitute terminating action for certain inspections. That proposal would also have required a one-time inspection of any new, reinforced stiffener; and repair or replacement of the new, reinforced stiffener if any cracking was found during the one-time inspection. That proposal also provided for an optional terminating action for certain requirements of that AD. This new action revises the proposed rule by reducing the compliance time for the initial inspection of the affected frame stiffeners. The actions specified by this new proposed AD are intended to prevent fatigue failure of certain frame stiffener fittings, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 17, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–256–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–256–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 2004 (69 FR 17084). That NPRM would have required initial and repetitive inspections of certain frame stiffeners to detect cracking. If any cracking was found, that proposal would have required replacement of the stiffener with a new, reinforced stiffener. Replacement of the stiffener would constitute terminating action for certain inspections. That NPRM would also have required a one-time inspection of any new, reinforced stiffeners; and repair or replacement of the new, reinforced stiffener if any cracking was found during the one-time inspection. That NPRM also provided for an optional terminating action for certain requirements of that AD. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. Cracking and consequent fatigue failure of certain frame stiffeners, if not corrected, could

result in reduced structural integrity of the airplane.

**Comments**

Due consideration has been given to the comments received in response to the original NPRM.

**No Objection to Proposed AD**

One commenter states that it does not own or operate airplanes affected by the original NPRM. The commenter does not have any further comments.

**Requests To Change Compliance Time**

One commenter, the manufacturer, states that the French airworthiness directives mandate accomplishment of the initial inspection of the FR12A stiffener before the accumulation of 13,000 total flight cycles. The original NPRM has a compliance time of within 6 months or 13,000 flight cycles after the effective date of the AD, whichever is later, for the initial inspection.

We infer that the commenter is requesting that the compliance time of the original NPRM be revised to match what is in the parallel French airworthiness directives. We partially agree. The compliance time in paragraph (a) of this supplemental NPRM has been changed to ''Prior to the accumulation of 13,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.'' Although the French airworthiness directives do not include a grace period, we find it necessary to include a 6-month grace period to avoid grounding airplanes that have accumulated 13,000 total flight cycles or more as of the effective date of the AD.

Another commenter, an operator, requests that the 6-month grace period in paragraph (a) of the original NPRM be extended to 18 months. The commenter states that it anticipates incorporation of the subject modification during upcoming maintenance checks, and that an 18-month compliance time will align with those maintenance checks. The commenter adds that if an operator has already accumulated more than 11,400 total flight cycles or 33,100 total flight hours on the airplane, the operator may be forced to do the subject modification outside of a heavy maintenance environment, which would extend the out-of-service time. The commenter notes that extending the grace period to 18 months would allow for accomplishment of the modification without specially scheduled downtime outside of scheduled maintenance.

We do not agree. In developing an appropriate grace period for this action, we considered the safety implications, operators' normal maintenance schedules, and the compliance time recommended by the airplane manufacturer for the timely accomplishment of the required actions. In consideration of these items, we have determined that a grace period of 6 months will ensure an acceptable level of safety, and is an appropriate interval of time wherein the required actions can be accomplished during scheduled maintenance intervals for the majority of affected operators. However, according to the provisions of paragraph (g) of this supplemental NPRM, we may approve a request to adjust the compliance time if the request includes data that justify that a different compliance time would provide an acceptable level of safety. This supplemental NPRM has not been changed regarding this issue.

**Request To Change Cost Impact Section**

The same commenter requests that the estimated work hours for access and close-up of the inspection area be included in the Cost Impact section of the original NPRM. The commenter states that approximately 140 work hours will be needed for access and close-up. The commenter agrees with the estimate in the original NPRM that approximately 4 work hours will be needed to accomplish the inspection.

We do not agree that the estimated work hours for access and close-up of the inspection area should be included in this supplemental NPRM. As stated in the original NPRM, ''the cost impact figures * * * represent only the time necessary to perform the specific actions actually required by the AD.'' The specific actions required by the AD are repetitive high-frequency eddy current inspections of the FR12A stiffener fitting. We expect that most operators will be able to do the actions specified in this supplemental NPRM during scheduled maintenance. We attempt to set compliance times that generally coincide with operators' maintenance schedules. However, because operators' schedules vary substantially, we cannot accommodate every operator's optimal scheduling in each AD. The time necessary for gaining access to and closing the inspection area is incidental. This supplemental NPRM has not been changed regarding this issue.

**Request To Allow Temporary Flight With Cracking**

One commenter, the manufacturer, notes that paragraph (b) of the original NPRM specifies replacement of cracked FR12A stiffeners before further flight.

Since the service bulletins and the parallel French airworthiness directives allow temporary flight with cracks of certain lengths, and corrective actions at various flight-cycle thresholds, we infer that the commenter is requesting that the original NPRM allow flight with cracking. We do not agree. The manufacturer did not provide data that showed the ultimate strength capability of a stiffener with cracking. Also, the manufacturer did not provide fatigue analysis that showed, under a load condition, that the cracking did not grow, or that the cracking grew at an acceptably slow rate, during the period time of time between the identification of the cracking and the corrective actions. We have determined that, due to the safety implications and consequences associated with such cracking, all fittings with cracking must be replaced before further flight. This supplemental NPRM has not been changed regarding this issue.

**Explanation of Change to Relevant Service Information Referenced in This Supplemental NPRM**

Since the issuance of the original NPRM, Airbus has issued Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004 (for Model A340–200 and A340–300 series airplanes). (The original NPRM refers to A340–53–4141, Revision 01, dated July 7, 2003, as the appropriate source of service information for the proposed actions for these airplanes.) Revision 02 of the service bulletin adds details to Figure 2 and changes the identification number of the modification kits. Revision 02 also includes a new figure, Figure 13, that contains instructions for reworking a stiffener fitting. Figure 13 only pertains to operators that have certain modification kits. We have changed paragraphs (a), (b), (c), and (f) of this supplemental NPRM to reference Revision 02 of the service bulletin.

**Explanation of Change to Paragraph (e) of This Supplemental NPRM**

Paragraph (e) of the original NPRM inadvertently referenced Airbus Service Bulletin A340–53–4137, dated May 26, 2003, twice. We have changed paragraph (e) of this supplemental NPRM to delete one of the references to Service Bulletin A340–53–4137, and to give credit for actions done before the effective date of the AD in accordance with Airbus Service Bulletin A340–53–4141, dated May 26, 2003; and A340–53–4141, Revision 01, dated July 7, 2003.

**Additional Change to This Supplemental NPRM**

The number of affected Airbus Model A330 airplanes has been updated from

9 to 20 in the Cost Impact section of this supplemental NPRM.

## Conclusion

Since a certain change expands the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

## Cost Impact

The FAA estimates that 20 Model A330 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,200, or $260 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

If an operator chooses to do the optional terminating action rather than continue the repetitive inspections, it would take about 74 work hours per airplane to accomplish the installations, at an average labor rate of $65 per work hour. Required parts would cost about $7,860 per airplane. Based on these figures, we estimate the cost of this optional terminating action to be $12,670 per airplane.

Currently, there are no affected Model A340–200 or A340–300 series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it would take approximately 4 work hours to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of this AD to be $260 per airplane, per inspection cycle.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 2003–NM–256–AD.

*Applicability:* Model A330 series airplanes; and Model A340–200 and A340–300 series airplanes; except those on which Airbus Modification 49694 has been installed; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue failure of certain frame stiffener fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

**Initial and Repetitive Inspections**

(a) Prior to the accumulation of 13,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later: Conduct a high-frequency eddy current (HFEC) inspection for cracking of the FR12A stiffener fitting in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004 (for Model A340–200 and A340–300 series airplanes); as applicable. Repeat the inspection at intervals not to exceed 10,000 flight cycles until the replacement required by paragraph (b) of this AD is accomplished; or until the optional terminating action in paragraph (d) of this AD is accomplished. The actions in paragraphs (b) and (d) of this AD constitute terminating action for the repetitive inspections only for the side on which the actions are taken.

**Replacement**

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD: Before further flight, replace the affected FR12A stiffener with a new reinforced FR12A stiffener in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; or Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004; as applicable. Replacement of the stiffener constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD, only for the side on which the replacement is made.

**Follow-On Inspection**

(c) For airplanes on which a new, reinforced stiffener is installed in accordance with paragraph (b) of this AD: Within 14,600 flight cycles following the installation, perform an HFEC inspection of the FR12A stiffener fitting for cracking in accordance with Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; or Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004; as applicable. If any cracking is detected, before further flight, repair or replace the new reinforced stiffener with a new stiffener in a manner approved by either the Manager, International Branch, ANM–116, FAA; or the DGAC (or its delegated agent).

**Optional Terminating Action**

(d) Replacement of the FR12A stiffeners with new, reinforced stiffeners; installation of new reinforced junction fittings between FR12A/FR13 and FR13/FR13A at the stringer 26 level; and installation of a new shear web that joins the fitting to the cabin floor track; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3130, Revision 01, dated October 10, 2003; or A340–53–4137, Revision 01, dated October 10, 2003; as applicable; constitutes terminating action for the inspection requirements of paragraphs (a) and (c) of this AD, only for the side on which the replacement and installations are made.

**Actions Accomplished per Previous Issues of Service Bulletins**

(e) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletins A330–53–3130, dated May 26, 2003; A330–53–3135, dated May 26, 2003; A340–53–4137, dated May 26, 2003; A340–53–4141, dated May 26, 2003; or A340–53–4141, Revision 01, dated July 7, 2003; are considered acceptable for compliance only with the following requirements of this AD: The HFEC inspections required by paragraph (a) of this AD, the replacement required by paragraph

(b) of this AD, and the actions in paragraph (d) of this AD.

**No Reporting Requirements**

(f) Although the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; and Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004; describe procedures for submitting certain information to the manufacturer, this AD does not require those actions.

**Alternative Methods of Compliance**

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in French airworthiness directives 2003–205(B), dated May 28, 2003; and 2003–206(B), dated May 28, 2003.

Issued in Renton, Washington, on November 10, 2004.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–25793 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Part 700

**[Docket No. 041026293–4293–01]**

**RIN 0694–AD35**

## Defense Priorities and Allocations System: Electronic Transmission of Reasons for Rejecting Rated Orders

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Defense Priorities and Allocations System (DPAS) regulations to allow a person who has rejected a rated order to give his or her reasons for the rejection through electronic means rather than requiring the person to submit the rationale in writing.

**DATES:** Comments must be received on or before December 22, 2004.

**ADDRESSES:** Written comments should be sent to the Federal eRulemaking Portal: *http://www.regulations.gov* or to William J. Denk, Director of the Defense Programs Division, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Fax: (202) 482–5650, or e-mail: *wdenk@bis.doc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Baker, Office of Strategic Industries and Economic Security, telephone: (202) 482–2017 or e-mail: *sbaker@bis.doc.gov*.

**SUPPLEMENTARY INFORMATION:** Under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), the President is authorized to require preferential acceptance and performance of contracts or orders supporting certain approved national defense and energy programs, and to allocate materials, services, and facilities in such a manner as to promote these approved programs. Additional priorities authority is found in section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, and 50 U.S.C. 82. DPAS authority has also been extended to support emergency preparedness activities under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (45 U.S.C. 5915 *et seq.*).

Originally published in 1984, the DPAS regulations were revised on June 11, 1998 (63 FR 31918), to update, streamline, and clarify a number of provisions. The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense and emergency preparedness program requirements, including critical infrastructure protection and restoration, as well as provide an operating system to support rapid industrial response in a national emergency. In pursuit of the DPAS mission, the Department of Commerce endeavors to minimize disruptions to the normal commercial activities of industry.

The Bureau of Industry and Security (BIS) is proposing to amend the regulations that require persons to transmit rejections of DPAS rated orders in writing to allow these transmissions to be made electronically. Industry has asserted that the current procedure hampers efficiency. As a result, BIS proposes to amend 15 CFR 700.13(d)(1) to allow a person the option of transmitting his or her rationale for rejecting a rated order electronically to the appropriate contracting officer or agency. If this rule is adopted, a person would be able to transmit his or her rationale for rejection either electronically or in writing. This amendment to the DPAS regulations should allow this information to be transmitted more quickly.

**Rulemaking Requirements**

1. *Executive Order 12866:* This rule has been determined to be not significant under EO 12866.

2. *Executive Order 13132:* This rule does not contain policies with Federalism implications as this term is defined in EO 13132.

3. *Paperwork Reduction Act:* This rule contains collection of information requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Comments may be sent to Mr. Stephen Baker, Office of Strategic Industries and Economic Security; fax: (202) 482–5650; e-mail: *sbaker@bis.doc.gov*. These collections have been approved by the OMB under control number 0694–0092, ''Procedures for Acceptance or Rejection of a Rated Order,'' which carries a burden hour estimate of 1 to 15 minutes per response. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

4. *Regulatory Flexibility Act:* The Chief Counsel for Regulation of the Department of Commerce has certified to the Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities (*i.e.*, companies or other organizations involved in production for the U.S. defense industrial base).

This rule would amend DPAS regulations to allow a person who has rejected a rated order to give his or her reasons for the rejection through electronic means rather than requiring the person to submit the rationale in writing. Previously, BIS required the rationale for rejection be transmitted in writing, not electronically. This change will reduce the burden on industry for staff time and postage and improve the efficiency of small business record keeping. Those small businesses without electronic capability will

continue to be able to submit their rejection rationale in writing.

It is estimated that 25 percent (or 1,750) of the 7,000 DPAS respondents tasked with notifying their customer of their rationale for rejection are small entities affected by this rule. This estimate is based on data provided by the Department of Defense (DoD)[1] on the number of entities participating in the DPAS program. DoD estimates that one percent (or 7,000) of 700,000 rated orders result in rejection notices and require the related transmittal of the rationale for rejection.

This rule would have a minor positive impact on the small entities affected by this rule. It would save these entities approximately five minutes per response (or 146 hours annually) in reduced public burden. Because the impact to small entities would be small, I certify that this rule would not have a significant economic impact on a substantial number of small entities. This amendment does not include any new reporting or recordkeeping requirements and will not duplicate, overlap or conflict with other laws or regulations.

### List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

Accordingly, the DPAS regulations (15 CFR part 700) are proposed to be amended as follows:

## PART 700—[AMENDED]

1. The authority citation is revised to read as follows:

**Authority:** Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and Executive Order 12919, as amended, 59 FR 29525, 3 CFR, 1994 Comp., p. 901, as amended by Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp., p. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp., p. 585.

2. Revise § 700.13(d)(1) to read as follows:

**§ 700.13 Acceptance and rejection of rated orders.**

* * * * *

(d) Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of this section, in writing (hard copy) or electronic format.

* * * * *

Dated: November 12, 2004.

**Peter Lichtenbaum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 04–25718 Filed 11–19–04; 8:45 am]

BILLING CODE 3510–33–P

[1] Consistent with section 201(b) of Executive Order 12919, the Department of Commerce has delegated authority to DoD to use the DPAS regulations for priority rating of contracts and orders for all materials, services, and facilities needed in support of approved programs with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities. *See* Department of Commerce DPAS Delegation #1 (July 1, 1998). DoD is the single largest user of the DPAS regulations.

---

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–145535–02]**

**RIN 1545–BB85**

## Guidance Regarding Predecessors and Successors Under Section 355(e); Limitation on Gain Recognition Under Section 355(e)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that define the terms predecessor and successor for purposes of section 355(e). These proposed regulations provide guidance in determining whether a corporation is a predecessor or successor of a distributing or controlled corporation, as well as rules to assist taxpayers in determining whether an acquisition of an interest in a corporation would cause a distributing corporation to recognize gain under section 355(e). These proposed regulations affect corporations that distribute the stock of controlled corporations in distributions described in section 355.

**DATES:** Written or electronic comments and requests for a public hearing must be received by February 22, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–145535–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–145535–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS—REG–145535–02).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Krishna P. Vallabhaneni at (202) 622–7550; concerning submissions of comments or requests for a hearing, Robin R. Jones, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

This document contains proposed regulations under section 355(e) of the Internal Revenue Code of 1986. Section 355(e), enacted as part of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat 788 (1997)), provides that stock of a controlled corporation (Controlled) generally will not be treated as qualified property under section 355(c)(2) or 361(c)(2) if the Controlled stock is distributed as part of a plan (or series of related transactions) pursuant to which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation (Distributing) or Controlled. On April 26, 2002, the Internal Revenue Service (IRS) and the Treasury Department published temporary regulations (TD 8988) in the **Federal Register** (67 FR 20632) under section 355(e) providing guidance regarding whether a distribution and an acquisition of Distributing or Controlled are part of a ''plan (or series of related transactions).'' *See* Treas. Reg. § 1.355–7T. Section 355(e)(4)(D) provides that, for purposes of section 355(e), ''any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.''

Practitioners have commented that guidance regarding the definitions of predecessor and successor is desirable. Therefore, these regulations propose definitions of predecessor and successor, rules for determining whether there has been an acquisition of a predecessor of Distributing, Distributing, or Controlled in certain

cases, and rules limiting the amount of gain required to be recognized as a result of acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing.

*Predecessors of Distributing*

The definition of a predecessor of Distributing in these proposed regulations is intended to reflect the fact that section 355(e) generally denies tax-free treatment under sections 355(c)(1) and 361(c)(1) if there is a division of a corporation's assets to which section 355(a) applies that is coupled with planned acquisitions of stock representing in the aggregate a 50-percent or greater interest in Distributing or Controlled. The proposed regulations generally provide that a predecessor of Distributing includes a corporation that, before the distribution, transfers property to Distributing in a transaction to which section 381 applies if Distributing transfers some (but not all) of the acquired property to Controlled (or a predecessor of Controlled, as described below) and the basis of such property immediately after the transfer to Controlled (or a predecessor of Controlled) is determined in whole or in part by reference to the basis of the property in the hands of Distributing immediately before the transfer. For example, if before the distribution P merges into D in a statutory merger under section 368(a)(1)(A) and D transfers some but not all of the acquired P assets to C in exchange for C stock in a reorganization under section 368(a)(1)(D), then P is a predecessor of D.

The proposed regulations also provide that a predecessor of Distributing includes a corporation that, before the distribution, transfers property to Distributing in a transaction to which section 381 applies if some but not all of the property transferred to Distributing includes Controlled stock and, after the combining transaction, Distributing transfers less than all of the property acquired (other than the Controlled stock) to Controlled. In such cases, the distribution of Controlled stock, even without a pre-distribution transfer of acquired assets to Controlled, effects a division of the predecessor's assets.

The definition of a predecessor of Distributing may result in a corporation being treated as a predecessor of Distributing even if the distribution and the combination of the predecessor and Distributing are not part of a plan. Once a predecessor of Distributing is identified, it must be determined whether the distribution and any acquisitions (deemed or actual) of stock of the predecessor are part of a plan.

*Predecessors of Controlled*

In the course of developing these regulations, the IRS and Treasury Department considered to what extent a corporation's transfer of property to Controlled in a transaction to which section 381 applies implicates the policies underlying section 355(e). Generally, Controlled will not be able to transfer property that it receives in such a transaction to Distributing tax-free. One exception is where Controlled itself distributes the stock of another corporation in a distribution to which section 355 applies. In these cases, however, Controlled will functionally be a distributing corporation, and the transferor of property to Controlled may be a predecessor of the distributing corporation. Therefore, as a general matter, it appears that property transferred to Controlled cannot be divided tax-free between Distributing and Controlled in the same way that property transferred to Distributing can be divided tax-free. Accordingly, the policy underlying the definition of a predecessor of Distributing does not appear to necessitate a definition of a predecessor of Controlled.

Nonetheless, solely for purposes of determining whether a corporation is a predecessor of Distributing, calculating certain limitations on gain recognition described below, and applying a special affiliated group rule described below, these proposed regulations define a predecessor of Controlled as a corporation that before the distribution transfers property to Controlled in a transaction to which section 381 applies. Under these proposed regulations, for no other purpose can a corporation be a predecessor of Controlled. Thus, acquisitions of stock that are part of a plan that includes the distribution and that in the aggregate represent a 50-percent or greater interest in a predecessor of Controlled will not cause Distributing to recognize gain. However, the IRS and Treasury Department continue to study whether there may be other situations in which a corporation should be treated as a predecessor of Controlled.

The definition of a predecessor of Controlled ensures that a corporation is treated as a predecessor of Distributing in the following situation and similar ones. Suppose Distributing acquires all the assets of X (including all the outstanding stock of Y) in a transaction to which section 381 applies. After the acquisition, Distributing causes Y to merge into Controlled, a wholly owned subsidiary of Distributing, in a reorganization under section 368(a)(1)(D). Distributing then distributes the stock of Controlled to its shareholders pro rata in a distribution to which section 355(a) applies. In this case, there is a separation of the X assets in a distribution to which section 355(a) applies. Under the definition of a predecessor of Controlled described above, Y will be treated as a predecessor of Controlled, and because Distributing acquires in a transaction to which section 381 applies stock of a predecessor of Controlled from X, X will be treated as a predecessor of Distributing.

*Multiple Predecessors*

Under the proposed regulations, more than one corporation may be a predecessor of Distributing or Controlled. For example, if more than one corporation transfers property to Distributing in transactions to which section 381 applies, each of the transferring corporations may be a predecessor of Distributing. However, a corporation that transfers its assets in a transaction to which section 381 applies to a predecessor of Distributing is not also treated as a predecessor of Distributing. The IRS and Treasury Department recognize that such transfers of assets to a predecessor of Distributing could be part of the plan that includes the distribution, but are concerned that treating such transferring corporations as predecessors of Distributing would add substantial complexity. Nonetheless, the IRS and Treasury Department continue to consider whether such corporations should be treated as a predecessor of Distributing.

*Successors*

The definition of a successor of Distributing or Controlled proposed in these regulations is intended to identify corporations that are properly viewed as a continuation of Distributing or Controlled for purposes of section 355(e). Therefore, the proposed regulations define a successor of Distributing as any corporation to which Distributing transfers property after the distribution in a transaction to which section 381 applies and a successor of Controlled as any corporation to which Controlled transfers property after the distribution in a transaction to which section 381 applies. More than one corporation may be a successor of Distributing or Controlled. For example, if after a distribution Distributing transfers property to another corporation (X) in a transaction to which section 381 applies, and X

transfers property to another corporation (Y) in a transaction to which section 381 applies, then each of X and Y may be a successor of Distributing. In this case, the determination of whether Y is a successor of Distributing is made after the determination of whether X is a successor of Distributing.

*Special Rules for Measuring Certain Acquisitions*

Whether there have been acquisitions of stock that are part of a plan that includes a distribution that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing is counted separately from whether there have been acquisitions of stock that are part of a plan that includes a distribution that in the aggregate represent a 50-percent or greater interest in Distributing. Therefore, Distributing may be required to recognize gain by reason of section 355(e) with respect to a predecessor of Distributing, but not Distributing, and vice versa.

Because a predecessor of Distributing may no longer exist after it combines with Distributing, special rules are necessary to determine whether there has been an acquisition of the predecessor in connection with and after the combination transaction. These proposed regulations provide that each person that owned an interest in Distributing immediately before the transaction in which the predecessor of Distributing transfers its property to Distributing is treated as acquiring stock in the predecessor of Distributing in the combination transaction. For example, suppose D acquires the assets of a predecessor in a statutory merger under section 368(a)(1)(A) and A, an individual, owned stock of D immediately before the merger. A would be treated as acquiring stock of the predecessor.

In addition, an acquisition of Distributing (or a successor of Distributing) that occurs after Distributing's combination with a predecessor will count not only as an acquisition of Distributing, but also as an acquisition of the predecessor. The stock of Distributing (or a successor of Distributing) is treated as the stock of all predecessors of Distributing. Therefore, if D acquires the assets of a predecessor in a statutory merger under section 368(a)(1)(A) and, after the merger, A, an individual, acquires 5 percent of the stock of D, A is treated as acquiring not only stock of D, but also stock of the predecessor of D.

The proposed regulations provide similar rules for determining whether there has been an acquisition of stock of Distributing or Controlled if there is an acquisition of stock of a successor of Distributing or Controlled. Therefore, acquisitions of a successor of Distributing or Controlled and acquisitions of Distributing or Controlled (before or after the distribution) pursuant to a plan are combined to determine whether there have been acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing or Controlled that cause section 355(e) to apply.

*Special Rules for Gain Recognition*

Generally, if a distribution and acquisitions that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing or Distributing are part of a plan, section 355(e) requires Distributing to recognize the full amount of the gain inherent in the Controlled stock on the date of the distribution under section 355(c)(2) or section 361(c)(2), as applicable. However, if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing are part of a plan but there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing that are part of that plan, and if the gain inherent in the assets of the predecessor of Distributing that are contributed to Controlled is small relative to the gain inherent in the Controlled stock on the date of the distribution, it may seem inappropriate to require that Distributing recognize the full amount of gain inherent in the Controlled stock. Similarly, if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing are part of a plan but there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in the predecessor of Distributing that are part of a plan, and if the excess of the gain inherent in the Controlled stock on the date of the distribution over the gain attributable to the assets of the predecessor is small relative to the full amount of gain inherent in the Controlled stock, it may seem inappropriate to require that Distributing recognize the full amount of gain inherent in the Controlled stock. Therefore, the proposed regulations provide two rules limiting the amount of gain that Distributing must recognize in these cases.

The first rule provides that if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing are part of a plan, then the amount of gain that Distributing recognizes by reason of such acquisitions will not exceed the amount of gain, if any, that the predecessor of Distributing would have recognized if, immediately before the distribution, the predecessor had transferred the property that was transferred to Controlled and the stock of Controlled that it transferred to Distributing to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applied (even if section 351 would not have actually applied) and then sold the stock of that corporation to an unrelated person in exchange for cash equal to its fair market value.

The second rule applies if a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing are part of a plan and the acquisitions occur in the section 381 transaction in which a predecessor of Distributing transfers its assets to Distributing. In these cases, the proposed regulations effectively provide that the amount of gain that Distributing recognizes will not exceed the amount of gain that Distributing would have recognized had it not transferred assets of the predecessor to Controlled and had it not acquired any Controlled stock from the predecessor. In particular, the amount of gain that Distributing recognizes will not exceed the excess, if any, of the amount described in section 355(c)(2) or section 361(c)(2), as applicable, over the amount of gain, if any, that Distributing would have been required to recognize if there had been acquisitions of stock that in the aggregate represent a 50-percent or greater interest in the predecessor of Distributing (but not Distributing) involved in the combining transfer that were part of a plan that includes the distribution, taking into account the limitation in the first rule. For example, assume that X, a corporation, merges into Distributing in a statutory merger that qualifies as a reorganization under section 368(a)(1)(A). In the merger, Distributing issues 75 percent of its stock to the former shareholders of X. Distributing then forms Controlled solely with assets acquired from X in the merger and distributes the stock of Controlled pro rata to its shareholders. At the time of the distribution, the basis of the Controlled stock is $30 and the fair market value of that stock is $70. Assume that the distribution and the former X shareholders' acquisition of

stock of Distributing are part of a plan. Furthermore, assume that, other than the deemed acquisition of stock of X by the pre-merger shareholders of Distributing, there are no other acquisitions of the stock of X that are part of a plan that includes the distribution. By reason of the second limitation, Distributing's gain recognized under section 361(c)(2) would be zero because all of the gain inherent in the Controlled stock at the time of the distribution is attributable to assets acquired from X in the merger.

In order to ensure that in appropriate cases these limitations do not ultimately prevent recognition of gain in the full amount described in section 355(c)(2) or 361(c)(2), as applicable, these proposed regulations provide that if there are acquisitions of stock that in the aggregate represent a 50-percent or greater interest in more than one corporation (for example, two predecessors of Distributing) that are pursuant to a plan that includes the distribution, Distributing must recognize gain in the amount described in section 355(c)(2) or 361(c)(2), as applicable, subject to the limitations described above, with respect to each such corporation. However, because this rule could cause Distributing to recognize a total amount of gain in excess of that amount described in section 355(c)(2) or 361(c)(2), as applicable, these regulations include an overall limitation on gain recognition. That rule provides that the sum of the amounts required to be recognized by Distributing under section 355(e) and the regulations promulgated thereunder will not exceed the amount described in section 355(c)(2) or section 361(c)(2), as applicable.

As described above, the rule for determining whether a corporation is a predecessor of Distributing references the assets of the predecessor at the time it combines with Distributing while the rule for calculating the limitation on gain recognition references the basis and value of the predecessor's assets at the time of the distribution. The IRS and Treasury Department believe that determining whether a corporation is a predecessor of Distributing by reference to its assets at the time it combines with Distributing (and not later) is appropriate because, in that transaction, the predecessor will likely cease to exist. However, the division of the predecessor's assets does not occur until the distribution. In addition, the gain required to be recognized by reason of section 355(e) is measured as of the date of the distribution. Therefore, the IRS and Treasury Department believe that it is appropriate to measure the basis and value of the predecessor's assets on the date of the distribution for purposes of determining the amount of gain required to be recognized when there have been acquisitions of a 50-percent or greater interest in the predecessor that are part of a plan that includes the distribution.

*Special Rule for Affiliated Groups*

The proposed regulations include a special rule that relates to the application of section 355(e)(2)(C). Section 355(e)(2)(C) provides that a plan (or series of related transactions) will not result in stock or securities in the controlled corporation not being treated as qualified property for purposes of section 355(c)(2) or section 361(c)(2) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof). These proposed regulations provide that, for purposes of section 355(e)(2)(C), a predecessor of Distributing or Controlled is treated as continuing in existence following its transfer of property to Distributing or Controlled, and Distributing or Controlled is treated as continuing in existence following a transfer of property to a successor.

*Request for Comments*

The IRS and Treasury Department are concerned that certain transfers of assets to a partnership or a corporation by Distributing or Controlled may facilitate an acquisition of an interest in Distributing's or Controlled's assets that is functionally equivalent to an acquisition of Distributing or Controlled. The IRS and Treasury Department are also concerned that certain acquisitions by persons unrelated to Distributing or Controlled of an interest in a corporation or partnership in which Distributing or Controlled directly or indirectly owns an interest may also be an acquisition that is functionally equivalent to an acquisition of Distributing or Controlled. If such transfers and acquisitions are part of a plan that includes the distribution, they could be used to circumvent the purposes of section 355(e). Accordingly, the IRS and Treasury Department are studying how section 355(e) might apply to such transfers and acquisitions. Comments are requested in this regard.

## 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. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Requests for a Public Hearing

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

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these proposed regulations is Krishna P. Vallabhaneni of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

**Authority:** 26 U.S.C. 7805 * * *
Section 1.355–8 also issued under 26 U.S.C. 355(e)(5). * * *

**Par. 2.** Section 1.355–8 is added to read as follows:

**§ 1.355–8 Definition of predecessors and successors and limitations on gain recognition.**

(a) *References to a distributing or controlled corporation.* For purposes of section 355(e) and the regulations promulgated thereunder, except as otherwise provided, any reference to a distributing corporation (Distributing) or a controlled corporation (Controlled) shall include a reference to any predecessor or successor of such corporation, as such terms are defined in this section.

(b) *Definition of predecessor*—(1) *Predecessor of a distributing corporation.* A predecessor of Distributing is a corporation (the first corporation) that before the distribution transfers property to Distributing in a transaction to which section 381 applies (the combining transfer), but only if either—

(i) Distributing transfers some but not all of the property acquired from the first corporation to Controlled (the separating transfer) and the basis of such property immediately after the separating transfer is determined in whole or in part by reference to the basis of the property in the hands of Distributing immediately before the separating transfer; or

(ii) In the combining transfer, some but not all of the property transferred to Distributing includes Controlled stock and, after the combining transfer, Distributing does not transfer all of the property acquired from the first corporation (other than the Controlled stock) to Controlled.

(2) *Predecessor of a controlled corporation.* Solely for purposes of paragraphs (b)(1), (e)(2), and (f) of this section, a corporation is a predecessor of Controlled if, before the distribution, it transfers property to Controlled in a transaction to which section 381 applies. Other than for the purposes described in the preceding sentence, no corporation can be a predecessor of Controlled.

(3) *References to a distributing or controlled corporation.* For purposes of paragraph (b)(1) of this section, a reference to Distributing shall not include a reference to a predecessor of Distributing. Therefore, a corporation that transfers property to a predecessor of Distributing in a transaction to which section 381 applies is not also a predecessor of Distributing. For purposes of paragraph (b)(2) of this section, a reference to Controlled shall not include a reference to a predecessor of Controlled. Therefore, a corporation that transfers property to a predecessor of Controlled in a transaction to which section 381 applies is not also a predecessor of Controlled.

(4) *Determination of predecessor status*—(i) *Substitute assets.* For purposes of determining whether a corporation is a predecessor of Distributing, if after the combining transfer Distributing transfers any property it received in the combining transfer in a transaction in which gain or loss is not recognized in whole, the property received by Distributing in exchange for such property shall be treated as transferred to Distributing in the combining transfer.

(ii) *Reorganizations under section 368(a)(1)(F).* For purposes of determining whether a corporation is a predecessor of Distributing or Controlled, if a corporation engages in a reorganization under section 368(a)(1)(F), then the resulting corporation shall be treated as the same corporation that engaged in the reorganization. Therefore, if a corporation (X) transfers property to another corporation (Y) in a reorganization under section 368(a)(1)(A), and then Y transfers property to Distributing in a reorganization under section 368(a)(1)(F), Y and Distributing will be treated as the same corporation and X may be a predecessor of Distributing.

(iii) *Multiple predecessors.* More than one corporation may be a predecessor of Distributing or Controlled. Therefore, if more than one corporation transfers property to Distributing or Controlled in transactions to which section 381 applies, each of the transferring corporations may be a predecessor of Distributing or Controlled, respectively.

(c) *Definition of successor*—(1) *In general.* A successor of Distributing or Controlled, respectively, is a corporation to which Distributing or Controlled transfers property after the distribution in a transaction to which section 381 applies (a successor transaction).

(2) *Determination of successor status.* More than one corporation may be a successor of Distributing or Controlled. Therefore, if Distributing transfers property to another corporation (X) in a transaction to which section 381 applies, and X transfers property to another corporation (Y) in a transaction to which section 381 applies, then each of X and Y may be a successor of Distributing. In this case, the determination of whether Y is a successor of Distributing is made after the determination of whether X is a successor of Distributing.

(d) *Special acquisition rules*—(1) *Deemed acquisitions of a predecessor of a distributing corporation.* If there is a predecessor of Distributing, the following rules shall apply.

(i) Each person that owned an interest in Distributing immediately before the combining transfer involving the predecessor of Distributing shall be treated as acquiring in the combining transfer stock representing an interest in the predecessor of Distributing.

(ii) If stock of Distributing is acquired after the combining transfer involving the predecessor of Distributing, the stock of Distributing shall be treated as the stock of the predecessor of Distributing. Therefore, an acquisition of the stock of Distributing that occurs after the combining transfer shall be treated as not only an acquisition of the stock of Distributing, but also an acquisition of the stock of the predecessor of Distributing.

(2) *Deemed acquisitions of a distributing corporation.* If there is a successor of Distributing, the following rules shall apply.

(i) Each person that owned an interest in the successor of Distributing immediately before the successor transaction involving the successor of Distributing shall be treated as acquiring in the successor transaction stock representing an interest in Distributing.

(ii) If stock of the successor of Distributing is acquired after the successor transaction, the stock of the successor of Distributing shall be treated as stock of Distributing. Therefore, acquisitions of the stock of a successor of Distributing that occur after the successor transaction shall be treated as acquisitions of the stock of Distributing.

(3) *Deemed acquisitions of a controlled corporation.* If there is a successor of Controlled, the following rules shall apply.

(i) Each person that owned an interest in the successor of Controlled immediately before the successor transaction involving the successor of Controlled shall be treated as acquiring in the successor transaction stock representing an interest in Controlled.

(ii) If stock of the successor of Controlled is acquired after the successor transaction, the stock of the successor of Controlled shall be treated as stock of Controlled. Therefore, acquisitions of the stock of a successor of Controlled that occur after the successor transaction shall be treated as acquisitions of stock of Controlled.

(4) *Separate counting for distributing corporations and their predecessors.* The measurement of whether one or more persons have acquired stock that in the aggregate represents a 50-percent or greater interest in either a predecessor of Distributing or Distributing that is part of the plan that

includes the distribution shall be made separately. Therefore, there may be acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing that are part of a plan that includes a distribution where there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing that are part of a plan that includes a distribution. In addition, there may be acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing that are part of a plan that includes a distribution where there are not acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing that are part of a plan that includes a distribution.

(e) *Special rules for gain recognition*—(1) *In general.* If there are acquisitions of stock that in the aggregate represent a 50-percent or greater interest in more than one corporation (for example, two predecessors of Distributing) that are pursuant to a plan that includes the distribution, Distributing must recognize gain in the amount described in section 355(c)(2) or 361(c)(2), as applicable, with respect to each such corporation, subject to the limitations in paragraphs (e)(2) and (3) of this section if applicable. The limitations in paragraphs (e)(2) and (3) of this section are applied separately to each such corporation to determine the amount of gain required to be recognized. Paragraph (e)(4) of this section sets forth an overall limitation that is computed taking into account all of the gain recognized by Distributing by reason of section 355(e).

(2) *Acquisition of a predecessor of a distributing corporation*—(i) *In general.* If a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in a predecessor of Distributing are part of a plan, the amount of gain recognized by Distributing by reason of section 355(e) as a result of the acquisitions shall not exceed the amount of gain, if any, that the predecessor of Distributing would have recognized if, immediately before the distribution, the predecessor of Distributing had transferred the property that was transferred to Controlled in the separating transfer and stock of Controlled that the predecessor of Distributing transferred to Distributing in the combining transfer to a newly formed, wholly owned corporation in exchange solely for stock of such corporation in an exchange to which section 351 applied and then sold the stock of that corporation to an unrelated person in exchange for cash equal to its fair market value.

(ii) *Operating rules.* For purposes of applying paragraph (e)(2)(i) of this section, the following rules shall apply.

(A) If before the distribution Distributing transfers any property it received from the predecessor of Distributing in the combining transfer in a transaction in which gain or loss is not recognized in whole, the property received by Distributing in exchange for such property shall be treated as transferred to Distributing in the combining transfer.

(B) The basis of the property other than stock of Controlled treated as transferred to the newly formed, wholly owned corporation by the predecessor of Distributing shall equal the basis of such property in the hands of Controlled immediately before the distribution.

(C) Only property (other than stock of Controlled) owned by Controlled at the time of the distribution shall be taken into account in computing the amount pursuant to paragraph (e)(2)(i) of this section. However, if before the distribution Controlled transfers any property it received in the separating transfer in a transaction in which gain or loss is not recognized in whole, the property received by Controlled in exchange for such property shall be treated as transferred to Controlled in the separating transfer.

(D) The basis and fair market value of the stock of Controlled treated as transferred to the newly formed, wholly owned corporation shall equal the basis and fair market value, respectively, of such stock immediately before the combining transfer in which the predecessor of Distributing transferred such stock to Distributing.

(3) *Acquisitions of a distributing corporation.* If a distribution and acquisitions of stock that in the aggregate represent a 50-percent or greater interest in Distributing are part of a plan and the acquisitions occur in a combining transfer, the amount of gain recognized by Distributing by reason of section 355(e) as a result of the acquisitions shall not exceed the excess, if any, of the amount described in section 355(c)(2) or section 361(c)(2), as applicable, over the amount of gain, if any, that Distributing would have been required to recognize if there had been acquisitions of stock that in the aggregate represent a 50-percent or greater interest in the predecessor of Distributing (but not Distributing) involved in the combining transfer that were part of a plan that includes the distribution, taking into account the limitation in paragraph (e)(2) of this section. For purposes of this paragraph (e)(3), references to Distributing shall not include a reference to a predecessor of Distributing.

(4) *Overall limitation on gain recognition.* The sum of the amounts required to be recognized by Distributing under section 355(e) and the regulations promulgated thereunder (taking into account paragraphs (e)(2) and (3) of this section) shall not exceed the amount described in section 355(c)(2) or section 361(c)(2), as applicable.

(f) *Predecessor or successor as a member of the affiliated group.* For purposes of section 355(e)(2)(C), a predecessor of Distributing shall be treated as continuing in existence following the combining transfer to which section 381 applies described in paragraph (b)(1) of this section, a predecessor of Controlled shall be treated as continuing in existence following the transaction to which section 381 applies described in paragraph (b)(2) of this section, and Distributing or Controlled shall be treated as continuing in existence following a successor transaction.

(g) *Examples.* The following examples illustrate the principles of this section. Unless otherwise stated, assume throughout these examples that Distributing (D) owns all the stock of Controlled (C) and that D distributes the stock of C in a distribution to which section 355 applies, but to which section 355(d) does not apply. In addition, assume that X, Y, and Z are individuals, and that D, C, P, Q, and R are corporations and none of them is a member of a consolidated group. No inference should be drawn from any example concerning whether any requirements of section 355 other than those of section 355(e) are satisfied. The examples are as follows:

*Example 1. Predecessor of distributing*—(i) *Facts.* X owns 100 percent of the stock of P and Y owns 100 percent of the stock of D. P merges into D in a reorganization under section 368(a)(1)(A). Immediately after the merger, X and Y own 10 percent and 90 percent, respectively, of the stock of D. D then contributes to C one of the assets acquired from P in the merger. At the time of the contribution, the asset has a basis of $40x and a fair market value of $110x. In exchange for the asset, D receives additional C stock and $10x. D distributes the stock of C (but not the cash) to X and Y pro rata. The contribution is described in section 368(a)(1)(D) and D recognizes $10x of gain under section 361(b) in the contribution. Immediately before the distribution, the asset contributed to C has a basis of $50x and a fair market value of $110x, and the stock of C held by D has a basis of $100x and a fair market value of $200x.

(ii) *Analysis.* Under paragraph (b)(1) of this section, P is a predecessor of D because before the distribution P transferred property to D in a transaction to which section 381 applies, D transferred some but not all of the acquired property to C, and immediately after its transfer to C, the property has a basis determined in whole or in part by reference to the basis of the property in the hands of D immediately before the transfer to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 90 percent of the voting power and value of P.

(iv) If the distribution and Y's deemed acquisition of a 90-percent interest in P were part of a plan, D would recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $100x of gain. Under paragraph (e)(2) of this section, however, D's gain recognized by reason of the acquisition of P would not exceed $60x, the gain P would have recognized if, immediately before the distribution, it had transferred the former P property transferred by D to C to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applied and then sold that stock to an unrelated person for cash equal to its fair market value. Therefore, D would recognize $60x of gain.

*Example 2. Distributing's predecessor owns controlled stock*—(i) *Facts.* X owns 100 percent of the stock of P, and Y owns 100 percent of the stock of D. P owns 35 percent of the stock of C with a basis of $40x and a fair market value of $35x. D owns the remaining 65 percent of the C stock with a basis of $10x and a fair market value of $65x. P merges into D in a reorganization under section 368(a)(1)(A). Immediately after the merger, X and Y own 10 percent and 90 percent, respectively, of the D stock, and D owns 100 percent of the C stock with a basis of $50x and a fair market value of $100x. D then contributes to C one of the assets it acquired from P in the merger in exchange for additional shares of C. The contribution qualifies as a reorganization under section 368(a)(1)(D). After the contribution, D distributes all of the C stock to X and Y pro rata. Immediately before the distribution, the asset contributed to C has a basis of $40x and a fair market value of $100x, and the C stock held by D has a basis of $90x and a fair market value of $200x.

(ii) *Analysis.* Under paragraph (b)(1) of this section, P is a predecessor of D because before the distribution P transferred property to D in a transaction to which section 381 applies, D transferred some but not all of the acquired property to C, and immediately after its transfer to C, the property has a basis determined in whole or in part by reference to the basis of the property in the hands of D immediately before the transfer to C. P is also a predecessor of D under paragraph (b)(1) of this section because some but not all of the property transferred to D includes C stock and, after the merger, D does not transfer all of the property acquired from P to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 90 percent of the voting power and value of P.

(iv) If the distribution and Y's deemed acquisition of a 90-percent interest in P were part of a plan, D would recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $110x of gain. Under paragraph (e)(2) of this section, however, D's gain recognized by reason of the acquisition of P would not exceed $55x, the gain P would have recognized if, immediately before the distribution, it had transferred the former P property that was transferred by D to C and the stock of C acquired from P to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applies and then sold that stock to an unrelated person for cash equal to its fair market value. For this purpose, the basis and fair market value of the C stock is treated as its basis and fair market value, respectively, immediately before the merger. Therefore, D would recognize $55x of gain.

*Example 3. Predecessor of controlled*—(i) *Facts.* X owns 100 percent of the stock of P and P owns various assets including 100 percent of the stock of R. Y owns 100 percent of the stock of D and D owns 100 percent of the stock of C. P merges into D in a reorganization under section 368(a)(1)(A). Immediately after the merger, X and Y own 10 percent and 90 percent, respectively, of the stock of D. D then causes R to merge into C in a reorganization under section 368(a)(1)(D). At the time of the P–D merger, the R stock has a basis of $40x and a fair market value of $110x. D distributes the stock of C to X and Y pro rata. Immediately before the distribution, the stock of C held by D has a basis of $100x and a fair market value of $200x.

(ii) *Analysis.* Under paragraph (b)(2) of this section, R is a predecessor of C because before the distribution R transferred property to C in a transaction to which section 381 applies. Under paragraph (b)(1) of this section, P is a predecessor of D because some but not all of the property transferred to D includes stock of R, a predecessor of C and, after the merger, D does not transfer all of the property acquired from P to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 90 percent of the voting power and value of P.

(iv) If the distribution and Y's deemed acquisition of a 90-percent interest in P were part of a plan, D would recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $100x of gain. Under paragraph (e)(2) of this section, however, D's gain recognized by reason of the acquisition of P would not exceed $70x, the gain P would have recognized if, immediately before the distribution, it had transferred the stock of R to a newly formed, wholly owned corporation solely for stock of such corporation in an exchange to which section 351 applied and then sold that stock to an unrelated person for cash equal to its fair market value. For this purpose, the basis and fair market value of the R stock is treated as its basis and fair market value, respectively, immediately before the P–D merger. Therefore, D would recognize $70x of gain.

*Example 4. Acquisition of a distributing corporation.* (i) *Facts.* X owns 100 percent of the stock of P and Y owns 100 percent of the stock of D. P merges into D in a reorganization under section 368(a)(1)(A). In the merger, X acquires 60 percent of the D stock. After the merger, therefore, X and Y own 60 percent and 40 percent, respectively, of the stock of D. D then contributes to C, a newly formed corporation, some of the assets acquired from P in the merger and one asset that it owned prior to the merger, in exchange for C stock in a transfer that qualifies as a reorganization under section 368(a)(1)(D). After the contribution, D distributes the C stock to its shareholders pro rata. Immediately before the distribution, the contributed asset that D had owned prior to the merger has a basis of $3x and a fair market value of $10x and the contributed assets acquired from P have an aggregate basis of $1x and an aggregate value of $30x. Finally, immediately before the distribution, D's C stock has a basis of $4x and a fair market value of $40x.

(ii) *Analysis.* Under paragraph (b)(1) of this section, P is a predecessor of D because before the distribution P transferred property to D in a transaction to which section 381 applies, D transferred some but not all of the acquired property to C, and immediately after its transfer to C, the property has a basis determined in whole or in part by reference to the basis of the property in the hands of D immediately before the transfer to C.

(iii) Under paragraph (d)(1)(i) of this section, Y is treated as acquiring stock representing 40 percent of the voting power and value of P. There are not acquisitions that in the aggregate represent a 50-percent or greater interest in P in the merger that is pursuant to a plan that includes a distribution. However, there is an acquisition by X of a 60-percent interest in D in the merger. If that acquisition were pursuant to a plan that includes the distribution, D would be required to recognize gain in the amount described in section 361(c)(2). Without regard to the limitations in paragraph (e) of this section, D would be required to recognize $36x of gain. Under paragraph (e)(3) of this section, however, because that acquisition occurred in connection with P's merger into D, the amount of gain recognized by D would not exceed $7x, the excess of the gain described in section 361(c)(2) ($36x) over the gain that D would have been required to recognize if there had been an acquisition of stock representing a 50-percent or greater interest in P (but not D) that was part of a plan involving the distribution ($29x). Therefore, D would recognize $7x of gain.

*Example 5. Successor of a controlled corporation*—(i) *Facts.* X owns 100 percent of the stock of each of D and R. D owns 100 percent of the C stock. D's C stock has a basis of $10x and a fair market value of $30x. D distributes all of its C stock to X. Immediately after the distribution, C merges into R in a reorganization under section 368(a)(1)(D). Immediately after the merger, X owns all of

the R stock. Subsequently, Z purchases 60 percent of the stock of R from X.

(ii) *Analysis.* Under paragraph (c) of this section, R is a successor of C because after the distribution C transfers property to R in a transaction to which section 381 applies. Accordingly, Z acquired an interest in a successor of C. In addition, under paragraph (d)(3)(ii) of this section, the stock of R is treated as stock of C such that Z is treated as acquiring 60 percent of the voting power and value of C.

(iii) If the distribution and Z's acquisition of a 60-percent interest in R were part of a plan, D would be required to recognize gain in the amount of $20x, the amount described in section 355(c)(2).

(h) *Effective date.* This section applies to distributions occurring after the date these regulations are published as final regulations in the **Federal Register.**

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–25649 Filed 11–19–04; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[OR–04–002; FRL–7835–3]**

### Approval and Promulgation of State Implementation Plans; Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve numerous revisions to the Oregon State Implementation Plan (SIP) in the State of Oregon Administrative Rules (OAR) relating to the inspection and maintenance (I/M) of motor vehicles. These revisions were submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, September 15, 2000, November 27, 2000, January 10, 2003, and April 22, 2004.

The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter CAA or Act).

**DATES:** Written comments must be received on or before December 22, 2004.

**ADDRESSES:** Comments may be mailed to: Wayne Elson, Environmental Protection Agency, Office of Air, Waste, and Toxics (OAWT–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101. Comments may also be submitted electronically or through hand delivery/courier. Please follow the detailed instructions in the **ADDRESSES** section of the Direct Final Rule which is located in the Rules section of this **Federal Register**. To submit comments, please follow the detailed instructions described in the Direct Final Rule, **SUPPLEMENTARY INFORMATION** section, Part I, General Information.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Wayne Elson, Office of Air, Waste, and Toxics (AWT–107), EPA, Seattle, Washington 98101, (206) 553–1463.

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: October 26, 2004.

**Julie M. Hagensen,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 04–25628 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 2530

**[WO–350–1430–PF–24 1A]**

**RIN 1004–AB10**

### Indian Allotments

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Bureau of Land Management (BLM) is withdrawing the proposed rule that would have revised the regulations for Indian allotments to reduce the regulatory burden imposed on the public, to streamline and clarify the existing regulations and to remove redundant and unnecessary requirements. The proposal was published in the **Federal Register** on October 16, 1996. We reopened the comment period in the **Federal Register** on July 15, 1999 for 60 days.

**FOR FURTHER INFORMATION CONTACT:** You may contact Jeff Holdren, Lands and Realty Group, on (202) 452–7779 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, except holidays, to contact Mr. Holdren.

**SUPPLEMENTARY INFORMATION:** The BLM published the proposed rule in the **Federal Register** on October 16, 1996 (61 FR 53887). We reopened the comment period in the **Federal Register** on July 15, 1999 (64 FR 38172) for 60-days because we inadvertently omitted the information collection requirements. We received three comments. The BLM decided to withdraw the proposed rule and will take no further action on this proposal regarding Indian allotments.

Dated: September 24, 2004.

**Chad Calvert,**

*Acting Assistant Secretary, Land and Minerals Management.*

[FR Doc. 04–25766 Filed 11–19–04; 8:45 am]

BILLING CODE 4310–84–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 22, 24, 74, 78, and 90

**[WT Docket No. 02–55; FCC 04–253]**

### The 800 MHz Public Safety Interference Proceeding; Request for Comments on Ex Parte Presentations and Extension of Deadlines

**AGENCY:** Federal Communications Commission.

**ACTION:** Request for comments.

**SUMMARY:** Subsequent to release of the *800 MHz Report and Order* in the Public Safety Interference Proceeding on August 6, 2004, Nextel Communications, Inc. and others filed *ex parte* presentations in the rulemaking proceeding. Nextel sought clarification and/or modification of certain aspects of

the Commission's final rules released on August 6, 2004, and published in the Rules and Regulations section in this issue. Nextel also filed a supplementary *ex parte* submission providing additional detail on the issues it raised in its September 16, 2004, *ex parte* presentation. Other parties have filed *ex parte* presentations in response to Nextel's *ex parte* filings. The Commission requests comments limited to these filings.

**DATES:** Submit comments on or before December 2, 2004. The Commission is not requesting reply comments.

**ADDRESSES:** All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. One (1) courtesy copy must be delivered to Roberto Mussenden, Esq. at Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, SW., Suite 5–C140, Washington, DC 20554, or via e-mail, *roberto.mussenden@fcc.gov*, and one (1) copy must be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via Web, *http://www.bcpiweb.com*.

**FOR FURTHER INFORMATION CONTACT:** Roberto Mussenden, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released on October 22, 2004 by the Federal Communications Commission requesting comments on certain *ex parte* submissions filed subsequent to release of said Report and Order and extending certain deadlines set forth in the *800 MHz Report and Order*.

1. In order to develop a full and complete record and to further the effective implementation of the 800 MHz band reconfiguration process, the Commission seeks expedited comment on the issues raised in certain *ex parte* presentations submitted after release of the *800 MHz Report and Order* on August 6, 2004. Said issues include the mechanics of the relocation process, valuation of the spectrum, and interference issues. The Commission is not accepting comment at this time on filings that address the freeze on 900 MHz applications. The Commission is waiving the reply comment cycle required pursuant to 47 CFR 1.415(c) for good cause, because expedited consideration of these issues is important to avoid uncertainty in the implementation of the 800 MHz band reconfiguration process and to avoid further delaying resolution of the problems of unacceptable interference affecting public safety licensees in this band. In addition, in order to avoid uncertainty for Nextel and other 800 MHz licensees, we believe it is appropriate to provide certain parties additional time to comply with certain benchmarks set forth in the *800 MHz Report and Order*, which is published in the Rules and Regulations section of this issue. Additional information regarding this deadline extension is published in the Rules and Regulations section of this issue.

3. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

4. Interested parties may view the referenced *ex parte* filings on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (i) Access ECFS at *http://www.fcc.gov/e-file/ecfs.html*; (ii) in the introductory screen, click on ''Search for Filed Comments'; (iii) in the ''Proceeding'' box, enter ''02–55''; (iv) check the box marked ''Search by Date Range; (v) in the ''Date received/adopted'' block, in the ''From'' column, enter 07/08/2004; (vi) in the ''To'' column enter the date this notice is published in the **Federal Register** in the format MM/DD/YYYY.

5. Commenters may file comments using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Commenters filing through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, commenters must submit only one copy of an electronic submission. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Commenters may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov* and should include the following words in the body of the message, ''get form <your e-mail address>.'' Commenters will receive a sample form and directions in reply.

6. Parties that choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

7. Commenters may send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Commenters must bind all hand deliveries together with rubber bands or fasteners and must dispose of any envelopes before entering the building. This facility is the only location where the Commission's Secretary will accept hand-delivered or messenger-delivered paper filings. Commenters must send commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) to 9300 East Hampton Drive, Capitol Heights, MD 20743. Commenters should address U.S. Postal Service first-class mail, Express Mail, and Priority Mail to 445 12th Street, SW., Washington, DC 20554.

8. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via Web, *http://www.bcpiweb.com*.

Federal Communications Commission.

**D'wana R. Terry,**

*Chief of Staff, Wireless Telecommunications Bureau, Federal Communications Commission.*

[FR Doc. 04–25261 Filed 11–19–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 04–3513; MB Docket No. 04–411, RM–11096]**

### Radio Broadcasting Services; Georgetown, Mason, and Oxford, OH, Salt Lick, KY and West Union, OH

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division requests comment on a petition jointly filed by Balogh Broadcasting Company, Inc., licensee of Station WOXY(FM), Channel 249A, Oxford, Ohio, Richard L. Plessinger, Sr., licensee of Station WAXZ(FM), Channel 249A, Georgetown, Ohio, and Dreamcatcher Communications, Inc., licensee of Station WRAC(FM), Channel 276A, West Union, Ohio requesting the reallotment of Channel 249A from Oxford to Mason, Ohio, as its first local service and modification of the Station WOXY(FM) license, reallotment of Channel 249A from Georgetown, Ohio to Salt Lick, Kentucky, as its first local service and modification of the Station WAXZ(FM) license, and reallotment of Channel 276A from West Union to Georgetown, Ohio to prevent removal of sole existing local service and modification of the Station WRAC(FM) license. Channel 249A can be allotted to Mason in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 kilometers (5.8 miles) east of Mason. The proposed reference coordinates for Channel 249A at Mason are 39–20–57 NL and 84–12–08 WL. Channel 249A can also be allotted to Salt Lick in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) northeast of Salt Lick. The proposed reference coordinates for Channel 249A at Salt Lick are 38–10–15 NL and 83–34–31 WL. Channel 276A can also be allotted to Georgetown in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.1 kilometers (7.5 miles) east of Georgetown. The proposed reference coordinates for Channel 276A at Georgetown are 38–52–14 NL and 83–45–55 WL.

**DATES:** Comments must be filed on or before December 27, 2004, and reply comments on or before January 11, 2005.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Mark N. Lipp, Esq., Counsel, Richard L. Plessinger, Sr., Scott Woodworth Vinson & Elkins, LLP, 1455 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004, Harry C. Martin, Esq., Counsel, Balogh Broadcasting Company, Inc., Fletcher Heald & Hildreth , PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209, Coe W. Ramsey, Esq., Counsel, Dreamcatcher Communications, Inc., Brooks Pierce McLendon Humphrey & Leonard, LLP, P.O. Box 1800, Raleigh, NC 27602.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–411, adopted November 3, 2004, and released November 5, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Salt Lick, Channel 249A.

3. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 249A and by adding Channel 276A at Georgetown, by adding Mason, Channel 249A, by removing Oxford, Channel 249A, by removing West Union, Channel 276A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04–25807 Filed 11–19–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 04–3512; MB Docket No. 04–407, RM–11106; MB Docket No. 04–408, RM–11107; MB Docket No. 04–409, RM–11108; MB Docket No. 04–410, RM–11109]**

### Radio Broadcasting Services; Bertram, TX; Hawley, TX; Port Norris, NJ; Woodson, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes four new FM broadcast allotments in Bertram, Texas; Hawley, Texas; Port Norris, New Jersey; Woodson, Texas. The Audio Division, Media Bureau, requests comment on a petition filed by Charles Crawford, proposing the allotment of Channel 284A at Bertram, Texas, as the community's first local aural transmission service. Channel 284A can be allotted to Bertram in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.7 kilometers (7.2 miles) north of the community. The reference coordinates for Channel 284A at Bertram are 30–50–26 NL and 98–05–45 WL. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

**DATES:** Comments must be filed on or before December 27, 2004, and reply

comments on or before January 11, 2005.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90405.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–407, 04–408, 04–409, 04–410, adopted November 3, 2004, and released November 5, 2004. The full text of this Commission document is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

The Audio Division requests comments on a petition filed by Charles Crawford, proposing the allotment of Channel 269A at Hawley, Texas, as the community's first local aural transmission service and modify the site for vacant Channel 270C1 at Munday, Texas. Channel 269A can be allotted at Hawley at a site 9.8 kilometers (6.1 miles) southeast of the community. The reference coordinates for Channel 296A at Hawley are 32–32–30 NL and 99–45–00 WL, and the reference coordinates for Channel 270C1 at Munday are 33–44–53 NL and 99–42–14 WL.

The Audio Division requests comments on a petition filed by Dana Puopolo, proposing the allotment of Channel 299A at Port Norris, New Jersey, as the community's first local aural transmission service. Channel 299A can be allotted to Port Norris in compliance with the Commission's minimum distance separation requirements without a site restriction. The reference coordinates for Channel 299A at Port Norris are 39–14–47 NL and 75–02–04 WL.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 298A at Woodson, Texas, as the community's first local aural transmission service. Channel 298A can be allotted to Woodson in compliance with the Commission's minimum distance separation requirements without a site restriction. The reference coordinates for Channel 298A at Woodson are 33–00–53 NL and 99–03–14 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas is amended by adding Bertram, Channel 284A, by adding Hawley, Channel 269A, and by adding Woodson, Channel 298A.

3. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by adding Port Norris, Channel 299A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04–25808 Filed 11–19–04; 8:45 am]

BILLING CODE 6712–01–P

---

## DEPARTMENT OF DEFENSE

## 48 CFR Part 239

**[DFARS Case 2003–D056]**

## Defense Federal Acquisition Regulation Supplement; Basic Agreements for Telecommunications Services

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the use of basic agreements in the acquisition of telecommunications services. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 21, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D056, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include DFARS Case 2003–D056 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, (703) 602–0311.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The

rule deletes procedures at DFARS 239.7407–1 and 239.7407–2 regarding the use of basic agreements and communication service authorizations for the acquisition of telecommunications services. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/index.htm*.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses procedural matters only, and makes no significant change to contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D056.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 239

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR part 239 as follows:

1. The authority citation for 48 CFR part 239 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

2. Section 239.7407 is added to read as follows:

**239.7407 Type of contract.**

When acquiring telecommunications services, the contracting officer may use a basic agreement (*see* FAR 16.702) in conjunction with communication service authorizations. When using this method, follow the procedures at PGI 239.7407.

**239.7407–1 and 239.7407–2 [Removed]**

3. Sections 239.7407–1 and 239.7407–2 are removed.

[FR Doc. 04–25812 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

---

## DEPARTMENT OF DEFENSE

## 48 CFR Part 239

**[DFARS Case 2003–D054]**

## Defense Federal Acquisition Regulation Supplement; Information Technology Equipment—Screening of Government Inventory

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to delete obsolete procedures for screening of Government inventory before authorizing a contractor to purchase information technology equipment. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 21, 2005.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003–D054, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Defense Acquisition Regulations Web Site: http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include DFARS Case 2003-D054 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, (703) 602–0311.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The rule deletes obsolete procedures for screening of Government inventory before authorizing a contractor to purchase information technology equipment. DoD now manages information technology equipment in the same manner as other Government property, in accordance with FAR part 45 and DFARS part 245.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed DFARS changes are limited to deletion of obsolete procedures for screening of Government inventory. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D054.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 239**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR part 239 as follows:

1. The authority citation for 48 CFR part 239 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

### Subpart 239.73—[Removed and Reserved]

2. Subpart 239.73 is removed and reserved.

[FR Doc. 04–25811 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

---

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 239 and 252

**[DFARS Case 2003–D053]**

## Defense Federal Acquisition Regulation Supplement; Update of Clauses for Telecommunications Services

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update clauses used in contracts for telecommunications services. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 21, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003–D053, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D053 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, (703) 602–0311.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes include—

- Deletion of an obsolete clause at DFARS 252.239–7003, Facilities and Services to be Furnished—Common Carriers.
- Expansion of the applicability of the clauses at DFARS 252.239–7004, Orders for Facilities and Services; 252.239–7005, Rates, Charges, and Services; and 252.239–7007, Cancellation or Termination of Orders, to all carriers of telecommunications services. The clauses presently apply only to common carriers (those subject to Federal Communications Commission or other governmental regulation). Expansion of these clauses to all carriers reflects the current business environment, where the differences between common and noncommon carriers have become less distinct.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed DFARS changes reflect current business practices for the acquisition of telecommunications services. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D053.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 239 and 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR parts 239 and 252 as follows:

1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

### 239.7406 [Amended]

2. Section 239.7406 is amended in paragraph (c)(6) by removing ''—Common Carriers.''

### 239.7411 [Amended]

3. Section 239.7411 is amended in paragraph (a) as follows:

a. By removing paragraph (a)(2);

b. By redesignating paragraphs (a)(3) through (a)(7) as paragraphs (a)(2) through (a)(6) respectively; and

c. In newly designated paragraphs (a)(2), (a)(3), and (a)(5), by removing ''—Common Carriers.''

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.239–7003 [Removed and Reserved]

4. Section 252.239–7003 is removed and reserved.

### 252.239–7004 [Amended]

5. Section 252.239–7004 is amended as follows:

a. In the section heading, by removing ''—common carriers'';

b. In the clause title, by removing ''—COMMON CARRIERS''; and

c. By revising the clause date to read ''(XXX 2004).''

**252.239–7005 [Amended]**

6. Section 252.239–7005 is amended as follows:

a. In the section heading, by removing ''—common carriers'';

b. In the clause title, by removing ''—COMMON CARRIERS'';

c. By revising the clause date to read ''(XXX 2004)''; and

d. In paragraph (f), in the first sentence, by removing ''—Common Carriers.''

**252.239–7007 [Amended]**

7. Section 252.239–7007 is amended as follows:

a. In the section heading, by removing ''—common carriers'';

b. In the clause title, by removing ''—COMMON CARRIERS'';

c. By revising the clause date to read ''(XXX 2004)''; and

d. In paragraph (b)(1), by removing ''—Common Carriers.''

[FR Doc. 04–25813 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

# Notices

Federal Register

Vol. 69, No. 224

Monday, November 22, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Notice of Request for New Information Collection

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We announced in the **Federal Register** our intention to submit to the Office of Management and Budget two new information collection activities to support a large livestock and meat marketing study. That notice was published on September 9, 2004 (69 FR 54629–54630), and comments were due on November 8, 2004. This notice announces our intention to reopen that comment period until December 3, 2004.

**DATES:** We will consider comments that we receive by December 3, 2004.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-mail: Send comments via electronic mail to *comments.gipsa@usda.gov*.
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

*Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.

*Background Documents:* Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

*Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Roger Schneider, Economist, USDA, GIPSA, (202) 720–7455, 1400 Independence Avenue, SW., Room 1642–S, Washington, DC 20250–3647, or via e-mail at *Roger.E.Schneider@usda.gov*.

**SUPPLEMENTARY INFORMATION:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture (USDA) administers the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by market agencies, dealers, stockyards, packers, swine contractors, and live poultry dealers in the livestock, meatpacking, and poultry industries. In fiscal year 2003, GIPSA received $4.5 million in appropriations for a packer concentration study, which will be a broad study of marketing practices in the entire livestock and red meat industries (Pub. L. 108–7, 117 Stat. 22). The study will address many questions and concerns that have been raised about changes in the structure and business practices in the livestock and meat industries. We published a notice announcing the study and describing the approach that we planned for the study on May 30, 2003 (68 FR 32455–32458).[1]

More specifically, the study will: (1) Identify and classify spot and alternative marketing arrangements; (2) describe terms, availability, and reasons for use of spot and alternative marketing arrangements and associated prices; (3) determine extent of use, analyze price differences, and analyze short-run spot market price effects of alternative marketing arrangements; (4) measure and compare costs and benefits associated with spot and alternative marketing arrangements; and (5) analyze the implications of alternative marketing arrangements for the livestock and meat marketing system.

In addition to publishing the notice announcing the information collection activities, on October 4, 2004, we sent a letter to packers and processors notifying them of the requirement to continue to maintain the required information. Subsequent to that, RTI International (RTI),[2] the contractor responsible for the information collection activities, began pre-testing data collection procedures with a limited number (9 or fewer of each type) of respondents.

We received six comments to the notice published on September 9, 2004 (69 FR 54629–54630). Three of those comments requested an extension of the comment period. The requests came from two industry organizations whose members will be required to provide the information for which comments were requested and an industry member who will be required to provide information for which comments were requested. The extension requests ranged from 2 weeks to 90 days. One of the three commenters specified that additional time is needed to provide constructive comments.

This notice reopens and extends the comment period on two information collection packages that we are preparing to submit to the Office of Management and Budget to collect information for the study. The first information collection package will cover transactions data on procurement and sales from meat packers, feeders, dealers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters. The second information collection package will cover surveys about the use of spot and alternative marketing arrangements among cattle, hog, and lamb producers, meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters.

*Title:* Livestock and Meat Marketing Study; Transactions Data and Survey of Spot and Alternative Marketing Arrangements.

*OMB Number:* New collection.

*Expiration Date of Approval:* New collection.

*Type of Request:* New.

*Abstract:* To conduct this study it is necessary to collect data on

[1] Additional information about the study, including comments to the notice and the announcement of the contract to perform the study, is available on the GIPSA Web site (*http://www.usda.gov/gipsa/psp/issues/livemarketstudy/livestock_marketing_study.htm*).

[2] RTI International is a trade name of Research Triangle Institute.

procurement and sales transactions from a sample of meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters. The establishments selected for the sample will be asked to provide the requested data in an electronic format, to the greatest extent practicable.

Response to this data collection, which constitutes a special report, will be required for meat packers and meat processors (7 U.S.C. 222).[3] The establishments will be asked to provide daily transactions data for procurement and sales for a 2.5-year period. Additionally, meat packers will be asked to provide summaries of operations data (profit and loss statements).

Response to this data collection will be voluntary for food wholesalers, food retailers, food service operations, and meat exporters. The establishments will be asked to provide transactions data for procurement and sales for a 2.5-year period in an aggregated format to reduce the burden.

An example of some the information that will be required is shown in the following table for beef packers. More or less information may be required and different information may be required depending upon the type of livestock or meat the respondent purchases or sells, and the type of activity (for example, slaughter, processing, or wholesaling) conducted by the respondent. The information will be requested in electronic format; we are not specifying how the respondents must keep the information, but, as shown in the following table, will provide a suggested format for providing the information. Respondents providing the information in another format will be asked to provide a data dictionary to explain their format. The information collection package contains the detailed information collection requirements for each type of respondent. We will revise the requested information based on the results of the pre-test and public comments, as appropriate.

TABLE 1.—PROCUREMENT DATA FIELDS

[A transaction is defined as the purchase of a pen/lot of cattle]

| Field name | Description/suggested format for data |
|---|---|
| ID Number | ID number used by establishment to identify individual lot or transaction. |
| Plant Name | Name of plant procuring cattle. |
| Purchase Date | Date lot of cattle was purchased from seller (yyyy/mm/dd). |
| Kill Date | Date first cattle in lot were slaughtered (yyyy/mm/dd). |
| Seller Name | Name of seller. |
| Seller City | City location of the feedlot where the cattle were fed (Not the address or location of the owner of the cattle). |
| Seller State | State location of the feedlot where the cattle were fed (Not the address or location of the owner of the cattle). |
| Seller County | County location of the feedlot where the cattle were fed (Not the address or location of the owner of the cattle). |
| Seller Zip | Zip code of the feedlot where the cattle were fed (Not the address or location of the owner of the cattle). |
| Number of Head | Number of live cattle in this lot (Exclude condemned and dead). |
| Condemn | Number of condemned and dead cattle in this lot. |
| Cattle Type | 1 = 95% or more of this lot was beef cattle; 2 = 95% or more of this lot was dairy cattle; 3 = Mixed beef and dairy cattle. |
| Steers | Percentage or Number of steers in this lot. |
| Heifers | Percentage or Number of heifers in this lot. |
| Bulls | Percentage or Number of bulls in this lot. |
| Cows | Percentage or Number of cows in this lot. |
| Stag | Percentage or Number of stags in this lot. |
| Bullocks | Percentage or Number of bullocks in this lot. |
| Heiferettes | Percentage or Number of heiferettes in this lot. |
| Category Units | 1 = Number in the lot (for example, number of steers, heifers, *etc*); 2 = Percentage in the lot (for example, percentage of steers, heifers, *etc*). |
| Live Weight | Net live or actual purchase weight for this lot (Equal to gross live weight minus pencil shrink). |
| Pencil Shrink | Shrink percentage used to calculate purchase weight. |
| Hot Weight | Total hot weight of this lot (carcass weight or dressed weight, if weighed pre-chill). |
| Cold Weight | Total cold weight of this lot (if weighed post-chill). |
| Weight Units | 1 = Pounds; 2 = Hundred weight (cwt); 3 = Tons. |
| Total Cost | Total delivered cost of this lot (Includes cost of the cattle, transportation, commission, feed costs, and hide premiums charged to the packer by the seller). |
| Shipping Cost | Total transportation cost paid by packer (0 = if cost was not paid by packer). |
| Commission Cost | Total commission cost paid by packer (0 = if cost was not paid by packer). |
| Feed Cost | Total feed cost paid by packer (0 = if cost was not paid by packer). |
| Hide Premium | Total hide premium paid by packer (0 = if no premium was paid by packer). |
| Prime | Percentage of this lot that were Quality grade Prime. |
| Choice | Percentage of this lot that were Quality grade Choice. |
| Upper Choice | Percentage of this lot that were in the Upper 2/3 Choice. |
| Lower Choice | Percentage of this lot that were in the Lower 1/3 Choice. |
| Select | Percentage of this lot that were Quality grade Select. |
| Standard | Percentage of this lot that were Quality grade Standard. |
| Other | Percentage of this lot that were Quality grade of something other than Prime, Choice, Choice Upper 2/3, Choice Lower 1/3, Select, or Standard. |
| Quality Grade Units | 1 = Live weight; 2 = Hot weight; 3 = Cold weight; 4 = Number of head. |
| Dark Cutter | Percentage or Number of cattle classified as dark cutters. |
| Dark Cutter Units | 1 = Number in the lot; 2 = Percentage in the lot. |
| Yield Grade 1 | Percentage of this lot that were Yield Grade 1. |
| Yield Grade 2 | Percentage of this lot that were Yield Grade 2. |
| Yield Grade 3 | Percentage of this lot that were Yield Grade 3. |

[3] The recordkeeping requirements for the data covered by this information collection activity have been previously approved separately under OMB control number 0580–0015.

TABLE 1.—PROCUREMENT DATA FIELDS—Continued

[A transaction is defined as the purchase of a pen/lot of cattle]

| Field name | Description/suggested format for data |
|---|---|
| Yield Grade 4 | Percentage of this lot that were Yield Grade 4. |
| Yield Grade 5 | Percentage of this lot that were Yield Grade 5. |
| Yield Grade Other | Percentage of this lot that were Yield Grade other than 1, 2, 3, 4, or 5. |
| Yield Grade Units | 1 = Live weight; 2 = Hot weight; 3 = Cold weight; 4 = Number of head. |
| % Heavy Weight | Percentage of cattle in lot that was classified heavy weight. |
| Heavy Weight Units | 1 = Live weight; 2 = Hot weight; 3 = Cold weight; 4 = Number of head. |
| Heavy Weight Limit | Maximum weight allowed before cattle were classified heavy weight. |
| % Light Weight | Percentage of cattle in lot that was classified light weight. |
| Light Weight Units | 1 = Live weight; 2 = Hot weight; 3 = Cold weight; 4 = Number of head. |
| Light Weight Limit | Minimum weight allowed before cattle were classified light weight. |
| Age 30+ | Percentage of cattle in lot that was 30 months of age and older. |
| Age Units | 1 = Live weight; 2 = Hot weight; 3 = Cold weight; 4 = Number of head. |
| Kosher | 1 = Cattle in this lot were eligible for Kosher status; 2 = Cattle in this lot were not eligible for Kosher status. |
| Halal | 1 = Cattle in this lot were eligible for Halal status; 2 = Cattle in this lot were not eligible for Halal status. |
| Certification Program | 1 = Cattle were raised under the requirements of a certification program (Certified Angus Beef, Certified Hereford Beef, *etc.*); 2 = Cattle were not raised under the requirements of a certification program. |
| Procurement Method | 1 = Spot-Market/Open Market (cattle purchased directly from feedlot, other seller, or at public markets within 2 weeks of kill date); 2 = Forward Contract (packer contracts with seller to purchase lot of cattle at either a fixed or basis price; contract is entered into at any time between placement of cattle on feed and 2 weeks prior to kill date); 3 = Packer-Fed/Owned (packer owned cattle fed for slaughter at either custom feedlot or packer owned or controlled feedlot); 4 = Marketing Agreement (a long-term arrangement where packer agrees to purchase specified number of cattle per specified time period such as week, month, or year); 5 = Joint Venture or Shared Ownership 6 = Other (purchasing method not captured in other categories). |
| Pricing Method | 1 = Negotiated Privately; 2 = Open Bidding; 3 = Sealed Bid; 4 = Formula Pricing; 5 = Internal Transfer Price; 6 = Other (pricing method not captured in other categories). |
| Valuation Method | 1 = Live weight, fixed price, not dependent on grade and yield; 2 = Carcass weight (hot or dressed weight), fixed price, not dependent on grade and yield; 3 = Carcass weight (hot or dressed weight), dependent on carcass grade and yield or grid value; 4 = Other (valuation method not captured in other categories). |

In addition, to complete this study it is necessary to conduct surveys of cattle, hog, and lamb producers, feeders, dealers, meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters. Participation in the surveys will be voluntary. Surveys will be mailed, with initial and follow-up contacts by telephone. The surveys will collect information on terms and frequency of use of alternative marketing arrangements; volume of livestock and meat transferred with alternative marketing arrangements, pricing methods for livestock and meat; reasons for using alternative marketing arrangements; and the effects of alternative marketing arrangements on costs and efficiencies, product quality, and risk shifting. The survey questions will be targeted to the appropriate industry segment to reduce burden. The surveys will request information about the respondents' operations for the previous fiscal year.

All data collection requests will include a pledge of confidentiality and the data will be collected exclusively for statistical purposes consistent with the provisions of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). In addition, the transactions data collected from meat packers and processors (part 1) will be subject to the confidentiality restrictions in the P&S Act. Analysis datasets created using the transactions data will be stored in an encrypted format. Individual data records will not include the identity of the establishment. The study findings will be reported to the public only in aggregated form so that individual establishments cannot be identified.

**(1) Transactions Data**

*Estimate of Burden:* The public reporting burden for this collection of information is estimated to average 40 hours per response.

*Respondents (Affected Public):* Meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters.

*Estimated Number of Respondents:* 400.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 16,000 hours.

*Total Costs:* Transactions data reporting $435,072 for all establishments combined. Calculated as follows: (16,000 hours) × ($27.192 per hour) = $435,072.

**(2) Spot and Alternative Marketing Arrangements Survey**

*Estimate of Burden:* The public reporting burden for this collection of information is estimated to average 60 minutes per response.

*Respondents (Affected Public):* Cattle, hog, and lamb producers, feeders, dealers, meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters.

*Estimated Number of Respondents:* 3,800.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 3,800 hours.

*Total Costs:* Survey reporting $139,080 for all establishments combined. Calculated as follows: (3,800 hours) × ($36.60 per hour) = $139,080.

Copies of this information collection assessment can be obtained from Tess Butler; see **ADDRESSES** section for contact information.

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Authority:** 44 U.S.C. 3506, 5 CFR 1320.8, and Pub. L. 108–7, 117 Stat. 22.

Dated: November 17, 2004.

**Donna Reifschneider,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 04–25803 Filed 11–19–04; 8:45 am]

BILLING CODE 3410–EN–U

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–588–046)**

### Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Changed Circumstances Review.

**SUMMARY:** On October 21, 2004, the Department of Commerce (the Department) published a notice of preliminary results of its changed circumstances review of the antidumping duty finding on polychloroprene rubber (PR) from Japan in which we preliminarily determined that Showa Denko K.K. (SDK) is not the successor–in-interest to the joint venture of Showa DDE Manufacturing K.K. (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan) (collectively, SDEM/DDE Japan joint venture). *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 61796 (October 21, 2004) (*Preliminary Results*). We gave interested parties, SDK and DuPont Dow Elastomers L.L.C. (DuPont), the petitioner in this proceeding, the opportunity to comment on the Preliminary Results. We received a comment from the petitioner concurring with our preliminary results. No additional comments were received. Therefore, for these final results, the Department is adopting its preliminary determination that SDK is not the successor–in-interest to SDEM/DDE Japan joint venture.

**EFFECTIVE DATE:** November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 6, 1973, the Department of Treasury published in the **Federal Register** (38 FR 33593) the antidumping finding on PR from Japan. On January 14, 2004, SDK submitted a letter stating that it is the successor–in-interest to the SDEM/DDE Japan joint venture and, as such, entitled to receive the same antidumping duty treatment previously accorded to the joint venture (*i.e.*, zero cash deposit). *See Notice of Final Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2002), (*Changed Circumstances*). In that same letter, SDK explained that on November 1, 2002, the SDEM/DDE Japan joint venture was dissolved. Prior to the joint venture's dissolution, SDK and DuPont each owned 50 percent of the joint venture. SDK, therefore, requested that the Department conduct an expedited changed circumstances review of the antidumping duty finding on PR from Japan pursuant to section 751(b)(1) of the Tariff Act (the Act), as amended, and 19 CFR 351.221(c)(3)(ii). However, because the submitted record supporting SDK's claims was deficient, the Department found that an expedited review was impracticable and, on March 1, 2004, issued a notice of initiation without the preliminary results. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 9586 (March 1, 2004).

In response to the Department's supplemental questionnaire, on March 10 and 19, 2004, SDK provided the Department with supplemental questionnaire responses. Additionally, on February 4 and May 3, 2004, DuPont notified the Department that it opposes SDK's request to be considered the successor–in-interest to the SDEM/DDE Japan joint venture. In particular, DuPont argued that differences between the corporate structures, distribution channels, price structure, and customer base preclude SDK from being considered the successor–in-interest to the SDEM/DDE Japan joint venture.

From August 25 through August 27, 2004, the Department conducted a verification of information in connection with this changed circumstances review at SDK's offices in Kawasaki, Japan. On September 20, 2004, the Department issued its Verification Report. *See* Memorandum from Zev Primor to the File ''Antidumping Duty Changed Circumstances Review of Polychloroprene Rubber (PR) from Japan: Verification Report for Showa Denko K.K. (SDK) Regarding Successorship,'' September 20, 2004 (Verification Report). On October 21, 2004, we preliminarily determined that given the totality of the considered factors, the record evidence demonstrates that SDK is a new entity that operates in a significantly different manner from the SDEM/DDE Japan joint venture. Consequently, we preliminarily determined that SDK should not be given the same antidumping duty treatment as the joint venture, i.e., zero percent antidumping duty cash deposit rate. Instead, SDK, as a new entity, should continue to be assigned as its cash deposit rate the ''all others'' rate, which in this proceeding is 55 percent. *See Preliminary Results*. On October 28, 2004, DuPont submitted a letter to the Department stating that the Department's preliminary determination that SDK is not the successor–in-interest to the SDEM/DDE Japan joint venture is well–founded in both law and fact. On the same date, SDK filed a letter stating that it would not comment on the preliminary results nor participate further in the proceeding.

### Scope of Review

Imports covered by this review are shipments of PR, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21, and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

### Final Results of Changed Circumstances Review

DuPont's comment fully concurs with the Department's preliminary determination and raises no additional issues. For the reasons stated in the *Preliminary Results*, we continue to find that SDK is not the successor–in-interest to SDEM/DDE Japan joint venture. We will instruct U.S. Customs and Border

Protection to apply the cash deposit determination from this changed circumstances review to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which SDK participates.

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 19 CFR 351.305(a)(3). Timely written notification of the return/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.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216.

Dated: November 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–3276 Filed 11–22–04; 8:45 am]

**BILLING CODE: 3510–DS–S**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–580–839]**

## Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Andrew McAllister, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1174.

**SUPPLEMENTARY INFORMATION:**

### Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber (''PSF''). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

### Amended Final Results

On October 8, 2004, the Department of Commerce (''the Department'') determined that certain PSF from the Republic of Korea (''Korea'') is being sold in the United States at less than fair value, as provided in section 751(a) of the Tariff Act of 1930, as amended (''the Act''). *See Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke the Order In Part*, 69 FR 61341 (October 18, 2004) (''*Final Results*''). On October 18, 2004, Saehan Industries, Inc. (''Saehan'') filed a timely ministerial error allegation pursuant to 19 CFR 351.224(c)(2). The petitioner[1] in this review did not file comments on Saehan's allegation.

Saehan contends that the Department excluded credit expenses from the calculation of home market direct selling expenses in the final margin program.

In accordance with section 735(e) of the Act, we have determined that ministerial errors were made in our final results margin calculations. Specifically, we find that we did not include home market credit expenses in Saehan's calculation of home market direct selling expenses. For a detailed discussion of the ministerial error allegation and the Department's analysis, *see* Memorandum to Susan Kuhbach, *''Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the Republic of Korea; Allegation of Ministerial Error,''* dated November 12, 2004, which is on file in the Central Records Unit (''CRU''), room B–099 of the main Department building.

In addition, when examining Saehan's ministerial error allegation, the Department found another ministerial error. For a full description, *see* Memorandum to File, *''Ministerial Error in Saehan Industries, Inc.'s Final Margin Calculation,''* dated October 22, 2004, which is on file in the Department's CRU. No parties commented on the correction of this clerical error.

In accordance with 19 CFR. 351.224(e), we are amending the final results of the antidumping duty administrative review of PSF from Korea to correct these ministerial errors.

The revised weighted–average dumping margin for Saehan is listed below:

| Producer/Manufacturer/Exporter | Original Weighted–average margin percentage | Amended Results Weighted–average margin percentage |
|---|---|---|
| Saehan Industries, Inc. | 4.19 | 2.13 |

[1] Arteva Specialties S.a.r.l., d/b/a Kosa and Wellman, Inc.

### Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the ''all others'' rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

### Assessment Rates

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of these amended final results of review.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: November 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–3277 Filed 11–19–04; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–834, A–583–831, A–412–818]**

## Stainless Steel Sheet and Strip in Coils from The Republic of Korea, Taiwan and the United Kingdom; Final Results of the Expedited Five Year (''Sunset'') Reviews of Antidumping Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of Final Results of the Expedited Five Year (''Sunset'') Reviews of Antidumping Duty Orders on Stainless Steel Sheet and Strip in Coils from the Republic of Korea, Taiwan, and the United Kingdom.

**SUMMARY:** On June 1, 2004, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on stainless steel sheet and strip in coils (''SSSS'') from the Republic of Korea (''Korea''), Taiwan, and the United Kingdom (''UK'').[1] On the basis of the notice of intent to participate, adequate substantive comments filed on behalf of the domestic interested parties, and inadequate response from respondent interested parties, the Department conducted expedited sunset reviews of the antidumping duty orders pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, (''the Act'') and section 351.218(e)(1)(ii)(B) of the Department's regulations. As a result of these sunset reviews, the Department determined that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review''.

**EFFECTIVE DATE:** November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC, 20230; telephone: 202–482–5050.

**SUPPLEMENTARY INFORMATION:**

### Scope of Orders

For purposes of this sunset review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 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 (*i.e.*, 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 (''HTS'') at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 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

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 30874 (June 1, 2004) (''Notice of Initiation'').

certified at the time of entry to be used in the manufacture of razor blades.[2]

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is 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 sulfide 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 for 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. his 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 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 between 0.002 and 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.''[3]

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.''[4]

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.''[5]

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 (*i.e.*, carpet knives).[6] This steel is similar to ASTM grade 440F, 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. 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 square micron. 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.''[7]

## Background

On June 1, 2004, the Department initiated sunset reviews of the antidumping duty orders on SSSS from Korea, Taiwan, and the UK in accordance with section 751(c) of the Act. *See Notice of Initiation*, 69 FR 30874 (June 1, 2004).

The Department received notices of intent to participate within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations on behalf of Allegheny Ludlum Corporation (''Allegheny Ludlum''), North America Stainless (''NAS''), Nucor Corporation (''Nucor''), the United Steelworkers of America, AFL–CIO/CLC (''USWA''); Local 3303 United Auto Workers (''Local 3303

[2] *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

UAW'')(formerly the Butler Armco Independent Union; and the Zanesville Armco Independent Organization, Inc. (''ZAIO'')(collectively ''domestic interested parties''). The domestic interested parties claimed interested–party status as U.S. producers of the subject merchandise, or certified unions whose workers are engaged in the production of the subject merchandise in the United States as defined by section 771(9)(C) and (D) of the Act.

The Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, the Department did not receive any responses from respondent interested parties to these proceedings. 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 conducted expedited sunset reviews of these antidumping duty orders.

These antidumping duty orders remain in effect for manufacturers, producers, and exporters of SSSS from Korea, Taiwan, and the UK, except for Inchon Iron & Steel Co., a Korean company for which the order was revoked in the investigation, and Tung Mung and Chang Mein, Taiwanese companies.

### Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated November 15, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''November 2004.'' The paper copy and electronic version of the Decision Memo are identical in content.

### Final Results of Reviews

The Department determines that revocation of the antidumping duty orders on SSSS from Korea, Taiwan, and the UK would likely lead to continuation or recurrence of dumping at the following weighted–average margins:

KOREA

| Manufacturers/Producers/Exporters | Weighted–Average Margin (Percent) |
|---|---|
| POSCO | 2.49 |
| Taihan Electric Wire Co., Ltd. | 58.79 |
| Daiyang Metal Co., Ltd. | 5.44 |
| All Others | 2.49 |

TAIWAN

| Manufactureres/Producers/Exporters | Weighted–Average Margin (Percent) |
|---|---|
| Tung Mung/Ta Chen | 15.40 |
| Tung Mung | Excluded |
| YUSCO/Ta Chen | 36.44 |
| YUSCO | 21.00 |
| All Others | 12.61 |

UK

| Manufacturer/Producers/Exporters | Weighted–Average Margin (Percent) |
|---|---|
| Avesta Sheffield Ltd./Avesta Sheffield NAD, Inc. | 14.84 |
| All Others | 14.84 |

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 order is 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 the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–3278 Filed 11–19–04; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–824]**

### Stainless Steel Sheet and Strip in Coils From Italy; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review of the antidumping duty order on stainless steel sheet and strip in coils from Italy.

**SUMMARY:** On June 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSSC'') from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

**EFFECTIVE DATE:** November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 1, 2004, the Department published the notice of initiation of the sunset review of the antidumping duty order on SSSSC from Italy.[1] On June 16, 2004, the Department received a Notice of Intent to Participate from Nucor Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steelworkers of America, AFL-CIO; the local 3303 United Auto Workers; and Zanesville Armco Independent Organization, Inc. (collectively ''domestic interested parties'') within the deadline specified in section 315.218(d)(1)(i) of the

[1] *See* Initiation of Five-Year (''Sunset'') Reviews, 69 FR 30874 (June 1, 2004)(''Initiation Notice'').

Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) and (D) of the Act, as domestic manufacturers of SSSSC or certified unions whose workers are engaged in the production of SSSSC in the United States. On July 1, 2004, the Department received a complete substantive response collectively from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of this order.

**Scope of the Order**

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 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 (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 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 HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 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 HTS, ''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 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.''[3]

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

[2] Due to changes to the HTS 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.

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

36.'' [4] 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.'' [5]

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).[6] 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''.[7]

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5,'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

## Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated November 15, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be 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 Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''November 2004.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

## Final Results of Reviews

We determine that revocation of the antidumping duty order on SSSSC from Italy would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

| Manufacturers/Exporters/Producers | Weighted Average Margin (percent) |
|---|---|
| ThyssenKrupp Acciai Speciali Terni, S.A. | 11.23 |
| All Others | 11.23 |

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 of the Department's regulations. Timely 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 violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–3280 Filed 11–19–04; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–428–825]**

## Stainless Steel Sheet and Strip in Coils From Germany; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review of the antidumping duty order on stainless steel sheet and strip in coils from Germany.

**SUMMARY:** On June 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSSC'') from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

**EFFECTIVE DATE:** November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 1, 2004, the Department published the notice of initiation of the

sunset review of the antidumping duty order on SSSSC from Germany.[1] On June 16, 2004, the Department received a Notice of Intent to Participate from Nucor Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steelworkers of America, AFL–CIO; the local 3303 United Auto Workers; and Zanesville Armco Independent Organization, Inc. (collectively ''domestic interested parties'') within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) and (D) of the Act, as domestic manufacturers of SSSSC or certified unions whose workers are engaged in the production of SSSSC in the United States. On July 1, 2004, the Department received a complete substantive response from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of this order.

**Scope of the Order**

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 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 (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 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 HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 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 HTS, ''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 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.''[3]

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

[1] *See* Initiation of Five-Year (''Sunset'') Reviews, 69 FR 30874 (June 1, 2004)(''Initiation Notice'').

[2] Due to changes to the HTS 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.

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

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.''[4]

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.''[5]

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).[6] 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''.[7]

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5,'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

### Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated November 15, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be 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 Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''November 2004.'' The paper copy and electronic version of the Decision Memo are identical in content.

### Final Results of Reviews

We determine that revocation of the antidumping duty order on SSSSC from Germany would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

| Manufacturers/exporters/producers | Weighted average margin (percent) |
|---|---|
| TKN | 13.48 |
| All Others | 13.48 |

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 of the Department's regulations. Timely 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 violation which is subject to sanction.

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–3281 Filed 11–19–04; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–580–835]**

## Stainless Steel Sheet and Strip in Coils From Korea; Extension of Time Limit for the Final Results of Sunset Review of Countervailing Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for the final results of sunset review of countervailing duty order: stainless steel sheet and strip in coils from Korea.

**SUMMARY:** The Department of Commerce (''the Department'') is extending the time limit for its final results in the first sunset review of the countervailing duty order on stainless steel sheet and strip in coils (''SSSS''). The Department intends to issue final results of this sunset review on or about December 10, 2004.

**EFFECTIVE DATE:** November 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Martha Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

### Extension of Final Results of Reviews

On June 1, 2004, the Department initiated a sunset review of the countervailing duty order on SSSS from Korea. *See Initiation of Five-Year*

*(Sunset) Reviews,* 69 FR 30874 (June 1, 2004). The Department, in this proceeding, determined that it would conduct an expedited sunset review of this order based on inadequate responses to the notice of initiation from respondent interested parties. The Department's final results of this review was originally scheduled for September 29, 2004 and was rescheduled for November 15, 2004.

Pursuant to section 751(c)(5)(B) of the Act, the administrating authority may extend the period for issuing final results by not more than 90 days if the administrating authority determines that a sunset review is extraordinarily complicated. A review may be treated as extraordinarily complicated if the issues to be considered are complex. Section 751(c)(5)(C)(ii) of the Act. In this instant review, the Department, needs additional time to consider complex issues related to the appropriate net countervailable subsidy rate likely to prevail if the order is revoked, which the Department will provide to the International Trade Commission. Thus, the Department intends to issue the final results on or about December 10, 2004, in accordance with sections 751(c)(5)(B) and 751(c)(5)(C)(i), (ii) and (iii) of the Tariff Act of 1930, as amended.

Dated: November 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–3279 Filed 11–19–04; 8:45 am]

BILLING CODE 3510–DS–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Thursday, December 9, 2004, 10 a.m.

**LOCATION:** Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the public.

**MATTER TO BE CONSIDERED:**

**Open Flame Flammability Standards for Mattresses, Mattress and Foundation Sets, and Bedclothes**

The staff will brief the Commission on the draft notice of proposed rulemaking addressing flammability (open flame) of mattresses and foundations under the Flammable Fabrics Act (FFA) as described in the November 1, 2004, staff briefing package. The staff will also brief the Commission on options for addressing bedclothes involvement in mattress/bedding fires as discussed in the briefing package. The briefing package is available on the internet at the CPSC Web site: *http://www.cpsc.gov/library/foia/foia05/brief/briefing.html.*

The meeting is open to the public although the Commission will not be taking comments at that time. As required by the FFA, a full opportunity of public comment, including presentation of oral testimony, will be provided should the Commission elect to proceed with the notice of proposed rulemaking.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–7923.

Dated: November 18, 2004.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 04–25970 Filed 11–18–04; 2:40 pm]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Contract Financing: Contractor's Request for Progress Payments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Request for public comments.

**SUMMARY:** The Defense Acquisition Regulations (DAR) Council is currently reviewing DoD's use of Standard Form (SF) 1443, Contractor's Request for Progress Payments. As part of this review, the DAR Council would like to hear the views of interested parties on what improvements could be made to the form, including the instructions, for use on DoD contracts. Respondents are also encouraged to describe any problems they have experienced in using the form on DoD contracts.

**DATES:** Submit written comments to the address shown below on or before January 6, 2005.

**ADDRESSES:** Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, Policy Directorate, Attn: Mr. David Capitano, Room 3C838, 3000 Defense Pentagon, Washington, DC 20301–3000. Comments may also be submitted by fax at (703) 614–0719 (Attn: Mr. David Capitano), or by e-mail at *david.capitano@osd.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. David Capitano, DPAP Policy Directorate, by telephone at (703) 847–7486, or by e-mail at *david.capitano@osd.mil.*

**SUPPLEMENTARY INFORMATION:** Based on the public comments received, the DAR Council will consider to what extent revisions (if any) to SF 1443 are needed. Any such revisions to the form will be published in the **Federal Register** as a proposed rule for public comment. Input may include, but is not limited to, the following areas:

1. Any revisions necessary to improve consistency between the form and the Progress Payments clause at 52.232–16 of the Federal Acquisition Regulation.
2. Simplification of the form and its instructions.
3. The impact any potential changes to the form may have on contractor and/or Government systems.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 04–25810 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by December 22, 2004.

*Title, Form, and OMB Number:* Customer Comment Card; Air Force Form 3211; OMB Number 0701–0146.

*Type of Request:* Extension.

*Number of Respondents:* 200.

*Responses Per Respondent:* 1.

*Annual Responses:* 200.

*Average Burden Per Response:* 5 minutes.

*Annual Burden Hours:* 16.67.

*Needs and Uses:* Each guest of Air Force Lodging and its contract lodging operations is provided access to Air Force Form 3211. The Air Force Form 3211 gives each guest the opportunity to comment on facilities and services received. Completion and return of the form is optional. The information collection requirement is necessary for Wing leadership to assess the effectiveness of their Lodging program.

*Affected Public:* Individuals or households; business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: November 15, 2004.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–25754 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by December 22, 2004.

*Title, Form, and OMB Number:* Request for Verification of Birth; DD Form 372; OMB Control Number 0704–0006.

*Type of Request:* Extension.

*Number of Respondents:* 100,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 100,000.

*Average Burden Per Response:* 5 minutes.

*Annual Burden Hours:* 8,300.

*Needs and Uses:* Title 10, U.S.C. 505, 532, 3253, 5013, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces. If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, ''Request for Verification of Birth,'' to a state or local agency requesting verification of the applicant's birth date. This verification of birth ensures that the applicant does not fall outside the age limitations, and that the applicant's place of birth supports the citizenship status claimed by the applicant.

*Affected Public:* State, local or tribal government.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: November 12, 2004.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–25755 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by December 22, 2004.

*Title, Form, and OMB Number:* Request for Reference; DD Form 370; OMB Control Number 0704–0167.

*Type of Request:* Extension.

*Number of Respondents:* 43,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 43,000.

*Average Burden Per Response:* 10 minutes.

*Annual Burden Hours:* 7,181.

*Needs and Uses:* Title 10 U.S.C. 504, 505, 508, and 12102, establishes minimum standards for enlistment into the Armed Forces. This information collection is for reference information on individuals applying for enlistment in the Armed Forces of the United States who require a waiver. The form associated with this information collection, DD 370, ''Request for Reference,'' is used by recruiters to obtain reference information on applicants who have admitted committing a civil or moral offense. The respondents may provide character information which would allow the applicant to be considered for a waiver and therefore continue the application process.

*Affected Public:* Individuals or households; business or other for-profit; Federal government; State, local or tribal government.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: November 12, 2004.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–25756 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** DoD, Office of the Under Secretary of Defense (Personnel and Readiness).

**ACTION:** Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on

respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by January 21, 2005.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), ODUSD (PI)/Defense Human Resources Activity, ATTN: Ms. Heidi Boyd, 4040 Fairfax Boulevard, Suite 200, Arlington VA 22203.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 696–0404.

*Title, Associated Form and OMB Control Number:* Application for Uniformed Services Identification Card—DEERS Enrollment, DD Form 1172, OMB Number 0704–0020.

*Needs and Uses:* This information collection requirement is needed to obtain the necessary information to authorize members of the Uniformed Services, their spouses and dependents, and other authorized individuals certain benefits and privileges. These privileges include health care, use of commissary, base exchange, and morale, welfare, and recreation facilities. This information collection is needed to obtain the necessary data to determine eligibility, to provide eligible individuals with an identification card for benefits and privileges administered by the Uniformed Services, and maintain a centralized database of eligible individuals.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 281,092.

*Number of Respondents:* 1,623,246.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 10 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This information collection identifies those individuals eligible for the benefits and privileges authorized in sections 1061–1065, 1072–1074c, 1076a, 1077, 1174a, 1175 and 1408 of title 10 and issuance of the appropriate Uniformed Services Identification Cards.

The Uniformed Services Identification Card is the key to authorized usage of military health care, commissary, exchange privileges, and morale, welfare, and recreation facilities. In order to obtain this identification card, an applicant is required to go to an identification card issuing facility and update the DD Form 1172, ''Application for Uniformed Services Identification Card—DEERS Enrollment.'' The sponsor, or person authorized to sign the DD Form 1172 in accordance with the criteria established in DoD Instruction 1000.13, provides appropriate dependent information and verification, *i.e.*, birth certificate, marriage license, etc. The information is entered into an automated system by the identification card issuing official and reviewed by the applicant. Once the applicant has reviewed the information, the sponsor, or person authorized to sign the form, will sign the system-printed DD Form 1172. The DD Form 1172 must be signed by both the sponsor (or person authorized to sign the form) and the verifying official. The person authorized to sign the form must sign it in the presence of the verifying official. On those rare occasions where the sponsor (or person authorized to sign the form) is unable to accompany his/her dependent to the identification card issuing facility, the signature must be notarized in accordance with the criteria set forth in DoD Instruction 1000.13 prior to verification by the verifying official. This does not happen very often and does not create a significant increase in burden to the public. Once the DD Form 1172 has been properly signed, the form is taken to the identification card issuing facility for issuance of the ID card. The date is transmitted to the Defense Manpower Data Center to be entered into the Defense Enrollment Eligibility Reporting System (DEERS) database. The application is required to update the information once every four years or as changes occur, *i.e.*, Reservist entering active duty or being released from activity duty, etc.

Respondent will be: Active duty, reserve, and retired personnel of the Uniformed Services (Army, Navy, Air Force, Marine Corps, Coast Guard, U.S. Public Health Service, and NOAA), and their dependents; surviving dependents of deceased active duty, eligible former spouses, and any eligible individual who may be eligible for benefits associated with the issuance of an identification card.

Dated: November 12, 2004.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 04–25757 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Transformation Advisory Group Meeting of the U.S. Joint Forces Command

**AGENCY:** Department of Defense, USJFCOM.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The Transformation Advisory Group (TAG) will meet in a closed session on November 30 and December 1, 2004. The mission of the TAG is to provide timely on scientific, technical, and policy-related issues to the Commander, U.S. Joint Forces Command as he develops and executes the Department of Defense strategy. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated April 17, 1995, as amended March 25, 2003. Access to this information must be strictly limited to personnel having the requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the TAG meeting could have exceptionally grave impact on national defense. In accordance with Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. 552b(c), and 41 CFR 102–3.155, this meeting will be closed.

**DATES:** 30 November–01 December 2004.

**ADDRESSES:** USJFCOM, 1562 Mtscher Avenue, Suite 200, Norfolk, Virginia 23551–2488.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roper-Burton, Executive Director, (757) 836–0965.

**SUPPLEMENTARY INFORMATION:** Jerome Mahar, Joint Staff, (703) 614–6465.

Dated: October 29, 2004.

**Jeannette Owings-Ballard,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–25905 Filed 11–19–04; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AC05–4–000]**

### Sun River Electric Cooperative, Inc.; Notice of Request for Waiver

November 12, 2004.

On October 18, 2004, Sun River Electric Cooperative, Inc. filed a request for waiver of the Commission's

quarterly financial reporting requirements to the Annual Report as set forth in Commission Order No. 646 issued February 4, 2004, in Docket No. RM03–8–000. 106 FERC ¶ 61,113 (2004).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. eastern time on November 22, 2004.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E4–3265 Filed 11–19–04; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–1822–003, et al.]**

## Indigo Generation, LLC, et al.; Electric Rate and Corporate Filings

November 15, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Indigo Generation, LLC, Larkspur Energy LLC, Wildflower Energy LP

[Docket No. ER01–1822–003]

Take notice that on November 8, 2004, Indigo Generation LLC (Indigo Generation), Larkspur Energy LLC (Larkspur Energy) and Wildflower Energy LP (Wildflower Energy) (collectively, the Wildflower Entities) filed a notice of change in status in connection with the sale by InterGen North America, Inc. of all of its equity interests, which were indirectly held through Wildflower Development LLC, in the Wildflower Entities, to Diamond Generating Corporation. Indigo states that Larkspur Energy and Indigo Generation, which are subsidiaries of Wildflower Energy, own and operate two natural gas-fired peaker plants with an aggregate net generating capacity of 232 megawatts located in Southern California.

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

### 2. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–010]

Take notice that on November 8, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing an amendment to its report entitled ''Compliance Report to the FERC Docket No. ER02–1326–000 Assessment of PJM Load Response Programs'' prepared by the PJM Market Monitoring Unit, originally filed on November 1, 2004, and corrected on November 3, 2004.

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

### 3. Midwest Independent Transmission System Operator, Inc., Northern Indiana Public Service Company

[Docket No. ER05–190–001]

Take notice that on November 8, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Northern Indiana Public Service Company (NIPSCO) (collectively, Applicants), filed an amendment to the Applicants' November 5, 2004, filing of proposed revisions to the Midwest ISO Open Access Transmission Tariff. Applicants request an effective date of December 1, 2004.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. The Midwest ISO also states that in addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO further states that it will provide hard copies to any interested parties upon request.

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

### 4. El Paso Electric Company

[Docket No. ER05–193–000]

Take notice that on November 8, 2004, El Paso Electric Company (EPE) submitted a Notice of Cancellation of El Paso Electric Company Electric Rate Schedule No. 48, an Interruptible Transmission Service Agreement between Salt River Project Agricultural Improvement and Power District and EPE. EPE requests an effective date of January 1, 2005.

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

### 5. American Electric Power Service Corporation

[Docket No. ER05–194–000]

Take notice that on November 8, 2004, American Electric Power Service Corporation (AEPSC), on behalf of AEP Texas North Company (AEP TNC), submitted for filing a Generation Interconnection Agreement between AEP TNC and the Public Service Company of Oklahoma (PSO) as Operation Project Manager on Behalf of the Participants in Oklaunion Unit No. 1. AEPSC requests an effective date of November 15, 2004.

AEPSC states that copies of the filing were served on PSO and the Public Utility Commission of Texas.

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

### 6. Boston Edison Company

[Docket No. ER05–196–000]

Take notice that on November 8, 2004, Boston Edison Company (BECo) tendered for filing an Interconnection Agreement and a Distribution Service Agreement between BECo and the Massachusetts Bay Transportation Authority. BECo requests an effective date of February 1, 2003.

BECo states that copies of the filing were served upon the Massachusetts Department of Telecommunications and Energy.

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

**7. Virginia Electric and Power Company**

[Docket No. ER05–197–000]

Take notice that on November 8, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Standard Large Generator Interconnection Agreement (LGIA) with CPV Warren, LLC (CPV) setting forth the terms and conditions governing the interconnection between CPV's generating facility and Dominion Virginia Power's transmission system. Dominion Virginia Power requests an effective date of November 9, 2004.

Dominion Virginia Power states that copies of the filing were served upon CPV and the Virginia State Corporation Commission.

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

**8. Commonwealth Chesapeake Company, LLC**

[Docket No. ER05–198–000]

Take notice that, on November 9, 2004, Commonwealth Chesapeake Company, L.L.C. (Commonwealth Chesapeake) submitted revisions to its market-based FERC Electric Tariff, Second Revised Volume No. 1 to include the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003). Commonwealth Chesapeake states that the filing also revises Commonwealth Chesapeake's Tariff to incorporate the pagination and other requirements of the Commission's order, *Designation of Electric Rate Schedule Sheets*, 90 FERC ¶ 61,352 (2000).

*Comment Date:* 5 p.m. eastern time on November 29, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E4–3266 Filed 11–19–04; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2004–0006; FRL–7840–3]**

## Agency Information Collection Activities: Submission for OMB Review and Approval; Comment Request; NESHAP for Beryllium Rocket Motor Firing (Renewal), ICR Number 1125.04, OMB Number 2060–0394

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document announces that an information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 22, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA–2004–0006, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7054; fax number: (202) 564–0050; e-mail address: *chadwick.dan@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2004–0006, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public

disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* NESHAP for Beryllium Rocket Motor Firing (40 CFR part 61, subpart D) (Renewal).

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP, 40 CFR part 61, subpart D) was promulgated on April 6, 1973, and amended on November 7, 1985, for this source category. These standards establish limits for beryllium. The rule requires subject test sites to test ambient air for beryllium during and after firing a rocket motor. Samples are analyzed within 30 days and results are reported to EPA by registered letter by the business day following the determination and calculation. The rule also requires continuous stack sampling of beryllium combustion products during and after firing a rocket motor, and analysis and reporting within 30 days. In addition, other reporting requirements include notification of anticipated firing date; air quality emissions and ambient air quality and emission test reports. Recordkeeping requirements include air sampling test results, record of emission test results and making these records available to the Agency. Records are kept for a period of two years for the air sampling test results.

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 are listed in 40 CFR part 9 and 48 CFR Chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* These standards apply to sources that are rocket motor test sites that use beryllium propellant.

*Estimated Number of Respondents:* 1.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 8 hours.

*Estimated Total Annual Costs:* $0, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $0 annual labor costs.

*Changes in the Estimates:* Industry burden hours remain unchanged.

Dated: November 13, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–25816 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[SFUND–2004–0008, FRL–7840–2]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Renewal), EPA ICR Number 1487.08, OMB Control Number 2050–0179

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 22, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number SFUND–2004–0008, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Solid Waste and Emergency Response (OSWER), Superfund Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Kirby Biggs, Office of Emergency and Remedial Response, Mail Code 5204G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8506; fax number: 703–308–2358; e-mail address: *Biggs.Kirby@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 2, 2004, (69 FR 40369), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment.

EPA has established a public docket for this ICR under Docket ID number SFUND–2004–0008, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the

comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

*Title:* Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Renewal).

*Abstract:* This ICR authorizes the collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for State, Federally-recognized Indian tribal governments, and political subdivision response actions. This regulation also codifies the administrative requirements for Superfund State Contracts for non-State lead remedial responses. This regulation includes only those provisions mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management under this regulation. The information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how Federal funds are being utilized. EPA requires this information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (Federal funds) under 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' and under 40 CFR part 35, ''State and Local Assistance.''

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The estimated annual public reporting and recordkeeping burden for this collection is estimated to average 10.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are States, Federally-recognized Indian tribes and Tribal Consortia, and political subdivisions which apply to EPA for financial assistance under a Superfund cooperative agreement or a Superfund State Contract.

*Estimated Number of Respondents:* 581.

*Frequency of Response:* Annually, On-occasion.

*Estimated Total Annual Hour Burden:* 6,063 hours.

*Estimated Total Annual Cost:* $215,000, includes $0 annualized capital/startup and O&M costs.

*Changes in the Estimates:* There is an increase of 948 hours from the most recently approved ICR. This increase is due to the correction of calculation errors in the prior ICR and revised Regional input.

Dated: November 13, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–25817 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2004–0019; FRL–7840–1 ]**

## Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Pulp and Paper Production (Renewal), ICR Number 1657.05, OMB Number 2060–0387

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 22, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA–2004–0019, to (1) EPA online using EDOCKET (our preferred method), by e-mail to docket.oeca@epa.gov, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: lazarus.leonard@epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0019, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

*Title:* NESHAP for Pulp and Paper Production (40 CFR part 63, subpart S) (Renewal).

*Abstract:* This National Emission Standards for Hazardous Air Pollutants (NESHAP) covering emissions from the pulping process relies on the capture and destruction of hazardous air pollutants (HAP) by either burning them in a boiler or kiln or by introducing them into the wastewater treatment system. HAP's captured from bleaching systems are controlled with a chlorine gas scrubber. The recordkeeping, notification and reporting requirements of the standard are critically important as they allow the Agency to determine to which facilities the standards apply and they enable the Agency to monitor initial and ongoing compliance with the standards. As much as possible, in order to reduce the burden, the compliance monitoring and recordkeeping requirements are designed to cover parameters that are already being monitored as part of the manufacturing process.

Pulp mill owners or operators (respondents) are required to submit initial notifications, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Respondents are required to monitor and keep records of specific operating parameters for each control device and to perform and document periodic inspections of the closed vent and wastewater conveyance systems. All respondents must submit semiannual summary reports of monitored parameters, and they must submit an additional monitoring report during each quarter in which monitored parameters were outside the ranges established in the standard or during initial performance tests. A source identified to be out of compliance with the NESHAP will be required to submit quarterly reports until the Administrator is satisfied that the source has corrected its compliance problem. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to Maximum Achievable Control Technology (MACT) standards. Since none of the required reports to the Agency have been deemed confidential business information, they will not be treated as such. Responses are mandatory (40 CFR part 63, subpart S).

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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 104 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Pulp mill owners or operators.

*Estimated Number of Respondents:* 137.

*Frequency of Response:* Initial, Quarterly, Semiannually.

*Estimated Total Annual Hour Burden:* 42,444 hours.

*Estimated Total Annual Costs:* $3,085,125, which includes $0 annualized capital/startup costs, $377,000 annual O&M costs, and $2,708,125 annual labor costs.

*Changes in the Estimates:* There is a decrease of 7,788 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in annual burden due to an improved estimate of the number of facilities.

Dated: November 13, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–25818 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2004–0011; FRL–7839–9]**

## Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Vinyl Chloride (Renewal), EPA ICR Number 0186.10, OMB Control Number 2060–0071

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 22, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA–2004–0011, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0011, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

*Title:* NESHAP for Vinyl Chloride (Renewal).

*Abstract:* The National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Vinyl Chloride (VC) were proposed on December 24, 1975, promulgated on October 21, 1976, and amended on June 7, 1977, September 30, 1986, September 23, 1988, and December 23, 1992. These standards apply to exhaust gases and oxychlorination vents at ethylene dichloride (EDC) plants; exhaust gas at vinyl chloride monomer (VCM) plants; and exhaust gases, reactor opening losses, manual vent valves, and stripping residuals at polyvinyl chloride (PVC) plants. The standards also apply to relief valves and fugitive emission sources at all three types of plants.

In the Administrator's judgement, vinyl chloride emissions from polyvinyl chloride (PVC), ethylene dichloride (EDC), and vinyl chloride monomer (VCM) plants cause or contribute to air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness. Vinyl chloride is a known human carcinogen which causes a rare cancer of the liver. In order to ensure compliance with the standard, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Ensure that facilities that are affected continue to operate the control equipment and use proper work practices to achieve compliance; (2) notification of startup indicates to enforcement personnel when a new facility has been constructed and is thus subject to the standards; and (3) provides a means for ensuring compliance.

The standards require daily measurements from the continuous monitoring system and of the reactor pressure and temperature. Establishment of a continuous monitoring program is a high priority of the Agency. The continuous monitoring system monitors VC emissions from the stack to judge compliance with the numerical limits in the standards. The parameters are used to judge the operation of the reactor so that the source and EPA will be aware of improper operation and maintenance. The standards implicitly require the initial reports required by the General Provisions of 40 CFR 61.7 and 61.9. These initial reports include application for approval of construction or modification, and notification of startup. The standards also require quarterly reporting of vinyl chloride emissions from stripping, reactor openings, and exhausts. Reports must be submitted within 10 days of each valve discharge and manual vent valve discharge. The owner/operator must make the following one-time-only reports: Application for approval of construction or modification; notification of startup; application of a waiver of testing (if desired by source); and an initial report. The initial report includes a list of the equipment installed for compliance, a description of the physical and functional characteristics of each piece of equipment, a description of the methods which have been incorporated into the standard operation procedures for measuring or calculating emissions, and a statement that equipment and procedures are in place and are being used. Generally, the one-time-only reports are required of all sources subject to NESHAP regulation.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 60 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes

of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Manufacturers of ethylene dichloride, vinyl chloride monomer, and polyvinyl chloride.

*Estimated Number of Respondents:* 28.

*Frequency of Response:* Initially, quarterly, and on occasion.

*Estimated Total Annual Hour Burden:* 11,825 hours.

*Estimated Total Capital and Operations & Maintenance (O&M) Annual Costs:* $2,014,515, which includes $0 annualized capital/startup, $1,260,000 annual O&M costs, and $754,515 Respondent Labor Costs.

*Changes in the Estimates:* There is a decrease of 4,334 hours in the total estimated hours burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in the burden from the most recently approved ICR is due to a decrease in the number of existing sources. Our data indicates that there are approximately forty-four sources in the active ICR compared to twenty-eight sources in the renewal, reflected in the change in the hourly burden.

Dated: November 13, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–25819 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0087; FRL–7839–8]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; PCBs; Consolidated Reporting and Recordkeeping Requirements; EPA ICR No. 1446.08, OMB No. 2070–0112

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated cost.

**DATES:** Additional comments may be submitted on or before December 22, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID Number OPPT–2004–0087, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 30, 2004, EPA sought comments on this renewal ICR (69 FR 23747). EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the Supporting Statement.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2004–0087, which is available for public viewing at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is (202) 566–0280. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

*Title:* PCBs; Consolidated Reporting and Recordkeeping Requirements.

*Abstract:* Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), directs EPA to regulate the marking and disposal of PCBs. Section 6(e)(2) bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR part 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping

requirements covered by 40 CFR part 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR part 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste.

Responses to the collection of information are mandatory (*see* 40 CFR part 761). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 1 hour per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Persons who currently possess PCB Items, PCB-contaminated equipment, or other PCB waste.

*Frequency of Collection:* On occasion.

*Estimated No. of Respondents:* 814,120.

*Estimated Total Annual Burden on Respondents:* 824,778 hours.

*Estimated Total Annual Costs:* $23,005,750.

*Changes in Burden Estimates:* This request reflects an increase of 83,517 hours (from 741,261 hours to 824,778 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase is due to revisions to the total number of respondents. In some cases, the total number of respondents was based on number of facilities, in other cases, the total number of respondents was calculated by estimating the total number of pieces of equipment that respondents must monitor for a particular requirement. These burden changes were the result of new data gathered for this ICR renewal as well as a recent PCB regulatory analysis, estimate adjustments made for consistency with a recent Agency report, and updated Agency data regarding total numbers of regulated entities. The change in burden represents an adjustment.

Dated: November 9, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–25820 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0252, FRL–7839–6]**

## Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0596.08; OMB Control No. 2070–0032; Application and Summary Report for an Emergency Exemption for Pesticides

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application and Summary Report for an Emergency Exemption for Pesticides; EPA ICR No. 0596.08; OMB Control No. 2070–0032. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

**DATES:** Additional comments may be submitted on or before December 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov*.

**ADDRESSES:** Submit your comments, referencing docket ID number OPP–2004–0252 , to (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 27, 2004 (69 FR 52664). EPA received one comment in response to that notice during the 60-day comment period and has addressed it in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2004–0252, which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the

system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*ICR Title:* Application and Summary Report for an Emergency Exemption for Pesticides.

*ICR Status:* This is a request for extension of an existing approved collection that is currently scheduled to expire on November 30, 2004. EPA is asking OMB to approve this ICR for three years. Under OMB regulations at 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

*Abstract:* Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to grant emergency exemptions to State, U.S. Territorial and Federal agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist, whether use of the pesticide under the exemption will be protective of human health and the environment, and to evaluate the effectiveness of the requested product in allaying the emergency. This data collection program is designed to provide EPA with necessary data to evaluate an application for a permit for the temporary shipment and use of a pesticide product for an unregistered use to mitigate an emergency situation and to evaluate the effectiveness of that product in allaying the emergency. State, U.S. Territorial, and Federal agencies submit applications for section 18 emergency exemptions at their discretion in accordance with 40 CFR part 166. After EPA has granted a section 18 emergency exemption to a given government agency, the requesting agency must submit to EPA information related to any unexpected adverse effects resulting from the use of the pesticide and a report summarizing the results of the pesticide use. These government agencies must also maintain records for all treatments involving the first food use of a pesticide and make them available to EPA upon request.

*Burden Statement:* The annual ''respondent'' burden for this ICR is estimated to be 99 hours per response. According to the Paperwork Reduction Act, ''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. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The 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 number for this information collection appear at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

*Respondents/affected entities:* State Agency, U.S. Territory, or Federal Agency.

*Estimated total number of potential respondents:* 50.

*Frequency of response:* On occasion.

*Estimated total/average number of responses for each respondent:* 10.

*Estimated total annual burden hours:* 49,500.

*Estimated total annual labor costs:* $2,683,000.

*Changes in the ICR Since the Last Approval:* The annual burden has decreased from 59,400 to 49,500 hours due to the drop in the overall number of section 18 emergency exemption applications filed annually, from 600 for the period 1998–2000 to approximately 500 for the period 2001–2003. The 9,900 hour decrease in annual burden reflects an adjustment to the estimated annual burden for this ICR.

Dated: November 9, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–25821 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2004–0021; FRL–7839–7]**

## Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Portland Cement Plants (Renewal), ICR Number 1051.09, OMB Number 2060–0025

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 22, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA–2004–0022, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7016; fax number:

(202) 564–0050; e-mail address: *fried.gregory@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004, (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0022, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* NSPS for Portland Cement Plants (40 CFR part 60, subpart F) (Renewal).

*Abstract:* Particulate matter emissions from portland cement plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

The control of emissions of particulate matter from portland cement plants requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of particulate matter from portland cement plants are the result of operation of kilns, clinker coolers, raw mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems. These standards rely on the capture of particulate emissions by a baghouse or electrostatic precipitator.

In order to ensure compliance with these standards, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard and note the operating conditions under which compliance was achieved. The quarterly reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. The standard also requires semiannual reporting of deviations from monitored opacity, as this is a good indicator of the source's compliance status.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 64.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Portland Cement Plants.

*Estimated Number of Respondents:* 118.

*Frequency of Response:* Initially and semiannually.

*Estimated Total Annual Hour Burden:* 15,978 hours.

*Estimated Total Annual Costs:* $1,552,045, which includes $37,000 annualized capital/startup costs, $495,600 annual O&M costs, and $1,019,445 annual labor costs.

*Changes in the Estimates:* There is an increase of 8,010 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is primarily due to an increase in the estimated number of existing affected sources from 113 to 118 and an increase in the number of hours to submit semiannual reports from 16 hours to 24 hours.

Dated: November 13, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–25822 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[EB Docket No. 04–381; DA 04–3048]**

## Hearing Designation Order To Adjudicate Petition for Reconsideration Filed by Gulf Power Company

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On September 27, 2004, the Enforcement Bureau of the Federal Communications Commission (Commission) released a Hearing Designation Order (HDO) initiating a hearing to determine whether Gulf Power Company (Gulf Power) is entitled to receive compensation above marginal cost for any attachments to its utility poles belonging to Florida Cable Telecommunications Association; Comcast Cablevision of Panama City, Inc.; Mediacom Southeast, L.L.C.; and Cox Communications Gulf Coast, L.L.C (collectively, Cable Operators). To avail themselves of the opportunity to participate in this hearing, the parties were required to file a written Notice of Appearance with the Office of the Commission Secretary, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the HDO, within 20 days of the mailing of the HDO to the parties.

**DATES:** The HDO was mailed to the parties on September 27, 2004. The parties were required to file their Notices of Appearance by October 18, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–204(B), Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rhonda J. Lien, 202–418–7330.

**SUPPLEMENTARY INFORMATION:** The Enforcement Bureau previously ruled that Gulf Power violated section 224 of the Act, 47 U.S.C. 224, and the Commission's pole attachment rules, 47 CFR 1.1401–1.1418, by charging the Cable Operators rates higher than those allowed by the Commission's rules and policies and by refusing to negotiate new rates in good faith. *See Florida Cable Telecommunications Association, Inc.; Comcast Cablevision of Panama City, Inc.; Mediacom Southeast, L.L.C.; and Cox Communications Gulf Coast L.L.C.* v. *Gulf Power Company,* Memorandum Opinion and Order, 18 FCC Rcd 9599 (Enf. Bur. 2003). Gulf Power timely filed a Petition for Reconsideration and Request for Evidentiary Hearing on June 23, 2003.

The complete text of this HDO is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document 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 202–863–2893, facsimile 202–863–2898, or via e-mail at *http://www.bcpiweb.com*.

Federal Communications Commission.

**Christopher N. Olsen,**

*Deputy Chief, Enforcement Bureau.*

[FR Doc. 04–25517 Filed 11–19–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL MARITIME COMMISSION

**[Petition No. P6–04]**

### Petition of China Shipping Container Lines (Hong Kong) Co., Ltd., for an Exemption From the First Sentence of Section 9(c) of the Shipping Act; Notice of Filing

Notice is hereby given that China Shipping Container Lines (Hong Kong) Co., Ltd. (''Petitioner''), a controlled carrier as that term is defined by the Shipping Act of 1984, has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.69, for an exemption from the first sentence of section 9(c) of the 1984 Act, 46 U.S.C. app. 1708(c).[1] Petitioner seeks an exemption so that it may reduce its tariff rates upon publication.[2]

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than December 6, 2004. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel, Brett M. Esber, Esq., Blank Rome LLP, Watergate 600 New Hampshire Avenue, NW., Washington, DC 20037. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *Secretary@fmc.gov*.

Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to *secretary@fmc.gov* or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request may be directed to *secretary@fmc.gov*.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–25770 Filed 11–19–04; 8:45 am]

BILLING CODE 6730–01–P

[1] China Shipping Container Lines (Hong Kong) Co., Ltd. is a wholly owned subsidiary of China Shipping Container Lines Co. Ltd. (''CSCL''). On April 1, 2004 the Commission issued an Order in Petition No. P4–03, granting CSCL an exemption like that now sought by Petitioner—an exemption from the first sentence of section 9(c) of the 1984 Act.

[2] The Petitioner, to date, has operated only outside of the United States' trades. Petitioner advises that it will commence operations in the U.S. trades on or about January 1, 2005.

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System

**SUMMARY:** June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Request for comment on information collection proposal**

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper

performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before January 21, 2005.

**ADDRESSES:** You may submit comments, identified by FR HMDA–LAR, by any of the following methods:

- Agency Web site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:**

*Report title:* Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

*Agency form number:* FR HMDA–LAR.

*OMB control number:* 7100–0247.

*Frequency:* Annual.

*Reporters:* State member banks, subsidiaries of state member banks, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations under section 25 or 25A of the Federal Reserve Act.

*Annual reporting hours:* 150,942 hours.

*Estimated average hours per response:* State member banks, 242 hours; and mortgage subsidiaries, 192 hours.

*Number of respondents:* 519 State member banks, and 132 mortgage subsidiaries.

*General description of report:* This information collection is mandatory (12 U.S.C. 2803). The information is not given confidential treatment, however, information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) and section 304 (j)(2)(B) of HMDA (12 U.S.C. 2803).

*Abstract:* The information reported and disclosed pursuant to this collection is used to further the purposes of HMDA. These include: (1) to help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public–sector investments so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing anti–discrimination statutes.

Board of Governors of the Federal Reserve System, November 16, 2004.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 04–25772 Filed 11–19–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

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 December 6, 2004.

**A. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Embry W. Williams, Jr.*, Amarillo, Texas; to acquire voting shares of Union BancShares, Inc., Clayton, New Mexico, and thereby indirectly acquire voting shares of The First National Bank of New Mexico, Clayton, New Mexico.

Board of Governors of the Federal Reserve System, November 16, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–25773 Filed 11–19–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 2004.

**A. Federal Reserve Bank of Chicago** (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Wintrust Financial Corporation*, Lake Forest, Illinois; to acquire 100 percent of the voting shares of Antioch Holding Company, Antioch, Illinois, and thereby indirectly acquire voting shares of State Bank of the Lakes, Antioch, Illinois.

Board of Governors of the Federal Reserve System, November 16, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–25774 Filed 11–19–04; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Anticipated Availability of Funds for Family Planning Services Grants

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

**ACTION:** Notice; correction.

**SUMMARY:** The Office of Population Affairs, OPHS, HHS published a notice in the **Federal Register** of Wednesday, July 7, 2004, announcing the anticipated availability of funds for family planning services grants. This notice contained an error. An eligible Population/area was not listed as available for competition in 2005. A document correcting the omission of the Seattle Population/area as competitive in 2005 was published in the **Federal Register** of Tuesday, August 10, 2004. Since that time, two additional Populations/areas, Illinois, Chicago area and Arizona, Navajo Nation, have become available for competition in 2005. This document corrects the **Federal Register** notice of Wednesday, July 7, 2004, to include all Populations/areas available for competition in 2005.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Moskosky, 301–594–4008.

### Correction

In the **Federal Register** of July 7, 2004, FR Doc. 03–15514, on page 41,114, in the second column under II. Award Information, correct the 6th and 7th lines of the first paragraph to read ''$47 million for competing Title X family planning services grant awards in 19;'' and on page 41,115, correct Table I to read:

TABLE I

| States/populations/areas to be served | Approximate funding available | Application due date | Approximate grant funding date |
|---|---|---|---|
| Region I: | | | |
| Massachusetts | $5,217,000 | 09–01–04 | 01–01–05 |
| Region II: | | | |
| New York State | 9,635,000 | 03–01–05 | 07–01–05 |
| Puerto Rico | 2,389,000 | 03/01/05 | 07/01/05 |
| Region III: | | | |
| Washington, D.C. | 1,053,000 | 09–01–04 | 01–01–05 |
| Region IV: | | | |
| Kentucky | 5,203,000 | 03–01–05 | 07–01–05 |
| South Carolina | 5,569,000 | 03–01–05 | 07–01–05 |
| Tennessee | 5,914,000 | 03–01–05 | 07–01–05 |
| Region V: | | | |
| Illinois, Chicago area | 200,225 | 06–01–05 | 09–30–05 |
| Region VI: | | | |
| Arkansas | 3,241,000 | 11–01–04 | 03–01–05 |
| New Mexico | 2,228,000 | 09–01–04 | 01–01–05 |
| Region VII: | | | |
| Kansas | 2,332,000 | 03–01–05 | 07–01–05 |
| Region VIII: | | | |
| No areas competitive in FY 2005. | | | |
| Region IX: | | | |
| Gila River Indian Community | 251,000 | 03–01–05 | 07–01–05 |
| Government of Guam | 452,000 | 03–01–05 | 07–01–05 |
| Republic of Palau | 99,000 | 03–01–05 | 07–01–05 |
| Federated States of Micronesia | 411,000 | 03–01–05 | 07–01–05 |
| Arizona, Navajo Nation | 640,000 | 03–01–05 | 07–01–05 |
| Region X: | | | |
| Idaho | 1,318,000 | 03–01–05 | 07–01–05 |
| Oregon, Multnomah County | 330,000 | 03–01–05 | 07–01–05 |
| Washington, Seattle | 158,450 | 03–01–05 | 07–01–05 |

Dated: November 12, 2004.

**Alma L. Golden,**

*Deputy Assistant Secretary for Population Affairs.*

[FR Doc. 04–25758 Filed 11–19–04; 8:45 am]

BILLING CODE 4150–34–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### 2005 White House Conference on Aging Policy Committee

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the third Policy Committee meeting concerning planning for the 2005 White House Conference on Aging. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting.

**DATES:** The meeting will be held Wednesday, December 1, 2004, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the American Association of Homes and Services for the Aging, 2519 Connecticut Avenue, NW., Conference Room, Washington, DC 20008–1520.

**FOR FURTHER INFORMATION CONTACT:** Nora Andrews, (301) 443–2874, or e-mail at *Nora.Andrews@whcoa.gov*.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the Policy Committee will meet to discuss delegate participation, the conference theme, and to review and discuss work of the subcommittees.

**Josefina G. Carbonell,**

*Assistant Secretary for Aging.*

[FR Doc. 04–25747 Filed 11–19–04; 8:45 am]

BILLING CODE 4154–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Cooperative Agreement Program for the National Academic Centers of Excellence on Youth Violence Prevention

*Announcement Type:* New.

*Funding Opportunity Number:* CE05–018.

*Catalog of Federal Domestic Assistance Number:* 93.136.

*Key Dates:*

*Letter of Intent Deadline:* December 22, 2004.

*Application Deadline:* February 10, 2005.

### I. Funding Opportunity Description

**Authority:** This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

*Purpose:* The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2005 cooperative agreement funds to establish up to ten National Academic Centers of Excellence (ACE) on Youth Violence Prevention, serving as national models for the prevention of youth violence. The purpose of the Centers is to help communities prevent youth interpersonal violence. As of 2005, Centers will be supported for up to ten years to promote a stable, long term focus on the complex problem of youth violence, fostering multidisciplinary and multi-sectoral interactions that can stimulate scientific creativity, speed new developments in youth interpersonal violence research and practice, and hasten translation of knowledge into health and community practice. Centers are expected to actively foster an environment conducive to reciprocally beneficial collaborations among health scientists, social scientists and the affected communities with the common goal of reducing youth interpersonal violence.

Youth violence is defined as: The intentional use of physical force or power, threatened or actual, exerted by or against children, adolescents or young adults, ages 10–24, which results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation. It includes violence between individuals or groups who may or may not know each other. It frequently takes place outside the home, in the streets, or in institutional settings, such as schools, workplaces, and prisons. Hereafter, youth violence and youth interpersonal violence will be used synonymously.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention. For a copy of ''Healthy People 2010'' visit the Internet site: *http://www.health.gov/healthypeople*.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals for the National Center for Injury Prevention and Control (NCIPC):

1. Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.
2. Monitor and detect fatal and non-fatal injuries.
3. Conduct a targeted program of research to reduce injury-related death and disability.

*Special Guidelines for Technical Assistance:*

*Conference Call:* Technical assistance will be available for potential applicants during one conference call.

The call for eligible applicants will be held on December 9, 2005 from 2:30 p.m. to 4 p.m. (eastern time). The conference can be accessed by calling 1–888–528–9061 and entering access code 18046.

The purpose of the conference call is to help potential applicants:

1. Understand the Request for Application Process for the RFA (CE05–018) for the National Academic Centers of Excellence on Youth Violence Prevention.
2. Understand the scope and intent of the RFA (CE05–018) for the National Academic Centers of Excellence on Youth Violence Prevention.
3. Become familiar with the Public Health Services funding policies and application and review procedures.

Participation in this conference call is not mandatory. At the time of the call, if you have problems accessing the conference call, please call 404–639–7550 for assistance.

*Program Objectives:* The goal of this program is to reduce the incidence of youth violence in the defined community by achieving the following objectives:

- Monitoring the magnitude and distribution of youth interpersonal violence.
- Building the scientific infrastructure necessary to support the development and widespread application of effective youth violence prevention interventions.
- Promoting interdisciplinary research strategies to address the problem of youth violence.
- Fostering collaboration between academic researchers and communities.

• Mobilizing and empowering communities to address the problem of youth violence.

*Activities:* Awardee activities during the course of the five-year award for this program are listed below. Additional information on the program activities is provided in the application content of this announcement.

• Apply and refine a logic model for the academic center of excellence adapted from the national ACE Program conceptual framework or logic model (See Appendix 1 for a description) to fit the specific inputs, activities, outputs, and outcomes of the proposed center.

• Develop and implement a center evaluation plan and demonstrate how the center's evaluation contributes to CDC's national program evaluation, including the core performance indicators (see Appendix 2 for a list of the indicators.)

• Develop, implement and evaluate center projects in conjunction with the center's ''defined community'', (whether geographic or a non-geographic sub-grouping) which the center's activities will serve. Community is defined as a group of people who share some or all of the following: geographic boundaries; a sense of membership; culture and language; common norms, interests, or values; and common health risks or conditions (CDC/ATSDR Principles of Community Engagement, IOM 2002). Community refers to a population that has a distinct identity. It can mean residents of a geographic area, be that a catchment's area, neighborhood, school district, city, county or region within a county. It can be used with a modifier or clause to describe a non-geographically based sub-grouping such as, but not exclusively: a community of youth violence prevention workers, a community of health professionals, or an ethnic or language community.

• Establish or maintain a center community advisory committee to work with the defined community to achieve center goals. See Appendix 3, the glossary, for a definition and composition of the community committee.

• Establish and maintain partnerships (*e.g.*, state and local health departments, youth violence prevention and youth serving organizations, community groups and agencies, faith-based organizations and local businesses, and academic units), and include these partners, when applicable, in the center activities. See Appendix 3, the glossary, for a definition and composition of partnerships.

• Establish and/or enhance surveillance systems to better measure the problem of youth violence and the impact of center activities and research in the defined community.

• Identify youth violence prevention priorities within the defined community.

• Carry out the center's participatory, community-based core youth interpersonal violence research project(s) and the center's five-year research agenda. Each center is required to conduct at least one core research project consistent with both the NCIPC Research Agenda and NCIPC's mission.

• Plan the core research project in collaboration with community partners.

• Refine, carry out and evaluate the center's community mobilization plan in partnership with a community's individuals, groups, and organizations on a participatory and sustained basis. (See Appendix 3, the glossary, for a definition of community mobilization.)

• When appropriate, collaborate with CDC, community partners, and other ACE centers to develop and finalize design for studies and activities, methodology, data collection measures, methods, and analyses and disseminate the results through presentations and publications to broad audiences, including public health.

• Collect and report necessary data and information to CDC to assess progress toward centers' goals and objectives and monitor overall performance. This should include, but will not be limited to, information related to the ACE Performance Indicators. (See Appendix 2 for list of indicators).

• Develop an infrastructure of personnel and resources to support center functions and processes. This infrastructure should ensure that adequate personnel, facilities, technology, and university support exists to accomplish the goals and objectives of the center.

• Provide training, technical assistance, and mentoring to health professionals, researchers, students, community members, and other partners, as appropriate, including other funded Academic Centers of Excellence on Youth Violence Prevention.

• Obtain approval of the study protocol by the recipient's local Institutional Review Board (IRB). Collaborate with CDC in the development of a research protocol for CDC Institutional Review Board (IRB) review, if appropriate.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC activities for this program are as follows:

• Provide scientific input, serve as a scientific and professional resource, and collaborate with ACE staff on research, interpretation of findings, and the production of publications and presentations to disseminate study results.

• Facilitate regular communication between CDC and the grantees to include, but not limited to conference calls and meetings, including the convening of annual ACE meetings to facilitate research collaboration and information sharing among centers.

• Review, monitor, and evaluate scientific and operational accomplishments to assure progress toward program goals and objectives. The review will be based on the center's logic model and the critical components of the model that are related to the achievement of core performance indicators. The review process will include but not be limited to conference calls, site visits, annual meetings, and required reports.

• Collect, organize and disseminate information on ACE activities, including research. Inform recipients about any CDC policies, laws, and regulations pertaining to public health research and programmatic activities, conduct inquiries concerning allegations of scientific misconduct, and take necessary steps to bring program into compliance.

• When appropriate, assist in the development of a research protocol(s) for IRB review by all performance sites involved in the research project. If CDC researchers are significantly involved in the project, the CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

## II. Award Information

*Type of Award:* Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

*Mechanism of Support:* U49.

*Fiscal Year Funds:* 2005.

*Approximate Total Funding:* $6,800,000 (This amount is an estimate, and is subject to availability of funds).

*Approximate Number of Awards:* 7–10.

*Approximate Average Award:* $830,000.

*Floor of Award Range:* $680,000.

*Ceiling of Award Range:* $980,000 (Ceilings are for the first 12-month budget period and include both indirect and direct costs).

*Anticipated Award Date:* September 1, 2005.

*Budget Period Length:* 12 months.

*Project Period Length:* Five years.

Throughout the project period, CDC's commitment to continuation of awards

will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports and site visits), and the determination that continued funding is in the best interest of the Federal Government.

## III. Eligibility Information

### *III.1. Eligible Applicants*

Eligible applicants are academic institutions/centers with a focus on health, such as:

- Public and private nonprofit universities;
- Colleges;
- University-associated teaching hospitals.

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application. A *Bona Fide* Agent is an agency/organization identified by the academic institutions/centers as eligible to submit an application under the academic institutions/centers eligibility in lieu of an academic institutions/centers application. If you are applying as a *bona fide* agent of academic institutions/centers, you must provide a letter from the academic institutions/centers as documentation of your status. Place this documentation behind the first page of your application form.

### *III.2. Cost Sharing or Matching*

Matching funds are not required for this program announcement.

### *III.3. Other*

CDC will not accept and review applications with budgets greater than the ceiling of the award range. Applications with budgets that exceed the ceiling of the award, which includes both direct and indirect costs, will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

*Special requirements:* If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3 Submission Dates and Times'' for more information on deadlines.

A National Academic Center of Excellence on Youth Violence Prevention is expected to have the following core components which together address the objectives of a center: (1) Administrative and Infrastructure Core, (2) Surveillance and Research Core and (3) Outreach and Education Core. The essential characteristics of a National Academic Center of Excellence on Youth Violence Prevention are as follows:

- A core faculty in fields such as public health, epidemiology, biostatistics, social sciences, behavioral and environmental sciences, health and youth policy, economics, evaluation, and health administration.
- Established working relationships with multidisciplinary faculty in the fields listed above and in other disciplines, such as, but not limited to, medicine, psychology, nursing, social work, education, urban planning, youth development and business.
- Graduate training programs relevant to youth violence prevention.
- Demonstrated relationships with a broad range of community partners and expertise in developing, implementing and evaluating community-based youth participatory research and mobilization activities.
- Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing community-based participatory research (CPBR) in peer-reviewed journals. (See Appendix 3, the glossary, for a definition of Community-based participatory research).
- Effective and well-defined working relationships within the performing organization and with outside entities (as evidenced by letters of support and in memoranda of understanding).
- An overall match between the applicant's proposed research objectives and the program objectives as described under the heading, ''Program Objectives''.

Only one application per institution will be accepted.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators

Principal Investigator qualifications are as follows:

- A principal investigator who has conducted community-based youth violence prevention research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

Applications that do not meet the above requirements will be considered non-responsive.

Individuals with the above-listed skills, knowledge, and resources necessary to carry out the proposed research are invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs. Each institution may submit only one application per round of competition.

## IV. Application and Submission Information

### *IV. 1. Address To Request Application Package*

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms, attachments and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

### *IV. 2. Content and Form of Application Submission*

*Letter of Intent (LOI):* Prospective applicants are asked to submit a Letter of Intent (LOI) that includes the following information and written in the following format:

- *Maximum Number of Pages:* Three.
- *Font Size:* 12-point unreduced.
- *Paper Size:* 8.5 by 11 inches.
- *Page Margin Size:* One inch.
- Printed only on one side of page.
- Single spaced.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed Center.
- Name, address, e-mail address, telephone number, and facsimile number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this RFA.

- Brief description of the proposed center's research focus (a three to four line description).
- Brief description of the scope and intent of the proposed center work (maximum one paragraph).

**Note:** Attachments, booklets, or other documents will not be accepted with the LOI.

*Application:* Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov*.

Your application should address activities to be conducted over the entire five-year project period.

For more information, see the CDC Web site at: *http://www.cdc.gov/funding.htm*.

This announcement uses just-in-time concepts. This announcement uses the non-modular budgeting format. The application narrative should consist of the following information:

(1) *Administrative and Infrastructure Core:* To ensure that applicants have the administrative and infrastructure capacity to achieve the program objectives, applicants should describe the following:

*(a) Defined Community:* Applicants need to define and describe the center's mission and the primary community (whether geographic or a non-geographic sub-grouping) that the center's activities will serve. (See Appendix 3, Glossary of Terms, for a definition of community). Applicants should, at a minimum, address the following characteristics of the defined community, as they pertain to the type of community chosen: the size of the community; the demographic make up, socioeconomic and cultural characteristics; levels of youth violence and the prevalent risk and protective factors of, or encountered by, the defined community; the youth violence prevention infrastructure, levels of organization and support for interpersonal youth violence prevention interventions in the defined community; and the existence of health, education, justice, and other policies related to youth violence prevention in the defined community. Applicants should describe the linkages between the center and the defined community and document appropriate levels of engagement and collaboration that reflects the ability to carry out proposed center activities.

*(b) Evaluation:* Applicants need to describe how they will develop a plan for evaluating the progress of the center in achieving its goals and the national performance indicators. Applicants should describe their capacity to: establish a five-year evaluation plan; conduct center-level evaluation; and collect data to determine the performance of the center using the national performance indicators. (See Appendix 2 for a description of Developing an Evaluation Framework: National Academic Centers of Excellence in Youth Violence Prevention.) To assure that applicants have this capacity, applicants should, at a minimum:

(i) Describe their center-level logic model specifying the center's youth violence prevention priorities and expected outcomes. Within the logic model, applicants should define the inputs, activities, outputs, outcomes, evaluation, and contextual conditions for the center. The logic model should be adapted from the national ACE Program conceptual framework (See Appendix 2.) In addition to the logic model, a narrative description of each component must be included. Please include the center's mission within the narrative, limiting the mission statement to one to two sentences. Further, within this narrative briefly describe how the center's model is related to the national ACE Program conceptual framework.

(ii) Document experiences of center faculty in conducting process, outcomes, and impact evaluations in the past five years and address how the center will continue or enhance its evaluation expertise as it relates to the center-level evaluation.

(iii) Describe how they will create a five-year plan for evaluating the critical components of the center's logic model. The plan should be developed in collaboration with the center's community committee and center partners and include: a description of how the plan will be developed; identification of resources and staff responsible for evaluation; specific evaluation questions, goals and objectives; quantitative and qualitative assessment of the centers activities to demonstrate program accomplishments and challenges; and a plan for identifying emerging challenges.

*(c) Infrastructure:* Applicants should describe an infrastructure of personnel and resources required to develop center functions and processes. Applicants should have the capacity to recruit, hire, and retain faculty and staff with the expertise to implement center projects and activities; acquire, manage, and maintain the communications and information systems necessary to operate an ACE; and acquire and maintain university support for the center. To assure that applicants have this capacity, applicants should, at a minimum:

(i) Provide an organizational chart for the center showing all organizational units and functions. The chart should also reflect the activities articulated in the center's logic model.

(ii) Describe the center's staffing and management plan. Describe each proposed position and discuss how the position provides the scientific and technical expertise needed to carry out both research and non-research activities. Describe the minimum criteria and the required expertise for each position. Describe the qualifications of the proposed staff, how the proposed staff will interact with each other, with other faculty outside the center, and with the university's leaders to accomplish the center's goals and objectives. This discussion should highlight the following center staff: leadership; research; evaluation; communication and dissemination; training; information management; and fiscal and administration staff.

(iii) Describe how your center will be integrated within the university structure. Describe the facilities in which staff will work and how these facilities enhance the center's ability to complete the proposed activities. Describe the center's plan to enhance its core capacity over the five-year period, including the commitment and capability to obtain the communication, information systems, and other tools necessary to accomplish goals and objectives (i.e., computer equipment, telephones, facsimile machines, scanners, scientific software, etc.).

(iv) Describe plans for cross-disciplinary training of new and established investigators, including: adequacy of facilities for workshops, seminars and other educational activities; capacity to train predoctoral and/or postdoctoral students in multi-disciplinary interpersonal youth violence prevention research; and experience in effectively conducting mentoring and career development activities.

*(d) Collaborations/Partnerships:* Applicants need to develop and describe the nature and range of partnerships needed to carry out center activities. An infrastructure of resources and personnel is required to support collaboration with partners and joint community mobilization efforts. (See Appendix 3, Glossary of Terms, for an

operational definition). Applicants should have the capacity to: Establish and maintain relationships with partners; facilitate the establishment and maintenance of the center's community committee(s); and collaborate with partners on the planning and implementation of core research, dissemination, training, and mobilization efforts. To assure that applicants have this capacity, applicants should:

(i) Describe the plan for establishing or maintaining the center's community committee(s). (See Appendix 3, Glossary of Terms for additional information regarding the center community committee.) This plan should include, at a minimum, the following: The intended composition and membership of the committee and how the constituents reflect the defined community; the proposed mission and role for the committee in the center's planning and activities, consistent with the logic model; a process for developing or refining guidelines for the community committee over the first year of the funding period; a plan for communication between the community committee and the center staff. Applicants must provide evidence of commitment and cooperation of current and potential members of the center's community committee (*e.g.*, letters of support, memorandums of understanding, or examples of prior collaboration.)

(ii) Identify and describe other partners such as local and state health departments, youth violence prevention organizations, community groups and agencies, youth organizations, and academic units. At a minimum, applicants need to briefly describe: Past partners, new partners, and proposed partners; the proposed methods for establishing and maintaining these partnerships, including how the lessons learned from previous partnerships will be applied to the proposed methods; and the partners' involvement in the center's proposed activities. In this section, applicants should specifically address the partners' role in developing this proposal and partners' expectations about their roles in the planning and implementation of the center's activities.

(iii) Provide evidence of commitment and cooperation of current and potential partners (*e.g.*, letters of support, memorandums of understanding, and examples of prior collaborations).

2. *Surveillance and Research Core:* Applicants need to describe and develop the infrastructure of resources and personnel required to support surveillance and research in the center.

Applicants need to enhance surveillance efforts and conduct research, as described below:

(a) *Surveillance:* Applicants should document experience in successfully developing, implementing and evaluating community level surveillance efforts in the last five years and describe plans to develop and/or enhance surveillance systems to be able to measure the problem of youth violence as well as determine impact of Center activities and research in the defined community. Applicants should address how your system will: Measure youth violence patterns in the defined community; be used to guide planning and evaluation of youth violence programs (*e.g.*, determine in what components and areas where prevention efforts are making a difference); and advance the public health research related to youth violence. All proposed surveillance activities should include an appropriate translation and dissemination plan. To assure that applicants have this capacity, applicants should, at a minimum: Document experience in successfully developing, implementing and evaluating community level surveillance efforts in the last five years.

(b) *Research:* Applicants should describe center capacity to: Establish a five-year research agenda; conduct core research and other prevention research as described in the research agenda; and effectively collaborate with partners in the identification, planning, implementation, and dissemination of core research. To assure that applicants have this capacity, applicants should, at a minimum: Document experience in successfully conducting, evaluating, and publishing youth interpersonal violence prevention research in the past five years; and describe community-based youth interpersonal violence prevention research activities and provide evidence of community involvement in those activities; and describe experience in conducting community-based participatory research in the past five years.

Applicants should describe (the core elements of) a five year research agenda, including a description of the core youth interpersonal violence prevention research project(s), and smaller studies and seed projects, as described below. The research projects and the agenda should reflect the potential for a center with a clear mission that promotes multidisciplinary collaboration and career development. The research agenda must represent more than an interesting collection of projects. Research projects must be interdependent (materials, results, data, or methodologies are shared among the projects), interrelated (each project must have goals and objectives that focus on the common theme), and multidisciplinary (representing different scientific backgrounds, training and expertise). Centers must develop research projects on youth interpersonal violence prevention with a conceptual focus on the defined community and that provide evidence of the potential for meaningful inter-disciplinary collaboration, and that respond to the NCIPC Research Agenda. Clear definitions of procedures used to select proposed and future projects are required.

The core research project should address the following types of applied interpersonal youth violence prevention research articulated in the NCIPC Research Agenda and that furthers the center's work in the defined community: intervention research, which examines the efficacy, effectiveness, economic efficiency of strategies, programs and policies in reducing or preventing youth interpersonal violence; and dissemination and dissemination implementation research (which includes research on the targeted distribution of information to a specific audience; and research on the use of strategies to introduce or change evidence-based youth interpersonal violence prevention interventions in specific settings).

Applicants should also demonstrate the links to the community within which the research is framed, documenting appropriate levels of support and collaboration. If the research agenda is also supported by non-ACE Program funding sources, identify the other funders.

The types of research projects centers are expected to carry out are listed below:

(i) Core research projects are the larger scale projects with annual budgets exceeding 150,000 a year, including direct and indirect costs, and lasting up to five years. These projects typically will test hypotheses and employ more sophisticated methodologies and/or larger sample sizes than small studies. Core research projects require an RO1 level summary as described in PHS 398 (Revised 5/01 and updated 6/28/02) guidelines.

(ii) Small studies of 25,000–150,000 a year, including direct and indirect costs, for one to three years duration, might be extensions of seed projects, either further developing methods or hypotheses in preparation for a larger investigation, or might be stand alone investigations sufficient to yield results

worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency or youth violence prevention organizations.

(iii) Seed projects, under 25,000 require a short write-up describing the youth interpersonal violence prevention context of the study, the objective, the design, the setting and participants, the intervention being addressed, main outcome measurements, expected results, timelines, costs.

The applicant should use the following template to describe each proposed research project:

- Title of the project.
- Project Director/Lead Investigator for the project.
- Institution(s)/partners involved in the project.
- Categorization of the type of research (such as, but not exclusively, intervention, dissemination, and dissemination-implementation research).
- Relationship of the project to the center's mission and health priorities.
- Relationship of the project to local youth interpersonal violence prevention priorities, HHS objectives (*e.g.*, Healthy People 2010), and NCIPC Research Agenda.
- Indication of whether the project is new or ongoing. (If ongoing, describe the prior work on this project.)
- Evidence of community participation in the planning, implementation, and evaluation of the project. Describe how the center will collaborate with partners on refining and developing the research methodology, recruiting of research participants, and reporting and disseminating research findings.
- Summary of the research project:

(i) Background
(ii) Importance
(iii) Relevance to the defined community.
(iv) Integration into 5 year research agenda
(v) Goals and objectives
(vi) Proposed timeframe for the project
(vii) Setting and context
(viii) Methods and measures
(ix) Study participants and recruitment strategy. Provide evidence that the recipient (or a collaborating partner) has access to the study population and that the participation by the study population will be adequate to test hypotheses.
(x) Expected outcomes
(xi) Communication and dissemination

*Data Sharing and Release:* Describe plans for the sharing and release of data, if applicable (See AR–25 for additional information).

3. *Outreach and Education Core:* To ensure that applicants have the capacity to achieve the outreach and education program objectives, applicants should describe the following:

(a) *Community Mobilization:* Applicants need to describe a draft plan for community mobilization. Applicants should describe the infrastructure of resources and personnel to support community mobilization activities in the center and to develop and implement a community mobilization plan involving the primary community the center's activities will serve. For a definition of Community Mobilization and Community Mobilization Plan (CMP), see Appendix 3, Glossary of Terms. The two overriding goals of a community mobilization plan should be to: enhance the community's capacity to address the problem of youth violence and prevent or reduce youth violence. (For additional Guidance on how to develop a CMP, see: *http://www.phppo.cdc.gov/dphsdr/documents/MAPPone_pager.doc* and *http://mapp.naccho.org/mapp_introduction.asp*).

Applicants should have the capacity to: establish a five-year community mobilization plan (CMP); conduct community mobilization activities as required in the CMP; and effectively collaborate with partners in the identification, planning, implementation, and evaluation of the CMP. In addition, the CMP should provide evidence that applicant or their collaborating partners have access to the defined community population, and that the participation by the defined community population will be adequate to develop, implement and evaluate the plan.

To assure that applicants have this capacity, applicants should at a minimum:

(i) Provide evidence of having identified youth interpersonal violence prevention priorities, including disparities, within the defined community and of having identified them in collaboration with community partners.

(ii) Document experience in successfully developing, conducting, and evaluating community mobilization activities in the past five years.

(iii) Describe how the CMP helps fulfill the center's mission. If the community mobilization efforts are also supported by non-ACE Program collaborations, identify the other funders.

(iv) Describe the center's draft five-year CMP, including the goals and objectives. The applicant should use the following template and provide information to describe the community mobilization plan:

- Title of the plan;
- Core staff and community partners;
- Institution(s)/partners involved in the project;
- Indication of whether the community mobilization plan is new or ongoing. (If ongoing, describe the prior work on this plan.)
- Describe how the center will collaborate with partners: In the refinement of the CMP, in the development of the community mobilization methodology, for community recruitment, to report and disseminating information and activities, and to evaluate CMP outcomes.
- Summary of the Community Mobilization Plan.

This should include:

(i) Background;
(ii) How the plan furthers the defined community youth violence prevention needs, and priorities;
(iii) Describe how the CMP is integrated into the center's five-year research agenda and the centers mission;
(iv) Goals and objectives;
(v) Proposed timeframe for the plan;
(vi) Setting and context;
(vii) Methods and measures;
(viii) Community definition, participation and recruitment strategy;
(ix) Expected outcomes;
(x) Communication, dissemination, and evaluation.

(b) *Communication and Dissemination Activities:* Applicants should outline how they will develop a communication plan and describe the communication and dissemination infrastructure and activities to be carried out to further the program goals. Applicants should have the capacity to: disseminate research by making its findings, methods, and tools available; keep stakeholders (*i.e.*, researchers, practitioners, community members, and policymakers) abreast of the center's accomplishments; produce products that reflect research progress and results, and participate in coordinated activities with other ACEs and their collaborating partners (*e.g.*, state/local health departments, community groups, and youth violence prevention research and practice organizations) to facilitate linkages among ACEs and national/state/local partners to ensure National Program objectives are being achieved. To assure that applicants have this capacity, applicants should, at a minimum:

(i) Outline how a communication plan will be developed that defines and

describes how the center's communication and dissemination activities will be integrated into the center's activities, including the research agenda.

(ii) Address how the center will work with collaborators and other partners to extend the center's reach; how the center's activities and research will affect youth violence prevention policies impacting their community; and how other potential outcomes through communication and dissemination efforts will be identified.

(iii) Describe the methods the center will use to translate, communicate, and disseminate its products and other information. Address how the center will produce, translate and distribute publications and materials such as scientific papers, conference reports, newsletters, and educational and training materials; plan proposed meetings, personal interactions, and sharing of information with collaborators for the development of long-term partnerships; provide electronic dissemination of products and other information through websites and any other means; and develop media releases and statements, or pursue opportunities for media coverage.

(iv) Describe the center's infrastructure of resources and personnel that will support the identified communication and dissemination activities. At a minimum, describe the center's ability to: disseminate community-based youth violence prevention research in public health, allied disciplines and the constituent communities/stakeholders; translate the content of the center's activities for different audiences; develop a plan that reflects the community's youth demographic and cultural profile; and access personnel and resources, as applicable for layout and design, web site construction, photography, proofreading, and other development and production activities.

(c) *Training, Technical Assistance and Mentoring:* Applicants should describe the center's draft plan for providing training, technical assistance, and mentoring, and the infrastructure of resources and personnel required to support training, technical assistance, and mentoring of practitioners, researchers, students, community members, and other partners, as applicable. Applicants should have the capacity to assess, plan, implement, and evaluate training, technical assistance, or mentoring activities. Applicants, at a minimum, should address the following:

(i) Describe the center's assets or needs assessment (past, current, or proposed) for training, technical assistance, and mentoring. Explain collaboration with partners in the assets and needs assessment.

(ii) Describe the center's draft plan for providing training, technical assistance, and mentoring. This plan should include: goals and objectives; partner collaboration; and how the plan reflects the mission of the center and the assets and needs assessment described above. Describe how any lessons learned from prior training; technical assistance and mentoring activities during the past five years will be applied to the proposed plan. Additionally, describe training facilities and resources (*e.g.*, ability to print materials, use video and computer equipment, and develop Web sites).

(iii) Describe the opportunities and quality of the career development and mentoring plan for the junior investigators in the center. Applicants should describe the feasibility and potential for junior investigators to gain research experience in youth violence affecting at-risk populations.

The narrative should be no more than 100 pages (8.5″ × 11″), double-spaced, and printed on one side only, with one-inch margins on all sides and unreduced 12-point font. Appendices must be hard copy documents (*i.e.*, no audiovisual materials or posters).

In order to facilitate the preparation and review of the application, the application components should be organized according to the Table of Contents listed below. The table of contents below supersedes the instructions contained in the PHS 398.

- Detailed Budget for the Initial Budget for the Entire Proposed Period for Each Project.
- Budget for the Entire Proposed Period of Support for the Entire Proposed Center.
- Detailed Budget Justification for Each Proposed Project/Activity for the Initial Budget Period.
- Biographical Sketch-Principal Investigator/Program Director.
- Other Biographical Sketches.
- Other Research Support.
- Executive Summary with Overall Goals and Objectives of the Center.
- Center Logic Model.
- Application Narrative:

Overall Description of the Proposed Center.

Statement on the Institutional Commitment to the Proposed Center.

Performance/Accomplishments in Last Project Period (Current Centers).

Past Performance/Accomplishments Relevant to Proposed Center.

Administrative and Infrastructure Core: Defined Community; Evaluation; Infrastructure; Collaborations/Partnerships.

Surveillance and Research Core: Surveillance Projects; Core Research Projects; Seed Projects.

Outreach and Education Core: Community Mobilization; Communication and Dissemination Activities: Training, Technical Assistance, and Mentoring.

The RFA label available in the PHS 398 (rev. 5/2001) application form must be affixed to the bottom of the face page of the application.

*IV.3. Submission Dates and Times*

*LOI Deadline Date:* December 22, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

*Application Deadline Date:* February 10, 2005.

*Explanation of Deadlines:* Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the PHS 398 application instructions. If your application is not received in the CDC Procurement and Grants office by the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. CDC will not notify you by mail upon receipt of your application, but if you still have any questions, contact the PGO–TIM staff at: 770–488–2700. Before

calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

*IV.4. Intergovernmental Review of Applications*

Executive Order 12372 does not apply to this program.

*IV.5. Funding Restrictions*

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

*IV.6. Other Submission Requirements*

*LOI Submission Address:* Submit your LOI by express mail, delivery service, fax or e-mail to:

*Address for Express Mail or Delivery Service:* NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

*Address for U.S. Postal Service Mail:* NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341, telephone: 770–488–4037, fax: 770–488–1662, e-mail: *cipert@cdc.gov*.

*Application Submission Address:* Submit the original and one copy of your application by mail or express delivery service to: Technical Information Management CE05–018, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to:

*Address for Express Mail or Delivery Service:* NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

*Address for U.S. Postal Service Mail:* NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

## V. Application Review Information

*V.1. Criteria*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the objectives identified in the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider the following items in the determination of scientific merit.

1. *Administrative and Infrastructure Core* (Total: 150 points)

(a) Defined Community (25 points). To what extent does the applicant adequately define and describe the primary community that the center's activities serve, such as: (i) The size of the defined geographic or non-geographic community, (ii) characteristics such as demographic make up, socioeconomic, and cultural characteristics, (iii) levels of youth violence and a description of the prevalent risk and protective factors, (iv) the youth violence prevention and public health infrastructure, including levels of organization and support for interpersonal youth violence prevention and community health interventions, (v) community assets and history of ''community participation, (vi) existing health, education, community, justice and other local policies related to youth violence prevention. How well does the applicant describe the center links to the defined community and document appropriate levels of engagement and collaboration?

(b) Program Evaluation (50 points). To what extent does the applicant: (i) Appropriately describe the center-level logic model and provide a narrative description of components of the logic model, (ii) sufficiently describe and justify how each component of the center's logic model relates to or differentiates from the national ACE Program conceptual framework, (iii) describe relevant evaluation experiences and expertise as it relates to conducting an evaluation of the applicant's center, (iv) articulate a five-year evaluation plan for evaluating the critical components of the center's logic model, including the goals and objectives, and (v) illustrate how the center's evaluation plan is related to the national ACE Program evaluation activities, which includes annual reporting on national performance indicators.

(c) Infrastructure (25 points). To what extent does the applicant: (i) Provide a detailed organizational chart that represents the center's activities, (ii) describe how the organizational structure facilitate the center's activities, (iii) describe the positions needed to accomplish the center's goals and objectives, (iv) propose a staffing plan with the required experience, expertise, and percentage of effort among the center's leadership, research, evaluation, communications, training, information management, and fiscal administration staff to accomplish its proposed goals and objectives, (v) explain how it will increase its capacity over time, (vi) demonstrated the applicant's commitment to the center (*e.g.*, facilities, technological resources, etc.)and adequate university commitment to establish and maintain an identity for the proposed center.

Is sufficient documentation of institutional endorsement of the proposed five-year research and community mobilization plans offered, including: (i) Letters of commitment from senior institutional officials from both collaborating institutions, (ii) letters of support that fully address and support the priorities and objectives of the center.

(d) Collaborations/Partnerships (50 points). To what extent does the applicant: (i) Describe the center's community advisory committee, particularly its initial mission, roles, composition, and plans for developing or refining guidelines, (ii) provide letters of support or other evidence from these partners of active participation in this collaboration that fully address and support the priorities and objectives of the center, (iii) outline the past and newly established partnerships, the roles of these partners, and the methods for establishing and maintaining the partnerships, and (iv) articulate the proposed activities with the identified partners?

2. *Surveillance and Research Core* (Total: 200 Points)

(a) Surveillance (50 points). To what extent does the applicant: (i) Describe the establishment and/or enhancement of surveillance system(s) to be able to measure the problem of youth violence

in the chosen community, (ii) address how these efforts will lead to a better understanding of factors influencing youth violence prevention, and (iii) include an appropriate translation and dissemination plan for the proposed surveillance activities?

(b) Research (150 points). To what extent does the applicant:

(i) Describe the research project(s) linkage to the center's mission and priorities identified in the logic model and the NCIPC Research Agenda? Outline a conceptual research framework, design, methods, and analyses that are well integrated, and appropriate to the aims of the center? Propose research project(s) that address an important research objective related to youth interpersonal violence prevention and disparities in the defined community? Explain how this research will lead to a better understanding of factors influencing youth violence prevention in the defined community?

(ii) Articulate the significance of the proposed research, and describe the effect of these studies on the concepts or methods that drive the youth violence prevention field? Employ novel concepts, approaches or methods in youth violence prevention research? Explain how the research challenges existing paradigms or develops new methodologies or technologies? Propose research of sufficient originality, novelty, and innovation to make it highly relevant to the overall goals and objectives of the national ACE Program? Acknowledge potential problem areas and consider alternative interdisciplinary approaches? Offer clear evidence of significant interdisciplinary interactions in the conception, design, and proposed implementation of the research?

(iii) Document collaboration with the community, providing clear evidence of community participation in developing and conducting the project? Demonstrate community support and liaison, and evidence of interaction with, and participation of community members and community leaders in the development and conduct of the research? Propose a design that demonstrates sensitivity to cultural and socioeconomic factors in the community?

(iv) Demonstrate success in conducting, evaluating, and publishing previous community-based youth violence prevention research in the past five years? Demonstrate a reasonable degree of community-based participatory research, and being trained and well-suited to carry out this work? Propose work appropriate to the experience level of center researchers?

(v) Describe a scientific environment conducive to the probability of success of the research to be conducted? Propose studies that take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Provide evidence of adequate institutional and community support?

(vi) Provide sufficient evidence regarding the development and implementation of effective communication channels between researchers and community members? Address plans for useful and successful practical dissemination of project activities and findings within the defined community?

3. *Outreach and Education Core* (Total: 150 Points)

(a) Community Mobilization Plan (50 points). To what extent does the applicant's draft plan:

(i) Enhance the community's capacity to address the problem of youth violence and improve the health of the community, by preventing or reducing youth violence, particularly among those most affected?

(ii) Present clear goals, objectives and activities that address the youth violence problem in the defined community? Address and take into account community contextual factors (*i.e.* socioeconomic and cultural context, level of youth violence, public health and youth violence prevention infrastructure, history of community participation and existing support for the issue)?

(iii) Offer adequate evidence of center experience in successfully developing, conducting, evaluating, and publishing on community mobilization activities in the past five years? Delineate community involvement in the development of the CMP?

(iv) Address the development and review of the plan (*i.e.* describe external review and critique mechanisms)?

(b) *Communications and Dissemination* (50 points). To what extent does the applicant: (i) Address the diversity or special needs of the community or subgroups, (ii) describe communications and dissemination activities that are integrated into the center's goals and objectives, (iii) anticipate how these activities will have an effect on local policies, and other potential outcomes, (iv) describe how the proposed methods for the center's communication and dissemination activities to help accomplish the center's goals and objectives, and (v) describe an adequate infrastructure of resources and personnel to support the center's communication and dissemination activities?

(c) *Training, Technical Assistance and Mentoring* (50 points). To what extent does the applicant: (i) Describe and justify the center's assets or needs assessments for training, technical assistance, or mentoring activities, (ii) outline a suitable training, technical assistance, and mentoring plan that reflects the mission of the center and the assets or needs assessment described above, (iii) describe the opportunities and quality of the career development and mentoring plan for the junior investigators in the center.

*Protection of Human Subjects from Research Risks:* Does the applicant adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

*Inclusion of Women, Minorities in Research:* Does the applicant adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? (See Attachment 1, AR–2 for more information). This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*Inclusion of Children as Participants in Research Involving Human Subjects.* The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm*.

*Budget:* The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

*V.2. Review and Selection Process*

Applications will be reviewed by the Procurement and Grants Office (PGO) staff for completeness, and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the National Center for Injury Prevention and Control in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive, if deemed to have the highest scientific merit, a second programmatic level review by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by an external peer review committee, the National Center for Injury Prevention and Control Initial Review Group (IRG), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive shall be further evaluated by a dual review process.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRG, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above. Applications will be assigned a score based on a scoring system of 100–500 points, in which the strongest applications will receive a higher point score, and the weakest applications a lower point score.

The Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC) will conduct the secondary review. The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Director for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered would be the same as those considered by the SPRS.

The secondary review committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

d. Budgetary considerations.

*Award Criteria:* Criteria that will be used to make award decisions during the programmatic review include:

- Merit (as determined by peer review)
- Availability of funds
- Geographic diversity
- Consistency with research priorities in CDC's Injury Research Agenda

*V.3. Anticipated Announcement and Award Dates*

September 1, 2005.

## VI. Award Administration Information

*VI.1. Award Notices*

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

*VI.2. Administrative and National Policy Requirements 45 CFR Part 74 and Part 92*

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–9 Paperwork Reduction Act Requirements. Projects that involve the collection of information from ten or more persons and that are funded by cooperative agreements will be subject to review and approval by the Office of Management and Budget (OMB).
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.

- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–21 Small, Minority, Women-Owned Businesses.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements.

Additional information on AR–1 through AR–24 can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

- AR–25 Release and Sharing of Data.

Starting with the December 1, 2004 receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.* background and significance, or human subjects requirements). The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count towards the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from their institutions on issues related to institutional policies, and local IRB rules, as well as local, state and federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC Internet Web site at: *http://www.cdc.gov/ncipc/osp/sharing_policy.htm*.

*VI.3. Reporting*

You must provide the CDC with original, plus two hard copies of the following reports:

1. Interim progress report (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and final performance reports, no more than 90 days after the end of the project period.

4. Additional requested information: The applicant will be responsible for submitting information on program performance. This will include, but is not limited to the following: providing information on all projects (*i.e.*, core projects, special interest projects, and other funded projects) and products (*i.e.*, publications, presentations, surveys, etc.); providing semi-annual updates on information requested by the program and provided in the application; and collaborating with the national ACE Program on the continued development and improvement of a reporting system.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contract'' section of this announcement.

## VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone: (770) 488–2700.

For questions about scientific/research program technical issues contact: Thomas Vogelsonger, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE. MS K–02, Atlanta, GA 30341, telephone: (770) 488–4823, FAX: (770) 488–1662, e-mail: *TVoglesonger@cdc.gov*.

For questions about peer review issues, contact: Gwen Cattledge, Ph.D., Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–02, Atlanta, GA 30341, telephone: 770–488–1430, e-mail: *GXC8@cdc.gov*.

For financial, grants management, or budget assistance, contact: James Masone, Contracts Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone: 770–488–2736, FAX: 770–488–2671, e-mail: *ZFT2@cdc.gov*.

## VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

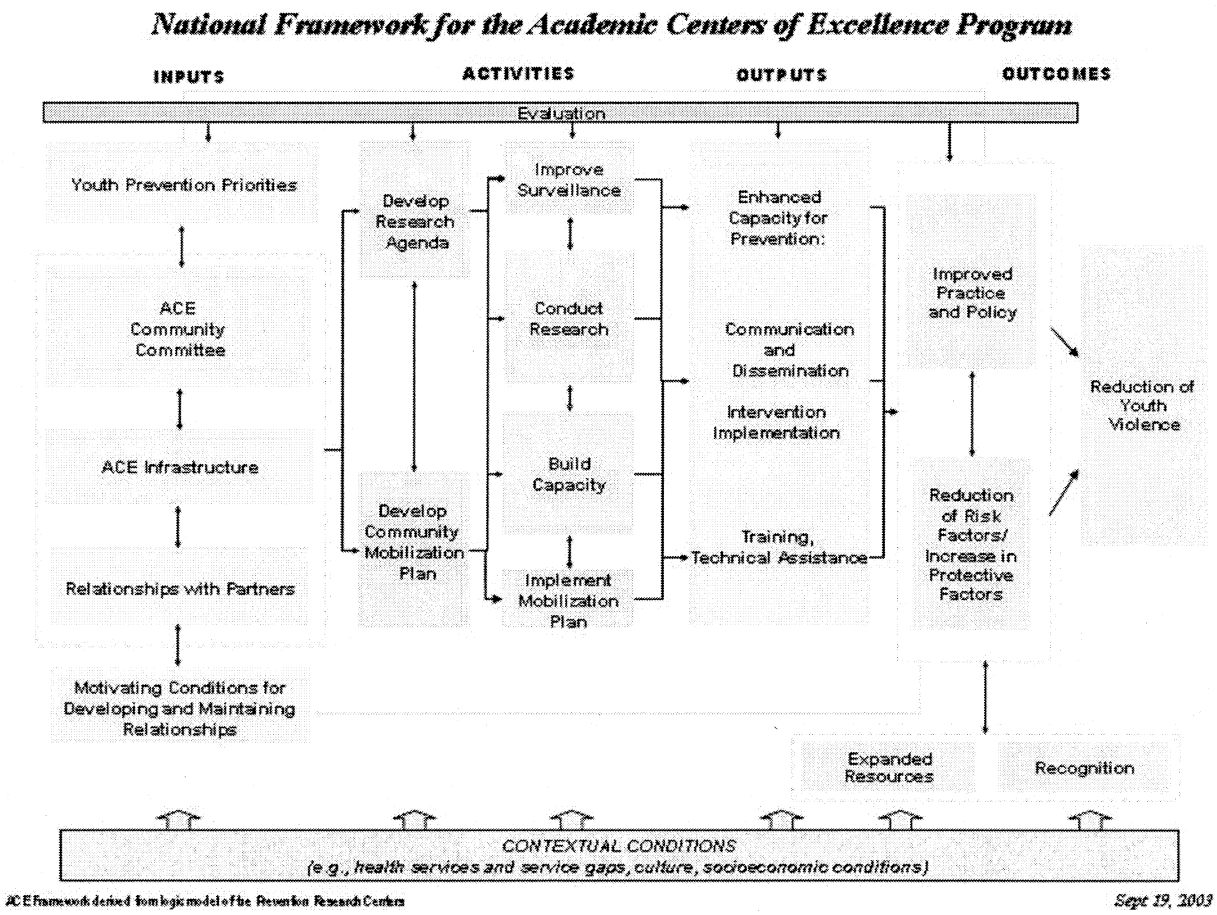
To locate the following attachments/appendices for this program announcement go to CDC Web site.

Dated: November 10, 2004.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

## Appendix 1




**Narrative Description of the Conceptual Framework for the National Academic Centers of Excellence for Youth Violence Prevention (ACE) Program**

The conceptual framework for the National Academic Centers of Excellence for Youth Violence Prevention (ACE) Program was developed to describe the future orientation of the program, its activities and the outcomes it expects to achieve. The national framework or logic model was created through a participatory process involving a diverse set of national, state, and local stakeholders and ACE grantees, and draws heavily from the Centers for Disease Control (CDC) Prevention Research Centers (PRC) model. The elements of the framework and its linkages are consistent with the Congressional language authorizing the establishment of the program, and CDC research policies.

This model serves as a planning mechanism for center in guiding their activities during the 5-year grant period. The framework identifies the inputs, activities, outputs, and outcomes common to all ACE's and shows the expected relationships among these components. The diagram of the framework summarizes how the program is presumed to work. Although the boxes of the framework are shown in a linear fashion, the relationships among them are expected to be complex, interactive, and recursive over time.

The national framework does not imply that one size fits all. To reflect uniqueness, each ACE should create their own logic model by tailoring the national framework or logic model to the center's specific activities and goals. The national framework cannot show the emphasis an individual ACE may place on one type of activity over another. The time required to achieve different outputs may vary among ACEs and depends on many factors, such as the type of research conducted and other activities undertaken, the amount of resources devoted to activities such as dissemination, and contextual factors. Thus, the framework does not specify the time it may take to achieve outputs or outcomes.

**Diagram Note:** The size of the boxes in the diagram depends on the amount of text in each box and does not denote the relative importance of a specific element.

*Inputs.* The first column of the conceptual framework, inputs, refers to the assumptions underlying a program and the infrastructure that must be in place before a program can be implemented. The four inputs the framework captures are described below.

*Youth Prevention Priorities.* Each ACE is established to address youth interpersonal violence prevention priorities and enhance knowledge of effective youth violence prevention in a defined community. Community is defined as a group of people who share some or all of the following: geographic boundaries; a sense of membership; culture and language; common norms, interests, or values; and common health risks or conditions. [IOM 2002] [CDC/ATSDR Principles of Community Engagement] It refers to a population

that has a distinct identity. It can mean residents of a geographic area, be that a catchement area, neighborhood, school district, city, county or region within a county. It can be used with a modifier or clause to describe a non-geographically based subgrouping such as, but not exclusively: a community of youth violence prevention workers, a community of health professionals, or an ethnic or language community. The ACE program focuses its research activities on the violence prevention issues of high priority to the defined community and that address state or national youth violence prevention priorities, and such gaps identified in the Research Agenda of CDC's National Center for Injury Prevention and Control and those stated in *Healthy People 2010*.

**Diagram Note:** Two-way arrows connect the youth violence prevention priorities and box and the next three combined input boxes.

*ACE Community Committee.* CDC will require each ACE to form or work with an existing ACE Community Committee. This group comprises members of the ACE's defined community and adult and youth representatives of agencies and organizations that serve the Center's designated community. The Community Committee participates in the Center's organization, research, or other activities. Committee members typically represent an identified group or population and participate in the committee in order to provide the perspective and knowledge of a designated population or group to the activities of the Center.

The inputs provided by an ACE Community Committee to the ACE include guidance, advice on ACE agendas and plans, expertise, contacts, essential information about the designated community as well as intangible benefits. Some ACE's may wish to form additional advisory groups, as needed, such as a policy board, a youth advisory board, or advisory committees for individual research projects. The decision to form these additional groups depends on the needs of the ACE and the community.

*ACE Infrastructure.* Before conducting specific youth violence prevention research, projects, and health promotion activities, an ACE must have the necessary internal infrastructure. This infrastructure includes the necessary human resources capacity to recruit faculty with the necessary core expertise, diversity and sensitivity. It also includes the necessary evaluation expertise as well as faculty and staff who have the requisite multidisciplinary expertise to implement ACE projects and activities and experience working with the community, and expertise for evaluating the implementation of the ACE's activities and to assess the ACE's outcomes and accomplishments. The Centers are mandated to create an infrastructure that facilitates initiatives that involve researchers and practitioners from varied disciplines, and collaboration across university centers. Finally, ACE capacity requires communication and data systems that enable and facilitate work, and administrative capacity (*e.g.*, financial resources).

*Relationships with Center Partners.* Each ACE is also expected to establish and maintain center partnerships with institutions such as state and local health, education, justice departments, other university partners, other ACEs, Injury Control Research Centers (ICRCs), Prevention Research Centers, national youth violence prevention organizations, and CDC. Partnerships are intended to strengthen the ACE's surveillance, research, training, mentoring, community mobilizing and dissemination activities in its identified community. Partners can collaborate with the ACE in designing and conducting research and other ACE projects and in disseminating research findings, which are expected to help facilitate the translation of public health research and related activities to practice and policy.

**Diagram Note:** A dotted box around these three inputs indicates that the ACE, its community, and its external partners are the major stakeholders; they collaborate with each other to implement the ACE Program. The inputs for Community Committee, Infrastructure, and Relationships with Partners also have two-way arrows touching each other. A two-way arrow connects the combined boxes for these inputs with that for the next input. One-way arrows also connect the three boxes to the first two program activities.

*Motivating Conditions for Developing and Maintaining Relationships.* The conceptual framework also recognizes the conditions motivating the development and maintenance of relationships with community partners and others. These conditions may include trust and tangible or intangible benefits (such as access to expertise or acceptance by a community) and sharing of resources gained from the partnership. These conditions may influence a partner's willingness to form a relationship with the ACE, the nature and strength of the relationship, and an ACE's ability to sustain the relationship over time.

*Activities.* The second and third columns of the conceptual framework capture the activities that include: developing a research agenda; developing a community mobilization plan; conducting surveillance, research, building capacity and implementing the community mobilization plan. (Multi-sectoral and multi-disciplinary collaboration and dissemination are inputs and outputs, respectively.)

*Research Agenda.* An ACE is encouraged to engage stakeholders within its defined community in developing an overall research plan, identifying research priorities, selecting research projects, recruiting research participants, refining research methods, developing interventions, conducting research, and reporting and disseminating research findings. ACE Centers are charged with establishing a five-year research agenda with tied to one or more HHS objectives, *Healthy People 2010, NCIPC Research Agenda, Guide to Community Prevention Services* and local youth violence prevention research priorities.

*Community Mobilization Plan.* ACEs are charged with the development and implementation of a five-year community mobilization or action plan (in collaboration with the Community Committee). Further, the development of a Community Mobilization Plan should be tied to the Research Agenda with an identified relationship to one or more youth violence prevention priorities.

**Diagram Note:** A two-way arrow connects the boxes for the development of the research agenda and the development of the community mobilization plan. One-way arrows connect the boxes for the mobilization plan and the research agenda to the next set of activities. A two-way arrow connects the research agenda and the mobilization plan as these processes should inform one another.

*Conduct Core Activities:*

- *Surveillance.* This core area includes the gathering, analysis and interpretation of surveillance data to enable the defined community with whom the ACE is working to better measure the problem of youth violence, and accurately reflect trends in the target community and the greater community. All Surveillance activities proposed should include an appropriate translation and dissemination plan.
- *Research.* The research conducted should be informed by local priorities, the NCIPC Research Agenda, and contribute to new methods of study, understandings of, or ways to prevent youth interpersonal violence. In addition, ACEs may conduct research funded by other federal agencies and by state agencies, community-based

organizations, and foundations. All research is expected to be conducted using sound research methods that further the field of youth interpersonal prevention research. All research proposed under the ACE program should include an appropriate dissemination plan.

• *Build Capacity.* ACEs are also charged with developing a five-year plan to train, provide technical assistance to, or mentor health professionals, researchers, practitioners, students, community members, and others. These activities, which are expected to be developed in collaboration with the recipients, may cover a range of topics, including youth violence prevention best practices, community building, research, and evaluation as well as other needs identified by ACE partners. ACEs may also train and provide technical assistance to community partners on implementing specific prevention and health promotion interventions, including effective practices.

• *Implement the Community Mobilization Plan.* ACE's are expected to form, nurture and advance partnerships with the community designed to implement evidence-based strategies or promising programs. Community implementation efforts can include convening stakeholders—including the most affected—helping to organize across different sectors, fostering strategic alliances, and strengthening community bonds; assessing community resources; mapping community assets; and enabling a fuller understanding of and response to the nature and dynamics of local violence.

**Diagram Note:** Two-way arrows connect these four core activities to one another. One-way arrows connect surveillance, research, capacity building, and community implementation to the three outputs (intervention implementation, communication and dissemination, and training and technical assistance).

*Outputs.* The fourth column captures outputs generated or produced as a result of program activities. Through the process of planning, carrying out public health-related youth violence prevention activities, and the promotion of collective action, it is expected that the professionals and community residents will gain increased skills and confidence (or a greater sense of ''efficacy'') enhancing its capacity for prevention. Enhanced capacity includes an improved ability on the part of agencies and organizations to implement and make well-reasoned decisions about effective violence prevention programs and services. It also includes enhanced academic infrastructure in service-learning, student practicum opportunities. This capacity combines a community's and a university's commitment, resources, and skills to respond to public health needs and priorities. Another aspect of enhanced capacity is the development of skilled ''violence preventers.'' This term includes not only professionals—both developing new skills for those entering the field as young researchers/practitioners and improving existing skills of current violence prevention workers—but also providing skills to youth, parents, and volunteers. Community stakeholders who collaborate with the ACE's in implementing research projects and who participate in ACE-sponsored training and technical assistance improve their skills as a result. The selected measurable products, or outputs, of these activities and processes are described below.

*Communication and Dissemination.* The communication and dissemination of research and evaluation findings are another type of output. These findings are typically published in peer-reviewed journals, books, and technical reports. They also may be presented to various audiences at professional conferences, community meetings, or other settings, and reported to the media. Findings from research conducted with a community should be shared with community partners and with other ACE's.

*Intervention Implementation.* Many ACEs develop, implement and test violence prevention strategies, programs and interventions in a community, encouraging the implementation of evidence-based strategies or promising programs. A program may rely on a curriculum, a manual, or a particular prevention strategy or health promotion tool, which is packaged and made available to interested organizations or individuals.

*Training, Technical Assistance.* ACE's training or technical assistance activities can include an assessment of the skills acquired, number of trainees and recipients of technical assistance, the number and duration of training or technical assistance events, and the satisfaction of participants with the training or technical assistance they received.

**Diagram Note:** Together, all the output boxes connect to a combined set of two outcome boxes through a one-way arrow. These two outcomes connect to each other by two-way arrows.

*Outcomes.* The last column of the conceptual framework shows the outcomes, or the intended effects of cumulative program activities over time.

*Improved Practice and Policy.* One expected outcome of the ACE Centers' activities is the uptake of interventions and improved youth interpersonal violence prevention practice and policies. Surveillance, research, capacity building, and community implementation activities conducted by the ACEs are expected to be translated into community practice or policies adopted by local and state health departments, schools, other public agencies (*e.g.*, recreation departments, housing authorities), and community-based organizations. Over time, these interventions and policies may be disseminated beyond an ACE's defined community and receive widespread use.

*Reduction of Risk Factors/Increase in Protective Factors.* Another expected outcome of the ACE Centers' activities is the reduction of risk factors/increase of protective factors in the community, a result of the uptake of improved violence prevention practice and policies.

*Expanded Resources and Recognition.* An ACE may be able to expand its resources beyond the core funding, research faculty, and initial organizational and agency partnerships that were formed when it first received CDC funding. An ACE may also gain recognition within a community and the nation for expertise in a particular field or area of youth interpersonal violence prevention, and for its partnerships.

**Diagram Note:** One set of dotted lines surrounds the boxes for the two outcomes. A second set surrounds the two additional boxes below it (expanded resources and recognition). These groupings show the potential relationships with other components of the framework with which they are logically connected or which they are likely to influence or be influenced by. The outcomes flow back through motivating conditions and up the input column. They also connect to youth violence prevention agendas and down the input column. A one-way feedback arrow also extends from the outcomes back to the inputs of youth violence prevention priorities and motivating conditions for developing and maintaining relationships.

*Contextual Conditions.* The box across the bottom of the conceptual framework is for contextual conditions, which are socioeconomic, political, and cultural factors external to the ACE Program that may not be within its control but which may influence the implementation of activities and achievement of outcomes. Note that these conditions may relate to all components of the framework.

*Evaluation.* Evaluation is a part of the ACE Program (noted at the top of the

framework) that extends across all the inputs, activities, outputs, and outcomes, except for the ultimate outcome. The arrow to each column signifies that the ACE Program will evaluate aspects of each component, guided by performance monitoring and evaluation questions. Many factors can contribute to the final outcome, and empirical data demonstrating a causal link between proposed program activities and improvements in community health are lacking. Therefore, the ACE Program will not evaluate the ACEs' effect on violence-induced death, disability and injury among adolescents, but will evaluate program effect on improved practice and policy, and reduction of risk factors/increase in protective factors.

The ACE Program evaluation will collect data that may include information about how inputs are being used to shape the ACE Program, which activities are undertaken by the collective program, the quality of the activities, and the specific outcomes the program is accomplishing. CDC, ACEs, and other stakeholders can use evaluation findings for many purposes, including modifying program activities or enhancing and strengthening relationships with community partners. Evaluation findings also provide information that can be shared with external stakeholders, can help document the program's value, and may provide justification for continuing or increasing program funding.

## Appendix 2.—List of Indicators for the National Academic Center of Excellence on Youth Violence Prevention Program

1. Evidence of ACE Community Committee participation in the determination of ACE violence prevention priorities.
2. Level of ACE Community Committee members satisfaction with participation.
3. Evidence of establishment of partnerships and maintenance of partnerships.
4. Establishment of a Community Mobilization Plan.
5. Establishment of a Research Agenda.
6. Evidence of community improvements in the ability to monitor and describe youth violence.
7. Extent to which the research portfolio is contributing to new methods of study, understandings of, or ways to prevent youth violence.
8. Evidence that the ACE Center is mobilizing the community to implement evidence-based strategies or promising programs.
9. Evidence of a communication and dissemination plan, developed with input from key partners.
10. Evidence of producing and disseminating research findings through peer-reviewed publications, and educational or technical materials.
11. Evidence of a plan for training researchers, practitioners and community members.
12. Extent to which center activities and evidence-based strategies have been translated into the outcomes listed.
13. Extent to which researchers, practitioners, and community members have been trained, mentored, or provided technical assistance in youth violence prevention.
14. Evidence of new grants, contracts or other resources awarded to the ACE Center or its partners.

## Appendix 3.—Glossary of Terms

*Youth Interpersonal Violence*

Youth interpersonal violence is defined as: The intentional use of physical force or power, threatened or actual, exerted by or against children, adolescents or young adults, ages 10–24, which results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation. Youth interpersonal violence encompasses peer and community violence between individuals or groups who may or may not know each other. This form of violence frequently takes place outside the home, in the streets, or in institutional settings, such as schools, workplaces, and prisons. Youth violence also encompasses violence that occurs between youth and family members and other intimate relations. The nature of violence can be physical, sexual, and psychological. (Adapted from WHO Report on Violence and Health, 2002). [Adapted from WHO Report on Violence and Health. To access the Report go to: *http://www.who.int/violence_injury_prevention/violence/world_report/en/* ].

*Community*

Community is defined as a group of people who share some or all of the following: geographic boundaries; a sense of membership; culture and language; common norms, interests, or values; and common health risks or conditions. [IOM 2002] [CDC/ATSDR Principles of Community Engagement].—It refers to a population that has a distinct identity. It can mean residents of a geographic area, such as a catchment area, neighborhood, school district, city, county or region within a county. It can be used with a modifier or clause to describe a non-geographically based sub-grouping such as, but not exclusively: A community of youth violence prevention workers, a community of health professionals, or an ethnic or language community.

*Community Mobilization*

Community mobilization is a process through which action is stimulated by a community itself or by others, that is planned, carried out, and evaluated by a community's individuals, groups, and organizations on a participatory and sustained basis to reduce or prevent youth violence, and improves health. [Save the Children/Health Communication Partnership]

*Community Mobilization Plan (CMP)*

The plan is a general description of how you and your partners intend work with a particular community to mobilize around youth violence prevention. A mobilization plan defines the overall goals and objectives and identifies a process that will help interested communities achieve them, not to determine specific community actions or activities. The two overriding goals of community mobilization are to: 1. Enhance the community's capacity to address the problem of youth violence; 2. Prevent or reduce youth violence, thereby improving the health of the community.

The goal of a community mobilization plan must be related to local youth violence prevention priorities. Where communities perceive a pressing youth violence prevention need, communities themselves may define the goal. Alternatively, ACEs and their stakeholders may identify a goal based on an analysis of community health indicators (*e.g.*, frequency and severity of specific health problems and feasibility to address them). [Health Communication Partnership]

*Community Participation*

The active involvement of the members of a community in the planning, creation, operation, evaluation, dissemination and oversight of an initiative or project.

Community Committee

A group of individuals that represent groups and organizations within the Center's designated community. The Community Committee participates in the Center's organization, research, or other activities. Committee members typically represent an identified group or population and participate in the committee in order to provide the perspective and knowledge of a

designated population or group to the activities of the Center.

CDC will require each ACE to form an ACE Community Committee. This group should comprise members of the ACE's defined community and adult and youth representatives of agencies and organizations serving that community. The inputs provided by an ACE Community Committee to the ACE include guidance, advice on ACE agendas and plans, expertise, contacts, essential information about the designated community as well as intangible benefits. Some ACE's may wish to form additional advisory groups, as needed, such as a policy board, a youth advisory board, or advisory committees for individual research projects. The decision to form these additional groups depends on the needs of the ACE and the community.

Center Partnerships

Each ACE is also expected to establish and maintain center partnerships with institutions such as state and local health, education justice departments, other university partners, other ACEs, Injury Control Research Centers (ICRCs), Prevention Research Centers, national youth violence prevention organizations, and CDC. Partnerships are intended to make the ACE's surveillance, research, training and mentoring, community mobilizing and dissemination activities relevant to its identified community. Partners can collaborate with the ACE in designing and conducting research and other ACE projects and in disseminating research findings, which are expected to help facilitate the translation of public health research and related activities to practice and policy.

Community-Based Participatory Research (CBPR)

Scientific inquiry conducted in communities in which community members, persons affected by condition or issue under study and other key stakeholders in the community's health have the opportunity to be full participants in each phase of the work (from conception—design—conduct—analysis—interpretation—conclusions—communication of results).

Definition Developed by Inter Agency Working Group for CBPR, Convened by NIEHS, NIH, August 2, 2002

According to the CARE–CDC Health Initiative, A Model for Global Participatory Research, in community-based participatory research, the definition of scientific rigor is broadened to encompass community participation in decisionmaking at every phase of the research process: defining the problem, setting goals, selecting methods, interpreting data, and recommending policy. Essential to this philosophical construct is the assurance of quality decision making throughout the research process. In the document Building Community Partnerships in Research, participatory research is described as the gold standard toward which all federally funded research should aspire. (5)(p7). [Building Community Partnerships in Research: Recommendations and Strategies. Executive Summary. Washington, DC: U.S. Dept of Health and Human Services; April 7, 1998.]

[FR Doc. 04–25667 Filed 11–19–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004D–0494]**

### Guidance for Industry on Changes to an Approved New Drug Application or Abbreviated New Drug Application; Specifications—Use of Enforcement Discretion for Compendial Changes

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Changes to an Approved NDA or ANDA; Specifications—Use of Enforcement Discretion for Compendial Changes.'' This guidance informs new drug application (NDA) and abbreviated new drug application (ANDA) holders of FDA's plan to use enforcement discretion with regard to the regulation on changes to an approved application. This regulation describes the filing requirement that a relaxation of acceptance criteria or deletion of a test to comply with an official compendium must be reported in a changes-being-effected-in-30-days supplement (CBE–30). FDA does not intend to take enforcement action if manufacturers continue to submit such changes in their annual reports. The use of enforcement discretion will give the agency time to clarify that some of these types of postapproval changes can be submitted in an annual report, rather than in a CBE–30. The agency intends to clarify this issue in an upcoming revision to a guidance for industry.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, 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 written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** David J. Cummings, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5187.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of April 8, 2004 (69 FR 18728), FDA published a final rule entitled ''Supplements and Other Changes to an Approved Application.'' In the same issue of the **Federal Register** (69 FR 18768), FDA announced the availability of the guidance for industry entitled ''Changes to an Approved NDA or ANDA'' (the changes guidance). Under § 314.70(c)(2)(iii) (21 CFR 314.70(c)(2)(iii)) of the final rule, the relaxation of an acceptance criterion or deletion of a test to comply with an official compendium that is consistent with FDA statutory and regulatory requirements must be submitted as a CBE–30 (see section VIII.C.1.e of the changes guidance).

FDA is issuing this guidance to explain that it is using enforcement discretion with regard to § 314.70(c)(2)(iii) to address concerns raised by stakeholders. FDA plans to clarify that some of these types of changes can be submitted in an annual report, instead of a CBE–30 supplement, in a revision of the guidance for industry entitled ''Changes to an Approved NDA or ANDA; Questions and Answers.''

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in

this guidance was approved under OMB Control No. 0910–0001 and 0910–0032.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on these topics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may at any time submit to the Division of Dockets Management written or electronic comments on the guidance (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 13, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–25748 Filed 11–19–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

eriodically, the Health Resources and Services Administration (HRSA) publi tracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

### Proposed Project: The Division of Independent Review Grant Reviewer Recruitment Form—New

HRSA's Division of Independent Review (DIR) is responsible for carrying out the independent review of all eligible applications submitted to HRSA. DIR ensures that the independent review process is efficient, effective, economical and complies with statutes, regulations and policies. The review of applications is performed by people knowledgeable in the field of endeavor for which support is requested and is advisory to individuals in HRSA responsible for making award decisions.

To streamline the collection, selection and assignment of grant reviewers to independent review committees, HRSA will utilize a Web-based data collection form to gather critical reviewer information. The Grant Reviewer Recruitment Form will standardize pertinent categories of reviewer information, such as areas of expertise, occupations, work settings, reviewer experience, and allow maximum use of drop-down menus to simplify for the data collection process. All self-nominated reviewers will be channeled to the Grant Reviewer Recruitment Form. DIR anticipates a monthly volume of approximately 100 self-nominated responses. On a periodic basis, existing HRSA reviewers will be notified and directed to update their profile (via the Grant Reviewer Recruitment Form). HRSA maintains a pool of approximately 5,000 individuals that have previously served on HRSA independent review committees. DIR projects that approximately 3,700 individuals (or 75% of existing reviewers) would comply with instructions to update their profile on the Web-based Recruitment Form.

For existing HRSA reviewers, the amount of time required to complete the Recruitment Form will be abbreviated since HRSA will fill in the Form with previously collected personal information; existing reviewers will focus only on updating changes (*e.g.*, addresses, employer, expertise, occupation) to their profile. The estimate of burden for the HRSA Grant Reviewer Recruitment Form is as follows:

| Type of respondent* | Number of respondents | Responses per respondent | Total responses | Minutes per response | Total burden hours |
|---|---|---|---|---|---|
| New reviewer | 1,200 | 1 | 1,200 | 45 | 900 |
| Existing reviewer | 3,700 | 1 | 3,700 | 30 | 1850 |
| Total | 4,900 | | 4,900 | | 2,750 |

*Includes two categories of grant reviewers: (1) new or self-nominated reviewers that have never served as a HRSA grant reviewer and (2) existing reviewers that have previously served on a HRSA independent review committee.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 15, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–25751 Filed 11–19–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Cooperative Agreement for the International AIDS Education and Training Center; CFDA 93.145

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of supplemental award.

*Intended Recipient of the Award:* University of Washington, Seattle, Washington.

*Purpose of the Award:* This notice announces the program expansion supplement for the cooperative agreement for the International AIDS Education and Training Center at the University of Washington, Seattle, Washington, to expand and augment capacity building under the President's Emergency Plan for AIDS Relief (the President's Emergency Plan). This is the third budget period for this Cooperative Agreement. The purpose of this funding is to support the President's Emergency Plan by strengthening human and organizational capacity through training, technical assistance, infrastructure building, and curriculum development in the 15 focus countries including 12 in Africa, two in the Caribbean and Vietnam (Botswana, Côte d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda and Zambia). Further training and technical assistance is also being augmented through the President's Emergency Plan in other countries for which bilateral agreements for similar strategies have been established. The President's Emergency Plan is intended to complement other bilateral and international support efforts, including support through the Global Fund to Fight AIDS, Tuberculosis, and Malaria.

*Amount of the Award:* $8,877,718.

*Project Period:* Original Project Period 04/01/02–9/30/05, New Project Period: 04/01/02–2/28/06.

The current budget period is being extended to February 28, 2005 (in line with the intent of the five year strategy of the President's Emergency Plan). This would also extend the project period for the cooperative agreement from September 30, 2005, to February 28, 2006.

*Justification for the Exception to Competition:* The International AIDS Education and Training Center is the only Health Resources and Services Administration (HRSA), HIV/AIDS Bureau grantee providing valuable capacity building in the area of care and treatment to the focus and bilateral countries through training and other technical assistance. The original intent of this cooperative agreement was to fulfill the gap in training for quality, comprehensive HIV/AIDS care and treatment left by other U.S. Government partners. The President's Emergency Plan is providing the resources to provide the services that are needed in countries hardest hit by the AIDS epidemic. Without this program expansion supplement, HRSA's HIV/AIDS Bureau will be unable to provide this enhanced level of resources and expertise to the targeted countries.

**FOR FURTHER INFORMATION CONTACT:** Additional information on the International AIDS Education and Training Center may be obtained from Thurma Goldman, MD, MPH, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Parklawn Building, Room 7–05, Rockville, Maryland 20857; telephone number (301) 443–1993; fax (301) 443–9645; or e-mail *tgoldman@hrsa.gov*.

Dated: November 10, 2004.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 04–25750 Filed 11–19–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[USCG–2004–19665]**

## Towing Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Towing Vessel Inspection Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to the inspection of towing vessels and safety management systems. The meetings will be open to the public.

**DATES:** The Towing Vessel Inspection Working Group will meet on Wednesday, December 8, 2004 from 1:30 p.m. to 4:30 p.m. and on Thursday, December 9, 2004 from 8:30 a.m. to 2 p.m. The meetings may close early if all business is finished. Written or electronic material and requests to make oral presentations should reach the Coast Guard on or before December 3, 2004. Requests to have a copy of your material distributed to each member of the Working Group should be in electronic form and reach the Coast Guard on or before December 3, 2004.

**ADDRESSES:** The Working Group will meet in the 7th Floor All-Hands Conference Room (#725), National Pollution Funds Center, 4200 Wilson Boulevard, Arlington, VA 22203. Please bring a government-issued ID with photo (*e.g.*, driver's license). Send written or electronic material and requests to make oral presentations to Mr. Gerald Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2004–19665.

**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:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

### Agenda of Working Group Meetings

The agenda for the Towing Industry Safety System Working Group tentatively includes the following items:

(1) Identify the elements that should be included in a safety management system (SMS) requirement for towing vessels.

(2) Identify a framework for Coast Guard oversight and enforcement of a towing vessel inspection program based on a SMS and consider the role of third parties in such a system.

(3) Identify whether any towing vessel should be exempt from coverage under an inspection program based on a SMS.

(4) Identify proposed regulations implementing an inspection program for towing vessels based on a SMS.

### Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director (as provided above in **FOR FURTHER INFORMATION CONTACT**) no later than December 3, 2004. Written or electronic material for distribution at the meeting should reach the Coast Guard no later than December 3, 2004.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Miante at the number listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: November 15, 2004.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security & Environmental Protection.*

[FR Doc. 04–25759 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Notice of Intent To Request Approval From the Office of Management and Budget (OMB) of Two Public Collections of Information; Transportation Security Screener Medical Questionnaire; Airspace Waiver Applications

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Notice.

**SUMMARY:** TSA invites public comment on two new information collection requirements abstracted below that will be submitted to OMB in compliance with the Paperwork Reduction Act.

**DATES:** Send your comments by January 21, 2005.

**ADDRESSES:** Comments may be mailed or delivered to Lisa Dean, Privacy Officer, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

**FOR FURTHER INFORMATION CONTACT:** Lisa Dean at the above address or by telephone (571) 227–3947 or facsimile (571) 227–2555.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to obtain clearance of the following information collections, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirements are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

1. *Transportation Security Screener Medical Questionnaire.* TSA is requesting the collection of this information to comply with 49 U.S.C. 44935, which requires TSA to establish qualification standards for the employment of security screening personnel, including physical abilities and aptitude requirements. This collection of information will assist the agency in ensuring that candidates under employment consideration for Transportation Security Screener positions meet the qualification standards to successfully perform the functions of the position. These qualification requirements must be met to create a national workforce of skilled employees charged with protecting the Nation's transportation systems to ensure freedom of movement for people and commerce.

The information will be collected through a screener medical questionnaire. TSA deems this collection necessary to evaluate a candidate's aptitude and physical abilities, including color perception, visual and aural acuity, physical coordination and motor skills to be able to: (a) Distinguish on screening equipment monitors the appropriate imaging standard; (b) distinguish each color displayed on every type of screening equipment and explain what each color signifies; (c) hear and respond to the spoken voice and to audible alarms in an active checkpoint environment; (d) perform physical searches by efficiently and thoroughly manipulating and handling baggage, containers, and other objects; (e) perform pat-downs or hand-held metal detector searches of individuals with sufficient dexterity and capacity to thoroughly conduct the procedures over an individual's entire body; and (f) demonstrate a daily fitness for duty without impairment due to illegal drugs, sleep deprivation, medication, or alcohol. The current estimated annual reporting burden is 11,430 hours, based on an estimated 38,052 respondents.

2. *Airspace Waiver Applications.* TSA is requesting approval of this collection of information to enable it to operate its airspace waiver program. This program allows aircraft operators to request permission to fly in restricted airspace. To obtain a waiver, the aircraft operator must file a waiver request in advance of the flight containing information about all passengers and crew members on board the flight, so that TSA may perform a background check on each individual. The waiver request seeks information such as the purpose of the flight, aircraft type and tail number, corporate information, itinerary, as well as the names, dates and places of birth, and social security numbers or passport number of all passengers and crew members. The current estimated annual reporting burden is 48,000 hours, based on an estimated 24,000 respondents.

Issued in Arlington, Virginia, on November 15, 2004.

**Lisa S. Dean,**

*Privacy Officer.*

[FR Doc. 04–25760 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Flight Crew Self-Defense Training—Registration and Evaluation

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Notice of emergency clearance request.

**SUMMARY:** The U.S. Department of Homeland Security, Transportation Security Administration, has submitted a request for emergency processing of a new public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collection and its expected burden.

**DATES:** Send your comments by December 22, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Lisa Dean, Privacy Officer, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3947; facsimile (571) 227–2555.

**SUPPLEMENTARY INFORMATION:**

**Transportation Security Administration**

*Title:* Flight Crew Self-Defense Training—Registration and Evaluation.

*Type of Request:* Emergency processing request of new collection.

*OMB Control Number:* Not yet assigned.

*Form(s):* ''Level 1 End-of-Course Evaluation''

*Affected Public:* Flight and cabin crew on commercial passenger and cargo flights.

*Abstract:* Section 603 of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176) requires TSA to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation. This collection would allow TSA to collect enrollment information from volunteer flight and cabin crew members who wish to register for self-defense classes, and would permit TSA to solicit voluntary feedback on the quality of the training. Due to an impending statutory deadline, TSA is seeking an emergency three-month authorization, until February 2005, to collect this information.

TSA seeks emergency approval for a collection of information that would permit flight and cabin crew members to register for self-defense classes, and would solicit voluntary feedback from participants on the quality of the training. Registration information would be gathered from volunteers for purposes of registering them for a self-defense program, confirming that they are eligible for that program (*i.e.*, that they are an active flight or cabin crew member for a commercial or cargo air carrier), and to confirm attendance at the self-defense classes. The information that would be collected during the registration process consists of the volunteer's identifying information (such as the volunteer's name and employee number), the name of the volunteer's employer, and contact information. There would be no form used for registration because it will occur through local community colleges throughout the country. Applicants will register through whatever the normal registration process is for the community college that is offering the course in their area.

After training is completed, TSA would solicit written feedback from trainees by using a standard TSA form (attached). Completion of this form would be voluntary and anonymous.

*Number of Respondents:* 3,000.

*Estimated Annual Burden Hours:* An estimated 750 hours annually.

*Estimated Annual Cost Burden:* $0.00.

TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on November 4, 2004.

**Lisa S. Dean,**

*Privacy Officer.*

[FR Doc. 04–25802 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–62–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Incidental Take of Threatened Species for the Elizabeth Cross Roads Property, Elbert County, CO

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Issuance of Permit for Incidental Take of Endangered Species.

**SUMMARY:** On December 16, 2003, a notice was published in the **Federal Register** (Vol. 68 No. 241 FR 70028), that an Application had been filed with the U.S. Fish and Wildlife Service (Service) by the Elizabeth Cross Roads, LLC, for a permit to incidentally take, under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, Preble's meadow jumping mouse, *Zapus hudsonius preblei*, pursuant to the terms of the ''Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) for the Elizabeth Cross Roads Property in Elbert County, Colorado.''

Notice is hereby given that on September 23, 2004, as authorized by the provisions of the Endangered Species Act, the Service issued a permit (TE–079424–0) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the threatened species, and that it would be consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit action may be requested by contacting the Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 7 a.m. and 4:30 p.m. weekdays.

Dated: September 24, 2004.

**Elliott N. Sutta,**

*Acting Deputy Regional Director, Denver, Colorado.*

[FR Doc. 04–25784 Filed 11–19–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Request for Public Comments on Extension of Existing Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

The proposal for the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* North American Amphibian Monitoring Program.

*Current OMB Approval Number:* 1028–0078.

*Summary:* The North American Amphibian Monitoring Program (NAAMP) is a long-term, large-scale anuran (frog and toad) monitoring program to track the status and trends of eastern and central. Volunteers conduct calling surveys three to four times per year, depending on the regional species assemblage. Volunteers listen for 5 minutes at 10 stops along the

route. Data are submitted electronically via the Internet or on hard copy. These data will be used to estimate population trends at various geographic scales and assist with documenting species distribution. NAAMP Web site is: *http://www.pwrc.usgs.gov/naamp/*.

*Estimated Annual Number of Respondents:* 400.

*Estimated Annual Burden Hours:* 3600 hours.

*Affected Public:* Primarily U.S. residents.

*For Further Information Contact:* To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

Dated: November 15, 2004.

**Susan Haseltine,**

*Associate Director for Biology.*

[FR Doc. 04–25746 Filed 11–19–04; 8:45 am]

BILLING CODE 4310–47–M

## DEPARTMENT OF INTERIOR

## Geological Survey

## Civil Implementation Working Group—U.S. Commercial Remote Sensing Space Policy (CRSSP)

**AGENCY:** U.S. Geological Survey.

**ACTION:** Notice of open meeting.

**SUMMARY:** Open meeting of the CRSSP Implementation Working Group (IWG) to present and discuss progress and plans for assessing near-term civil requirements for remote sensing data.

**DATE/TIME OF MEETING:** December 14, 2004, 9–12 a.m.

**PLACE:** Visitors Center, USGS Headquarters, 12201 Sunrise Valley Drive, Reston, VA 20192.

**FOR FURTHER INFORMATION CONTACT:** Inquiries and notice of intent to attend the meeting may be addressed to: Greg Snyder, CRSSP IWG Chair, USGS National Center Center MS 517, Reston VA 22091, *gsnyder@usgs.gov* or 703–648–5169.

**SUPPLEMENTARY INFORMATION:**

### Purpose of Public Meeting

This public meeting provides a forum for the remote sensing industry and other interested participants to be briefed on the progress and plans of the CRSSP near-term requirements collection and evaluation process and to discuss ways to improve its effectiveness.

### Background

On April 25, 2003, the president signed the U.S. Commercial Remote Sensing Space Policy. The fundamental goal of this policy is to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry. Doing so will also foster economic growth, contribute to environmental stewardship, and enable scientific and technological excellence. In support of this goal, the United States Government is directed to:

- Rely to the maximum practical extent on U.S. commercial remote sensing space capabilities for filling imagery and geospatial needs for military, intelligence, foreign policy, and homeland security, and civil users;
- Focus United States Government remote sensing space systems on meeting needs that can not be effectively, affordably, and reliably satisfied by commercial providers because of economic factors, civil mission needs, national security concerns, or foreign policy concerns;
- Develop a long-term, sustainable relationship between the United States Government and the U.S. commercial remote sensing space industry;
- Provide a timely and responsive regulatory environment for licensing the operations and exports of commercial remote sensing space systems; and
- Enable U.S. industry to compete successfully as a provider of remote sensing space capabilities for foreign governments and foreign commercial users, while ensuring appropriate measures are implemented to protect national security and foreign policy.

The specific directives to civil agencies included:

- Determine which needs for imagery and geospatial products and services can be reliably met by commercial remote sensing space capabilities;
- Communicate current and projected needs to the commercial remote sensing space industry.

The policy also directs civil agencies to craft a plan for policy implementation. The plan, agreed to in December 2003, calls for shared responsibilities among civil agencies, close coordination with the National Geospatial-Intelligence Agency, and the formation of two groups; a senior steering committee (SSC) for policy guidance and an interagency policy implementation working group (IWG) for operational support. The USGS administers these two groups and serves as the lead civil agency. The policy also identifies goals beyond the scope of the implementation plan that are being addressed by other interagency groups.

### Proposed Agenda

The meeting will begin with presentations to provide an update on the CRSSP civil near-term requirements-collection process and planned reporting capabilities, followed by discussions of how to provide meaningful requirements information for industry planning and business decisions. Representatives from the CRSSP IWG will present the goals, accomplishments, plans and potential enhancements to the process.

### Meeting Access

Directions to the USGS National Center can be accessed at *http://www.usgs.gov/major_sites.html.* After arriving at USGS follow signs to Visitors Parking and proceed to the Visitors Entrance. You will be required to show valid picture identification as you enter. A guard will point you to the Visitors Center.

**Robert A. Lidwin,**

*Chief of Staff, USGS Geography Discipline.*

[FR Doc. 04–25745 Filed 11–19–04; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## Potential for Oil Shale Development

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of request for comments.

**SUMMARY:** The BLM seeks public input on the terms to be included in leases of small tracts for oil shale research and development within the Piceance Creek Basin, northwestern Colorado; the Uinta Basin, southeastern Utah: and the Green River and Washakie Basins, western Wyoming.

**DATES:** Please send your comments no later than December 22, 2004.

**ADDRESSES:** Please hand-deliver written comments: To Nick Douglas, Suite 700, 1620 L Street, NW., Washington, DC. This is also the FedEx address. Mail written comments to BLM (Attention: Nick Douglas), Minerals, Realty and Resource Protection, Mail Stop: LS 700, 1849 C Street, NW., Washington, DC 20240. Electronic Mail: You may send comments through the Internet to BLM at: *Nick_Douglas@blm.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nick Douglas, Senior Policy Advisor, Minerals, Realty and Resource

Protection, Bureau of Land Management, Mail Stop: LS 700,1849 C Street, NW., Washington, DC 20240 at (202) 452–0374.

**SUPPLEMENTARY INFORMATION:** The United States holds over 50 percent of the world's oil shale resources, which contain 2.6 trillion barrels of oil. These resources include the oil shale deposits in the Green River formation in the western United States. The Green River formation contains an estimated 1.5 trillion barrels of oil, 72 percent of which is on public lands administered by the BLM. In Colorado alone, the total resource approaches one trillion barrels of oil, and the Federal Government owns approximately 78 percent of the surface acreage and 82 percent of the shale oil in-place. The oil shale deposits in the eastern United States are estimated to contain 189 billion barrels of oil, but the Federal ownership share is not known at this time.

Section 21 of the Mineral Leasing Act, 30 U.S.C. 241, authorizes the leasing of federal lands for the development of oil shale. The BLM does not have any regulation for oil shale leasing. Therefore, all the essential leasing requirements must be included in the lease itself. The purpose of this notice is to solicit public comment on the specific provisions which BLM should include in a 40-acre lease for oil shale research and development (R&D). The intent of the leases is to further the development of technologies for the economic production of shale oil. The BLM seeks this information to facilitate oil shale development in furtherance of the President's National Energy Policy. The policy outlined several recommendations to diversify and increase energy supplies, increase energy security, encourage conservation, and ensure energy distribution. Diversification of energy supply could be enhanced with access to and development of the vast oil shale resources.

The BLM seeks comments on the attached proposed lease form for oil shale R&D. The BLM requests comments on:

(1) What terms (duration, royalty, rental, acreage, diligence, option for additional acreage) should BLM include in the R&D lease to provide short-term incentives, and also encourage long-term commercial development;

(2) The adequacy of a 40-acre lease for a successful demonstration of oil shale technology;

(3) The methodology for conversion of an R&D lease to a commercial lease;

(4) The criteria to qualify a company or individual to acquire an R&D lease and what documentation should be required;

(5) The level of National Environmental Policy Act (NEPA) documentation that would be appropriate for R&D leasing; and

(6) The appropriate methodology for determining fair market value for conversion to a commercial lease.

**Oil Shale Research and Development (R&D) Lease**

This lease is entered into on , , to be effective on , , (the ''Effective Date''), by the United States of America (the ''Lessor''), acting through the Bureau of Land Management (hereinafter called the ''Bureau''), of the Department of the Interior (the ''Department''), and _____ (the ''Lessee''), pursuant and subject to the provisions of the Mineral Leasing Act of February 25, 1920 as amended (30 U.S.C. §§ 181–287), hereinafter called the ''Act'', more specifically section 21 of the Act (30 U.S.C. § 241), and to the terms, conditions, and requirements (1) of all regulations promulgated by the Secretary of the Interior (the ''Secretary'') in 43 CFR Part 3160, including Onshore Oil and Gas Orders, and 43 CFR Part 3590, including revisions thereof hereafter promulgated by the Secretary (and not inconsistent with any specific provisions of this lease), all of which shall be, upon their effective date, incorporated in and, by reference, made a part of this lease. To the extent the provisions of this lease are inconsistent with the requirements of any regulation or order, the lease term govern.

*Section 1. Definitions*

As used in this lease:

(a) ''Authorized Officer'' means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(b) ''Oil shale'' means a fine-grained sedimentary rock containing: (1) Organic matter which was derived chiefly from aquatic organisms or waxy spores or pollen grains, which is only slightly soluble in ordinary petroleum solvents, and of which a large proportion is distillable into synthetic petroleum, and (2) inorganic matter which may contain other minerals. This term is applicable to any argillaceous, carbonate, or siliceous sedimentary rock which, through destructive distillation, will yield synthetic petroleum.

(c) ''Leased Lands'' means the lands described as follows:

(d) ''Commercial Quantities'' means quantities sufficient to provide a positive return after all costs of production have been met, including the amortized costs of capital investment.

(e) ''Shale oil'' means a synthetic petroleum derived from the destructive distillation of oil shale.

*Section 2. Grant to Lessee*

The Lessee is hereby granted, subject to the terms of this lease, the exclusive right and privilege to prospect for, drill, mine, extract, remove, beneficiate, concentrate, process and dispose of the oil shale and the products of oil shale contained within the Leased Lands. In accordance with approved plans, the Lessee may utilize or dispose of all oil shale and oil shale products, together with the right to construct on the Leased Lands all such works, buildings, plants, structures, roads, powerlines, and additional facilities as may be necessary or reasonably convenient for the mining, extraction, processing, and preparation of oil shale and oil shale products for market. The Lessee has the right to use so much of the surface of the Leased Lands as may reasonably be required in the exercise of the rights and privileges herein granted.

*Section 3. Lessor's Reserved Interests in the Leased Lands*

The Lessor Reserves

(a) The right to continue existing uses of the leased lands and the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands for uses that do not unreasonably interfere with operations of the Lessee under this lease.

(b) The right to permit for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the Leased Lands, as may be necessary or appropriate to the working of the Leased Lands or other lands containing mineral deposits subject to the Act, and the treatment and shipment of the products thereof by or under authority of the Lessor, its lessees, or permittees, and for other public purposes. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of the Lessee.

*Section 4. Lease Term*

The lease is issued for a term not to exceed xxx years, (please comment on the duration of R&D lease) subject to conversion to a twenty-year lease under the conditions specified in section 23.

*Section 5. Rentals: Non-Commercial Production*

The Lessee shall pay the Lessor an annual rental in advance for each acre or fraction thereof during the continuance of the lease of $xxx. (Please comment on annual rental.) Rental is payable annually on or before the anniversary date of the lease. Rentals for any lease year shall be credited by the Lessor against any royalty payments for that lease year.

The failure to pay rental by the anniversary date shall be grounds for termination of the lease. Should you fail to pay the full amount on the anniversary, BLM will notify you of this failure and provide you with a grace period of 15 days from notice to make payment in full. Should no payments be received during the grace period, the lease shall terminate without the need for further administrative proceedings.

*Section 6. Royalties*

(a) For the initial 5 years of the lease, the Lessor waives the requirement for royalty on any production. For the 6th through 10th year of the lease, the Lessee shall pay to the Lessor a royalty of $xxx (please comment on royalty amount or percentage) per barrel of shale oil which is sold or removed from the

Leased Lands, except that used for production purposes or unavoidably lost.

(b) Lessee shall file with the proper office of Lessor, no later than 30 days after the effective date thereof, any contract or evidence of other arrangement for sale or disposal of production. At such times and in such form as Lessor may prescribe, Lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

(c) Payment for royalties due under this lease shall be payable monthly on or before the last day of the calendar month following the calendar month in which the shale oil is processed or, if it is not processed, is sold.

(d) Payments and royalties under this lease shall be subject to the regulations in 30 CFR Part 218, Subpart E.

*Section 7. Bonds*

(a) Prior to conducting operations on this lease, the Lessee shall provide a bond in the amount determined by the authorized officer, conditioned upon compliance with all terms and conditions of the lease and the plan of operations. This bond shall be of a type authorized by 43 CFR 3104.1 and must be sufficient to cover all costs associated with reclamation and abandonment activities. The authorized officer may adjust the required bond amount as he determines necessary to assure full compliance for the operations conducted under this lease.

(b) Upon request of the Lessee, the bond may be released as to all or any portion of the Leased Lands affected by exploration or mining operations, when the Lessor has determined that the Lessee has successfully met the reclamation requirements of the approved development plan and that operations have been carried out and completed with respect to these lands in accordance with the approved plan.

*Section 8. Plan of Operations*

(a) Prior to conducting operations on the lease, including exploration, the Lessee shall submit a plan of operations for review and approval by the authorized officer. This plan shall be submitted in accordance with the requirements of 43 CFR 3160 or 43 CFR 3590, depending on the nature of the proposed activity. The authorized officer shall make the final determinations as to which regulations govern the proposed activity and notify the Lessee of any additional requirements. The authorized officer may condition the approval on reasonable modifications of the plan to assure protection of the environment.

(b) After plan approval, the Lessee must obtain the written approval of the authorized officer for any change in the plan approved under subsection (a).

(c) The Lessee shall file annual progress reports describing the operations conducted under the plan of operations.

*Section 9. Operations on the Lease Lands*

(a) The Lessee shall conduct all operations under this lease in compliance with all applicable Federal, State and local statutes, regulations, and standards including those pertaining to water quality, air quality, noise control, threatened and endangered species, historic preservation, and land reclamation, and orders of the authorized officer (written or if oral, reduced to writing within ten days.)

(b) The Lessee shall avoid, or, where avoidance is impracticable, minimize, and where practicable correct, hazards to the public health and safety related to his operations on the Leased Lands conducted in accordance with the approved operations plan.

(c) Lessee shall carry on all operations in accordance with approved methods and practices as provided in the applicable operating regulations and approved operations plan. Activities will be conducted in a manner that minimizes adverse impacts to the land, air, water, cultural, biological, visual, and other resources, including mineral deposits not leased herein, and other land uses and users.

(d) The Lessee shall comply with all applicable state and Federal laws.

*Section 10. Water Rights*

All water rights developed by the Lessee through operations on the Leased Lands shall immediately become the property of the Lessor. As long as the lease continues, the Lessee shall have the right to use those water rights free of charge for activities under the lease.

*Section 11. Development by In Situ Methods*

Where in situ methods are used for the production of shale oil, the Lessee shall not place any entry, well, or opening for such operations within 500 feet of the boundary line of the Leased Lands without the permission of, or unless directed by the Authorized Officer, nor shall induced fracturing extend to within 100 feet from that boundary line.

*Section 12. Inspection*

The Lessee shall permit any duly authorized officer or representative of the Department at any reasonable time:

(a) to inspect the Leased Lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and

(b) to copy and make extracts from any books and records pertaining to operations under this lease.

*Section 13. Reports, Maps, etc.*

(a) The Lessee shall submit to the Lessor in such form as the latter may prescribe, not more than 60 days after the end of each quarter of the Lease Year, a report covering that quarter which shall show the amount produced from the Lease by each method of production used during the quarter, the character and quality thereof, the amount of products and by-products disposed of and price received therefore, and the amount in storage or held for sale. This report shall be certified by an agent having personal knowledge of the facts who has been designated by the Lessee for that purpose.

(b) The Lessee shall prepare and furnish at such times and in such form as the Lessor may prescribe, maps, photographs, reports, statements and other documents required by the provisions of 43 CFR Part 3160 or 3590 as appropriate.

*Section 14. Assignment*

The Lessee may assign any interest in this lease with the approval of the authorized officer, subject to the assignor retaining liability for all obligations that accrued prior to the assignment and the provision of bond by the assignee for all liabilities arising after the assignment. The assignor shall maintain bond for liabilities arising in the period prior to the assignment unless the assignee provides bond for the entire period of the lease.

*Section 15. Heirs and Successors in Interest*

Each obligation of this lease shall extend to and be binding upon, and every benefit shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

*Section 16. Relinquishment of lease*

The Lessee may relinquish in writing at any time all rights under this lease, or any portion thereof. Upon Lessor's acceptance of the relinquishment, Lessee shall be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable. The Lessee shall promptly pay all royalties due and reclaim the relinquished acreage in accordance with the plan of operations.

*Section 17. Remedies in Case of Default*

If the Lessee fails to comply with applicable laws, regulations, or the terms, conditions, and stipulations of this lease and the noncompliance continues for a period of 30 days after service of notice thereof, this lease shall be subject to cancellation. The Lessor may (1) Suspend operations until the required action is taken to correct noncompliance, or (2) institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in Section 31 of the Act (30 U.S.C. 188) and for forfeiture of any applicable bond. If the Lessee fails to take prompt and necessary steps to (a) prevent loss or damage to the mine, property, or premises, (b) prevent danger to the employees, or (c) avoid, minimize or, repair damage to the environment, the Lessor may enter on the premises and take such measures as he may deem necessary to prevent, or correct the damaging, dangerous, or unsafe condition of the mine or any other facilities upon the Leased Lands. Those measures shall be at the expense of the lessee.

*Section 18. Delivery of Premises in Case of Forfeiture*

(a) At such time as all or portions of this lease are returned to Lessor, the Lessee shall deliver to the Lessor the land leased, wells, underground support structures, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings and wells in condition for suspension or abandonment. Within 180 days thereof, Lessee shall remove from the premises all other structures, machinery,

equipment, tools, and materials as required by the Authorized Officer. Any such structures remaining on the Leased Lands beyond the 180 days, or approved extension thereof, shall become the property of the Lessor. Lessee shall either remove all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the Lessor.

(b) Lessee shall reclaim all lands which have been disturbed and dispose of all debris or solid waste in an approved manner in accordance with the schedule established in the plan of operations and maintain bond coverage until such reclamation is complete.

*Section 19. Protection of Proprietary Information*

(a) This lease, and any activities thereunder, shall not be construed to grant a license, permit or other right of use or ownership to the Lessor, or any other person, of the patented processes, trade secrets, or other confidential or privileged technical information (hereafter in this section called ''technical processes'') of the Lessee or any other party whose technical processes are embodied in improvements on the Leased Lands or used in connection with the lease.

(b) Notwithstanding any other provision of this lease, the Lessor agrees that any technical processes obtained from the Lessee which are designated by the Lessee as confidential shall: (1) Not be disclosed to persons other than employees of the Federal Government having a need for such disclosures and (2) not be copied or reproduced in any manner. The Lessor further agrees this material may not be used in any manner that will violate their proprietary nature.

(c) Prior to any disclosure pursuant to a Freedom of Information Act request, the Bureau will notify the submitter of the specific information which it has initially determined to release and give it thirty (30) days to provide a justification for the nondisclosure of the information under exemption 4 or other relevant exemptions. Your justification should address in detail, pursuant to the procedures in 43 CFR 2.23, whether the information

(1) Was submitted voluntarily and falls in a category of information that the submitter does not customarily release to the public, or

(2) If the information was required to be submitted, how substantial competitive or other business harm would likely result from release.

(c) If after reviewing the information you submit, the bureau decides to release the information over your objections, it will inform you that it intends to release the information 10 workdays after receipt of the notice by the submitter.

*Section 20. Lessee's Liability to the Lessor*

(a) The Lessee shall be liable to the United States for any damage suffered by the United States in any way arising from or connected with Lessee's activities and operations conducted pursuant to this lease, except where damage is caused by employees of the United States acting within the scope of their authority.

(b) The Lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with Lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the Lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

*Section 21. Appeals*

The Lessee shall have the right to appeal orders or decisions of the BLM under 43 CFR Subpart 3165.

*Section 22. Special Stipulations*

The special stipulations that are attached to and made a part of this lease are imposed upon the Lessee, and the Lessee's employees and agents. The failure or refusal to comply with these stipulations shall be deemed a failure of the Lessee to comply with the terms of the lease. The special stipulations may be revised or amended, in writing, by mutual consent following appropriate notice to the public.

*Section 23. Conversion Rights*

Upon production of commercial quantities of shale oil from the lease, the lease may be converted to a commercial lease containing up to a total of 5,120 acres, as allowed under the Mineral Leasing Act (30 U.S.C. Section 241) upon payment of fair market value for the additional acreage and the completion of appropriate NEPA analysis. This commercial lease may be issued for a term of 20 Years and so long thereafter as shale oil is produced from the Leased Lands in commercial quantities, and contain terms consistent with regulations to be developed by the Secretary pursuant to section 21 of the Mineral Leasing Act. Such commercial lease shall be subject to the readjustment of lease terms at the end of the 20th lease year and each 20 year period thereafter, and subject to payment to the Lessor of a rental of 50 cents per acre or fraction thereof and a royalty of xxx% of the gross value (provide comment of the percentage of royalty for commercial production) of the shale oil which is removed or sold by the Lessee, at the First Point of sale.

*Section 24. Reimbursable Costs*

In applying for required approvals, the lessee under the oil shale research and development (R & D) lease shall be subject to the obligation to reimburse the BLM as if the requirements of subpart 2808 of Part 43 of the Code of Federal Regulations (43 CFR Subpart 2808) were applicable.

Dated: September 30, 2004.

**Thomas P. Lonnie,**

*Assistant Director, Minerals Realty, and Resource Protection.*

[FR Doc. 04–25761 Filed 11–19–04; 8:45 am]

**BILLING CODE 4310–AG–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0112).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in Form MMS–131, Performance Measures Data. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by December 22, 2004.

**ADDRESSES:** You may submit comments either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0112). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Interested parties may submit a copy of their comments on-line to MMS, the address is: *https://ocsconnect.mms.gov*. From the Public Connect ''Welcome'' screen, you will be able to either search for Information Collection 1010–0112 or select it from the ''Projects Open For Comment'' menu.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the form that involves the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form MMS–131, Performance Measures Data.

*OMB Control Number:* 1010–0112.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior to preserve, protect, and develop OCS oil, gas, and sulphur resources; make such resources available to meet the Nation's energy needs as rapidly as possible; balance

orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. These responsibilities are among those delegated to MMS. MMS generally issues regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases.

In 1991 MMS began promoting, on a voluntary basis, the implementation of a comprehensive Safety and Environmental Management Program (SEMP) for the offshore oil and gas industry as a complement to current regulatory efforts to protect people and the environment during OCS oil and gas exploration and production activities. From the beginning, MMS, the industry as a whole, and individual companies realized that at some point they would want to know the effect of SEMP on safety and environmental management of the OCS. The natural consequence of this interest was the establishment of performance measures. We are requesting OMB approval for a routine renewal of the Form MMS–131, Performance Measures Data. There are a few editorial changes, but no changes to the data elements.

The responses to this collection of information are voluntary, although we consider the information to be critical for assessing the effects of the OCS Safety and Environmental Management Program. We can better focus our regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting MMS expectations. We are more effective in leveraging resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection program emphasis. The performance measures give us valuable quantitative information to use in judging the reasonableness of company requests for alternative compliance or departures under 30 CFR 250.141 and 250.142. We also use the information collected to work with industry representatives to identify and request ''pacesetter'' companies make presentations at periodic workshops.

Knowing how the offshore operators as a group are doing, and where their own company ranks, provides company management with information to focus their continuous improvement efforts. This leads to more cost-effective prevention actions and, therefore, better cost containment. This information also provides offshore operators and organizations with a credible data source to demonstrate to those outside the industry how well the industry and individual companies are doing.

No questions of a ''sensitive'' nature are asked, and the collection of information involves no proprietary information. We intend to release data collected on Form MMS–131 only in a summary format that is not company-specific. We will protect the information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

*Frequency:* The frequency is annual, with responses due during the 1st quarter of the calendar year.

*Estimated Number and Description of Respondents:* Approximately 100 Federal OCS oil and gas or sulphur lessees and we expect a 63 percent response rate.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* We estimate the public reporting burden averages 8 hours per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information. The total annual hour burden is estimated to be 504 hours.

*Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no ''non-hour cost'' burden associated with Form MMS–131.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on June 22, 2004, we published a **Federal Register** notice (69 FR 34690) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at any time on these collections of information; and provides the address to which they should send comments. This information is also contained in the PRA statement on Form MMS–131. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 22, 2004.

*Public Comment Policy:* Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz, (202) 208–7744.

Dated: August 27, 2004.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 04–25879 Filed 11–19–04; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Product Act of 1993—Actuarial Standards Board

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Actuarial Standards Board (''ASB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Actuarial Standards Board, Washington, DC. The nature and scope of ASB's standards development activities are: Development of technical standards of practice for actuaries practicing in the United States.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25865 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Association for Accreditation of Ambulatory Surgery Facilities

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the American Association for Accreditation of Ambulatory Surgery Facilities (''AAAASF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Association for Accreditation of Ambulatory Surgery Facilities, Gurnee, IL. The nature and scope of AAAASF's standards development activities are: the development of standards by which single-specialty and multi-specialty out-patient surgery facilities are accredited. The standards for accreditation of such surgery facilities are developed continually revised by AAAASF's committee of medical professionals.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25837 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Association of Textile Chemists and Colorists

Notice is hereby given that, on September 13, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Association of Textile Chemists and Colorists (''AATCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Association of Textile Chemists and Colorists, Research Triangle Park, NC. The nature and scope of AATCC's standards development activities are: to increase knowledge of the application of dyes and chemicals in the textile industry; encouragement of research on chemical processes and materials of important interest to the textile industry; and establishment of channels for information exchange among members. AATCC develops test methods and evaluation procedures through research committees composed of volunteers from the following sectors: primary textile industry; fiber and yarn suppliers; chemical and dyes suppliers; machinery and instrument suppliers; retail, government, and independent testing laboratories; and academicians. Methods are grouped into the following categories: biological properties; colorfastness; dyeing properties; identification and analysis; and physical properties. AATCC test methods do not set pass/fail criteria or standards for performance. They provide a standard means for testing, often with an evaluation scale.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25850 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—American College of Osteopathic Emergency Physicians

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the American College of Osteopathic Emergency Physicians (''ACOEP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American College of Osteopathic Emergency Physicians, Chicago, IL. The nature and scope of ACOEP's standards development activities are: To develop, plan, establish, coordinate and publish voluntary consensus standards applicable to the fields of emergency medicine, emergency medical services, and toxicology. Specifically, ACOEP develops, plans, establishes, coordinates, and publishes voluntary consensus standards in the form of basic standards for residency training in

emergency medicine, combined family practice/emergency medicine, and emergency medical services; and for subspecialty residency training in toxicology. ACOEP also evaluates osteopathic residency training and fellowship programs for conformance with the standards. Through its standards development activities, ACOEP seeks to ensure the highest quality of training and education in osteopathic emergency medicine. ACOEP's standards development activities are ongoing in nature, and existing standards may be updated and/or amended from time to time.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25840 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Institute of Aeronautics and Astronautics, Inc.

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Institute of Aeronautics and Astronautics, Inc. (''AIAA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Institute of Aeronautics and Astronautics, Inc., Reston, VA. The nature and scope of AIAA's standards development activities are: The development, maintenance, and publishing of standards relating to aerodynamic decelerators; the motion of artificial bodies in space; atmospheric and space environments with emphasis on scientific models; computational fluid dynamics applicable to aeronautics and astronautics; the requirements for humans in development and operation of aerospace systems; application for specific characteristics of computer software for aerospace use; handling, storage, and use of hydrogen in gaseous liquid and slush form; handling, storage and use of liquid propellants; methods for mitigating the generation of orbital debris including debris flux models and vocabulary; the architecture and interfaces necessary for effective spacecraft servicing; performance parameters related to the use of automation and robotics in space missions with emphasis on interfaces, reliability, and life cycle design; vocabulary, interfaces, safety practices, mission profiles, and other system design aids which will promote space transportation; basic aerospace design principles; the test and evaluation of aerospace equipment in ground-based facilities; methods for the systematic development of reliable systems, including acquisition management issues, methods for planning, implementing, and verifying a Performance-based Reliability and Maintainability (R&M) Program; support design of aerospace structures, including future requirements for loads, materials, processes, configurations, life cycles, and tests.

Additional information may be obtained from David J. Quackenbush, Treasurer and Secretary of the American Institute of Aeronautics and Astronautics, Inc., e-mail *daveq@aiaa.org.*

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25856 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Baking

Notice is hereby given that, on September 22, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Baking (''ASB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Baking, Sonoma, CA. The nature and scope of ASB's standards development activities are: As Secretariat for the American National Standard for Bakery Equipment Safety and Sanitation Requirements, ASB administers the standards that apply to the design, construction, installation, safe operation and maintenance of bakery machinery and equipment. The purpose of the standards is to provide reasonable safety for bakery workers; and they are intended as a guide to Federal, State and municipal authorities in drafting regulations; as voluntary application; and as a standard reference for safety requirements for the use of bakery machinery and for equipment manufacturers and concerns employing such machinery. The Baking Equipment Safety and Sanitation Standards are on file with the American National Standards Institute, Inc., 11 West 42nd Street, New York, NY.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25854 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Association for Information and Image Management

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Association for Information and Image Management (''AIIM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Association for Information and

Image Management, Silver Spring, MD. The nature and scope of AIIM's standards development activities are: Standardization of terminology, definitions, sizes, formats, quality, methods of measurement, apparatuses and procedures for the production, use and storage, and retrieval of information images and related source data. Standards, recommended practices, and technical reports prepared in accordance with AIIM's policies and procedures are intended to have broad national acceptance, as well as provide the basis upon which to achieve international accord in the development of ISO standards.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25844 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automotive Lift Institute—Certification Program

Notice is hereby given that, on October 29, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Automotive Lift Institute–Certification Program (''ALI–CP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Automotive Lift Institute—Certification Program, Indialantic, FL. The nature and scope of ALI–CP's standards development activities are: development of automotive lift safety standards including, but not limited to, standards for design, construction, testing, validation (certification), operation, inspection, maintenance, installation, and service.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25848 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automotive Lift Institute

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Automotive Life Institute (''ALI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Automotive Life Institute, Indialantic, FL. The nature and scope of ALI's standards development activities are: Development of automotive lift safety standards including, but not limited to, standards for construction, installation, operation, inspection, and maintenance.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25867 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Builders Hardware Manufacturers Association, Inc.

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Builders Hardware Manufacturers Association, Inc. (''BHMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Builders Hardware Manufacturers Association, Inc., New York, NY. The nature and scope of BHMA's standards development activities are: Developing and maintaining the ANSI/BHMA A156 series of standards covering builders hardware products including architectural door trim, auxiliary hardware, cabinet hardware, door controls, exit devices, hinges, locking devices, power operated doors, and sliding and folding door hardware.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25838 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commission on English Language Program Accreditation

Notice is hereby given that, on September 22, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Commission on English Language Program Accreditation (''CEA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Commission on English Language Program Accreditation, Alexandria, VA.

The nature and scope of CEA's standards development activities are: To promote best practices in English language instruction and administration in the United States through the development of standards, which form the foundation of the accreditation review process.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25834 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Composite Panel Association

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Composite Panel Association (''CPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Composite Panel Association, Gaithersburg, MD. The nature and scope of CPA's standards development activities are: Increasing acceptance and use of composite panel products (products made from composite wood and allied materials) and educating users about their benefits. CPA represents the composite panel industry on technical, environmental, quality assurance and product acceptance issues.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25831 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Advanced Manufacturing–International

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Advanced Manufacturing–International (''CAM–I'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Consortium for Advanced Manufacturing–International, Fort Worth, TX. The nature and scope of CAM–I's standards development activities are: To focus on information preparation for computer aided/integrated manufacturing systems and methods related to standards software input/output, interfaces, and language specifications.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25860 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cyber Security Industry Alliance, Inc.

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cyber Security Industry Alliance, Inc. (''CSIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Cyber Security Industry Alliance, Inc., Wakefield, MA. The nature and scope of CSIA's standards development activities are: To promote the continuous enhancement of cyber security through public policy, education and technology-focused initiatives; (2) to promote such initiatives across the cyber security industry and on a global basis; (3) to promote and encourage the adoption of strong, effective technology standards relating to the cyber security industry through the foregoing initiatives and public education; and (4) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25869 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Distributed Management Task Force, Inc.

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Distributed Management Task Force, Inc. (''DMTF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Distributed Management Task Force, Inc., Portland, OR. The nature and scope

of DMTF's standards development activities are: To develop standards for common management infrastructure components for instrumentation, control, and communications in a platform-independent and technology neutral way. DMTF technologies include information models (CIM), communication/control protocols (WBEM), and core management services/utilities.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25841 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVB Project

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVB Project (''DVB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: DVB Project, Geneva, SWITZERLAND. The nature and scope of DVB's standards development activities are: To develop, assist in conformance testing in respect of, provide certification services related to, and promote specifications for digital video broadcasting and related fields.

For further information about the DVB Project, its activities, and its membership, *see http://www.dvb.org.*

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25871 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electric Reliability Council of Texas, Inc.

Notice is hereby given that, on September 24, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Electric Reliability Council of Texas, Inc. (''ERCOT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Electric Reliability Council of Texas, Inc., Austin, TX. The nature and scope of ERCOT's standards development activities are: ERCOT manages a major portion of the state's electric power grid. ERCOT is responsible for managing the reliable supply of electricity to all customers within its region by maintaining a balance between forecasted schedules of electricity providers and the actual electricity demand among all market participants. ERCOT's members include utilities (municipals, cooperatives and investor owned utilities), power marketers, generation providers, retail service providers and end-use customer representatives.

ERCOT members and market participants meet on a regular basis at ERCOT facilities to create, revise and discuss the standards, policies and procedures in place for the ERCOT region and markets. Because participants are adopting changes to existing standards on a regular basis, ERCOT's standards development activities must be considered on-going.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25872 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electronic Industries Alliance

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Electronic Industries Alliance (''EIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Electronic Industries Alliance, Arlington, VA. The nature and scope of EIA's standards development activities are: The development and maintenance of voluntary industry standards and related documents, formulation of positions for presentation on behalf of the United States in international standards fora, and preparation of technical information and reports for use by industry and government, on behalf of manufacturers of electronic products and providers of services to said manufacturers and consumers.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25846 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gaming Standards Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the national Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Gaming Standards Association (''GSA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Gaming Standards Association, Fremont, CA. The nature and scope of GSA's standards development activities are: GSA is an international trade association representing gaming manufacturers, suppliers and operators. It facilitates the identification, definition, development, promotion, and implementation of open standards to enable innovation, education, and communication for the benefit of the entire gaming industry.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25839 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Glazing Industry Secretariat Committee

Notice is hereby given that, on September 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Glazing Industry Secretariat Committee (''GISC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Glazing Industry Secretariat Committee, Topeka, KS. The nature and scope of GISC's standards development activities are: To function as the Secretariat with oversight and administrative responsibilities for ANSI Standard Z97.1, American National Standard for Safety Glazing Materials Used in Buildings—Safety Performance Specifications and Methods of Test, establishing the specifications and methods of tests for safety properties of safety glazing materials (glazing materials designed to promote safety and to reduce or minimize the likelihood of cutting and piercing injuries when the glazing materials are broken by human contact) as used for all building and architectural purposes.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25852 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—GlobalPlatform, Inc.

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), GlobalPlatform, Inc. (''GlobalPlatform'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recover of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: GlobalPlatform, Inc., Foster City, CA. The nature and scope of GlobalPlatform's standards development activities are: (1) to Define, adopt, and evolve appropriate standards and specifications, including but not limited to standards and specifications for smart cards, systems and devices; (2) to facilitate and promote the development of systems and software applications for multiple application smart cards infrastructure; (3) to develop other conventions needed to facilitate cross-industry application loading, such as card management, security, key management and personalization; and (4) to complement and enhance other smart card specifications, standards, and industry groups as appropriate.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25849 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Illuminating Engineering Society of North America

Notice is hereby given that, on September 7, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Illuminating Engineering Society of North America (''IESNA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Illuminating Engineering Society of North America, New York, NY. The nature and scope of IESNA's standards development activities are: The study of subjects relating to the science and art of illumination and the publication of reports and standards thereon for the improvement of the lighted environment.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25845 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Nuclear Materials Management

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et seq.* (''the Act''), The Institute of Nuclear Materials Management (''INMM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Institute of Nuclear Materials Management, Northbrook, IL. The nature and scope of INMM's standards development activities are: Standards for the packaging and transportation of fissile and radioactive materials, and non-nuclear hazardous materials including waste and mixed waste; but not including movement or handling during processing and manufacturing operations; and standards for protection, control, and accounting of special nuclear materials in all phases of the nuclear fuel cycle, including analytical procedures where necessary and special to this purpose, except that physical protection of special nuclear materials within a nuclear power plant is not included.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25858 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Imaging Industry Association, Inc.

Notice if hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Imaging Industry Association, Inc. (''I3A'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Imaging Industry Association, Inc., Harrison, NY. The nature and scope of I3A's standards development activities are: (a) To promote the standardization of imaging products and service and methods of testing or rating the performance thereof; (b) to sponsor, actively participate in, and support the creation of one or more imaging standards and/or protocols to enable manufacturers, developers, and providers of various devices, software and services to achieve interoperability; (c) to collect and disseminate information of value of manufacturers, sellers and consumers of imaging products, and otherwise to further the manufacturer, sale or use of imaging products and services; (d) to act as the industry voice, appearing before and cooperating with legislative committees, agencies, and government bodies in conjunction with matters affecting the imaging industry; (e) to drive adoption of standards and initiatives through a variety of promotional efforts, including but not limited to marketing activities, development of proof of concept/feasibility demonstrations, and pilot/prototype or testing projects; (f) to promote and encourage a wider understanding and appreciation of imaging, the imaging arts and a greater use of imaging products and services; (g) to further friendly and cordial relations among manufacturers, developers, and providers of imaging products and services, and between such vendors and the sellers and consumers of their products; and (h) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25857 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursant to the National Cooperative Research and Production Act of 1993—Joint Venture Under ATP Award No. 70NANB4H3044

Notice is hereby given that, on October 22, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Joint Venture under ATP Award No. 70NANB4H3044 (''ATP JV'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties are Sarnoff Corporation, Princeton, NJ; Autoliv ASP, Inc., Auburn Hills, MI; and Ford Motor Company, Dearborn, MI. The general area of ATP JV's planned activity is active automotive safety through a novel fusion of vision and radar sensors that will identify and evaluate impending collisions in time to take advance action.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25868 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Material Handling Industry

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Material Handling Industry (''MHI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Material Handling Industry, Charlotte, NC. The nature and scope of MHI's standards development activities are: ANSI accredited standards

developer for various types of material handling equipment.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25862 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Council for Prescription Drug Programs

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Council for Prescription Drug Programs (''NCPDP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Council for Prescription Drug Programs, Scottsdale, AZ. The nature and scope of NCPDP's standards development activities are: Creating and promoting standards for the transfer for data to and from the pharmacy services sector of the healthcare industry.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25863 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Electrical Manufacturers Association

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Electrical Manufacturers Association (''NEMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Electrical Manufacturers Association, Rosslyn, VA. The nature and scope of NEMA's standards development activities are; NEMA administers and publishes standards that are related to a spectrum of electrical products produced globally, including but not limited to, industrial automation equipment including industrial controls and systems, motors, and power sources for welding; lighting systems including lamps, lighting controls, lamp ballasts, and lighting fixtures (luminaries); consumer products including dry batteries, smoke and fire detectors, and residential controls; building construction products including circuit breakers, receptacles, conduit, outlet boxes, switches, surge suppressors, insulating materials, and wire and cable; equipment for the electric utility industry; and medical imaging equipment including CT, Ultrasound, X-ray, and MRI. NEMA also serves as Secretariat for DICOM (Digital Communications in Medicine) Standards Committee; certain ANSI Accredited Standards Committees (''ASC''); and certain technical committees of the International Electrotechnical Commission (IEC). NEMA also publishes the standards developed by itself and by DICOM and ASC.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25842 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antritrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fluid Power Association: Cooperative Network for Research in Motion Control Through Fluid Power

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fluid Power Association: Cooperative Network for Research in Motion Control Through Fluid Power (''CNR'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identifies of the parties are National Fluid Power Association, Milwaukee, WI; Ace Controls, Inc., Farmington Hills, MI; Balluff, Inc., Florence, KY; Bimba Manufacturing Company, Monee, IL; Enfield Technologies, Trumbull, CT; Bosch Rexroth Corporation, Hoffman Estates, IL; Caterpillar Inc., Joliet, IL; Eaton Corporation, Eden Prairie, MN; Festo Corporation, Hauppauge, NY; Gates Corporation, Denver, CO; Hoerbiger-Origa Corporation, Glendale Heights, IL; HUSCO International, Inc., Waukesha, WI; Moog Inc., East Aurora, NY; Parker Hannifin Corporation, Cleveland, OH; Ross Controls, Troy, MI; Quality Control Corporation, Chicago, IL; Sauer-Danfoss, Ames, IA; Georgia Institute of Technology, Atlanta, GA; Milwaukee School of Engineering, Milwaukee, WI; and University of Minnesota, Minneapolis, MN. The nature and objectives of CNR's planned activities are to strengthen ties between researchers and the fluid power industry, stimulate interest in fluid power at research universities, attract highly qualified students to the study of fluid power, to provide and make accessible quality university research and development on motion control issues facing the fluid power industry as a whole, and to advance the promotion of, provide support for, and encourage participation in, research, development, and education relevant to the fluid power industry in general. CNR's initial research projects include the

development of: (i) A numerical model (and associated computer program) of a generalized reciprocating hydraulic rod seal, including mixed lubrication and surface roughness; (ii) a unique and complete integration of fabrication and design optimization leading to the creation of hydraulic or pneumatic components that derive their light weight and high stiffness from engineered small-scale internal structures; and (iii) integrated PTQ (pressure, temperature and flow rate) sensing for fluid power systems.

These three projects will be conducted by the Georgia Institute of Technology, Milwaukee School of Engineering, and the University of Minnesota respectively.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antritrust Division.*

[FR Doc. 04–25851 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Oasis Open

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OASIS Open (''OASIS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: OASIS Open, Billerica, MA. The nature and scope of OASIS' standards development activities are: To advance the development, adoption, application, and implementation of structured information standards. The consortium produces standards for Web services, security, e-business, law and government, supply chain, computing resource management, document-centric applications, XML processing, conformance and interoperability, and industry domains.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25832 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Geospatial Consortium, Inc.

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Geospatial Consortium, Inc. (''OGC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Open Geospatial Consortium, Inc., Wayland, MA. The nature and scope of OGC's standards development activities are: (1) To facilitate a formal, member-driven, consensus process to promote the development and use of advanced open systems standards and techniques for the definition and implementation of the National and Global Information Infrastructures, with an initial emphasis on the geosciences and related imaging and distributed multimedia technologies; (2) to enable interoperability of spatial components and services from different vendors by engaging in outreach, education, recruitment, and adoption activities focused on helping enterprises of all kinds understand that enterprise data can be leveraged with spatial capabilities to extend the use of corporate information throughout the enterprise; (3) to ensure that standards adopted by OGC become widely used globally; (4) to operate subsidiaries in accordance with the strategic direction of OGC, including subsidiaries that represent regionally-based OGC members in regional membership organizations and associations with a similar vision and mission to that of OGC, including local, sub-national and national agencies and associations of private persons and organizations; (5) to provide a regional and global industry forum to promote co-operative business development initiatives related to distributed geoprocessing; (6) to provide government and other policymaking bodies with neutral, third party reports and analyses explaining how interoperatibility, as enabled by OGC's work, can improve government and other enterprise operations and stimulate market development, adjusting to meet regional needs and circumstances; (7) to liaise and cooperate with other standards development and setting organizations and bodies world-wide that operate with missions and strategic directions similar to those of OGC, including organizations that address worldwide research requirements for interoperable geospatial technologies and geographic data, including activities where there is high social value associated with open networks providing access to information services, such as disaster preparedness and response, e-Government, sustainable development, research, education, and citizen engagement; and (8) to promote and to obtain funding to meet the need for education, promotion, and research related to interoperable geospatial technologies and data in the foregoing areas. OGC may also develop and maintain standards and specifications in the same areas, perform certification of technology compliant with such standards and specification; and perform other related research and experimentation in, and implementation of, open systems standards and technology.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25833 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Outdoor Power Equipment Institute

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Outdoor Power Equipment Institute

(''OPEI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Outdoor Power Equipment Institute, Alexandria, VA. The nature and scope of OPEI's standards development activities are: The development of voluntary standards for wheeled and handheld outdoor power equipment including, but not limited to: Walk-behind mowers; ride-on machines with mowers; snow throwers; commercial turf care equipment; powered shredder/grinders and shredded/baggers; walk-behind powered rotary tillers; hand-held and backpack, gasoline-engine-powered blowers; grass trimmers; and brush cutters.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25855 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 03–03

Notice is hereby given that, on November 2, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum Project No. 03–03 (''PERF; Project No. 03–03'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: ChevronTexaco Energy Technology Company, Richmond, CA; ExxonMobil Production Company, Houston, TX; Total E&P Services, Courbevoie, FRANCE; Halliburton Energy Services Group, Houston, TX; and Statoil ASA, Stavanger, NORWAY. The general area of PERF Project No. 03–03's planned activity is to generate a set of model technical standards that may be incorporated into regulations (framework) based on a risk approach to protect health and the environment at E&P operations. The activities to be carried out include the development of a framework from which risk based technical standards can be derived. Participation in this joint venture will remain open to qualified persons and organizations, and the participants intend to file additional written notifications disclosing all changes in membership.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25836 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2002–13

Notice is hereby given that, on October 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum Project No. 2002–13 (''PERF Project No. 2002–13'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: ExxonMobil Research and Engineering Company, Fairfax, VA; ConocoPhillips Company, Houston, TX; and Unocal, Sugarland, TX. The nature and objectives of the venture are to create a forum for sharing information regarding the industry's water management practices. This may include water reuse solutions in practice, rejected reuse solutions, case studies in the area of water reuse/minimization/optimization, produced water reclamation, wastewater recovery, and tools used to develop these solutions. The program will be carried out through compiling, presenting and exchanging of individual research projects, including identification of methods to improve water management for industry.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25853 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Software Defined Radio Form

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Software Defined Radio Forum (''SDR Forum'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Software Defined Radio Forum, Denver, CO. The nature and scope of SDR Forum's standards development activities are: (a) To promote the development and application of a compatible modular technology base for software-defined information transfer systems and devices; (b) to comprise an international group of equipment vendors, subsystem vendors, software developers, technology developers, communication service providers, research and engineering organizations, government users, regulators and other interested parties who share the common business interest of supporting the advancement of a compatible modular technology base for multimode multiband information transfer systems and devices; (c) to promote the development and application of such technology worldwide; (d) to promote national and international compatibility

and interoperability for such technology; (e) to develop and/or promulgate uniform standards for such technology; and (f) to conduct cooperative research, perform tests and prepare and disseminate informational materials relating to such technology.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25835 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: The Consortium for NASGRO Development and Support

Notice is hereby given that, on October 18, 2004, pursuant to section 6(a) of the nat8ional Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: The Consortium for NASGRO Development and Support has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership and project status of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the period of performance has been extended to May 31, 2007. Additionally, Honeywell International, Inc., Phoenix, AZ, has been added as a party to this venture; and Agusta s.p.a., Costina Costa de Samarate, Italy; Korea Aerospace Industries, Ltd., Kyungnam, Korea; and Mitsubishi Heavy Industry, Ltd., Nagoya, Japan are no longer active participants.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute: The Consortium for NASGRO Development and Support intends to file additional written notification disclosing all changes in membership.

On October 3, 2001, Southwest Research Institute: the Consortium for NASGRO Development and Support filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2002 (67 FR 2910).

The last notification was filed with the Department on August 7, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 8, 2003 (68 FR 52959).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25861 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Steel Joist Institute

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Steel Joist Institute (''SJI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Steel Joist Institute, Myrtle Beach, SC. The nature and scope of SJI's standards development activities are: Continually develop standard specifications for the steel joist industry through the American National Standards Institute through consensus balloting.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25864 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Steel Tank Institute

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Steel Tank Institute (''STI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Steel Tank Institute, Lake Zurich, IL. The nature and scope of STI's standards development activities are: To develop, promulgate and publish voluntary consensus standards, recommended practices and installation guidelines for the manufacture, installation, testing and inspection of underground and aboveground shop-fabricated steel storage tanks. STI standards ensure that underground and aboveground shop-fabricated steel storage tanks meet standards for safety and reliability so that users and other members of the public are assured that such tanks are properly manufactured, installed, tested and inspected. STI's voluntary consensus standards are developed by STI members and other interested parties who wish to participate in the process.

Additional information concerning STI can be obtained from Wayne Geyer, Executive Director, STI, at (847) 438–8265 (ext. 234).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25847 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Unified Abrasive Manufacturers Association

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Unified Abrasive Manufacturers Association (''UAMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Unified Abrasive Manufacturers Association, Cleveland, OH. The nature and scope of UAMA's standards development activities are: UAMA acts as secretariat for two ANSI accredited standards committees which develop (1) specifications for safety in the use of bonded, coated and loose abrasives, excluding natural sandstones, including safety requirements for abrasive products, abrasive machines and accessories, and requirements for the proper storage, handling and mounting of abrasive products; and (2) identification and dimensional standards and standard test methods for bonded, coated and loose abrasive in the natural and manufactured categories.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25859 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Video Electronics Standards Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Video Electronics Standards Association (''VESA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Video Electronics Standards Association, Milpitas, CA. The nature and scope of VESA's standards development activities are: To facilitate and promote personal computer graphics through improved graphics standards for the benefit of the end user; to support and set industry-wide interface standards for the personal computer, workstation and computing environments; and to promote and develop timely, relevant, open standards for the display and display interface industry, ensuring interoperability and encouraging innovation and market growth.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25843 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Window & Door Manufacturers Association

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Window & Door Manufacturers Association (''WDMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principle place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Window & Door Manufacturers Association, Des Plaines, IL. The nature and scope of WDMA's standards development activities are: WDMA develops voluntary consensus industry standards pertaining to the design and manufacture of products, and the components of the products, of the window, skylight and door industry. WDMA is currently recognized by the American National Standards Institute (ANSI) as an Accredited Standards Developing Organization (SDO).

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 04–25870 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket Nos. 01–12; 01–13]**

### Indace, Inc., c/o Seegott, Inc.; Malladi, Inc.; Suspension of Shipments

On January 25, 2001, the then-Administrator of the Drug Enforcement Administration (DEA) issued an Order to Suspend Shipment to Indace, Inc., c/o Seegot, Inc. (Indace) of Elgin, Illinois, notifying it that pursuant to 21 U.S.C. 971, DEA had ordered the suspension of a shipment of 3,000 kilograms of ephedrine hydrochloride, a listed chemical, from India into the United States. Indace indicated in its request for importation that the listed chemical was intended for further shipment to PDK Laboratories, Inc. (PDK) of Hauppage, New York. The Order to Suspend Shipment stated that DEA concluded that the listed chemical may be diverted to the clandestine manufacture of a controlled substance based upon the appearance of products manufactured from prior imports of ephedrine and pseudoephedrine destined for PDK at illicit criminal sites, including methamphetamine clandestine laboratories and dumpsites throughout the United States.

On January 26, 2001, the then-Administrator of DEA issued an Order to Suspend Shipment to Malladi, Inc. (Malladi) of Edison, New Jersey, notifying it that pursuant to 21 U.S.C. 971, DEA had ordered the suspension of a shipment of 3,000 kilograms of ephedrine hydrochloride, a listed chemical, from India into the United States. Malladi also had indicated in its request for importation that the listed chemical was intended for further shipment of PDK and the Order to Suspend Shipment similarly stated that DEA had concluded the listed chemical may be diverted to the clandestine manufacture of a controlled substance, based upon the appearance of products manufactured from prior imports of ephedrine and pseudoephedrine destined for PDK at illicit criminal sites, including methamphetamine clandestine laboratories and dumpsites throughout the United States.

On February 8, 2001, PDK requested a hearing in both matters, asserting standing as a Respondent pursuant to the ruling in *PDK Laboratories, Inc.* v. *Reno,* et al., 134 F.Supp.2d 24 (D.D.C. 2001). DEA complied with the District Court's ruling and both matters were docketed before Administrative Law Judge (ALJ) Gail A. Randall.

On March 8, 2001, the ALJ issued an order consolidating both matters for hearing purposes. Neither Indace nor Malladi requested a hearing in these matters. Following prehearing procedures, a hearing was held in Arlington, Virginia, on March 26–30, April 5–6, April 11–13 and April 16–17, 2001. At the hearing, PDK and the Government called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law, and argument.

On April 5, 2002, the ALJ issued a consolidated Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter ''Recommendation'' or ''Opinion and Recommended Ruling'') recommending that both suspensions be lifted and the exporters allowed to complete the shipments. On April 25, 2002, the Government filed Exceptions to the ALJ's Recommendation. In response, on May 21, 2002, PDK filed its Response to the Exceptions Filed by the Government. Subsequently, on June 5, 2002, the ALJ transmitted the record of these proceedings to the Deputy Administrator for final action pursuant to 21 CFR 1313.57.

On December 13, 2002, pursuant to 21 CFR 1313.57, then-Deputy Administrator John B. Brown III, issued his final order regarding the Indace and Malladi suspensions of shipments. The then-Deputy Administrator rejected the Opinion and Recommended Ruling of the Administrative Law Judge. That final order was subsequently published in the **Federal Register** on December 19, 2002. *See* Indace, Inc. c/o Segott, Inc.; Malladi, Inc. (Indace/Malladi), 67 FR 77805 (2002).

In the ALJ's Opinion and Recommended Ruling, she interpreted the terms''listed chemical'' and ''the chemical,'' as set forth in 21 U.S.C. 971(c)(1) (hereafter ''971''), to be limited to the actual material to be imported, in this case, bulk ephedrine. In the event the Deputy Administrator disagreed with that interpretation, the ALJ made alternative findings and recommendations that the Government had not satisfied the ''may be diverted'' portion of 971. The then-Deputy Administrator rejected the ALJ's interpretation of 971, finding:

> The application of 971 is not limited to the imported form of the listed chemical. The Deputy Administrator concludes that the provisions of 971 apply to regulated transactions involving listed chemicals regardless of imported or exported form. *i.e.,* bulk of finished products. The Deputy Administrator further concludes the provisions of 971 apply to finished products subsequently manufactured from bulk imported list chemicals.

*Id.,* 67 FR at 77806.

The then-Deputy Administrator agreed with the ALJ that the evidence did not show, by a preponderance of the evidence, a violation by PDK of its obligation to report suspicious sales under 21 CFR 1310.05(a)(1) in connection with certain mail order sales of 25 mg. ephedrine products which occurred in 1995 and 1996. The then-Deputy Administrator further noted there had been testimony presented concerning ''traditional'' versus ''non-traditional'' markets for List I chemical products. However, in accord with his previous holding on this subject, he found the probative weight of the evidence introduced in this case to be minimal, without ''some form of further extrinsic evidence to support these arguments.'' Indace/Malladi, *supra,* 67 FR at 77808, quoting Mediplas Innovations, (Mediplas) 67 FR 41256, 41264 (2002).

However, relying primarily on the issuance of a series of Warning Letters by DEA between 1999 and 2001, advising PDK that its ephedrine and pseudoephedrine products had been found at illicit methamphetamine manufacturing sites, the then-Deputy Administrator concluded sufficient evidence supported DEA's contention that the chemicals may be diverted. Secondarily, the then-Deputy Administrator relied on PDK's failure to report as exports, pursuant to 21 CFR 1313.21(a), four shipments of ephedrine sold to Sun Labs of Canada between 1994 and 1995, which had been delivered within the United States.

In making his ruling the then-Deputy Administrator applied the ''totality of the circumstances'' test used in Mediplas, stating:

> The Deputy Administrator notes the record is replete with PDK's contentions that it has worked hard to evaluate its activities and to cooperate with DEA in stemming diversion. However, the record shows that diversion of PDK products has continued to occur, and that, based upon the Warning Letters received, PDK should have known its remedial actions were insufficient to stem the diversion of its List I chemical products. Moreover, the record shows evidence that PDK violated export regulations on at least four occasions by failing to file the required notifications of its shipments to Sun Labs. The totality of the circumstances therefore supports the Government's assertion that the list chemicals sought to be imported and distributed to PDK may be diverted and furthermore that the Suspension Orders were proper and should be sustained, Mediplas, 67 FR at 41,264. The fact that PDK products containing ephedrine and pseudoephedrine have been repeatedly found at the site of clandestine methamphetamine laboratories and dump sites is a significant indicator that these products may continue to be diverted to such illicit activities.
>
> * * * The Deputy Administrator finds that there was sufficient evidence at the time of the hearing to support DEA's contention that the chemicals may be diverted. Mediplas, 67 FR at 41260–41261 * * * Therefore, the Deputy Administrator concludes that the suspensions set forth in the January 25 and 26, 2001 Orders to Suspend Shipments of ephedrine hydrochloride issued to Indace and Malladi were justified.

Indace/Malladi, *supra,* 67 FR at 77809.

PDK filed a timely petition for review of the final order pursuant to 21 U.S.C. 877 with the United States Court of Appeals for the District of Columbia Circuit and on March 26, 2004, the Court issued its opinion in *PDK Laboratories Inc.* v. *U.S. Drug Enforcement Administration (PDK Labs),* 362 F.3d 786 (D.C. Cir. 2004). Consistent with the District Court's decision in *PDK Labs Inc.* v. *Reno, supra,* 134 F. Supp. at 31, the Court of Appeal concluded PDK had both prudential and Article III standing to challenge the suspension orders under the facts and circumstances of this cas. PDK Labs, *supra,* 363 F.3d at 791–794; *see also PDK Labs Inc.* v. *Ashcroft,* ____ *F.Supp.2d* ____, 2004 WL 1924930, 4 (D.D.C., decided August 27, 2004).

The Court of Appeal also ruled that the final order of December 13, 2002, should be set aside and remanded to DEA for a new final order. The entire Court concluded the then-Deputy Administrator had relied in significant part on PDK's failure to file export notifications regarding the New York deliveries of tablets containing ephedrine to Sun Labs of Canada. However, the final order failed to distinguish or explain its apparent departure from the position taken by the agency in Alfred Khalily, Inc. (Khalily), 64 FR 31289 (DEA June 10, 1999). PDK Labs, 363 F.3d at 798–799.

> In applying his 'totality of the circumstances' approach to determining whether the listed chemical may be diverted, the Deputy Administrator ruled that PDK had violated an export notification regulation when it made four deliveries of tablets containing ephedrine between 1994 and 1995 to Sun Labs of Canada in New York. 67 FR

at 77807–08. The Deputy Administrator did not explain how alleged export violations were relevant to determining whether PDK's finished products might be used in methamphetamine laboratories. In any event, the Deputy Administrator failed to distinguish, indeed did not mention, Alfred Khalily, Inc., 64 FR 31389 (DEA June 10, 1999), which held that a company selling List I chemicals to a foreign buyer but delivering the chemicals to the buyer in the United States 'was not responsible for filing any export documentation.' *Id.* at 31,293 n.2.

PDK Labs, 362 F.3d at 788.

In addition to this ground for remand, a majority of the Court also concluded that remand was necessary for DEA to interpret 971(c)(1)'s provision authorizing DEA to ''order the suspension of any importation * * * of a listed chemical on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance.'' *See PDK Labs,* v. *DEA*, 362 F.3d at 794–98. One judge issued a concurring opinion which, while agreeing remand was appropriate for the failure to distinguish Khalily, disagreed with the majority as to the need for DEA to provide further interpretation of section 971(c)(1). *Id.* at 799–810 (Roberts, J., conc.). However, the majority analyzed the crux of the case as follows:

> The main interpretive question in the case is whether, as the suspension orders assume, 'the chemical may be diverted' includes the prospect that PDK's ephedrine-containing pills in retail stores will be sold to, or shoplifted by, people who will then use the pills to produce methamphetamine [fn]. The Deputy Administrator concluded that the statute plainly meant what the suspension orders assumed. He reached this conclusion without mentioning any policy considerations or other means within the agency's expertise. Apparently for this reason, DEA neither invoked *Chevron* v. *NRDC,* U.S. 837, 843–45 (1984), nor asks us to give special deference to the Deputy Administrator's judgment about the meaning of the provision.

PDK Labs, *supra,* 362 F.3d at 794.

The majority viewed the then-Deputy Administrator's final order as premised on an erroneous belief that the statute was ''clear'' and 971(c)(1)'s meaning ''plain.'' *Id.*, at 794–95. It held as follows:

> We do not agree that the language of § 971(c)(1) *plainly* covers the diversion of finished products, or drug products. That a statute is susceptible of one construction does not render its meaning plain if it is also susceptible of another plausible construction, as we believe this statute is. Section 971(c)(1) deals with importation (and exportation) of listed chemicals. It does not regulate what a drug manufacturer does with the chemical after receiving it; other sections of the [Controlled Substances Act, as amended] control that subject. When § 971(c)(1) states that DEA may stop the importation if 'the chemical may be diverted to the clandestine manufacture of a controlled substance,' one might ask: 'Diverted from what?' In context, a reading as plausible as the Deputy Administrator's is that Congress meant only to cover diversions during importation. On this view, § 971(c)(1) would authorize suspension orders only if the imported chemical might not reach its intended destination—the legitimate, domestic manufacturer.

PDK Labs, *supra,* 362 F.3d at 796–97 (italics in original).

The majority further concluded,

> In short, we do not agree that the meaning of § 971(c)(1) is as plain as it says it is. It may be that here, as in other cases, the strict dichotomy between clarity and ambiguity is artificial, that what we have here is a continuum, a probability of meaning. In precisely those kinds of cases, it is incumbent upon the agency not to rest simply on its parsing of the statutory language. It must bring its experience and expertise to bear in light of competing interests at stake. See *Chevron* v. *NRDC,* 467 U.S. at 865–66, 104 S. Ct. at 2792–93. But it has not done so here and at this stage it is not for the court 'to choose between competing meanings.' [Citations].

PDK Labs, *supra,* 362 F.3d at 797–98.

With this guidance in mind, the Deputy Administrator has considered the record in its entirety, along with the Court of Appeal's ruling and, pursuant to 21 CFR 1313.57, hereby issues her final order regarding the Indace and Malladi suspension of shipments, based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator is issuing one final order regarding both suspension cases since the same findings of fact and conclusions of law apply to both suspensions. Except as hereinafter noted, the Deputy Administrator rejects, in its entirety, the Opinion and Recommended Ruling of the Administrative Law Judge. Based upon her review of the record in this matter, including all submissions of both parties, and exceptions as filed, the Deputy Administrator adopts such findings of fact and conclusions of law as hereinafter follow.

The Deputy Administrator finds that both Indace and Malladi are registered with DEA as importers of listed chemicals. Both importers were advised in the Orders to Suspend Shipment of their right to request a hearing. Neither importer chose to do so. Furthermore, the record reflects that the ALJ gave Indace an opportunity to participate in prehearing matters, but Indace did not respond. Accordingly the Deputy Administrator concludes that both Indace and Malladi have waived their right to a hearing pursuant to 21 CFR 1313.54.

It is now the law of the case that in reference to this proceeding, PDK is ''a regulated person to whom an order applies under 21 U.S.C. 971(c)(2) with respect to the suspension of List I chemicals to be imported on PDK's behalf.'' *PDK Laboratories Inc.* v. *Reno,* et al., *supra,* 134 F.Supp. at 31; PDK Labs, *supra,* 362 F.3d at 792–95. Accordingly, the District Court and the Court of Appeal have created a rule for this case.[1]

On January 25 and 26, 2001, DEA issued the Orders to Suspend Shipment to Indace and Malladi which are the subject of these proceedings. The Orders asserted as a basis for suspension that the ephedrine to be imported may be diverted to the illicit production of a controlled substance. They recited that DEA investigations revealed that products produced from prior imports of ephedrine and pseudoephedrine destined for PDK had appeared at clandestine methamphetamine laboratories in the United States. The Orders also indicated that traffickers utilize ephedrine and pseudoephedrine in the illicit production of methamphetamine, that PDK manufactures and distributes over-the-counter drug products containing the listed chemicals pseudoephedrine and ephedrine, that these products are distributed in strength, quantity and packaging unlike the traditional market (referred to by DEA as ''gray market'' products), and that these products are generally distributed and sold through non-traditional retail outlets. The Orders to Suspend Shipment also indicated that DEA data regarding clandestine laboratory seizures noted that gray market products are predominantly encountered in clandestine methamphetamine laboratories.

The issue before the Deputy Administrator is whether or not the record as a whole establishes by a preponderance of the evidence that DEA should suspend the two shipments of ephedrine hydrochloride destined to be shipped from India to the United States, pursuant to 21 U.S.C. 971(c)(1) and 21 CFR 1313.41(a).

[1] However, as the Court of Appeal indicated, ''in holding that PDK has prudential standing, we have avoided placing a judicial interpretation on § 971(c)(2), the hearing provision.'' PDK Labs, *supra,* 362 F.3d at 794. The Deputy Administrator therefore declines to adopt a rule as DEA policy that a party in PDK's position (*i.e.,* a wholesale distributor/manufacturer or a downstream customer of such an entity), is entitled to a hearing under 21 U.S.C. 971(c)(2) as a ''regulated person to whom an order applies under paragraph (1)'' of that subdivision.

There is no evidence that the shipments of bulk ephedrine hydrochloride would be diverted before reaching PDK, the intended recipient within the United States. Thus, if the ALJ's interpretation of the terms ''listed chemical'' and ''the chemical'' as set forth in 971(c)(1) was correct, the suspensions could not be sustained. However, the Deputy Administrator rejects the ALJ's interpretation of these critical terms and concludes they encompass more than just the imported or exported form of the listed chemical, in this case bulk ephedrine hydrochloride. Instead, the Deputy Administrator finds the applicable provisions of 971 apply to regulated transactions involving listed chemicals, regardless of their imported or exported form, *i.e.*, bulk or finished products. The Deputy Administrator further concludes the terms at issue also apply to finished products subsequently manufactured from bulk imported/exported list chemicals.

The Deputy Administrator believes that the term ''listed chemical,'' as used in 971(c)(1) should be construed broadly in light of that term's use in other parts of the same statute, which was enacted by Congress in 1988. In the previous final order, the then-Deputy Administrator cited the Ninth Court of Appeal's decision in *United States* v. *Daas (Dass)*, 198 F.3d 1167 (9th Cir. 1999). *See*, Indace/Malladi, 67 FR at 77806. In that case, the defendant, who had been convicted under then-21 U.S.C. 841(d)(2)[2] for distributing a listed chemical, argued the evidence was insufficient to support his conviction because that statute, which was enacted at the same time as 971(c)(1), only criminalized the distribution of pure ephedrine or pseudoephedrine, not a chemical mixture containing these chemicals.

The Ninth Circuit rejected that argument, holding that ''§ 841(d)(2) encompasses such mixtures as Mini Thins and Pseudo Thins.'' Dass, 198 F.3d at 1174. In particular, the Ninth Circuit noted that the ephedrine and pseudoephedrine in Mini Thins and Pseudo Thins ''retain a separate existence,'' (quoting *Chapman* v. *United States*, 500 U.S. 453, 461 (1991) and, therefore, that ''[t]he ephedrine and pseudoephedrine in Mini Thins and Pseudo Thins are plainly 'listed chemicals' within the meaning of § 841(d)(2).'' *Id.*, at 1175.[3]

For clarification, while Daas referred to the ''plain'' meaning of the phrase in the criminal statute, the Deputy Administrator does not view Dass as *mandating* the adopted interpretation of 971(c)(1). However, as noted by the majority in PDK Labs, ''There is logic in the Ninth Circuit's reasoning, and in the Deputy Administrator's reliance on the decision. When Congress uses the same word in different parts of a statute, it usually means the same thing. *See Sullivan* v. *Stroop*, 496 U.S. 478, 484 (1990); *Energy Research Found* v. *Defense Nuclear Safety Bd.*, 917 F.2d 581, 583 (D.C. Cir. 1990).'' PDK Labs, 362 F.3d at 796.

However, the majority went on to note that logic is only one component of statutory interpretation. The words of the statute should be ''read in context, the statute's place in 'the overall scheme' should be considered, and the problem Congress sought to solve should be taken into account [Citations].'' PDK Labs, 362 F.3d at 797.

The Deputy Administrator finds that based upon the evidence in the record, the listed chemicals ephedrine and pseudoephedrine are marketed in prescription and over-the-counter drug products which have legitimate therapeutic uses as a bronchodilator and nasal decongestant, respectively.

The Deputy Administrator also finds that over the past decades, DEA has been engaged in enforcement and regulatory activity to control the large-scale diversion of chemicals, including ephedrine and pseudoephedrine, into the illicit manufacture of controlled substances. The controlled substance methamphetamine is easily produced in clandestine laboratories using either pseudoephedrine or ephedrine. The process of manufacturing methamphetamine is easily accomplished with minimal equipment and readily available chemical supplies.

The Controlled Substances Act has always prohibited the illicit (*i.e.*, without a DEA registration) manufacture of controlled substances. The earliest illicit methamphetamine laboratories used the freely available chemical phenyl-2-propanone, also known as phenylacetone or P2P, to produce methamphetamine, until that substance was itself scheduled as a controlled substance. In the 1980's methamphetamine laboratories increasingly began to switch to an ephedrine process. The Chemical Diversion and Trafficking Act of 1988 (CDTA), Pub. L. 100–690, established the basic scheme of chemical regulation and imposed reporting and record keeping and import/export notification requirements on certain regulated transactions involving chemicals, including bulk ephedrine. However, at the time, listed chemicals contained in drug products were exempted from the reporting and record keeping provisions of the CDTA.

In response to these controls, illicit methamphetamine laboratories began to switch to targeted ''single entity'' ephedrine as a raw material. The Domestic Chemical Diversion Control Act of 1993 (DCDCA), Pub. L. 103–200, was then crafted to close the ephedrine ''loophole'' by removing the exemption for ''single entity'' ephedrine products, and lowering its sales threshold. In addition, the DCDCA initiated a registration requirement for handlers of List I chemicals.

Subsequently, illicit laboratories shifted to pseudoephedrine and combination ephedrine drug products as sources of raw material, prompting the passage of the Comprehensive Methamphetamine Control Act of 1996 (MCA), Pub. L. 104–237, to establish additional controls and quantity thresholds for reporting transactions regarding listed chemicals. The MCA also established a Suspicious Orders Task Force, in part to assist in alerting the chemical industry to the many devices used by individuals who seek to divert large quantities of listed chemicals and listed chemical products into the illicit manufacture of controlled substances.

Thus, there has been a series of legislative enactments intended to address the problems of illicit drugs, including methamphetamine. As illicit manufacturers altered methods of production and choices of precursor chemicals, Congress enacted legislation intended in significant part to brunt the efforts of criminals engaged in operating clandestine methamphetamine laboratories and to thwart or impede their obtaining the precursor chemicals required to manufacture controlled substances.

The Deputy Administrator finds nothing in the legislative history of these enactments compels the narrow interpretation of 971(c)(1) adopted by the ALJ in her Opinion and Recommended Ruling. Indeed, that history suggests Congress was very much concerned with the diversion of finished drug products containing ephedrine. *See* H.R. Rep. No. 103–

[2] Now 21 U.S.C. 841(c)(2).

[3] The Mini-Thin ephedrine based product involved in Daas, had been obtained by the defendant from Body Dynamics Incorporated (BDI) and sold to the All-Rite Market of Marysville, California between early 1996 and early 1997. Daas, *supra*, 198 F.3d at 1171–72. During this period, PDK was manufacturing the Mini-Thin products and distributing it exclusively through BDI. In 1998, after DEA executed a Federal search warrant on BDI and sent a Warning Letter to PDK concerning BDI labeled products being found at illicit sites, PDK terminated its contract with BDI.

379(I), at 6 (1993), reprinted in 1993 U.S.C.C.A.N. 2983 [''This provision removes the exemption * * * for drugs containing ephedrine * * * because these products are being diverted in significant quantities for the illicit manufacture of methamphetamine''). As discussed in the initial final order, when the then-Acting Deputy Administrator made a report to the House of Representatives Committee considering the DCDCA, it indicated the legislation was intended, part, to close a ''loophole'' for those who divert ephedrine drug products. *Id.*, at 5, 8 (1993).

As noted by the concurring opinion in PDK Labs, the DEA Acting Administrator's report to the House explained that ''the so-called 'legal drug exemption' which currently exempts drug products approved for marketing under the Food, Drug and Cosmetic Act from the regulatory provisions of our chemical control law had become a 'loophole' exploited by clandestine laboratory operators. H.R. Rep. No. 103–379, at 8. It is that loophole that the DCDCA and CMCA revoked for drugs containing ephedrine, see 21 U.S.C. 802(39)(A)(iv)(I)(aa).'' PDK Labs, 362 F.3d at 803 (Roberts, J., conc.) (internal quotation marks omitted).

However, the majority in PDK Labs observed that the 1993 House Report came out five years after the 1988 enactment of 971(c)(1), that the DCDCA did not specifically amend section 971 and the ''loophole'' being closed concerned record keeping and reporting requirements. PDK Labs, 362 F.3d at 794–95.

Nevertheless, the Deputy Administrator views the totality of these progressive enactments as part of an overall continuum of Congress' intent to provide DEA the regulatory means to monitor the domestic production, manufacture and distribution of List I chemicals and prevent their illicit use in manufacturing methamphetamine, including the ability to prevent the importation of bulk chemicals that will be manufactured into chemical products after arriving into the United States and then diverted throughout the country to thousands of clandestine laboratories.

The Deputy Administrator does not view the relevant enactments of Congress as expressing any clear intent that the term ''listed chemical,'' as used in 971(c)(1 ), was limited to the particular chemical being imported or that DEA, as the agency entrusted with administering that provision, could not consider and take action to prevent the import of bulk listed chemicals which were to be manufactured into finished products and then, in the downstream course of commerce, diverted to the illicit production of methamphetamine.

If Congress wanted to make an express distinction between a bulk listed chemical and a finished product in section 971(c), it could have done so. For example, 21 U.S.C. 958(i) is the statute permitting registered manufacturers to challenge an application for a DEA registration that seeks to import bulk controlled substances. That provision explicitly states that it is limited to bulk manufacturers. Congress could have done likewise, but it did not make such a distinction between bulk and finished form list chemicals when it crafted section 971.

The record reflects that once PDK receives its bulk ephedrine, it combines the ephedrine with the decongestant guaifenesin and binders to form a listed chemical product. Throughout this process, the chemical composition of the ephedrine is unaltered. Illicit methamphetamine manufacturers then purchase or steal the tablets and break the finished product down to its component parts. This, in effect, yields the same pure ephedrine that was imported for PDK. In this manner, the listed chemical itself—ephedrine—is diverted to methamphetamine manufacturing. As the concurring opinion described the process in PDK Labs,

> At the time of its 'diversion,' the ephedrine extracted from PDK Mini-Two Way Action is just as much a listed chemical as when it was transported across the high seas in bulk form. Thus, at least insofar as a listed chemical is readily extractable from its finished drug product, the text of section 971(c) treats transactions (including a 'diversion') in that drug as transactions in the listed chemical it contains.
>
> This interpretation comports with common sense. If a methamphetamine manufacturer steals, for the purpose of making methamphetamine, a bottle containing pure ephedrine, or pure ephedrine dissolved in water, or a bottle containing 50 ephedrine and 50 guaifenesin pills, we would not hear an argument that he did not divert a listed chemical because he also diverted a bottle, some water, or some guaifensin. The presence of packaging materials or other extraneous items does not vitiate the existence of the listed chemical. Here, a bottle of PDK Mini Two-Way Action contains pills each consisting of 25 mg of ephedrine and 200 mg of guaifensin and binders. For purposes of Section 971(c), the decongestant and the binders are extraneous materials, no more relevant to the analysis than the bottles and boxes in which the pills are packaged.

PDK Labs, 362 F.3d at 800–801 (Roberts, J., conc.).

The Deputy Administrator agrees with this analogy and finds that it comports with that of the Ninth Circuit in interpreting ''listed chemical'' for purposes of 21 U.S.C. 841(d)(2) (now (c)(2)), discussed earlier. *See United States* v. *Daas, supra*, 198 F.3d at 1174–75.

While Congress may not have been as concerned about the diversion of ephedrine-containing products when it enacted section 971 as it was in the years that followed, as noted in the concurring opinion, '' 'the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.' *PGA Tour, Inc.* v. *Martin*, 532 U.S. 661, 689 (2001) (internal quotation marks and citations omitted); accord Consumer Elecs. Ass'n, 347 F.3d [291] at 298.'' PDK Labs, 362 at 802–03.

Were the ALJ's strict interpretation of section 971(c)(1) given effect, as a policy matter it would also create an arbitrary dual standard. For example, if a listed chemical is imported in bulk form and if it is a chemical that is not or will not be converted to a drug product, then under 971(c)(1), that chemical may be suspended based upon its diversion during any time in its distribution flow, *i.e.*, from the initial importation downstream to the last retail handler. Under the ALJ's interpretation, however, the suspension statute would be of limited use for those bulk products, such as ephedrine, that could be finished into an over-the-counter drug product somewhere along the distribution chain. In other words, as a matter of law, based solely upon the ALJ's statutory interpretation, once the imported bulk ephedrine is converted into a drug product at some point in the distribution chain, it is no longer subject to being suspended pursuant to section 971(c).

Such an artificial distinction between over-the-counter drug products and other chemicals that will not be converted into any finished drug product is not tenable and is certainly inconsistent with the criminal penalty provisions of the law involving imports. For example, if DEA had facts to show that an importer had reasonable cause to believe that a listed chemical was to be imported, tableted, and distributed to a clandestine laboratory, then the importer would be subject to a lengthy term of imprisonment under 21 U.S.C. 960(d)(3). However, even if DEA knew those same facts, under the ALJ's standard, the import shipment could not be suspended.

For consideration only of the policy issues involved in interpreting 971(c)(1), as opposed to the sufficiency of the evidence to show that in *this* particular case the List I chemical ''may be

diverted,'' (inasmuch as no additional extrinsic evidence was introduced at the hearing regarding the gray market; *see* Mediplas, *supra,* 67 FR at 41264; Indace/Malladi, *supra,* 67 FR 77808), a series of cases decided after this matter was litigated and/or originally acted upon by the then-Deputy Administrator, illustrate the problems DEA, state regulators and law enforcement agencies throughout the country currently face as a result of the proliferation of clandestine laboratories—using precursor chemicals, obtained by theft or purchase of listed chemical products which have often been made from bulk chemicals imported into the United States and then distributed to convenience stores and gas stations as a part of the grey market.

*See, e.g.,* OTC Distribution Co., 68 FR 70538, 70539 (2003) (''Pseudoephedrine bulk powder is usually imported from China or India, tableted by DEA-registered manufacturers, distributed to various distributors, wholesalers and then to retail outlets. Of DEA's approximately 3,500 chemical registrants in 2000, over 3,100 were distributors. While illegal diversion can occur at any point in the distribution chain, it usually occurs after the manufacturer has sold its product to a distributor.''; *see also* Branex Incorporated, 69 FR 8682, 8690–93 (2004); Xtreme Enterprises, Inc., 67 FR 76195, 76196–97 (2002); Sinbad Distributing, 67 FR 10232, 10233–34 (2002). For additional background as to the diversion of List I over-the-counter chemical products after distribution to retail establishments as it bears on DEA's interpretation of 971(c)(1), *see also* DEA's Proposed Rules on Security Requirements for Handlers of Pseudoephedrine, Ephedrine, and Phenylpropanolamine, 69 FR 45616, 45617 (2004).

In sum, DEA and other Federal, State and local law enforcement agencies are faced with a growing problem of listed chemicals being imported into the United States in bulk form, which are then converted into List I chemical products, distributed to the grey market and diverted to illicit production of methamphetamine. Section 971(c)(1) is considered by DEA to be a significant component of the regulatory arsenal given it by Congress to combat this immense and growing public problem.

If the language of a law is ambiguous and there exists two competing reasonable interpretations and the agency interpretation, which best suits its goals, is consistent with the intent of Congress, that interpretation should be granted great deference. Such a construct would be especially true here, because section 971 (similar to many other statutes under the Controlled Substances Act) is remedial and since it was passed to protect the public interest, it should be construed broadly to effectuate its purpose. *See Jefferson County Pharmaceutical Association* v. *Abbott Laboratories* et al., 460 U.S. 150, 159 (1983) (holding that the Robinson-Patman Act had to be construed liberally and broadly to effectuate its purpose, which was to prevent anti-trust price discrimination); *Federal Trade Commission* v. *Mandel Brothers, Inc.,* 359 U.S. 385, 389 (1959) (holding that the Federal Trade Commission's interpretation of a retail labeling act would be upheld because the legislation was remedial, *i.e.,* it was enacted to protect consumers).

The Deputy Administrator therefore concludes that the interpretation adopted in this final order is consistent with the words of the statute, its place in the overall drug enforcement legislative scheme and the problems Congress was attempting to address.

In adopting her limited interpretation of ''listed chemical'' under 971(c)(1), the ALJ cited three prior DEA cases in support of her position: Suspension of Shipment Cases,[4] 65 FR 51333 (2002); Yi Heng Enterprises Dev. Co., 64 FR 2234 (1999); and Neil Laboratories, Inc., 64 FR 30063 (1999). The Deputy Administrator finds these cases readily distinguishable, as they did not involve or discuss the question of chemical identity, which is at issue here. Instead, each of these cases dealt with other listed chemicals which were distributed in their original state and, unlike the PDK-bound imports, were not destined to be subjected to the introduction of fillers and coatings in order to transform them into over-the-counter drug products after importation and then placed into commerce.

While remanding, the Court of Appeal implicitly suggested that the then-Deputy Administrator's interpretation of 971(c)(1)'s ''listed chemical'' was permissible. However, in the majority's view it was arrived at under the erroneous impression that the statute ''plainly meant what the suspending orders assumed.'' PDK Labs, 362 F.3d at 794.

Disavowed of that view by the majority's guidance, based on the foregoing, the Deputy Administrator re-adopts the interpretation given by her predecessor to 971(c)(1)'s terms ''listed chemical'' and ''the chemical'' and holds they apply to regulated transactions involving listed chemicals regardless of imported or exported form, *i.e.,* bulk or finished products and that the provisions of 971 apply to finished products subsequently manufactured from bulk imported or exported listed chemicals.

The Deputy Administrator does not view this interpretation as managed by the ''plain language'' of the 971(c)(1). Instead, based on its experience and expertise, DEA concludes this is a reasonable interpretation which is consistent with the intent and language of the statute. It is also compatible with an in furtherance of the will of Congress in enacting the overall series of drug control laws serving to deter the illicit manufacturing, distribution and use of controlled substances and in furtherance of DEA's mission. Accordingly, should this final order be the subject of judicial scrutiny, it is requested that it be afforded appropriate deference. *See, Chevron* v. *NRDC, supra,* 467 U.S. at 865–66; PDK Labs, *supra,* 362 F.3d at 794.

The ALJ also disagreed with the Government's interpretation of 971(c), finding it would create a form of ''strick liability'' for the importers in this case. As discussed previously, although the suspension was directed against the importers, the party in interest in this proceeding is the manufacturer-customer of the importers. It is the conduct of that party, PDK, and its customers, and the fact that the product which it manufactured and distributed ended up in clandestine drug laboratories, that forms the basis of the Government's contention that the ephedrine ''may be diverted.''

The then-Deputy Administrator concluded in Mediplas, *supra,* 67 FR 41,256, published subsequent to the ALJ's recommendation in the instant case, that whether a regulated person foresaw or knew of diversion was not a determining factor as to whether the listed chemical ''may be diverted.'' While knowledge of a regulated person, or its party in interest customer, may be relevant in a totality of the circumstances analysis, the ultimate issue is whether the listed chemical being imported into the United States ''may be diverted'' and then, whether or not the Deputy Administrator should exercise her discretion to sustain the suspension of shipment.

The focus of the factual inquiry is the ultimate destination of the listed chemical, not the culpability of the regulated person. Indeed section 971(1), by its terms, makes no mention of a

[4] January 17, 1998, Shipment of 10,000 Kilograms of Potassium Permanganate, December 16, 1997 Shipment of 20,000 Kilograms of Potassium Permanganate and November 17, 1997, Shipment of 20,000 Kilograms of Potassium Permanganate; Suspension of Shipments (collectively referred to as Suspension of Shipment Cases).

showing of intent, recklessness, negligence, knowledge, or any type of *mens rea*. Rather the plain language of the provision focuses solely upon whether the chemical ''may be diverted.'' Any contention that the ''may be diverted'' standard should be interpreted to contain a culpability element, cannot be squared with the plain language of that provision. *See American Tobacco C.* v. *Patterson,* 456 U.S. 63, 68 (1982) (''As in all cases involving statutory construction, our starting point must be the language employed by Congress and we assume that the legislative purpose is expressed by the ordinary meaning of the words used.'' (internal quotations omitted); *United States* v. *Green Drugs,* 905 F.2d 694,697–98 (3rd Cir. 1990) (holding that strict liability may be imposed for civil violations of the recordkeeping provisions of the CSA because ''[o]ur starting point is, of course, the text of the statute itself, which plainly shows an absence of the scienter requirement for civil violations of the recordkeeping provisions.'').[5]

While Mediplas was published after the ALJ issued her Opinion and Recommendation, the argument that an importer and, by logical extension, PDK as its party in interest, must have some degree of responsibility for the diversion, had previously been rejected by DEA ion a transshipment case. In Yi Heng Enterprises Dev. Co., *supra,* 64 FR 2,234, a transshipper of potassium permanganate through a U.S. port argued it had committed no violations in the past when it sold listed chemical to customers in Colombia. Even though the record demonstrated the transshipper's customers had committed numerous violations with listed chemicals purchased from the transshipper, that company contended that it had no control, and thus, should not be responsible for the transgressions of its downstream customers. Yi Heng unequivocally rejected this argument holding, ''[t]he prior conduct of [the transshipper's] customers * * * is clearly relevant in determining whether the shipments may be diverted.'' *Id.,* at 2,235.

To the extent the ALJ here concluded the Government's interpretation of ''may be diverted'' represents a ''radical shift in policy'' that must be accomplished through rulemaking, as opposed to adjudication, the Deputy Administer disagrees. The statute's language on this point and its meaning are sufficiently clear. DEA need not issue an array of regulations to anticipate every situation where a List I chemical may be diverted and the importer/exporter is entitled to an ''agency hearing on the record in accordance with subchapter 5 of Title 5.'' 21 U.S.C. 971(c)(2). The statute clearly envisions permitting the agency to proceed by adjudication.

Further, the instant suspension orders entail no new standards. They simply require a determination of specific facts. Similarly, the Government's position cannot be characterized as a ''radical departure.'' To the contrary, it is consistent with prior rulings, particularly Yi Heng and Mediplas.[6]

Applying the interpretations of 971(c)(1) discussed above and the totality of the circumstances test applied in Mediplas and the initial action on this matter, the Deputy Administrator now determines whether evidence exists to support the suspensions, based upon a finding that the List I chemicals may be diverted.

The Deputy Administrator finds DEA initiated a program intended to inform listed chemical registrants of situations when their listed chemicals products were discovered at illicit clandestine laboratory sites. According to DEA, a Warning Letter program was developed to assist registrants in identifying products that had been diverted and so they could decide appropriate remedial action.

On March 19, 1998, DEA issued a Warning Letter to PDK indicating that, from April 2, 1997, through December 20, 1997, PDK List I chemical products were found in 51 sites in Oklahoma, Missouri, Arkansas, Alabama, Kansas, California, Texas, Tennessee, Ohio, Florida, Iowa, Michigan, South Dakota, Arizona, Utah and Colorado, all in connection with the clandestine manufacture of controlled substances.

For investigative reasons, DEA did not resume sending any Warning Letters to PDK until February 15, 2000, when it issued a Warning Letter indicating that during 1998–99, PDK's ''Max Brand Pseudo 60's,'' ''Mini Tabs,'' ''Max Alert Pseudo,'' ''Mini Pseudo,'' ''Mini Two Way'', ''Mini Two Way Action'' and ''Mini Thins'' products were found in approximately 49 sites in eleven states, all in connection with the clandestine manufacture of controlled substances.

On February 15, 2000, DEA issued a Warning Letter to PDK indicating that 500 bottles of PDK's ''Max Brand Mini-Tabs'' product were found on June 25, 1999, in connection with the clandestine manufacture of controlled substances.

On February 17, 2000, DEA issued a Warning Letter to PDK indicating that 48 bottles of PDK ''Mini Pseudo'' product were found on October 26, 1999, in Dooly County, Georgia; that 1564 bottles of PDK ''Mini Pseudo'' product were found on March 24, 1999, in San Bernardino County, in California; that 8 bottles of PDK ''Mini Two Way Action'' product were found on March 23, 1999, in Detroit, Michigan; that 12,931 bottles of PDK ''Max Brand Pseudo 60's'' product were found on February 18, 1999, in Chatsworth, California; and that 40 bottles of PDK ''Mini Pseudo'' product were found on February 12, 1999, in Seattle, Washington, all in connection with the clandestine manufacture of controlled substances.

On February 28, 2000, DEA issued a Warning Letter to PDK indicating that 96 bottles of PDK ''Max Brand Pseudo 60's'' product and 144 bottles of PDK ''Two Way Max Brand'' product were found on January 27,2000, in McCrory, Arkansas; and that 13 bottles of PDK ''Max Brand Pseudo 60's'' product were found on February 14, 2000, in Dallas, Texas, both in connection with the clandestine manufacture of controlled substances.

On June 26, 2000, DEA issued a Warning Letter to PDK indicating that 1 bottle of PDK ''Max Brand Pseudo 60's'' product was found on December 22, 1999, in San Dimas, California; and that 143 bottles of PDK ''Max Brand Pseudo 60's'' product were found on January 6, 2000, in Las Vegas, Nevada, both in connection with the clandestine manufacture of controlled substances.

On June 6, 2000, DEA issued a Warning Letter to PDK indicating that 1 bottle of PDK ''Two Way Max Brand'' product and 2 bottles of PDK ''Max Brand Pseudo 60's'' product were found on January 6, 2000, in Sparta, Tennessee; that 4 bottles of PDK ''Max Brand Pseudo 60's'' product were found on May 11, 2000, in Lawrence, Kansas; and that 5 bottles of PDK ''Two Way Brand'' product were found on May 19, 2000, in Hamilton, Alabama, all in connection with the clandestine manufacture of controlled substances.

On June 8, 2000, DEA issued a Warning Letter to PDK indicating that 9 bottles of PDK ''Max Brand Pseudo 60's'' product were found on May 11, 2000, in Lawrence, Kansas; that 6 bottles of PDK ''Max Brand Pseudo 60's'' product were found on May 12, 2000, in Signal Mountain, Tennessee; that 144 bottles of PDK ''Max Brand

[5] In 1998, Congress amended the recordkeeping requirements of the CSA to include a negligence provision. *See* 21 U.S.C. 842(a)(5), (a)(10). Notably, however, Congress did not similarly amend section 971(c) to include such a provision.

[6] To the extent a future reviewer should disagree with the Deputy Administrator's reading of 971(c)(1)'s ''may be diverted'' language and determine it is ambiguous, the agency position should be given due deference under Chevron, *See, INS* v. *Anibal Aguirre,* 526 U.S. 415, 425 (1999).

Pseudo 60's'' product were found on May 31, 2000, in Auburn, Washington; and that 2 bottles of PDK ''Max Brand Pseudo 60's'' product were found on June 5, 2000, in Ozawkie, Kansas, all in connection with the clandestine manufacture of controlled substances.

On July 5, 2000, DEA issued a Warning Letter to PDK indicating that 1,871 bottles of PDK ''Max Brand Pseudo 60's'' product were found on April 12, 2000, in Temecula, California, in connection with the clandestine manufacture of controlled substances.

On July 7, 2000, DEA issued a Warning Letter to PDK indicating that 6 bottles of PDK ''Max Brand Pseudo 60's'' product were found on December 17, 1999, in Freeport, Florida; and that 1 empty case indicating a volume of 144 bottles of PDK ''Two Way Max Brand,'' and 78 bottles of PDK ''Max Brand Pseudo 60's'' product were found on April 14, 2000, in Sherman, Texas, all in connection with the clandestine manufacture of controlled substances.

On July 7, 2000, DEA issued a Warning Letter to PDK indicating that 672 bottles of PDK ''Max Brand Pseudo 60's'' product were found on February 29, 2000, in Hillsboro, Oregon; that 12 bottles of PDK ''Max Brand Pseudo 60's'' product were found on March 23, 2000, in Gales Creek, Oregon; and that 3 bottles of PDK ''Max Brand Pseudo 60's'' product were found on April 6, 2000, in Washington County, Oregon, all in connection with the clandestine manufacture of controlled substances.

On July 13, 2000, DEA issued a Warning Letter to PDK indicating that 157 bottles of PDK ''Max Brand Pseudo 60's'' product were found on July 7, 2000, in Plano, Texas, in connection with the clandestine manufacture of controlled substances.

On September 23, 2000, DEA issued a Warning Letter to PDK documenting that 24 bottles of PDK ''Max Brand Pseudo 60's'' product were found on June 21, 2000, in Las Vegas, Nevada; that 36 bottles of PDK ''Max Brand Pseudo 60's'' product were found on August 3, 2000, in Portland Oregon; that 217 bottles and 2,880 packets of PDK ''Max Brand Pseudo 60's'' product and 7 packets of PDK ''Pseudo 60's'' product were found on September 8, 2000, in Las Vegas, Nevada, all in connection with the clandestine manufacture of controlled substances.

On September 23, 2000, DEA issued a Warning Letter to PDK indicating that 72 bottles of PDK ''Max Brand Pseudo 60's'' product were found on April 25, 2000, in Copeville, Texas; that 2 bottles of PDK ''Two Way Max Brand'' product were found on May 2, 2000, in Charlotte, North Carolina; that 142 bottles of PDK ''Max Brand Pseudo 60's'' product were found on July 7, 2000, in Reno, Nevada; and that 341 bottles of PDK ''Max Brand Pseudo 60's'' product and 7 packets of PDK ''Pseudo 60's'' product were found on September 1, 2000, in Portland, Oregon, all in connection with the clandestine manufacture of controlled substances.

On September 25, 2000, DEA issued a Warning Letter to PDK indicating that approximately 400 bottles of PDK ''Mini-Pseudo'' product were found on September 7, 2000, in Fallbrook, California, in connection with the clandestine manufacture of controlled substances.

On October 24, 2000, DEA issued a Warning Letter to PDK indicating that 15 bottles of PDK ''Max Brand Pseudo 60's'' product were found on August 22, 2000, in Cedar Rapids, Iowa; and that 1,152 bottles of PDK ''Max Brand Pseudo 60's'' product were found on March 14, 2000, in Turlock, California, both in connection with the clandestine manufacture of controlled substances.

On October 27, 2000, DEA issued a Warning Letter to PDK indicating that 287 bottles of PDK ''Max Brand Pseudo 60's'' product were found on October 20, 2000, in Lake Havasu City, Arizona, in connection with the clandestine manufacture of controlled substances.

On November 9, 2000, DEA issued a Warning Letter to PDK indicating that 504 bottles and 35 boxes of PDK ''Max Brand Pseudo 60's'' product were found on October 12, 2000, in Portland, Oregon, in connection with the clandestine manufacture of controlled substances.

On November 13, 2000, DEA issued a Warning Letter to PDK indicating that 15 bottles of ''Mini Tabs Two Way,'' 5 packets of PDG ''Two Way Max Brand'' product and 480 packets of PDK ''Max Brand Pseudo 60's'' product were found on July 31, 2000, in Little Rock, Arkansas; and that approximately 1,700 bottles of PDK ''Max Brand Pseudo 60's'' product were found on July 26, 2000, in Lawrence, Kansas, all in connection with the clandestine manufacture of controlled substances.

On November 15, 2000, DEA issued a Warning Letter to PDK indicating that 528 packets of PDK ''Max Brand Pseudo 60's'' product were found on September 27, 2000, in South Jordan, Utah, in connection with the clandestine manufacture of controlled substances.

On December 18, 2000, DEA issued a Warning Letter to PDK indicating that 354 bottles of PDK ''Ephedrine Two Way'' product were found on August 12, 2000, in Yakima, Washington, in connection with the clandestine manufacture of controlled substances.

On December 28, 2000, DEA issued a Warning Letter to PDK indicating that 12 bottles of PDK ''Max Brand Pseudo 60's'' product were found on February 24, 2000, in Stevenson, Alabama; that 1 bottle of PDK ''Max Brand Psuedo 60's'' and 1 bottle of PDK ''Two Way Ephedrine Max Brand'' product were found on September 6, 2000, in Russellville, Alabama; and that 144 bottles of PDK ''Max Brand Pseudo 60's'' product were found on December 12, 2000, in Dallas, Texas, all in connection with the clandestine manufacture of controlled substances.

On January 23, 2001, DEA issued a Warning Letter to PDK indicating that 25 bottles of PDK ''Two Way Max Brand'' product were found on June 20, 2000, in Sicklerville, New Jersey; and that 369 bottles of PDK ''Two Way Max Brand'' product were found on December 6, 2000, in Carson City, Nevada, both in connection with the clandestine manufacture of controlled substances.

It is recognized that the above Warning Letters reflect that pseudoephedrine listed products were found at these clandestine laboratories and dump sites, along with PDK's ephedrine chemical products. However, DEA is aware that there is a close relationship between these two listed chemicals in the methamphetamine manufacturing process and PDK used the same or similar distribution chain to distribute both forms of listed chemical products. Based on agency experience, DEA knows that the same or similar methods of diversion are employed by clandestine methamphetamine manufacturers to obtain both pseudoephedrine and ephedrine listed chemical products and that a history of diversion of one product is probative as to the potential for diversion of the other. Thus, the Deputy Administrator concludes that the diversion of PDK's pseudoephedrine chemical products reflected in the Warning Letters is highly relevant to the potential for future diversion of its ephedrine chemical products.

The Government did not introduce evidence as to the quantity of other manufacturer's listed chemical products that have been found to be diverted, only the quantities and types of PDK's products which had been the subject of Warning Letters for the period at issue. It is also recognized that section 971(c)(1) requires an exercise of agency discretion, given that all ephedrine chemical products require the importation of the listed chemical into the United States at some point in their manufacturing and/or distribution chain. Thus, literally every shipment is

subject to a *theoretical* possibility that it ''may'' be diverted.

DEA recognizes that it and other law enforcement agencies are aware of and able to take action against only a small number of the total clandestine methamphetamine laboratories and dump sites in this country. Accordingly, the specific universe of PDK product diverted, *vis a vis*, all other manufacturers' products, is a number which cannot be established with specificity. However, the Deputy Administrator notes that at a March 1998 meeting between DEA and PDK, DEA personnel concluded that PDK's listed chemical products were being reported as the most prevalently found products at illicit settings in this country, *i.e.*, ''PDK products were number one in terms of being seized at methamphetamine labs.'' Tr. 1613.

Given the quantities and diverse locations of PDK listed chemical products discovered at illicit sites reflected in the Warning Letters, DEA is able to draw a reasonable inference regarding the likelihood that the instant shipments may be diverted and to exercise its discretion as to the need to prohibit their import.

In Mediplas, without having to undergo any attempt at a comparative statistical analysis, the Deputy Administrator found ''the nine Warning Letters issued to Mediplas provided substantial evidence documenting the diversion of thousands of bottles of its previously imported List I chemical Products * * *.'' Mediplas, *supra*, 67 FR at 41262. In comparison, PDK's 22 Warning Letters detail diversion of thousands of bottles of its previously imported List I chemicals to approximately 140 illicit methamphetamine laboratory-related sites located in at least 18 states.

The fact that a company's product has been discovered in clandestine laboratories and dump sites has been a regular basis for DEA taking adverse action against manufacturers and distributors of List I chemical products, again without attempting statistical comparative analysis. *See* OTC Distribution, *supra*, 68 FR at 70544 (14 Warning Letters in 21 months a factor in revoking registration of List I chemical product distributor); Sinbad Distributing, *supra*, 67 FR at 10233 (registration as a distributor of listed chemical products denied in part because two potential suppliers of applicant had received 15 Warning Letters between them); CHM Suppliers, 67 FR 9985, (2002) (same).

In *Neil Laboratories, Inc.* v. *Ashcroft*, 217 F. Supp.2d 80 (D.D.C. 2002), DEA had issued an immediate suspension of a List I manufacturer's registration under 21 U.S.C. 824(d). The registrant challenged that action and the district court upheld the DEA order based, in part, on the fact that ''Neil Labs received approximately 30 warning letters from the DEA between February 4, 1999, and March 11, 2002, that identified various instances in which Neil Labs' product had been diverted to illicit uses.'' *Id.*, at 87.

The Deputy Administrator finds the record shows through testimony and documentary evidence that over a period of several years, PDK and DEA corresponded and met with the intention of resolving problems pertaining to the diversion of PDK's ephedrine and pseudoephedrine products. Evidence presented by PDK indicated it had taken steps to implement controls in its plant and distribution chain and during this period, DEA permitted certain listed chemical shipments, destined for PDK, to be imported. Nevertheless, as documented by the Warning Letters, PDK's products continued to appear at illicit settings in substantial amounts, despite remedial efforts undertaken or promised by the company. As the Court of Appeal observed in *ALRA Laboratories, Inc.* v. *DEA*, 54 F.3d 450 (7th Cir. 1995), ''An agency rationally may conclude that past performance is the best predictor of future performance.'' *Id.*, at 452.

As a collateral matter, it is noted that the individual responsible for implementing PDK's operating procedures for responding to DEA Warning Letters was Mr. Michael Lulkin. Beginning in 1990, Mr. Lulkin, an attorney, had served as PDK's outside counsel. In 1995, he was hired as in-home counsel and became PDK's Vice President of Legal Affairs and subsequently it's Director of Administrative Affairs. In 1998, Mr. Lulkin, along with PDK's then-President, Mr. Michael Krasnoff, was convicted in Federal court of four felony counts relating to securities fraud, money laundering and mail fraud. The mail fraud offenses involved PDK. Mr. Lulkin was subsequently disbarred from the practice of law in 1999.

PDK's Board of Directors and its current President, Mr. Reginald Spinello, who had worked for Mr. Krasnoff as PDK's Executive Vice President for Operations since 1991, allowed Mr. Krasnoff and Mr. Lulkin to remain associated with PDK. After resigning as President in 1998, Mr. Krasnoff continued to serve as a consultant to the company. Mr. Lulkin continues as an employee of PDK, where his duties include overseeing the company's regulatory compliance.

Neither of these personnel decisions, but particularly the retention of Mr. Lulkin as a key overseer of regulatory matters, despite his convictions for fraud and a felony against the company, generates confidence on the part of the Deputy Administrator that PDK is sufficiently committed to complying with the myriad of regulatory requirements designed to prevent diversion of listed chemicals.

In sum, the Deputy Administrator finds, based on the foregoing, that the bulk ephedrine which is the subject of the Suspension of Shipment Orders is a ''listed chemical'' that ''may be diverted'' and that the orders should be sustained.

As discussed earlier, the full court in *PDK Labs* agrees remand was necessary because the then-Deputy Administrator had also concluded PDK violated export notification requirements in connection with the sale and delivery of ephedrine products to Sun Labs of Canada. Because the evidence showed the product was actually delivered to the customer within the United States, the Court concluded the then-Deputy Administrator had failed to explain the agency's apparent divergence from its decision in *Alfred Khalily, Inc., supra* 65 FR 31,289 (1999). *See PDK labs, supra*, 362 F.3d at 798–99.

In *Khalily*, the then-Deputy Administrator agreed with the ALJ that the respondent company was not responsible for filing export documentation regarding its sale of a listed chemical, hydriotic acid, to a Mexican based company, R.J. Meyer. The key findings were that ''R.J. Meyers's purchase orders revealed that the shipments were either consigned to Jose Gutierrez, and sometimes Gus Pimental c/o Sky Harbor Delivery in Tucson, Arizona, or to Jose Gutierrez c/o Gus Pimental ata warehouse in Phoenix, Arizona'' and ''According to Respondent's invoices, Respondent sold the hydriotic acid to R.J. Meyer, but it was shipped to Jose Gutierrez at Sky Harbor Delivery. These shipments were 'FOB Destination,' which according to Mr. Khalily means that the shipper's responsibility ends when the product is delivered to the specified location.'' *Khalily, supra*, 64 FR at 31, 290.

The chemicals had been shipped to the Arizona warehouse and subsequently picked up by Mr. Gutierrez who, it turned out, was not a representative of R.J. Meyer. The chemicals were then loaded into a rental truck and disappeared. R.J. Meyer's personnel testified that the shipments never entered Mexico and DEA was

unable to determine their disposition after they left the Arizona warehouse.

The then-DEA Deputy Administrator concluded, ''While Respondent was selling above threshold quantities of hydriotic acid to a Mexican company, these sales were ''FOB Destination'' transactions and *therefore Respondent's responsibility* ended when the chemicals were delivered to the warehouse in Arizona. Respondent did not send or take the listed chemicals out of the United States, nor was it the 'principal party in interest' with the power and control for sending the chemicals out of the United States. Therefore, it was not responsible for filing any export documentation.'' Khalily, 64 FR at 31293 (emphasis added).

In the instant case, the then-Deputy Administrator concluded that ''[g]iven the circumstances of these sales, and especially given that PDK actually believed the product was destined for export, that PDK should have complied with DEA export regulations in effect at the time.'' 67 FR at 77808. He also concluded the ''record shows that PDK violated DEA export regulations on at least four occasions by failing to file the required notifications of its shipments to Sun Labs.'' 67 FR at 77809.

Notwithstanding Khalily, under the unique facts of this case the Deputy Administrator agrees that PDK should have filed export notifications with DEA.

The evidence shows that between 1994 and 1995, PDK sold Sun Labs of Canada at least four shipments of ephedrine and ephedrine hydrochloride, a listed chemical. During these proceedings, the parties disputed whether these shipments were ''exports,'' which required filing of a DEA Form 486 report within 15 days of the ''export,'' pursuant to 21 CFR 1313.21. That regulation provides, in relevant part, ''no person shall export or cause to be exported from the United States any [listed chemical] * * * until such time as the Administrator has been notified. Notification must be made not later than 15 days before the transaciton is to take place.'' 21 CFR 1313.21(a).

Neither PDK nor Sun Labs, nor their then-principals, were strangers. At the time, the President and owner of Sun Labs was Mr. Perry Krape, a former principal and a founder of PDK who, up until November of 2000, retained 8% ownership in PDK.

The ALJ noted in her findings that Mr. Krasnoff, discussed earlier as the subject of felony convictions involving the company, was PDK's President during this period. Mr. Krasnoff testified that these orders were delivered to Sun Labs at PDK's facility in Hauppauge, New York. He further testified it was PDK's belief that, after picking up the product, Mr. Krape's immediate intention was to transport it to his storage facilities in New York. Although there was no testimony that the ephedrine product was actually shipped to Canada, the Deputy Administrator finds it reasonable to infer that it was destined for Canada and to only remain in the United States temporarily.

The invoices indicated the customer was Sun Labs, located in Mississauga, Ontario, Canada. A DEA diversion investigator testified that ''the address on the invoices and the shipping labels, the shipping documents, indicated it was going to Ontario, Canada.'' Additionally, the investigator testified that each of the bills of lading for these transactions stated the ephedtine was being billed to and shipped to Sun Labs in Ontario, Canada.

While there were no shipping charges on the invoices and the ''Name of Carrier'' on the bills of lading listed either ''Pick-up'' or ''Perry Krape,'' the invoices, which were introduced into evidence, stated a ''Ship to'' address of ''Sun Labs, Inc., 300–2400 Dun Dun St West, Mississauga ON L5K2R8.'' The ''Bill to'' address on the invoices was the same foreign location. The bills of lading further identified the ''To Consignee'' as Sun Labs Inc. at its Mississauga, Ontario address.

Mr. Krasnoff also assumed Sun Lab's owner was going to distribute this product in Canada, as Mr. Krasnoff testified PDK had a ''no-compete'' agreement with Sun Labs in which Sun Labs agreed it would not sell ephedrine in PDK's territory, which included the entire United States. Further, Mr. Krasnoff testified in reference to these transactions, that he ''believe[d] that [Sun Labs] intention was to take the product to Canada at some point in time and that [Sun Labs] was putting together a distribution system in order to distribute that produce in Canada.'' Finally, Mr. Krasnoff states that Mr. Krape had said he ''was going to be the ephedrine king of Canada.'' [7]

For purposes of these export regulations, 21 CFR 1312.02, defines the term ''chemical export'' to cover more than just the physical sending or taking of the listed chemical out of the United States. Instead it provides ''The term '*chemical export*' means transferring ownership or control, *or* the sending of listed chemicals out of the United States (whether or not such sending or taking out constitutes an exportation within the meaning of the Customs and related laws of the Unites States).'' 21 CFR 1313.02(a) (1995), now 21 CFR 1300.02(b)(5) (italics in original, emphasis added).

In Khalily, the shipment was consigned ''F.O.B'' to a buyer at an Arizona warehouse and the ALJ and then-Deputy Administrator were obviously focused on the implications of the ''F.O.B'' transfer *i.e.*, ''Respondent's responsibility ended when the chemicals were delivered to the warehouse in Arizona.'' Khalily, *supra*, 64 FR at 31,293. Further, there was no evidence that the listed chemicals were ever sent to Mexico. The facts here are distinguishable.

The invoices and bills of lading identify the listed chemical products as being purchased by and ''shipped to'' Sun Labs, a Canadian company at its foreign address in Ontario. While the bills of lading also indicated the product was going to be ''picked up'' at PDK's Hauppauge premises, even if the product was not being immediately transported across the border, ''ownership'' and ''control'' was knowingly transferred by PDK to a company located *outside* of the United States, thus falling within the definition of ''chemical export''—which ''no person'' (including PDK) ''shall export or cause to be exported from the United States * * * until such time as the Administrator has been notified.'' 21 CFR 1313.21(a).

While Mr. Krape apparently picked the listed chemicals up at PDK's New York location, the Deputy Administrator concludes PDK knew the listed chemicals were going to be physically taken outside the United States, albeit at an uncertain date, which the company never sought to ascertain and/or report. Where ownership and control was transferred to a foreign company, under the unique facts of this case, the Deputy Administrator concludes that export regulations required PDK to notify DEA of the transactions.

Compliance with regulatory requirements is relevant to the risk of diversion the listed chemicals will face as they progress through the chain of commerce from importation and/or exportation, manufacture and ultimate distribution through wholesalers and retailers. With regard to exports, DEA is aware that precursor chemicals can be brought into the United States from their countries of origin and then exported to other countries, where they are diverted to the manufacture of

[7] Although he is no longer with PDK, Mr. Krasnoff was also quoted as saying in May of 1996, ''it's none of my business if someone gets high off of this stuff,'' demonstrating an improper attitude for an officer of a DEA registrant and a cavalier approach toward complying with DEA regulations, including those pertaining to exports.

methamphetamine and other controlled substances and then subject to being smuggled back into the United States. *See e.g.,* Neil Laboratories, *supra,* 64 FR at 30,064 (exportation of pseudoephedrine from New Jersey to Mexico suspended because of risk of diversion). Further, the government's evidence showed that Sun Labs had a toll free 800 number and took orders from customers in the United States for List I chemical products, thereby returning them to this country. Additional, the Government offered testimony that DEA ''was beginning to see Canadian product showing up in large numbers in [clandestine] labs.'' Tr. at 753.

An exporter/transshipper's failure to comply with the notification requirements of 21 CFR 1313.31 has previously been cited as a ground for suspending shipments. *See e.g.,* Yi Heng Enterprises Dev. Co., *supra,* 64 FR at 2,235 (respondent transshipper concedes point and DEA holds ''it is undisputed that no advance notification of * * * shipments * * * was provided to DEA as required by the regulations and that this provides a basis for the suspension of these shipments.''); Suspension of Shipments, *supra,* 65 FR at 51,338 (''Finally, [the transhipper] failed to file advance notification of these shipments.'').

The Deputy Administrator recognizes that PDK's regulatory omissions are mitigated by the facts of their age and that the company's failure to file notifications did not involve the specific shipments at issue in the suspension orders. Nevertheless, PDK's non-compliance with regulatory requirements in these instances is considered relevant.[8]

The Orders to Suspend Shipments also alleged that in 1995, PDK made direct mail orders sales of its ephedrine chemical products to individuals who were later arrested and convicted of manufacturing and possessing methamphetamine with intent to distribute and admitted obtaining their precurser chemicals from PDK. Based on her view of the evidence, the ALJ declined to find that these sales were suspicious transactions which should have been reported by PDK pursuant to 21 CFR 1310.05(a)(1).

The evidence showed that David Chapin ordered and received over 12,000 tablets of ephedrine, 25 mg, during February 1995 and Jason Young received over 8,800 tablets of the same product between June and October of 1995. Based on his consultations with a pharmacist, a DEA diversion investigator deemed these sales to be excessive, given the individual therapeutic dosage units recommended in the Physician's Desk Reference and the United States Pharmacy Index for a one month period of time. Based on a recommended dosage of six tablets per day, the investigator testified that ''[e]very individual (purchase) on the mail order from 1995 was excessive.'' David Chapin was subsequently arrested for having an operational methamphetamine lab and stated that the PDK was the source of his ephedrine. He was subsequently convicted and sentence to 96 months in Federal prison.

However, based primarily upon Mr. Krasnoff's testimony, the ALJ concluded that PDK believed Chapin and Young were repackaging the single-entity ephedrine tablets purchased from PDK for resale, thus the quantities would not have appeared to be suspicious and need not have been reported to DEA. While the Deputy Administrator agrees there was no evidence introduced that PDK specifically knew of the buyers' illicit manufacturing, the evidence indicates a disturbing willingness on the part of PDK to turn a blind eye toward diversion of its product.

The ALJ specifically fond that Mr. Kranoff told DEA investigators in a May 1996 investigation concerning these sale, that he could care less who ordered what and how much. He also stated that ''it's none of my business if someone gets high off this stuff.'' Significantly, the ALJ found Mr. Krasnoff's sworn testimony at the hearing, in which he denied making these statements, to be incredible. The Deputy Administrator agrees that this witness was not credible and that his credibility is also diminished by his convictions of felony offenses involving moral turpitude.

When pressed on cross-examination as to his belief that ''smallest of distributors were repackaging or reselling,'' Mr. Krasnoff testified that:

> We got the sense that there was a network of distributors who distributed his product that we manufactured either in a *Tupperware-type setting* of [sic] door to door sales, and/or some of them distributing the product through the mail, ad hoc mail order companies.

Tr. 1993 (emphasis added).

The Deputy Administrator finds this testimony, suggesting that mail order recipients were emptying tablets out of a 1,000 count bottle and reselling them in a Tupperware setting or door to door to be incredible, particularly when considered in light of its self-serving nature, Mr. Kraasnoff's other untruths while testifying, and his fraud based felony convictions. Accordingly, the Deputy Administrator finds that the subject sales should have been reported as suspicious. Further, this evidence establishes that in 1995, PDK, sold ephedrine products directly to individuals who diverted them to illicit purposes.

However, it also noted these transactions occurred a number of years ago, Mr. Krasnoff's relationship with PDK has finally been severed, PDK ceased its mail order sales and the company has reported a series of suspicious sales to DEA on other occasions. Nevertheless, the Deputy Administrator finds that PDK's past attitude and its engaging in these transactions, along with its failure to report them as suspicious, are relevant as to whether the current suspensions should be sustained.[9]

At the hearing, DEA witnesses testified regarding traditional retail outlets and non-traditional retail outlets and the types of listed chemical products distributed to these outlets. The traditional market is characterized by a short distribution pattern to large chain grocery stores, large chain convenience stores, large chain drug stores, large discount retailers and large chain convenience stores. These products are packaged in blister packs and are 30 mg in strength. The non-traditional outlets are characterized by a very lengthy distribution chain of listed chemical products packaged in higher strength and in bottles of 60 or more dosage units. The higher strength products are those products usually found at the illicit methamphetamine production sites.

The Suspicious Orders Task Force also identified as suspicious, customers who resell large volumes of listed chemical products to the ''independent convenience store'' market. While PDK does not currently distribute List I chemical products directly to the public or to retail sales outlets, including convenience stores, witnesses indicated that through its distribution scheme, PDK is the largest supplier of generic List I chemical products to the convenience store market.

Since the hearing on this matter, a series of DEA final orders have addressed the distribution of listed

[8] For clarification should this final order be appealed, the Deputy Administrator finds that the evidence of diversion reflected in the series of Warning Letters provides a sufficient basis for sustaining the suspension orders, independent of the export notification infractions.

[9] However, again for clarification of future reviewers, notwithstanding the above findings, the Deputy Administrator finds that the evidence of diversion reflected in the series of Warning Letters provid3es a sufficient independent basis for concluding that the List I chemicals may be diverted and the suspension orders sustained.

chemical products through the gray market and in particular, through independent convenience stores. In Mediplas, my predecessor discounted the probative weight of the Government's ''anecdotal'' evidence ''without some form of further extrinsic evidence to support these arguments.'' Mediplas, *supra*, 67 FR at 41,264. In sustaining the shipments in the initial final order here, my predecessor noted the evidence in PDK's hearing was ''essentially identical'' to the evidence in Mediplas. Accordingly, he applied the same rule and declined to find that the Government's evidence of PDK's gray market distribution chain supported the suspension orders. *See, e.g.*, Indace/Malladi, *supra*, 67 FR at 77808.

In Branex, Incorporated, *supra*, 69 FR at 8696 while then-Acting Deputy Administrator, I approve use of the above Mediplas evidentiary standard:

> In deference to my predecessor's ruling in [Mediplas], a finding regarding convenience stores [as] conduits for the diversion of listed chemicals does not necessarily translate to a finding regarding the existence of the so-called 'traditional' versus 'non-traditional' markets for products containing ephedrine and pseudoephedrine. Rather, in Mediplas, the then-Deputy Administrator found there was little probative value to such evidence, and the probative weight of evidence regarding traditional and non-traditional markets is 'minimal without some form of further extrinsic evidence to support these arguments [Citation].' The Acting Deputy Administrator notes further, my predecessor's conclusion that a registrant's sale of large quantities of list I chemicals do not, in and of themselves, demonstrate that the chemicals may be diverted.

Branex, *supra*, 69 FR at 8693.

However, at the Branex hearing the Government did introduce substantial extrinsic evidence satisfying the Mediplas standard. In that regard, I held:

> The Acting Deputy Administrator concurs with Judge Bittner's conclusion that the government met the Mediplas evidentiary requirement by showing that Respondent sold pseudoephedrine to customers that did not have a reasonable expectation of being able to resell the product to a legitimate customer base. Specifically, the Government presented a relevant comparison analysis involving the marketing and sale of bottled pseudoephedrine products to a relatively small market by OTC Distribution (a supplier of listed chemicals to Respondent) versus that of nationally recognized pharmaceutical manufacturers and distributors of those products (*i.e.*, Pfizer and the L. Perrigo Company). The Acting Deputy Administrator also finds telling, the testimony of Pfizer and Perrigo representatives that neither were aware of OTC Distribution as a possible competitor. More persuasive however, was the testimony and documentary evidence prepared by the Government expert in statistical analysis, Jonathan Robbin. * * *
>
> [T]he Acting Deputy Administrator . . . finds compelling Mr. Robbin's conclusion of the unlikelihood that convenience stores would sell more than $27.00 worth of pseudoephedrine per month to consumers purchasing decongestant products, as purportedly sold by Respondent's customers. The Acting Deputy Administrator further credits Mr. Robbin's finding regarding the inconceivability of customers purchasing a year's supply of list I chemical products from convenience stores and related establishments on a monthly basis.
>
> The Acting Deputy Administrator also finds persuasive the conclusion of Mr. Robbin that the pseudoephedrine products supplied by Respondents to its customers did not follow the normal channel of distribution of goods of this kind. This finding is given further credence when one considers the quantities of pseudoephedrine the respondent sold to its convenience store customers and the exorbitant price some of these customers were willing to pay the Respondent for those products. The Acting Deputy Administrator finds that the compelling nature of Mr. Robbin's market study casts doubt on the legitimacy of the Respondent's customers, and brings some context to the diversion of the respondent's listed chemical product.

Branex, *supra*, 69 FR at 8,693; *see e.g.*, Xtreme Enterprises, Inc, supra, 67 FR at 76,197 (denying registration as a listed chemical distributor after testimony by Mr. Robbin on graymarket and holding that applicant's positive factors were ''far outweighed'' by lack of experience and ''the fact that she intends to sell ephedrine almost exclusively in the gray market.''). *See also* Value Wholesale, 69 FR 58,548 (2004) (citing Xtreme Enterprises, Inc. and denying registration inpart on intent to distribute to grey market); K & Z Enterprises, Inc., 69 FR 51475 (2004) (same); William E. ''Bill'' Smith d/b/a B&B Wholesale, 69 FR 22559 (2004) (same); John E. McCrae d/b/a J & H Wholesale, 69 FR 51480 (2004) (same); SPA Dynamic Wholesalers, 68 FR 61466 (2003) (citing Robbin study and denying registration as distributor to grey market).

While DEA has concluded in the above series of cases that grey market establishments, such as convenience stores and gas stations, constitute sources for the diversion of listed chemical products and can form the basis for adverse action against registrants and potential registrants, the Government's evidence which formed the basis for those holdings was not presented at PDK's hearing. Thus, PDK has not had an opportunity to refute or contest that evidence and it is outside the record.

Accordingly, the Deputy Administrator will continue to apply the Mediplas evidentiary standard to the instant record and declines to find that the vidence concerning the gray market introduced in this specific case supports a factual finding that the listed chemicals which are the subject of the two suspension orders ''may be diverted.''[10]

In arriving at this decision, the Deputy Administrator has considered PDK's stature and business activities in the business community, its efforts at compliance, as well as the evidence available to DEA up to the time of the hearing. The Deputy Administrator finds that there was sufficient evidence at the time of the hearing to support DEA's contention that the chemicals may be diverted. ''As the Deputy Administrator has previously noted, [e]vidence of a violation of law is not necessary to demonstrate that suspensions were lawful.'' Mediplas, supra, 67 FR at 41,262 citing Suspension of Shipments, *supra*, 65 FR at 51337. Therefore, the Deputy Administrator concludes that the suspensions set forth in the January 25 and 26, 2001, Order to Suspend Shipments of ephedrine hydrochloride issued to Indace and Malladi were justified.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 971 and 28 CFR 0.100(b) and 0.104, hereby orders that the suspensions of the above described shipments, be, and hereby are, sustained, and that these proceedings are hereby concluded.

This final order is effective immediately.

Dated: November 9, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 04–25695 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–09–M

---

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 19, 2004, ISP, Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application

[10] However, as noted earlier, for the limited purpose of interpreting the term ''listed chemical'' as it appears in section 971(c)(1) and the policy implications of the alternatives, the findings and conclusions contained in the above cited cases are considered relevant to DEA's application of the agency's current knowledge and expertise.

by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

| Drug | Schedule |
|---|---|
| 2, 5–Dimethoxyamphetamine (7396). | I |
| Amphetamine (1100) | II |
| Phenylacetone (8501) | II |

The company plans to manufacture phenylacetone to be used in the manufacture of the amphetamine. The bulk 2, 5–dimethoxyamphetamine will be used for conversion into non-controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, Office of Liaison and Policy (ODLR) and must be filed no later than January 21, 2005.

Dated: November 8, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–25767 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 20, 2004, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import Phenylacetone to manufacture amphetamine.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, Office of Liaison and Policy (ODLR) and must be filed no later than December 22, 2004.

This procedure is to be conducted simultaneously with, and independent, of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: November 8, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–25768 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 28, 2004, Orasure Technologies, Inc., Lehigh University, Seeley G. Mudd-Building 6, Bethlehem, Pennsylvania 18015, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

| Drug | Schedule |
|---|---|
| Alphamethadol (9605) | I |
| Benzoylecgonine (9180) | II |
| Morphine (9300) | II |

The company plans to manufacture the listed controlled substances in bulk to manufacture other controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative, Office of Liaison and Policy (ODLR) and must be filed no later than January 21, 2005.

Dated: November 8, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–25769 Filed 11–19–04; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Trade Adjustment Assistance Program: Training and Employment Guidance Letter Interpreting Federal Law; Correction

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Correction.

**SUMMARY:** In notice document 04–22919 beginning on page 60903 in the issue of Wednesday, October 13, 2004, make the following correction:

On page 60903, the heading to the document was omitted and should be added to read: Employment and Training Advisory System, U.S. Department of Labor, Washington, DC 20210.

*Classification:* TAA.

*Correspondence Symbol:* ONR.

*Date:* November 6, 2003.

Signed in Washington, DC this 15th day of November, 2004.

**Timothy F. Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E4–3273 Filed 11–19–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Federal-State Unemployment Compensation Program: Certifications for 2004 Under the Federal Unemployment Tax Act

On October 31, 2004, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits against their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 2004.

**Emily Stover DeRocco,**

*Assistant Secretary.*

Secretary of Labor,
Washington, DC,
October 31, 2004.

The Honorable John W. Snow,
Secretary of the Treasury,
Washington, DC 20220.

Dear Secretary Snow: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 2004. One is required with respect to the normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,
Elaine L. Chao,

(Enclosures.)

Department of Labor,
Office of the Secretary,
Washington, DC.

**Certification of States to the Secretary of the Treasury Pursuant to Section 3304(c) of the Internal Revenue Code of 1986**

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 2004, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act: Alabama, Alaska, Arizona, Arkansas; California, Colorado, Connecticut; Delaware, District of Columbia; Florida; Georgia; Hawaii; Idaho, Illinois, Indiana, Iowa; Kansas, Kentucky; Louisiana; Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana; Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota; Ohio, Oklahoma, Oregon; Pennsylvania, Puerto Rico, Rhode Island; South Carolina, South Dakota; Tennessee, Texas; Utah; Vermont, Virginia, Virgin Islands; Washington, West Virginia, Wisconsin, Wyoming.

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2004.

Elaine L. Chao,
*Secretary of Labor.*
Department of Labor,
Office of the Secretary,
Washington, DC.

**Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986**

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2004: Alabama, Alaska, Arizona, Arkansas; California, Colorado, Connecticut; Delaware, District of Columbia; Florida, Georgia, Hawaii; Idaho, Illinois, Indiana, Iowa; Kansas, Kentucky, Louisiana; Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana; Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota; Ohio, Oklahoma, Oregon; Pennsylvania, Puerto Rico, Rhode Island; South Carolina, South Dakota; Tennessee, Texas, Utah; Vermont, Virginia, Virgin Islands; Washington, West Virginia, Wisconsin, Wyoming.

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 2004.

Elaine L. Chao,
*Secretary of Labor.*

[FR Doc. 04–25782 Filed 11–19–04; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel, Arts Education section (Arts Teachers Institutes category) to the National Council on the Arts will be held by teleconference on Friday, December 10, 2004 from 5:30 p.m. to 6:40 p.m. e.s.t., in Room 703 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: November 17, 2004.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 04–25828 Filed 11–19–04; 8:45 am]

BILLING CODE 7537–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–33821]**

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Belair Quartz, Inc.'s Facility in Christiansted, St. Croix

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:** Orysia Masnyk Bailey, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (404) 562–4739, fax (404) 562–4955; or by e-mail: *omm@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The Nuclear Regulatory Commission (NRC) is terminating Materials License No. 55–23732–02 issued to Belair Quartz, Inc. and authorizing release of its facility in Christiansted, St. Croix, U.S. Virgin Islands for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The license will be terminated following the publication of this notice.

## II. EA Summary

The purpose of the action is to terminate the license and authorize the release of the licensee's Christiansted, St. Croix facility for unrestricted use. Belair Quartz, Inc. (Belair Quartz) was authorized by the NRC from April 27, 1995, to use watch dials and hands containing luminous paint activated with tritium for the manufacture and repair of timepieces. On October 31, 2001, Belair Quartz requested that the NRC release the facility for unrestricted use. Belair Quartz has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR part 20 for unrestricted release.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license termination. The NRC staff has reviewed the information and final status survey submitted by Belair Quartz and performed a confirmatory survey. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

## III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Belair Quartz, Inc.''s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG-1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

## IV. Further Information

Documents related to this action, including the application for the license termination and supporting documentation, are available electronically in the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment (ML042720034), and the Letter dated October 31, 2001, transmitting the Final Status Survey Report (ML013120531). On October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail at *pdr@nrc.gov*.

These documents may be viewed electronically at the NRC Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD, 20852. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated in King of Prussia, Pennsylvania, this 15th day of November, 2004.

For the Nuclear Regulatory Commission.

**John D. Kinneman,**

*Chief, Materials Security & Industrial Branch, Division of Nuclear Materials Safety Region I.*

[FR Doc. 04–25780 Filed 11–19–04; 8:45 am]

BILLING CODE 7590–01–P

# NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 1, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Wednesday, December 1, 2004—11:30 a.m.—1 p.m.**

The Subcommittee will discuss proposed ACRS activities and related matters. 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. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) 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 in the agenda.

Dated: November 16, 2004.

**John H. Flack,**

*Acting Branch Chief, ACRS/ACNW.*

[FR Doc. 04–25778 Filed 11–19–04; 8:45 am]

BILLING CODE 7590–01–P

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Northwest Power and Conservation Planning Council Subbasin Plan; Draft Amendments

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council; Council).

**ACTION:** Notice of availability and opportunity to comment on subbasin plan draft amendments to the Council's Columbia River Basin Fish and Wildlife Program (program).

**SUMMARY:** Following the mandate set out in the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) (the Act), in November 1982 the Council adopted a regional program, the Columbia River Basin Fish and Wildlife Program. The Act requires the program be designed to protect, mitigate and enhance fish and wildlife of the Columbia River Basin affected by hydropower dams, while also assuring the region of an adequate, efficient, economical and reliable power supply.

**SUPPLEMENTARY INFORMATION:** In 2000, the Council began a comprehensive revision of the program. First, the Council amended the program by adopting a framework of vision, objectives and strategies at different geographic scales (basinwide, ecological province, subbasin), tied together with a consistent scientific foundation. The Council also adopted basinwide provisions and described how it proposed to add more specific objectives and measures to the program through integrated subbasin plans for the tributary subbasins of the Columbia and for specific mainstem reaches. The draft amendments now proposed for adoption will add subbasin plans to the general, basinwide provisions of the program as the next step in the comprehensive revision.

On August 12, 2002, the Council solicited recommendations for amendments to the program at the subbasin level from the region's State and Federal fish and wildlife agencies, Indian tribes, and others, as required by the Act. At the same time, the Council worked with a broad range of interests in the region and developed a ''Technical Guide for Subbasin Planners'' to help ensure that plans had a consistent format and content. The Council also worked with the Bonneville Power Administration to secure funding support for planning groups, the first time that funding has been made available to help develop fish and wildlife program amendment recommendations. Subbasin planners were asked to develop subbasin plans that incorporate a technical assessment, an inventory of past and present activities, and a management plan consisting of a vision, biological objectives and implementation strategies for the subbasin.

On May 28, 2004, the Council received 59 recommendations for subbasin plans in 58 subbasins from various planning entities. The Council made those recommendations available for public review and comment, including review by a team of independent scientists. The public comment period on the recommendations ended on August 12, 2004. The Council received an extensive set of comments. The Council staff and Council also reviewed the plans during the comment period for consistency with standards in the Act for program amendments and with the provisions in the 2000 Program.

After its review of the recommendations and the comments on recommendations, on October 13, 2004, the Council concluded that 29 of the 59 subbasin plan recommendations were ready for release for public review as draft amendments to the fish and wildlife program. The Council proposes to adopt the management plan portions of these subbasin plans as parts of the program. The underlying technical assessments and inventories will be placed in an appendix to the program.

The Council has scheduled public hearings in the following locations to accept oral and written comments on draft subbasin plan program amendments. Wednesday, October 27: Wenatchee, Washington, and Euguene, Oregon; Thursday, October 28: Kalispell, Montana; Wednesday, November 3: Pendleton, Oregon; Thursday, November 4: Ontario, Oregon, and Boise, Idaho; Monday, November 8: Vancouver, Washington; Tuesday, November 9: Portland, Oregon; Wednesday, November 10: Hood River, Oregon; Monday, November 15: Clarkston, Washington; and Tuesday, November 16: Coeur d'Alene, Idaho. For precise times and locations, please contact the Council's central office or consult the Council's Web site.

**FOR FURTHER INFORMATION CONTACT:** If you would like a copy of the Subbasin Plan Draft Amendments on a compact disc or in printed form, please contact the Council's central office. The Council's address is 851 SW Sixth Avenue, Suite 1100, Portland, Oregon 97204 and its telephone numbers are (503) 222–5161; (800) 452–5161. The Counil's fax number if (503) 820–2370. The Subbasin Plan Draft Amendments are also found on the Council's Web site: *www.nwcouncil.org.*

If you are submitting comments on the draft amendments, please note prominently which subbasin plan you are commenting on and address them to Mr. Mark Walker, Director of Public Affairs. Comments may be submitted by mail, by facsimile transmission (fax), or by electronic mail at: *comments@nwcouncil.org.* All comments must be received by 5 p.m. on November 22, 2004.

**Stephen L. Crow,**

*Executive Director.*

[FR Doc. 04–25725 Filed 11–19–04; 8:45 am]

**BILLING CODE 7905–01–M**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–14 and RI 25–14A

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–14, Self-Certification of Full-Time School Attendance for the School Year, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of section 8341(a)(4)(C), and section 8441, title 5, U.S. Code, to receive benefits as a student. RI 25–14A, Information and Instructions for Completing the Self-Certification of Full-Time School Attendance, provides instructions for completing the Self-Certification of Full-Time School Attendance for the School Year survey form.

Approximately 14,000 RI 25–14 forms are completed annually. We estimate it takes approximately 12 minutes to complete the form. The annual burden is 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Cyrus S. Benson, Team Leader, RIS Support Services/Support Group, Publications Team, (202) 606–0623.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–25709 Filed 11–19–04; 8:45 am]

BILLING CODE 6325–38–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: OPM Form 1530; OMB 3206–0162

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. OPM Form 1530, Report of Medical Examination of Person Electing Survivor Benefits Under the Civil Service Retirement System, is used to collect information regarding an annuitant's health so OPM can determine whether the insurable interest survivor benefit election can be allowed.

Approximately 500 OPM Form 1530 will be completed annually. We estimate it takes approximately 90 minutes to complete the form. The annual burden is 750 hours. For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Cyrus S. Benson, Team Leader, Publications Team, Support Group, RIS Support Services, (202) 606–0623.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–25710 Filed 11–19–04; 8:45 am]

BILLING CODE 6325–38–P

## PRESIDIO TRUST

### Notice of Public Meeting

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with ''§ 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6 p.m. on Thursday, December 9, 2004, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to provide an end of the year project and budget update and to receive public comment in accordance with the Trust's Public Outreach Policy.

*Accommodation:* Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at (415) 561–5300 prior to December 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, telephone: (415) 561–5300.

Dated: November 16, 2004.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 04–25779 Filed 11–19–04; 8:45 am]

BILLING CODE 4310–4R–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 17a–3; SEC File No. 270–026; OMB Control No. 3235–0033.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 17a–3 [17 CFR 240.17a–3] under the Securities Exchange Act of 1934 requires records to be made by certain exchange members, brokers, and dealers, to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 6,900 active broker-dealer respondents registered with the Commission incur an average burden of 2,421,195 hours per year to comply with this rule. It is estimated that approximately 6,900 active broker-dealer respondents registered with the Commission incur an average burden of 2,421,195 hours per year to comply with this rule. The Commission believes that requirements included in Rule 17a–3(a)(17) relating to new account data would be performed by clerical workers. The hourly wage of the average person who would be providing customers with account record information is $24 per hour.[1] The hourly wage of the average person who would be updating account record information is $25 per hour.[2] Thus the aggregate cost of these hours is about $16.86 million ((601,753 hours × $24)[3] + (96,742 hours × $25)[4]). The Commission believes that requirements contained in the rest of Rule 17a–3 would be performed by individuals in a broker-dealer's compliance department

[1] This figure is based on the SIA Report on Office Salaries In the Securities Industry 2003 (Retail Sales Assistant, Junior) and includes 35% for overhead charges.

[2] This figure is based on the SIA Report on Office Salaries In the Securities Industry 2003 (Data Entry Clerk, Senior) and includes 35% for overhead charges.

[3] This figure comes to approximately $14,442,072.

[4] This figure comes to approximately $2,418,550.

at $82 per hour.[5] Thus, the dollar cost of the 4,600 yearly hours incurred as a result of these rules is 1,722,700 × 82 = $171.66 million. The total cost of ongoing compliance with Rule 17a–3 is $16.86 + $171.66 = $188.52 million.

The Commission believes that requirements included in Rule 17a–3(a)(17) relating to new account data would be performed by clerical workers. The hourly wage of the average person who would be providing customers with account record information is $24 per hour.[6] The hourly wage of the average person who would be updating account record information is $25 per hour.[7] Thus the aggregate cost of these hours is about $16.86 million ((601,753 hours × $24)[8] + (96,742 hours × $25)[9]). The Commission believes that requirements contained in the rest of Rule 17a–3 would be performed by individuals in a broker-dealer's compliance department at $82 per hour.[10] Thus, the dollar cost of the 4,600 yearly hours incurred as a result of these rules is 1,722,700 × 82 = $171.66 million. The total cost of ongoing compliance with Rule 17a–3 is $16.86 + $171.66 = $188.52 million.

Rule 17a–3 does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member. 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.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, by sending an e-mail to *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

[5] This figure is based on statistics collected by the Commission's Office of Economic Analysis.

[6] This figure is based on the SIA Report on Office Salaries In the Securities Industry 2003 (Retail Sales Assistant, Junior) and includes 35% for overhead charges.

[7] This figure is based on the SIA Report on Office Salaries In the Securities Industry 2003 (Data Entry Clerk, Senior) and includes 35% for overhead charges.

[8] This figure comes to approximately $14,442,072.

[9] This figure comes to approximately $2,418,550.

[10] This figure is based statistics collected by the Commission's Office of Economic Analysis.

Dated: November 15, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3267 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Form N–14; SEC File No. 270–297; OMB Control No. 3235–0336.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–14—Registration Statement Under the Securities Act of 1933 for Securities Issued in Business Combination Transactions by Investment Companies and Business Development Companies. Form N–14 is used by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and business development companies as defined by section 2(a)(48) of the Investment Company Act to register securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to be issued in business combination transactions specified in Rule 145(a) (17 CFR 230.145(a)) and exchange offers. The securities are registered under the Securities Act to ensure that investors receive the material information necessary to evaluate securities issued in business combination transactions. The Commission staff reviews registration statements on Form N–14 for the adequacy and accuracy of the disclosure contained therein. Without Form N–14, the Commission would be unable to verify compliance with securities law requirements. The respondents to the collection of information are investment companies or business development companies issuing securities in business combination transactions. The estimated number of responses is 457 and the collection occurs only when a merger or other business combination is planned. The estimated total annual reporting burden of the collection of information is approximately 620 hours per response for a new registration statement, and approximately 350 hours per response for an amended Form N–14, for a total of 235,010 annual burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Commission's mission, including whether the information will have practical utility; (b) the accuracy of the Commission'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, 450 5th Street, NW., Washington, DC 20549.

Dated: November 15, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3268 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50669; File No. SR-BSE–2004–47]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to $5 Quotation Spreads on the Boston Options Exchange

November 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2004, the Boston Stock Exchange (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 2 17 CFR 240.19b–4.

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 a section of its Boston Options Exchange rules regarding quote spread requirements. The text of the proposed rule change appears below. Additions are in italics. Deleted items are in brackets.

* * *

Chapter VI Market Makers

Sec. 5 Obligations of Market Makers

(a)

(i)–(vi) No change.

(vii) Price options fairly by, among other things, bidding and offering so as to create differences of no more than [$.25]*$5* between the bid and the offer *following the pre-opening phase* for each options contract. *During the pre-opening phase, spread differentials shall be no more than $.25 between the bid and offer for each options contract* for which the bid is less than $2, no more than $.40 where the bid is at least $2 but does not exceed $5, no more than $.50 where the bid is more than $5 but does not exceed $10, no more than $.80 where the bid is more than $10 but does not exceed $20, and no more than $1.00 where the bid is $20 or greater, provided that BOX may establish differences other than the above for one or more options series. The bid/offer differentials stated above shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

* * *

## 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

The purpose of the proposed rule change is to permit quote spread parameters of up to $5, regardless of the price of the bid, for all options classes traded on the Boston Options Exchange (''BOX''). Currently, Chapter VI, Section 5(a)(vii) of the BOX Rules establishes maximum bid-ask differentials (also referred to as quote spread requirements) that vary from $0.25 to $1.00, depending upon the price of the option.[3] The primary purpose of the quote spread requirements is to help maintain narrow spreads in options. These requirements can have the unintended consequence of requiring market makers to quote at prices that are unnecessarily narrow, thereby exposing them to great risk if markets move quickly.

Given the competitive market making structure of BOX, and the existence of vigorous inter-market competition, the mandatory quote spread requirements may not be necessary to ensure narrow and competitive spreads in options. In this regard, the BOX market structure creates strong incentives for competing market makers and other market participants to disseminate competitive prices. On BOX, each market maker quotes independently, and customers and broker-dealers can enter limit orders at prices better than those posted by market makers. BOX automatically collects this trading interest information, calculates the BOX best bid and offer, and disseminates that value to the Options Price Reporting Authority. Accordingly, the BOX market is competitive, accessible and transparent.

In addition, market participants in BOX have strong incentives to quote competitively. BOX allocates incoming orders based on the price and time of receipt of orders and quotes on the book. A market participant, including a market maker, will not participate in any trade if other orders or quotes have time priority at the same price. Therefore, all BOX market participants have incentive to quote the best price first. Also, BOX's unique Market Maker Prime Rule[4] gives market makers an added incentive to quote the best price first in order to gain an enhanced trade allocation in the BOX Price Improvement Period (''PIP'').[5] In the BOX approval order the Commission stated that it ''believes that the BSE's proposal to give priority to a Market Maker who quotes aggressively before a PIP is initiated [Market Maker Prime], is consistent with the Act and may provide a further incentive for Market Makers to publicly display their best quotes, which would benefit all options market participants.''[6]

Given BOX's NBBO protections[7] as well as through the Options Market Linkage Plan, market participants have even stronger incentives to quote at the best price, lest incoming orders be filled away. Thus, inter- and intra-market competitive forces provide strong incentives for market participants to quote competitively and enter quotes and orders that improve the price and depth of the market.

For these reasons, BSE proposes to widen the allowable spread on BOX to $5. The proposed quote spread requirements will apply after the opening. During the opening, market makers will be required to quote in accordance with the traditional bid-ask width requirements. The $5 quotation requirements would become operative immediately following the opening.

BSE notes that its proposal is similar to pilot programs adopted by the International Securities Exchange, Inc. (''ISE'') and the Chicago Board Options Exchange, Inc. (''CBOE'') that the SEC recently approved on a permanent basis,[8] and a rule change proposed by the Pacific Exchange, Inc. (''PCX'') that was immediately effective upon filing.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and,

[3] The allowable bid-ask differential are: $0.25 for options under $2, $0.40 for options between $2 and $5, $0.50 for options between $5 and $10, $0.80 for options between $10 and $20, and $1.00 for options above $20. *See* Chapter VI, Section 5(a)(vii) of the BOX Rules.

[4] *See* Chapter V, Section 19 of the BOX Rules.

[5] *See* Chapter V, Section 18 of the BOX Rules.

[6] *See* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15).

[7] *See* Chapter V, Section 16(b) of the BOX Rules. BOX filters all inbound orders to ensure that these orders will not execute at a price outside the current national best bid or offer.

[8] *See* Securities Exchange Act Release Nos. 50015 (July 14, 2004), 69 FR 43872 (July 22, 2004) (SR-ISE 2003–22); and 50079 (July 26, 2004), 69 FR 45858 (July 30, 2004) (SR-CBOE–2004–44).

[9] See Securities Exchange Act Release No. 50538 (October 14, 2003), 69 FR 62105 (October 22, 2004) (SR–PCX–2004–89).

[10] 10 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

As noted above, this proposal is similar to pilot programs adopted by the ISE and the CBOE that the Commission recently approved on a permanent basis,[12] and a rule change proposed by PCX that was immediately effective on filing.[13] Neither the ISE proposal nor the CBOE proposal received any public comments. Accordingly, the BSE believes that this proposal does not raise any new issues or regulatory concerns. The Exchange has therefore designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15] Consequently, 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6) because the proposal provides quote width relief similar to that provided under the rules of other exchanges.[18] Accordingly, the Exchange believes that its proposal does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. In addition, the Exchange believes that its request is consistent with the protection of investors and the public interest and that good cause exists, including the need to keep BOX competitive and efficient.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[19] Specifically, the Commission believes that allowing the BSE to implement $5 quotation spread parameters like those adopted by the ISE, the PCX, and the CBOE will help the BOX to compete with those exchanges. The Commission believes that the BSE's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the ISE and CBOE proposals. For these reasons, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BSE–2004–47 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2004–47 and should be submitted on or before December 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3271 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

[12] *See supra,* note 8.

[13] *See supra,* note 9.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] *See supra,* notes 8 and 9.

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50673; File No. SR–CBOE–2004–52]**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Amend Its ''Trigger'' Rule To Permit RAES Orders To Automatically Execute Against Orders Resting on the Exchange's Limit Order Book

November 16, 2004.

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 July 30, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. The CBOE submitted Amendment No. 1 to the proposal on September 23, 2004.[3] 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 ''Trigger'' rule (CBOE Rule 6.8(d)(v)) to permit RAES orders to automatically execute against orders resting on the Exchange's limit order book. Below is the text of the proposed rule change. Proposed additions are *italicized*; proposed deletions are [bracketed].

* * * * *

**Chicago Board Options Exchange, Incorporated**

**Rules**

* * * * *

**Chapter VI—Doing Business on the Exchange Floor**

* * * * *

**Rule 6.8 RAES Operations**

(a)–(d)(iv) No change.

(d)(v) Notwithstanding sub-paragraph (d)(iv), for classes of options as determined by the appropriate Floor Procedure Committee (''FPC''), for any series of options where the bid or offer generated by Autoquote (Exchange or proprietary) is equal to or crosses the Exchange's best bid or offer as established by an order in the Exchange's limit order book, orders in the book for options of that series will be automatically executed against participants on RAES (''Trigger'') up to a size not to exceed the number of contracts equal to the applicable maximum size of RAES-eligible orders for that series of options (''Trigger Volume''). The appropriate FPC is responsible for determining the Trigger Volume for a particular series of options. In the event a member in the trading crowd verbally initiates a trade with a book order prior to the time the book staff announces to the trading crowd that the order has been removed from the book by Trigger, the book staff will manually endorse the book order to that member(s). In the event the order in the book is for a larger number of contracts than the applicable Trigger Volume, the balance of the book order may be executed manually by the trading crowd. In the limited circumstance where contracts remain in the book after an execution (or partial execution) of a book order up to the applicable Trigger Volume, the bid or offer generated by Autoquote will be one-tick inferior to the price of the book order such that the disseminated quote will not cross or lock with the Autoquote bid or offer. *In addition, where contracts remain in the book after an execution (or partial execution)* [In these instances], or for any series where Trigger has not yet been implemented by the appropriate FPC, orders in RAES for options of that series may either [will not] be automatically executed [but instead] or [will] be rerouted on ORS to the crowd PAR terminal or to another location in the event of system problems or contrary firm routing instructions, *as determined by the appropriate FPC on a class by class basis.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend CBOE Rule 6.8(d)(v), which governs the operation of the Exchange's AutoQuote Triggered Ebook Execution System (''Trigger''). The proposed rule change would affect how incoming orders submitted through the Exchange's Retail Automatic Execution System (''RAES'') are treated at such time a locked or crossed market exists.

Trigger is a system that allows orders resting in CBOE's electronic book to be automatically executed in the limited situation where the bid or offer for a series of options generated by CBOE's AutoQuote system (''AutoQuote''), or any CBOE-approved proprietary quote generation system used in lieu of AutoQuote, locks or crosses CBOE's best bid or offer for that series as established by such booked orders. The Trigger functionality does not apply to options traded on CBOE's Hybrid Trading System.

The current Trigger rule (CBOE Rule 6.8(d)(v)) provides that when the quote generated by AutoQuote locks or crosses a resting order in the book, the Trigger process is initiated and the book order up to the Trigger volume, which is set by the appropriate Floor Procedure Committee (''FPC''), is immediately removed from the book and a last sale is disseminated. Where any unexecuted balance remains in the book, it may be executed manually by the trading crowd or by others. During the entire Trigger process, incoming RAES orders do not automatically execute, and instead route to the PAR terminal, where the Exchange's Designated Primary Market-Maker represents them. As soon as the entire book order is removed from the book, the new AutoQuote value, unimpeded by a crossed or locked market, is disseminated and RAES again is available for automatic executions.

Under the proposed rule change, incoming RAES orders submitted during the Trigger process would be eligible to execute against those book orders that are crossed or locked by Autoquote. Specifically, if a balance remains on the book after the Trigger volume is removed from the book, incoming RAES orders would remain eligible for execution against the book order instead of routing to the PAR terminal for manual representation. The proposed rule change does not change the existing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 22, 2004 and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 replaced and superceded the original filing in its entirety.

process for incoming RAES orders that are submitted prior to a locked or crossed market; these orders would continue to be executed in accordance with the RAES procedures set forth in CBOE Rule 6.8 (*i.e.*, if an order in the Exchange's book constitutes the best bid or offer on the Exchange, the incoming RAES order will generally execute against the order in the book). The appropriate FPC would implement this Trigger enhancement on a class-by-class basis.

The Exchange believes that by allowing incoming RAES orders submitted during a locked or crossed market to be eligible for automatic execution, the number of corresponding orders routed to PAR for manual handling would decrease. As a result, the Exchange believes that the proposed rule change provides public customers with greater access to the Exchange's markets and more efficient execution of their RAES orders.

2. Statutory Basis

The CBOE believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it should promote just and equitable principles of trade and serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–52 on the subject line.

*Paper comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-CBOE–2004–52. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File SR–CBOE–2004–52 and should be submitted on or before December 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3275 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50665; File No. SR–FICC–2004–05]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend Rules Relating to the Participants Fund Deposit Requirements of Its Mortgage-Backed Securities Division

November 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1]1, notice is hereby given that on March 3, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on March 11, 2004, amended the proposed rule change described in items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the rules of its Mortgage-Backed Securities Division (''MBSD'') to eliminate the basic deposit component of its Participants Fund deposit requirement for participants that are registered with the Commission as registered investment companies (''RICs'') pursuant to the Investment Company Act of 1940.[2]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 80a–1.

and (C) below, of the most significant aspects of these statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to amend the rules of FICC's MBSD to eliminate the basic deposit component of the Participants Fund deposit requirement for participants that are RICs.[4]

In 2003, FICC received a no-action letter[5] from the Commission's Division of Investment Management (''IM'') stating that IM would not recommend to the Commission enforcement action under Section 17(f) of the Investment Company Act of 1940 against any RIC or its custodian if the RIC or its custodian placed the RIC's cash and/or securities in the custody of the MBSD for purposes of meeting the Participants Fund requirements imposed by the MBSD. IM's no-action letter was based upon the fact that the main portions of the MBSD's Participants Fund, the ''minimum market margin differential deposit'' and the ''market margin differential deposit,'' are intended to benefit the non-defaulting participants of the MBSD because these portions are intended to provide assurances that each participant's contributions to the Participants Fund will be adequate to satisfy all open commitments recorded with the MBSD. In contrast, the remaining portion of the Participants Fund, the ''basic deposit,'' is designed to protect the FICC by ensuring that each participant's fees owing to the MBSD will be paid if the participant is unable to meet such fee obligations.

In granting no-action relief to FICC, IM staff relied upon FICC's representation that RICs would be exempt from the basic deposit requirement. FICC determined that this representation would not subject it to undue risk because the basic deposit is a relatively minimal amount and this exemption affects very few participants.[6] The management of FICC returned the basic deposits posted by its RIC clearing members under perceived authority given to it under Article IV, Rule 1, Section 3 of its Rules. FICC nonetheless believes it would be prudent to expressly state in its MBSD Rules that RICs are exempt from the basic deposit requirement.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to FICC because by exempting RICs from its basic deposit requirement, FICC is enabling RICs to become participants and is doing so in a manner that allows FICC to safeguard the securities and funds in its custody or control or for which it is responsible.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2004–05 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-FICC–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com*. 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–FICC–2004–05 and should be submitted on or before December 13, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3270 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] FICC will also state in the MBSD's Schedule of Charges that the basic deposit does not apply to RICs.

[5] 5 No-Action Letter under the Investment Company Act of 1940—Section 17(f) and Rule 17f–4, to Fixed Income Clearing Corporation (March 13, 2003).

[6] Currently, the basic deposit is determined semiannually and is the greater of (a) $1,000 or (b) the participant's average monthly bill (per account) with a maximum of $10,000. The MBSC currently has only two RIC clearing members.

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50674; File No. SR–ISE–2004–09]**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and No. 2 by the International Securities Exchange, Inc., Relating to the Listing and Trading of Options on the S&P 1000 Index

November 16, 2004.

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 April 5, 2004, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') 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 ISE. The ISE submitted Amendments No. 1 and No. 2 to the proposal on July 16, 2004,[3] and August 2, 2004, respectively.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules to list and trade options on the Standard & Poor's 1000 Index (''S&P 1000'' or ''Index''). Specifically, the ISE proposes to list and trade options based on: (i) One-tenth of the value of the Index (''Reduced Value Index Options'' or ''Reduced Value S&P 1000 Options''); and (ii) one one-hundredth of the value of the Index (''Micro Index Options'' or ''Micro S&P 1000 Options''). The ISE also proposes to list and trade long-term Reduced Value Index Options and long-term Micro Index Options (the Reduced Value Index Options, Micro Index Options, long-term Reduced Value Index Options, and long-term Micro Index Options may be referred to, collectively, as the ''Index Options''). The Index Options will be cash-settled and have European-style exercise provisions. The text of the proposed rule change appears below; additions are *italicized*.

* * * * *

**Rule 2001. Definitions**

* * * * *

Supplementary Material to Rule 2001

.01 The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.

| Underlying index | Reporting authority |
|---|---|
| S&P SmallCap 600 Index. | Standard & Poor's. |
| Morgan Stanley Technology Index. | American Stock Exchange. |
| S&P MidCap 400 Index. | Standard & Poor's. |
| *S&P 1000 Index* ..... | *Standard & Poor's.* |

**Rule 2004. Position Limits for Broad-Based Index Options**

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by this Rule 2004. There may be no position limit for certain Specified (as provided in Rule 2000) broad-based index options contracts. All other broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in the chart below.

| Broad-based underlying index | Standard limit (on the same side of the market) | Restrictions |
|---|---|---|
| S&P SmallCap 600 Index ..... | 100,000 contracts ..... | No more than 60,000 near-term. |
| S&P MidCap 400 Index ..... | 45,000 contracts ..... | No more than 25,000 near-term. |
| *Reduced Value S&P 1000 Index* ..... | *50,000 contracts* ..... | *No more than 30,000 near-term.* |
| *Micro S&P 1000 Index* ..... | *500,000 contracts* ..... | *No more than 300,000 near-term.* |

* * * * *

**Rule 2009. Terms of Index Options Contracts**

(a) General.

* * * * *

(4) ''European-Style Exercise.'' The following European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index

(ii) Morgan Stanley Technology Index

(iii) S&P MidCap 400 Index

*(iv) Reduced Value S&P 1000 Index*

*(v) Micro S&P 1000 Index*

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 2008(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The following A.M.-settled index options are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index

(ii) Morgan Stanley Technology Index

(iii) S&P MidCap 400 Index

*(iv) Reduced Value S&P 1000 Index*

*(v) Micro S&P 1000 Index*

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 15, 2004, and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 replaced the filing in its entirety.

[4] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated July 28, 2004 (''Amendment No. 2''). Amendment No. 2 made technical changes clarifying the description of the Index and the calculation of the Index Settlement Value.

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) The interval between strike prices will be no less than $5.00; provided, that in the case of the following classes of index options, the interval between strike prices will be no less than $2.50:

(i) S&P SmallCap 600, if the strike price is less then $200.00

(ii) Morgan Stanley Technology Index, if the strike price is less then $200.00

(iii) S&P MidCap 400 Index, if the strike price is less than $200

*(iv) Reduced Value S&P 1000 Index, if the strike price is less then $200.00*

*(v) Micro S&P 1000 Index, if the strike price is less then $200.00*

* * * * *

*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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in item IV below. The ISE 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 ISE proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style Index Options. Specifically, the Exchange proposes to list and trade Reduced Value Index Options, Micro Index Options, long-term Reduced Value Index Options, and long-term Micro Index Options.[5]

Index Design and Composition

The S&P 1000 is a market capitalization-weighted index.[6] The S&P 1000 is a combination of the S&P MidCap 400 Index and the S&P SmallCap 600 Index. The S&P MidCap 400 Index represents approximately 70% of the Index and the S&P SmallCap 600 Index represents approximately 30% of the Index.[7] The combination is designed to address the needs of investors who want to allocate assets between large capitalization stocks, on the one hand, and small and middle capitalization stocks, on the other hand.[8] As of February 18, 2004, 607 components in the Index were listed on the New York Stock Exchange (''NYSE''); 384 were listed on Nasdaq; and nine were listed on the American Stock Exchange (''Amex''). All Nasdaq stocks in the Index are designated as national market system securities by the National Association of Securities Dealers (''NASD''), meaning, among other things, that real-time last sale reports are available for these stocks. The Commission previously approved the Exchange's proposals to list and trade options on the S&P SmallCap 600 Index and the S&P MidCap 400 Index.[9]

Although Standard & Poor's (''S&P'') introduced the S&P 1000 in 2003, S&P calculated the Index internally for two years prior to its introduction. Because the Index is a combination of the S&P MidCap 400 Index and the S&P SmallCap 600 Index, the 1000 components of the Index consist of the 400 components included in the S&P MidCap 400 Index and the 600 components included in the S&P SmallCap 600 Index. Stated differently, when a component is added to (deleted from) either the S&P MidCap 400 Index or the S&P SmallCap 600 Index, the component is simultaneously added to (deleted from) the S&P 1000. As a result, the S&P 1000 does not have its own component inclusion or exclusion criteria. Rather, the inclusion and exclusion criteria for the S&P MidCap 400 Index and the S&P SmallCap 600 Index determine the components of the S&P 1000.

The components of the S&P MidCap 400 Index and the S&P SmallCap 600 Index are chosen on the basis of market capitalization, liquidity and industry group representation. The criteria for a component to be added to the S&P MidCap 400 Index and the S&P SmallCap 600 Index (and as a result, to the S&P 1000 Index) are as follows: The component must (i) be a U.S. company; (ii) have adequate liquidity and a reasonable price—the ratio of annual dollar value traded to market capitalization should be 0.3 or greater (very low stock prices can affect a stock's liquidity); (iii) have a market capitalization of $1 billion to $4 billion for the S&P MidCap 400 and $300 million to $1 billion for the S&P SmallCap 600 (these ranges are reviewed from time to time to assure consistency with market conditions); (iv) have financial viability, usually measured as four consecutive quarters of positive as-reported earnings (as-reported earnings are GAAP Net Income excluding discontinued operations and extraordinary items); (v) have a public float of at least 40% of the total issued and outstanding shares; (vi) maintain sector balance for each index as measured by a comparison of the Global Industry Classification Standard sectors and the relevant market capitalization ranges for each index; and (vii) be an operating company and not a closed-end fund, holding company, partnership, investment vehicle or royalty trust (real estate investment trusts are eligible for inclusion in the Index).

The following are the criteria for a component to be deleted from the Index: The component must (i) be involved in a merger, become acquired or significantly restructured such that it no longer meets the inclusion criteria; or (ii) substantially violate one or more of the addition criteria.[10] Finally, the Index may not contain any component that is presently a component of the S&P 500 index.

As of March 25, 2004, the Index's components were classified in the following ten market sectors, along with their respective weightings in the Index: Energy (6.37%); Materials (4.32%); Industrials (13.96%); Consumer Discretionary (18.52%); Consumer Staples (4.45%); Health Care (12.15%); Financials (18.15%); Information Technology (16.06%); Telecommunications Services (0.51%); and Utilities (5.51%).[11] A complete list of the 1000 component stocks in the Index is available at the Exchange, on the Exchange's Web site, and on S&P's Web site.

As set forth in Exhibit B to the proposal, as of February 18, 2004, the

[5] Under ISE Rule 506, ''Long-Term Options Contracts,'' the ISE may list long-term options that expire from 12 to 39 months from the time they are listed.

[6] The calculation of a market capitalization-weighted index involves taking the summation of the product of the price of each stock in the index and the shares outstanding for each issue. In contrast, a price-weighted index involves taking the summation of the prices of the stocks in the index.

[7] *See* S&P 1000 Index description published by Standard & Poor's (''S&P'') on S&P's Web site at *www.standardandpoors.com*.

[8] *See* Amendment No. 2, *supra* note 4.

[9] *See* Exchange Act Release Nos. 48587 (October 2, 2003), 68 FR 58154 (October 8, 2003) (order approving File No. SR–ISE–2003–18) (approving the listing and trading of options on the S&P SmallCap 600 Index); and 49696 (May 13, 2004), 69 FR 28962 (May 19, 2004) (order approving File No. SR–ISE–2004–08) (approving the listing and trading of options on the S&P MidCap 400 Index).

[10] *See* S&P's Web site at *www.standardandpoors.com* under a link entitled ''Index Methodology, Criteria for Additions to and Deletions from a U.S. Index.''

[11] These calculations are based on the index descriptions of the S&P MidCap 400 and the S&P SmallCap 600 on S&P's Web site at *www.standardandpoors.com*.

Index had the following characteristics: (i) The total capitalization of all of the components in the Index was $1.474 trillion; (ii) regarding component capitalization, (a) the highest capitalization of a component was $11.801 billion (Gilead Sciences Corp.), (b) the lowest capitalization of a component was $72.109 million (Huffy Corp.), (c) the mean capitalization of the components was $1.474 billion, (d) and the median capitalization of the components was $1.019 billion; (iii) regarding component price per share, (a) the highest price per share of a component was $910.04 (Washington Post Co.), (b) the lowest price per share of a component was $3.40 (Milacron Inc.), (c) the mean price per share of the components was $30.76, (d) and the median price per share of the components was $27.61; (iv) regarding component weightings, (a) the highest weighting of a component was 0.80% (Gilead Sciences Corp.), (b) the lowest weighting of a component was 0.005% (Huffy Corp.), (c) the mean weighting of the components was 0.10%, (d) the median weighting of the components was 0.07%, and (e) the total weighting of the top five highest weighted components (Gilead Sciences Corp., M&T Bank Corp., New York Community Bancorp Inc., Coach Inc., and D.R. Horton Inc.) was 3.14%; (v) regarding component available shares (public float), (a) the most available shares of a component was 416.90 million shares (Amtel Corp.), (b) the least available shares of a component is 3.3 million shares (Haggar Corp.), (c) the mean available shares of the components was 45.78 million shares, (d) and the median available shares of the components was 32.80 million shares; (vi) regarding the six-month average daily volumes of the components, (a) the highest six-month average daily volume of a component was 12.326 million shares (Rf Micro Devices Inc.), (b) the lowest six month-average daily volume of a component was 6,910 shares (Green Mountain Power Corp.), (c) the mean six-month average daily volume of the components was 466,190 shares, (d) the median six-month average daily volume of the components was 252,180 shares, (e) the six-month average daily volumes of the five most heavily traded components was 7.479 million shares (Rf Micro Devices Inc. (12.326 million shares), Amtel Corp. (8.69 million shares), 3Com Corp. (5.76 million shares), Sandisk Corp. (5.50 million shares), E*Trade Financial Corp. (5.11 million shares)), and (f) 93.6%, or 936 out of 1000, of the Index's components had a six-month average daily volume of at least 50,000 shares; (vii) regarding options eligibility, (a) 98.95% of the Index's components were options eligible, as measured by weighting, and (b) 98.4% of the Index's components were options eligible, as measured by number.

The S&P 1000 Index is presently a ''full'' market capitalization-weighted index. That is, the value of the Index is calculated by multiplying, for each component, the total number of shares outstanding by the price per share, adding these values together, and dividing the result by the Index divisor. However, on March 1, 2004, S&P announced that it would shift the S&P 500 Index, S&P MidCap 400 Index, S&P SmallCap 600 Index, and its other U.S. indexes to ''float-adjusted'' market capitalization weighting.[12] After the transition to float-adjusted market capitalization weighting, the value of the Index will be calculated by multiplying, for each component, the number of shares in the public float of the component by the price per share, adding these values together, and dividing the result by the Index divisor.

S&P will implement the transition from full market capitalization weighting to float-adjusted market capitalization weighting over an 18-month period. In September 2004, S&P began publishing procedures and float adjustment factors and will begin calculating provisional float adjusted indexes. The float adjustment factors include, among other things, information regarding the adjustments that will be made to each component to determine what each component's float will be. At that time, S&P will begin calculating provisional indexes alongside of the regular indexes so that passive indexers (institutional investors that model their portfolio construction and weighting according to S&P indexes) can control the timing of adjustments.

In March 2005, the official index series for S&P's U.S. indexes will shift to partial float adjustment, using float adjustment factors that represent half of the total adjustment, based on the information published in September 2004. In September 2005, the shift to float adjustment will be completed, the official indexes will be fully float-adjusted, and the provisional indexes will be discontinued. Float adjustment factors will be reviewed annually in September.[13]

The Exchange does not intend to trade options on any provisional index calculated during the transition period. Further, based on conversations with S&P, the Exchange does not expect that any securities or futures exchange will trade products on any provisional index during the transition period. S&P has stated that, notwithstanding the simultaneous calculation of provisional indexes, there will still be only one official set of S&P indexes.

During the transition period, S&P will adjust the divisor of the indexes to maintain continuity across the adjustments. Therefore, as a result of the divisor adjustments, the Index value will maintain continuity immediately following both adjustments (in March 2005 and September 2005). Because the Index value will maintain continuity, the value of options traded on the Index will not change as a direct result of the float adjustment. S&P does not expect any companies to be removed from the Index as a result of the adjustments. Adjusting the divisor ensures that the Index level is affected by the performance of individual components, rather than by share changes or component replacements.

The Exchange expects S&P's float adjustment to adjust for cross-holdings and insider holdings. The Exchange will provide a link on its Internet Web site to the page on S&P's Web site page where float adjustment information will be displayed.

According to the ISE, changes to the indexes have already been widely discussed. Major broker-dealers, including Merrill Lynch, Morgan Stanley, Lehman Brothers, JP Morgan, and others, have performed research and published material regarding the changes. Attached as Exhibit E to the proposal are copies of some of that research. S&P intends to publish more detailed procedures for the adjustments in September 2004, well before it begins making its first set of changes in March 2005. S&P also intends to announce all related information by press release and to post that information to its Web site. Due to current and anticipated coverage, the Exchange does not believe that the adjustment will surprise investors.

On March 18, 2004, the Index value was 3,370.88. The Exchange believes that this level is too high for successful options trading. Accordingly, the Exchange proposes to base trading in Index options on fractions of the Index value. In particular, the Exchange proposes to list (i) Reduced Value S&P 1000 Options that are based on one-tenth of the value of the Index, and (ii) Micro S&P 1000 Options that are based on one one-hundredth of the value of

[12] *See* S&P's press release dated March 1, 2004, (''Press Release'') on S&P's Web site at *http://www.standardandpoors.com*. As indicated below, the ISE expects S&P's float adjustment to adjust for cross-holdings and insider holdings.

[13] *See* Press Release, *supra* note 12.

the Index.[14] The Exchange believes that listing options on reduced values of the Index will attract a greater source of customer business than if options were based on the full value of the Index. The Exchange also believes that listing options on reduced values of the Index will provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the Index. Further, by reducing the values of the Index, the ISE notes that investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. The Exchange believes that this should attract additional investors, and, in turn, create a more active and liquid trading environment.[15]

Index Calculation and Index Maintenance

The values of the Reduced Value S&P 1000 Index and the Micro S&P 1000 Index will each be calculated continuously, using the last sale price for each component stock in the Index, and will be disseminated every 15 seconds throughout the trading day.[16] To calculate the full Index value, the sum of the market value of the stocks in the Index is divided by the base period market value (divisor), and the result is multiplied by 100. To calculate the value of the Reduced Value S&P 1000, the full Index value is divided by ten. To calculate the value of the Micro S&P 1000, the full Index value is divided by 100. To provide continuity for the Index's value, the divisor is adjusted periodically to reflect such events as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings and other capitalization changes.

S&P will calculate the settlement value for purposes of settling Reduced Value S&P 1000 Options (''Reduced Value Settlement Value'') and Micro S&P 1000 Options (''Micro Settlement Value'') on the basis of opening market prices on the business day prior to the expiration date of such options (''Settlement Day'').[17] The Settlement Day is normally the Friday preceding ''Expiration Saturday.'' [18] In the event that a component security in the Index does not trade on Settlement Day, the closing price from the previous trading day is used to calculate the Settlement Value. Accordingly, trading in Reduced Value S&P 1000 Options and Micro S&P 1000 Options will normally cease on the Thursday preceding an Expiration Saturday. S&P will calculate, and the Exchange will disseminate, both the Reduced Value Settlement Value and the Micro Settlement Value.[19]

S&P will monitor and maintain the S&P 1000. S&P is responsible for making all necessary adjustments to the Index to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances, change the market value of the Index and would require a change in the Index divisor to effect adjustments.

Although the Exchange is not involved in the maintenance of the Index, the Exchange represents that it will monitor the Index on a quarterly basis and will notify the staff in the Commission's Division of Market Regulation (''Division''), pursuant to filing a proposed rule change pursuant to Rule 19b–4,[20] if: (i) The number of securities in the Index drops by ⅓ or more; (ii) 10% or more of the weight of the Index is represented by component securities having a market value of less than $75 million; (iii) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (iv) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (v) the largest component security accounts for more than 15% of the weight of the Index or the largest five components in the aggregate account for more than 50% of the weight of the Index.

The Exchange will notify the Division immediately in the event S&P determines to cease maintaining or calculating the Index or in the event the Index values are not disseminated every 15 seconds by a widely available source. In the event the Index ceases to be maintained or calculated, or disseminated every 15 seconds by a widely available source, the Exchange agrees not to list any additional series for trading and agrees to limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.[21]

Contract Specifications

The contract specifications for both Reduced Value S&P 1000 Options and Micro S&P 1000 Options are set forth in Exhibit C to the proposal. The ISE proposes to characterize the Index as a broad-based index, as defined in ISE Rule 2001(j).[22] Options on the Index are European-style and A.M. cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in ISE Rule 2008(a), will apply to Index Options. Exchange rules that are applicable to the trading of options on broad-based indexes will apply to the trading of Index Options.[23] Specifically, among others, Exchange rules governing margin requirements and trading halt procedures that are applicable to the trading of broad-based index options will apply to Index Options.

The Exchange proposes to establish aggregate position limits for options on the Reduced Value S&P 1000 Index at 50,000 Reduced Value S&P 1000 contracts on the same side of the market, provided no more than 30,000 of such Reduced Value S&P 1000 contracts are in the nearest expiration month series. The Exchange also

[14] As noted above, the ISE also proposes to list long-term Reduced Value S&P 1000 Options and long-term Reduced Value Micro S&P 1000 Options.

[15] The concept of listing reduced value options on an index is not a novel one. See, *e.g.*, Securities Exchange Act Release Nos. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (order approving File No. SR–CBOE–93–12) (approving the listing and trading of options based on one-tenth the value of the S&P 500 Index); 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (notice of filing and immediate effectiveness of File No. SR–CBOE–00–15) (listing and trading of options based on one-tenth of the value of the Nasdaq 100 Index); and 48681 (October 22, 2003), 68 FR 62337 (November 3, 2003) (order approving File No. SR–CBOE–2003–14) (approving the listing and trading of options based on one-tenth of the value of the NYSE Composite Index).

[16] The values of the Reduced Value S&P 1000 and the Micro S&P 1000 will be calculated by S&P and disseminated to Reuters. The Exchange will receive those values from Reuters and disseminate them every 15 seconds between the hours of 9:30 a.m. and 4:15 p.m. to the Options Price Reporting Authority (''OPRA'') and to its members. The Index is published daily in, among other places, The Wall Street Journal and The New York Times, and is available during trading hours from quotation vendors such as Reuters. Telephone conversation between Joseph W. Ferraro III, Assistant General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission (November 9, 2004).

[17] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[18] For any given expiration month, the Index Options will expire on the third Saturday of the month.

[19] *See* Amendment No. 2, *supra* note 4.

[20] Telephone conversation between Joseph W. Ferraro III, Assistant General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission (November 9, 2004).

[21] 21 *Id.*

[22] ISE Rule 2001(j) defines a ''market index'' or a ''broad-based index'' to mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

[23] *See* ISE Rules 2000 through 2012.

proposes to establish aggregate position limits for options on the Micro S&P 1000 Index at 500,000 Micro S&P 1000 contracts on the same side of the market, provided that no more than 300,000 of the S&P 1000 Index contracts are in the nearest expiration month series. Reduced Value S&P 1000 contracts will be aggregated with Micro S&P 1000 contracts, where 10 Micro S&P 1000 contracts equal one Reduced Value S&P 1000 contract. These limits are similar to the limits applicable to options on the Russell 2000 Index, a similarly capitalized index.[24]

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of Index Options. Accordingly, purchases of put or call Index Options with nine months or less until expiration must be paid for in full. Writers of uncovered put or call Index Options must deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current Index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value.

The Exchange proposes to set strike price intervals at 2½ points for certain near-the-money series in near-term expiration months when the Index is at a level below 200, and 5-point strike price intervals for other Index Options series with expirations up to one year, and 25-to 50-point strike price intervals for longer-term Index Options. Accordingly, because the current Reduced Value S&P 1000 level is 337.1, the Exchange will set strike price intervals at five points for Reduced Value S&P 1000 Options. Because the current Micro S&P 1000 level is 33.71, the Exchange will set strike price intervals at 2½ points for Micro S&P 1000 Options. The minimum tick size for series trading below $3 will be 0.05, and for series trading at or above $3 the minimum tick size will be 0.10.

The Exchange proposes to list both Reduced Value S&P 1000 Options and Micro S&P 1000 Options in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[25] In addition, long-term Index Options series having up to 39 months to expiration may be traded.[26] The interval between expiration months for Reduced Value S&P 1000 Index Options or Micro S&P 1000 Index Options will not be less than six months. The trading of any long-term Reduced Value S&P 1000 Options and Micro S&P 1000 Options will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Except for the further reduced value given to the Micro S&P 1000 Options, all of the specifications and calculations for the Micro S&P 1000 Options will be the same as those used for the Reduced Value S&P 1000 Options. The Micro S&P 1000 Options will trade independently of and in addition to the Reduced Value S&P 1000 Options, and both products will be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for Index Options and intends to apply those same program procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: the Amex, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the National Stock Exchange, the NASD, the NYSE, the Pacific Stock Exchange and the Philadelphia Stock Exchange. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange represents that it has the system capacity to adequately handle all series that would be permitted to be added by this proposal (including LEAPS). The Exchange provided to the Commission information in a confidential submission that supports its system capacity representations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5),[28] in particular, in that it will permit trading in both Reduced Value S&P 1000 Options and Micro S&P 1000 Options pursuant to rules designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principals of trade.

*A. Self-Regulatory Organization's Statement on Burden on Competition*

The ISE believes that the proposed rule change does not impose any burden on competition.

*B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[24] The same limits that apply to position limits shall apply to exercise limits for these products. Telephone conversation between Joseph W. Ferraro III, Associate General Counsel, ISE, Florence Harmon, Senior Special Counsel, and A. Michael Pierson, Attorney, Division, Commission (November 16, 2004).

[25] *See* ISE Rule 2009(a)(3).

[26] *See* ISE Rule 2009(b)(1). The Exchange is not listing reduced value LEAPS on either of the Reduced Value S&P 1000 Indexes or Reduced Value Micro S&P 1000 Indexes pursuant to ISE Rule 2009(b)(2). Telephone conversation between Joseph W. Ferraro III, Associate General Counsel, ISE, Florence Harmon, Senior Special Counsel, and A. Michael Pierson, Attorney, Division, Commission (November 16, 2004).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

• Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2004–09 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–09 and should be submitted on or before December 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3274 Filed 11–19–04; 8:45 am]

**BILLING CODE 8010–01–P**

[29] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50670; File No. SR–NASD–2004–167]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Establish Combined Nasdaq Market Center and Brut Pricing for NASD Members

November 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On November 8, 2004, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)[4] of the Act and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish a new pricing and rebate schedule for NASD members that spans activity on both the Nasdaq Market Center (''NMC'') and Nasdaq's Brut Facility (''Brut''), to be implemented on November 1, 2004. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 8, 2004 (''Amendment No. 1''). Amendment No. 1 made technical corrections to the proposed rule text of the originally filed proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

### 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

Nasdaq is proposing to establish a new pricing and rebate schedule for NASD members for Nasdaq-listed securities that spans activity on both the NMC and Brut. The fee and rebate structure is based on multiple volume-based usage tiers that take into account the combined NMC and Brut volume of a member. A member will pay varying fees for having orders routed away from the systems or when accessing liquidity (''take-outs'') based upon the member's combined volume activity in the NMC and Brut.

Likewise, rebates for providing liquidity will be based on the combined total of liquidity provided to both systems. Nasdaq believes that this pricing structure will encourage activity on both the NMC and Brut and will not provide financial incentives to use one system versus the other. The new combined NMC/Brut fee structure for Nasdaq-listed securities is provided below:

REBATE SCHEDULE FOR EXECUTIONS IN NASDAQ MARKET CENTER AND BRUT

| Average daily shares of liquidity provided on NASDAQ and/or BRUT | Liquidity provider rebate per share executed |
|---|---|
| Greater than 20 million | $0.0025 |
| Between 1–20 million | 0.0022 |
| Less than or equal to 1 million | 0.0020 |

FEE SCHEDULE FOR TAKE-OUT AND ROUTING

| Average daily shares of liquidity provided on NASDAQ and/or BRUT | Fee to take liquidity/Brut routing fee (per share) |
|---|---|
| Greater than 10 million | 0.0027 |
| Greater than 500,000 but less than or equal to 10 million | 0.0028 |
| Less than or equal to 500,000 | 0.0030 |

Nasdaq represents that it will continue to charge a $0.001 per share NMC order delivery charge on NMC orders delivered to fee-charging ECNs participating in NMC. This charge is currently capped at $10,000 per month for firms providing more than 500,000 shares per day, on average, over the course of the month. Nasdaq also represents that, in conjunction with the adoption of this pricing structure, Brut will cease charging an access fee on orders delivered to it from the NMC. In addition, Nasdaq represents that it currently does not charge when a firm executes against its own quote or order. Nasdaq represents that, upon the implementation of the above pricing schedule, Nasdaq will begin charging for these executions at the rates listed above.

2. Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(5) of the Act,[7] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq states that written comments were neither solicited nor received.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The forgoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 [9] thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[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–NASD–2004–167 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NASD–2004–167. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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–2004–167 and should be submitted on or before December 13, 2004.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3272 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50667; File No. SR–NYSE–2004–05]**

## Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Enhancements to the Exchange's Existing Automatic Execution Facility Pilot (NYSE Direct+)

November 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 2 [3] to a proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On November 9, 2004, the NYSE filed Amendment No. 3 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated November 8, 2004 (''Amendment No. 2''). Amendment No. 2 supplements the description of certain aspects of the Exchange's hybrid market and proposes additional amendments to the Exchange's rules.

[4] *See* Partial amendment dated November 9, 2004 (''Amendment No. 3''). In Amendment No. 3, the NYSE submitted the proposed rule changes in the format required in Exhibit 5 to the Form 19b–4, which was inadvertently omitted from Amendment No. 2.

as amended by Amendment Nos. 2 and 3 from interested persons.

The proposed rule change was filed on February 9, 2004 and amended by Amendment No. 1 on August 2, 2004.[5] The proposed rule change as amended by Amendment No. 1 was published for comment in the **Federal Register** on August 16, 2004.[6] On August 26, 2004, the Commission extended the public comment period with respect to the Notice to September 22, 2004.[7] The Commission received 15 comment letters with respect to the Notice.[8]

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amendments to its rules governing NYSE Direct+® (''Direct+''), which were originally proposed in the Notice, supplements the description of certain aspects of the Exchange's hybrid market, and proposes additional amendments to the Exchange's rules. Below is the text of the proposed rule change, as amended by Amendment Nos. 2 and 3. Proposed new language is italicized; proposed deletions are in brackets.[9] Furthermore, examples of trading under the proposed rules are attached hereto as Exhibit A.

* * * * *

**Definitions of Orders**

**Rule 13**

* * * * *

**All or None Order**

A market or limited price order [which] *designated all or none* is to be executed in its entirety or not at all, but, unlike a fill or kill order, is not to be treated as cancelled if not executed as soon as it is represented in the Trading Crowd *or automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.* The making of ''all or none'' bids or offers in stocks is prohibited and the making of ''all or none'' bids or offers in bonds is subject to the restrictions of Rule 61 and Rule 86.

* * * * *

*Auction Limit Order*

*An auction limit order is an order that provides an opportunity for price improvement.*

*The limit price of an auction limit order to buy should be at or above the Exchange best offer at the time the order is entered on the Exchange. The limit price of an auction limit order to sell should be at or below the Exchange best bid at the time the order is entered on the Exchange.*

*An auction limit order shall be quoted and executed in accordance with Exchange Rules 15A.50, 123F and 79A.15.*

**Auto Ex Order**

An auto ex order is*:*

(a) *A market order designated for automatic execution or a limit order to buy (sell) priced at or above (below) the Exchange best offer (bid) at the time such order is routed to the Display Book® or;*

*(b) An immediate or cancel order; or*

*(c) An elected stop or stop limit order systemically delivered to the Display Book; or*

*(d) A buy ''minus'', sell ''plus'' or short sale order systemically delivered to the Display Book; or*

*(e) An all or none order; or*

*(f) An elected or converted percentage order that is convertible on a destabilizing tick and for which the entering broker has granted permission for the specialist to be on parity with the order; or*

*(g) A part of round lot order (PRL); or*

*(h) Orders initially eligible for automatic execution that have been cancelled and replaced in a stock, Investment Company Unit (as defined by paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200), subject to* [a limit order of 1099 shares or less priced at or above the Exchange's published offer (in the case of an order to buy) or at or below the Exchange's published bid (in the case of an order to sell), which a member or member organization has entered for] automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000–1004[5].

[Pursuant to a pilot program to run until December 23, 2004, orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200) may be entered as limit orders in an amount greater than 1099 shares. The pilot program shall provide for a gradual, phased-in raising of order size eligibility, up to a maximum of 10,000 shares. Each raising of order size eligibility shall be preceded by a minimum of a one-week advance notice to the Exchange's membership.]

* * * * *

**Immediate or Cancel Order**

A market or limited price order [which] *designated immediate or cancel* is to be executed [in whole or in part] *to the extent possible* as soon as such order is represented in the Trading Crowd *or automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004,* and the portion not so executed is to be treated as cancelled. For the purposes of this definition, a ''stop'' is considered an execution.

A ''commitment to trade'' received [on the Floor] through ITS *will be automatically executable in accordance with, and to the extent provided by, Exchange Rules 1000–1004,* and shall be treated in the same manner, and entitled to the same privileges, as [would] an immediate or cancel order that [reaches the Floor] *is systemically delivered to the Display Book* at the same time except as otherwise provided in the Plan and except further that such a commitment may not be ''stopped.'' [and the commitment shall remain irrevocable for the time period chosen

[5] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 30, 2004, and accompanying Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[6] *See* Securities Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407 (''Notice'').

[7] *See* Securities Exchange Act Release No. 50277 (August 26, 2004), 69 FR 53759 (September 2, 2004).

[8] *See* letter to William Donaldson, Chairman, Commission, from Donald E. Weeden, dated August 31, 2004; letters to the Commission from: Kim Bang, President and Chief Executive Officer, Bloomberg Tradebook LLC, dated September 22, 2004; and Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company, dated October 26, 2004; letters to Jonathan G. Katz, Secretary, Commission, from: Ari Burstein, Associate Counsel, Investment Company Institute, dated September 22, 2004; Donald D. Kittell, Executive Vice President, Securities Industry Association, dated October 1, 2004; Ellen L.S. Koplow, Executive Vice President and General Counsel, Ameritrade, Inc., dated September 22, 2004; Bruce Lisman, Bear, Stearns & Co., Inc., dated September 28, 2004; Edward J. Nicoll, Chief Executive Officer, Instinet Group Incorporated, dated October 25, 2004; Thomas Peterffy and David M. Battan, the Interactive Brokers Group, dated September 7, 2004; and Lisa M. Utasi, President and Kimberly Unger, Executive Director, the Security Traders Association of New York, Inc., dated September 22, 2004; and letter to Annette L. Nazareth, Director, Division, Commission, and Robert L.D. Colby, Deputy Director, Division, Commission, from Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company, dated August 10, 2003. See e-mails to Nancy Reich Jenkins, Managing Director, Market Surveillance, NYSE, from George W. Mann Jr., Executive Vice President and General Counsel, Boston Stock Exchange, Inc., dated September 22, 2004; and e-mails to the Commission from: Jose L. Marques, Ph.D., Managing Member, Telic Management LLC, dated September 21, 2004; Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of Northern Colorado, dated September 22, 2004; and James L. Rothenberg, Esq., dated August 30, 2004.

[9] The rule text as set forth herein includes several minor technical revisions that the Exchange has committed to correct by filing an amendment. Telephone conversation between Cyndi Rodriguez, Special Counsel, Division, Commission, and Jeff Rosenstrock, Senior Special Counsel, Market Surveillance, NYSE, on November 15, 2004.

by the sender of the commitment.] *After trading with the Exchange published bid (offer), the unfilled balance of a commitment to trade shall be automatically reported to ITS as cancelled.*

**Limit, Limited Order or Limited Price Order**

An order to buy or sell a stated amount of a security at a specified price, or at a better price, if obtainable after the order is represented in the Trading Crowd.

*A marketable limit order is an order on the Exchange that can be immediately executed; that is, an order to buy priced at or above the Exchange best offer or an order to sell priced at or below the Exchange best bid.*

*A marketable limit order systemically delivered to the Display Book is an auto ex order subject to automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

**Market Order**

An order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd *or systemically delivered to the Display Book.*

*A market order is not an auto ex order unless so designated and shall be quoted and executed in accordance with Exchange Rules 15A.50, 123F.*

*A market order designated for automatic execution is an auto ex order and shall be executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

* * * * *

**Percentage Order**

A limited price order to buy (or sell) 50% of the volume of a specified stock after its entry. There are four types of percentage orders:

(a) Straight Limit Percentage Orders—Such an order is elected when a transaction has occurred at the limit price or a better price. Unless otherwise specified, only volume at or below the limit subsequent to the receipt of the order will be applied in determining the elected portion of buy orders. Conversely, only volume at or above the limit will be calculated in determining the elected portion of sell orders.

(b) Last Sale Percentage Orders—The elected portion of an order designated ''last sale'' shall be executed only at the last sale price or at a better price, provided that such price is at or better than the limit specified in the order. If the order is further designated ''last sale-cumulative volume'', the elected portion shall be placed on the book at the price of the electing sale, but if not executed, shall be cancelled and re-entered on the book at the price of the subsequent transactions on the Exchange, provided the price of such subsequent transactions is at or better than the limit specified in the order.

(c) ''Buy Minus''-''Sell Plus'' Percentage Orders—The elected portion of an order to ''buy minus'' shall be executed only on a ''minus'' or ''zero minus'' tick. Orders of this type must also be qualified further by designating a limit price. The elected portion of an order to ''sell plus'' shall be executed only on a ''plus'' or ''zero plus'' tick. Orders so designated are handled in the same manner as an order to sell short. (See Rule 123A.71) Orders of this type must also be further qualified by designating a limit price.

If so instructed by the entering broker(s), percentage orders to buy will be converted into regular limit orders for transactions effected on ''minus'' or ''zero minus'' ticks. Conversely, if so instructed by the entering broker(s), percentage orders to sell will be converted into regular limit orders for transactions effected on ''plus'' or ''zero plus'' ticks.

If further instructed by the entering broker(s), as provided in Rule 123A.30, percentage orders to buy may be converted into regular limit orders for transactions on ''plus'' or ''zero plus'' ticks. Conversely, if so instructed by the entering broker(s), percentage orders to sell may be converted into regular limit orders for transactions on ''minus'' or ''zero minus'' ticks.

(See also Rule 123A.30.)

(d) ''Immediate Execution or Cancel Election'' Percentage Orders—The elected portion of a percentage order with this designation is to be executed immediately in whole or in part at the price of the electing transaction. Any elected portion not so executed shall be deemed cancelled, and shall revert to its status as an unelected percentage order and be subject to subsequent election or conversion.

*The converted portion of such a percentage order that is convertible on a destabilizing tick (a ''CAP–DI order'') and which is systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004 consistent with the order's instructions.*

* * * * *

**Sell ''Plus''-Buy ''Minus'' Order**

A market order to sell ''plus'' is a market order to sell a stated amount of a stock provided that the price to be obtained is not lower than the last sale if the last sale was a ''plus'' or ''zero plus'' tick, and is not lower than the last sale plus the minimum fractional change in the stock if the last sale was a ''minus'' or ''zero minus'' tick. A limited price order to sell ''plus'' would have the additional restriction of stating the lowest price at which it could be executed.

*Sell ''plus'' limit orders which are systemically delivered to the Display Book® and sell ''plus'' market orders designated for automatic execution will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004 consistent with the order's instructions.*

A market order to buy ''minus'' is a market order to buy a stated amount of a stock provided that the price to be obtained is not higher than the last sale if the last sale was a ''minus'' or ''zero minus'' tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a ''plus'' or ''zero plus'' tick. A limited price order to buy ''minus'' would have the additional restriction of stating the highest price at which it could be executed.

*Buy ''minus'' limit orders that are systemically delivered to the Display Book® and buy ''minus'' market orders designated for automatic execution will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004 consistent with the order's instructions.*

**Stop Order**

A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd. *Stop orders that are systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004 consistent with the order's instructions.*

**Stop Limit Order**

A stop limit order to buy becomes a limit order executable at the limit price, or at a better price, if obtainable, when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or

below the stop price after the order is represented in the Trading Crowd. *Stop limit orders that are systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004 consistent with the order's instructions.*

* * * * *

(Remainder of rule unchanged)

**ITS "Trade-Throughs" and "Locked Markets"**

**Rule 15A**

* * * * *

Supplementary Material

.10 Nothing in paragraph (d)(2)(B) above is intended to discourage a locking member from electing to ship if the complaint requests him to do so.

.20 The fact that a transaction may be cancelled or the price thereof may be adjusted pursuant to the provisions of paragraph (b)(2) of this Rule 15A, shall not have any effect, under the rules, on other transactions or the execution of orders not involved in the original transaction.

.30 The provisions of this Rule 15A shall supersede the provisions of any other Exchange Rule which might be construed as being inconsistent with Rule 15A.

.40 For the purposes of this Rule:

i. The terms ''Exchange trade-through'' and ''Third participating market center trade-through'' do not include the situation where a member who initiates the purchase (sale) of an ITS security at a price which is higher (lower) than the price at which the security is being offered (bid) in another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid); and

ii. A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

*.50 Where a better bid or offer is published by another ITS participating market center or centers in which an automatic execution is immediately available or such bid or offer is otherwise protected from a trade-through by Securities and Exchange Commission rule or ITS Plan, and the price associated with such published better bid or offer has not been systemically matched by the specialist, the Exchange will automatically route to such other market center or centers as a commitment to trade any order or portion thereof that satisfies such better published bid or offer, unless the member entering the order indicates in such manner as required by the Exchange that it is contemporaneously satisfying the better published bid or offer.*

* * * * *

**Dissemination of Quotations**

**Rule 60**

* * * * *

(e) Autoquoting of highest bid/lowest offer and automated adjustment of size of liquidity bid and offer. The Exchange will autoquote the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price. The size of any liquidity bid or offer shall be systemically increased to reflect any additional limit orders transmitted to the specialist's book at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). The size of any liquidity bid or offer shall be systematically decreased to reflect the execution of any limit orders on the specialist's book at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). However, de minimis increases or decreases in the size of limit orders on the book, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the book.

[In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.]

*Autoquote will be suspended when the specialist has gapped the quotation in accordance with Exchange policies and procedures, a block size transaction as defined in Rule 127 that involves orders on the book is being reported manually or when a liquidity replenishment point (''LRP'') as defined in Exchange Rule 1000 (a)(v)(A) has been reached.*

*After the specialist has gapped the quotation, autoquote will resume with a manual transaction or the publication of a non-gapped quotation.*

*Autoquote will resume as soon as possible after a LRP has been reached, but in no more than five seconds, where the auto ex order that reached the LRP is executed in full, or any unfilled balance of such order is not capable of trading at a price above (in the case of a buy order) or below (in the case of a sell order) the LRP. Where the unfilled balance of an auto ex order is able to trade at a price above (below) the LRP, but the price does not create a locked or crossed market, autoquote will resume upon a manual transaction or the publication of a new quote by the specialist, but in any event in no more than 10 seconds. Where the unfilled balance of an auto ex order is able to trade at a price above (below) the LRP and the price creates a locked or crossed market, autoquote will resume upon a manual transaction or the publication of a new quote by the specialist.*

*Autoquote will resume as soon as possible after a momentum liquidity replenishment point, as defined in Exchange Rule 1000(a)(v)(B), is reached, but in no more than ten seconds unless a locked or crossed market exists. In such case, autoquote will resume upon a manual transaction.*

*Autoquote will resume immediately after a manual report of a block size transaction is reported.*

* * * * *

**[Below Best] Bid*s* [-] *and* [Above Best] Offers**

**Rule 70**

When a bid is clearly established, no bid or offer at a lower price shall be made. When an offer is clearly established, no offer or bid at a higher price shall be made.

All bids made and accepted, and all offers made and accepted, in accordance with *Exchange* Rules [45 to 86] shall be binding.

Supplementary Material

.10 *Except for bids and offers made by a specialist pursuant to Rule 104 (b) and (c),* [A]any bid *(offer) systemically delivered to the Display Book* which is made at the same or higher (*lower*) price of the prevailing offer (*bid*) shall result in an *automatic execution* [transaction at the offer price in an amount equal to the lesser of the bid or offer. The same principle shall apply when an offer is

made at the same or lower price as the bid.] *in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

.20 *(a) A Floor broker may place within the Display Book system a broker agency interest file at varying prices at or outside the Exchange best bid and offer with respect to orders he or she is representing on the Floor, except that the agency interest file shall not include any ''G'' order interest or customer interest that restricts the specialist's ability to be on parity pursuant to Exchange Rule 104.10(6)(i)(C).*

*(b) All Floor broker agency interest at the same price shall be on parity, except agency interest that established the Exchange best bid or offer shall be entitled to priority for one trade in accordance with Exchange Rule 72. No Floor broker agency interest in the file shall be entitled to precedence based on size.*

*(c) The Floor broker agency interest file shall become part of the quotation when it is at or becomes the Exchange best bid or offer and shall be executed in accordance with Exchange Rule 72. Such interest will be displayed in its entirety if less than 1,000 shares, and if greater than 1,000 shares, will be displayed for 1,000 shares or a greater amount chosen by the Floor broker. That portion of the interest displayed at the best bid or offer shall be on parity with other displayed interest at such best bid or offer. That portion not displayed will yield to all other interest on the book, in the Crowd or of the specialist eligible to trade at the published bid or offer.*

*Once an execution has taken place against the interest represented by a Floor broker in the agency interest file, if the remaining displayed interest represented by that Floor broker is for less than 1,000 shares and the Floor broker represents additional interest in the Floor broker's agency interest file, such additional interest will be automatically displayed in its entirety if less than 1,000 shares or for 1,000 shares or a greater amount chosen by the Floor broker.*

*Any unfilled portion of an incoming order that was executed automatically at the displayed bid or offer shall be executed against any undisplayed contra side interest residing in the broker agency interest file at the same price in a transaction directly following the automatic execution.*

*(d) A Floor broker's agency interest not at the Exchange best bid or offer shall be on parity with orders on the book, the Crowd and the specialist layered interest file if executed as part of a sweep in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

*(e) A Floor broker may have an agency interest file in only one Crowd, as determined by the Exchange, at any given time. A Floor broker may trade on behalf of his or her orders as part of the Crowd at the same price and on the same side of the market as his or her agency interest file only to the extent that the volume traded verbally in the Crowd is not included in the agency interest file.*

*(f) A Floor broker's agency interest file must be cancelled when he or she leaves the Crowd. Failure to do so is a violation of Exchange rules. If the Floor broker leaves the Crowd without canceling his or her agency interest file and one or more executions occur with the agency interest, the Floor broker shall be held to such executions.*

*(g) A Floor broker has discretion to exclude his or her agency interest from the aggregated agency file interest information available to the specialist.*

*(h) Broker agency interest excluded from the aggregated interest information available to the specialist is able to participate in automatic executions, but will not participate in a manual execution unless the broker representing this interest verbally trades on its behalf as part of the Crowd and may trade at a price that is inferior to the price of such transaction.*

*(i) Nothing in this rule shall be interpreted as modifying or relieving the Floor broker from his or her agency obligations and required compliance with all Exchange rules, policies and procedures.*

*.30 Definition of Crowd A Floor broker will be considered to be in a Crowd if he or she is present at any one of five contiguous panels at any one post where securities are traded.*

* * * * *

**Miscellaneous Requirements on Stock and Bond Market Procedures**

**Rule 79A**

Supplementary Material

.10 Request to make better bid or offer.—When any Floor broker does not bid or offer at the limit of an order which is better than the currently quoted price in the security and is requested by his principal to bid or offer at such limit, he shall do so.

.15 With respect to limit orders received by specialists, each specialist shall publish immediately (*i.e.*, as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects;

(i) The price and full size of each customer limit order that is at a price that would improve the specialist's bid or offer in such security; and

(ii) The full size of each limit order that

(A) Is priced equal to the specialist's bid or offer for such security;

(B) Is priced equal to the national best bid or offer; and

(C) Represents more than a de minimis change (*i.e.*, more than 10 percent) in relation to the size associated with the Exchange's bid or offer.

[Each specialist shall keep active at all times the quotation processing facilities (known as ''Quote Assist'') provided by the Exchange. A specialist may deactivate the quotation processing facilities as to a stock or a group of stocks provided that Floor Official approval is obtained. Such approval to deactivate Quote Assist must be obtained no later than three minutes from the time of deactivation.]

*Limit orders received by the specialist that improve the Exchange then-current bid or offer or change the size of the Exchange bid or offer, other than de minimis increases or decreases, shall be autoquoted in accordance with Exchange Rule 60(e). The Exchange shall activate the autoquote facility in each specialty stock by initiating a liquidity quote. Each specialist shall keep active at all times the autoquote facility provided by the Exchange, except that a specialist may cause the deactivation of the autoquote facility by gapping the quote in accordance with the policies and procedures of the Exchange. Autoquoting will also be automatically suspended when a liquidity replenishment point, as defined in Exchange Rule 1000(a)(v), is reached.*

The requirements with respect to specialists' display of limit orders shall not apply to any customer limit order that is[;]:

(1) Executed upon receipt of the order;

(2) Placed by a customer who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed;

(3) An odd-lot order;

(4) Delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–1(c)(5)(ii) under the Securities Exchange Act with respect to that order;

(5) Delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–4 under the Securities Exchange Act with respect to that order;

(6) An ''all or none'' order;

(7) A limit order to buy at a price significantly above the current offer or a limit order to sell at a price significantly below the current bid that is handled in compliance with Exchange procedures regarding such orders, (''too marketable limit orders''); or

(8) An order that is handled in compliance with Exchange procedures regarding *gap quoting* or block crosses at significant premiums or discounts from the last sale.

* * * * *

(Remainder of rule unchanged)

**Dealings by Specialists**

**Rule 104**

* * * * *

(b) Specialists shall have the ability to establish an external quote application interface (''Quote API'') which utilizes proprietary algorithms that allow the specialist, on behalf of the dealer account, to systematically update the Exchange published bid or offer within the Display Book system in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200). [Nothing in this rule shall be interpreted as modifying or relieving the specialist from his or her obligations and required compliance with all Exchange rules, policies and procedures.]

*(c) Except as otherwise provided in paragraph (b) above, specialists shall have the ability to establish an external quote application interface (''Quote API'') which utilizes proprietary algorithms that allow the specialist, on behalf of the dealer account, to systemically:*

*(i) When not reacting to an order entering the Display Book®, establish the best bid or offer on the Exchange;*

*(ii) When not reacting to an order entering the Display Book®, withdraw the specialist interest at the best bid or offer on the Exchange;*

*(iii) Supplement the size of the existing Exchange published best bid or offer;*

*(iv) Provide price improvement to automatic executions subject to the conditions outlined below;*

*(v) Match bids and offers published by other market centers;*

*(vi) Facilitate a single-price execution at the Exchange published best bid or offer, provided the specialist purchases or sells all of the remaining volume on the order being facilitated; or*

*(vii) Place within the Display Book® system a specialist interest file at varying prices outside the published Exchange quotation.*

*The specialist Quote API may permit the specialist dealer account to systemically participate in a transaction to provide price improvement as provided in (iv) only when:*

*(A) The quotation spread is .03 or greater;*

*(B) The specialist's interest at the Exchange published bid or offer in that security is the lesser of 10,000 shares or twenty percent of the size of the market on the side which the transaction will take place;*

*(C) The size of the order to be executed is 2,000 shares or less;*

*(D) The specialist satisfies the entire order; and*

*(E) The price improvement to be supplied by the specialist's participation is at least .02 where the quotation spread at the time of the transaction is .03 to .05, is at least .03 where the quotation spread at the time of the transaction is .06 to .10, is at least .04 where the quotation spread at the time of the transaction is .11 to .20, and is at least .05 where the quotation spread at the time of the transaction is greater than .20.*

*(d) Quote API pursuant to paragraphs (b) and (c) above:*

*(i) Must not enable the specialist to trade at the best bid or offer except as permitted in (c)(vi) above;*

*(ii) Must be designed and must operate in such a manner that its functionality is based on the consideration of only the order most recently accessed by or available to the Quote API at the time the Quote API is generating a message;*

*(iii) Must identify the order it is reacting to in a manner prescribed by the Exchange;*

*(iv) Must not be operative during the time a block size trade as defined in Rule 127 involving orders on the book is being reported pursuant to manual procedures or at any time that autoquoting or automatic executions are not available on the Exchange; and*

*(v) Must be able to participate in a trade in a manner that complies with all Exchange rules, policies and procedures with respect to the specialist's ability to establish, increase or liquidate a position.*

*The identification of a particular order that the Quote API is reacting to when it sends a message will not guarantee that the specialist will trade with that order or that the specialist will have priority in trading with that order. Specialist interest established by the Quote API that does not trade with a particular order it identifies will be automatically cancelled by the Exchange.*

* * * * *

(Remainder of rule unchanged)

**Disclosure of Specialists' Orders**

**Rule 115**

A member acting as a specialist may disclose any information in regard to the order entrusted to the specialist:

(i) For the purpose of demonstrating the methods of trading to visitors to the Floor;

(ii) To other market centers in order to facilitate the operation of ITS or any other Application of the System; and

(iii) While acting in a market making capacity, to provide information about buying or selling interest in the market, *including aggregated buying or selling interest contained in any broker agency interest file other than interest the broker has chosen to exclude from the aggregate buying and selling interest* in response to an inquiry from a member conducting a market probe in the normal course of business. Information regarding stop orders may be provided if the specialist has a reasonable basis to believe that the member intends to trade the security at a price at which stop orders would be relevant. A specialist shall make information available in a fair and impartial manner to any member while on the Floor. A specialist shall not disclose the identity of any buyer or seller represented on his book if expressly requested not to do so by the broker who entered the order with the specialist.

* * * * *

(Remainder of rule unchanged)

**Orders of Members To Be in Writing**

**Rule 117**

No member on the Floor shall make any bid, offer or transaction for or on behalf of another member except pursuant to a written *or electronically recorded* order. If a member to whom an order has been entrusted leaves the Crowd without actually transferring the order to another member, the order shall not be represented in the market during his *or her* absence, *except with respect to any portion of his or her agency interest file that was not cancelled before the member left the Crowd, notwithstanding that such failure to cancel an agency interest file is a violation of Exchange rules.*

Supplementary Material

.10 Absence from Crowd.—When a member keeps an order in his *or her* possession and leaves the Crowd in which dealings in the security are conducted, *the member* is not entitled during his *or her* absence to have any bid, offer or transaction made in such security on his *or her* behalf or to have dealings in the security held up until he *or she* is summoned to the Crowd, *except that the member shall be held to any executions involving his or her agency interest file*. To insure representation of an order in the market during his *or her* absence, a member must therefore actually turn the order over to another member who will undertake to remain in the Crowd. If a member keeps the order in his *or her* possession and during his *or her* absence from the Crowd the security sells at or through the limit of his *or her* order, *the member* will be deemed to have missed the market.

* * * * *

(Remainder of rule unchanged)

**Record of Orders**

**Rule 123**

* * * * *

**(e) System Entry Required**

Except as provided in paragraph .21 and .22 *below*, no Floor member may represent or execute an order on the Floor of the Exchange *or place an agency interest file within the Display Book® system* unless the details of the order *and the agency interest file* have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order *and agency interest file* must be capable of transmitting these details to a designated Exchange data base within such time frame as the Exchange may prescribe.

The details of each order required to be recorded shall include the following data elements, any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:

1. Symbol;
2. Clearing member organization;
3. Order identifier that uniquely identifies the order;
4. Identification of member or member organization recording order details;
5. Number of shares or quantity of security;
6. Side of market;
7. Designation as market, limit, stop, stop limit[;], *auction limit*;
8. Any limit price and/or stop price;
9. Time in force;
10. Designation as held or not held;
11. Any special conditions;
12. System-generated time of recording order details, modification of terms of order or cancellation of order;
13. Such other information as the Exchange may from time to time require.

*The Floor member must identify which orders or portions thereof are being made part of the agency interest file pursuant to such procedures as required by the Exchange.*

* * * * *

(Remainder of rule unchanged)

**Miscellaneous Requirements**

**Rule 123A**

* * * * *

.30 A specialist may accept one or more percentage orders.—

* * * * *

*(a) The elected or converted portion of a ''percentage order that is convertible on a destabilizing tick and designated immediate execution or cancel election'' (''CA–DI order'') may be automatically executed and may participate in a sweep.*

*(i) An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume associated with the bid (offer) remaining after the electing order is filled in its entirety. An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order that sweeps the book will participate in a transaction at the sweep clean up price if there is volume remaining on the book or from contra-side elected CAP–DI orders at that price.*

*(ii) An elected or converted CAP–DI order on the contra-side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price and the sweep clean up price, if any.*

* * * * *

(Remainder of rule unchanged)

*Order Handling—Auction Limit Orders and Market Orders*

*Rule 123F*

*(a) Auction Limit Orders*

*(1) An auction limit order will be automatically executed or routed pursuant to Rule 15A.50 upon entry if there is a minimum variation quotation on the Exchange at the time the order reaches the book or the national best bid (offer) is displayed by another ITS participating market center and such bid (offer) creates a minimum variation market compared with the Exchange best offer (bid).*

*(2) If not executed upon entry, an auction limit order to buy with a limit price that is at or above the Exchange best offer when it reaches the book shall be autoquoted the minimum variation better than the Exchange best bid at the time and an auction limit order to sell with a limit price that is at or below the Exchange best bid when it reaches the book shall be autoquoted the minimum variation better than the Exchange best offer at that time, thereby becoming the new Exchange best bid or offer.*

*The size associated with a subsequent auction limit order to buy with a limit price that is at or above the Exchange best offer when it reaches the book will be added to the bid. The size associated with a subsequent auction limit order to sell with a limit price that is at or below the Exchange best bid when it reaches the book will be added to the offer.*

*(3) The arrival of a subsequent order on the same side of the market capable of trading at a price better than the auction limit order is bidding (offering), the execution of an order on the same side, of the market as an auction limit order that exhausts some or all of the contra-side volume available in the Exchange quotation, the cancellation of some or all of the contra-side volume, or a change in the price of the contra-side of the quotation that would enable an execution of the auction limit order with price improvement shall cause the auction limit order to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

*(4) An auction limit order that has not been executed within 15 seconds after it reaches the book shall be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

*(5) An auction limit order may be executed at a price inferior to the market price prevailing at the time it was entered.*

*(6) An auction buy limit order with a limit price that is not at or above the Exchange best offer when it reaches the book or an auction limit order to sell with a limit price that is not at or below the Exchange best bid when it reaches the book shall be displayed on the book at its limit price. An auction limit order that is unable to automatically execute because of its limit price shall be handled as a regular limit order.*

*(b) Market Orders*

*(1) A market order designated for automatic execution will be automatically executed in accordance with and to the extent provided by Exchange Rules 1000–1004.*

*(2) A market order not designated for automatic execution but delivered systemically to the Display Book® will be automatically executed or routed pursuant to Rule 15A.50 upon entry if there is a minimum variation quotation on the Exchange at the time the order reaches the Display Book® or the national best bid (offer) is displayed by another ITS participating market center and such bid (offer) creates a minimum variation market compared with the Exchange best offer (bid).*

*(3) If not executed upon entry, such market order to buy shall be autoquoted the minimum variation better than the Exchange best bid and such market order to sell shall be quoted the minimum variation better than the Exchange best offer at that time, thereby becoming the new Exchange best bid or offer.*

*(4) The arrival of a subsequent order on the same side of the market capable of trading at a better price than such market order is bidding (offering), the execution of an order on the same side of the market as such market order, that exhausts some or all of the contra-side volume available in the Exchange quotation, the cancellation of some or all of the contra-side volume, or a change in the price of the contra-side of the quotation that would enable an execution of such market order with price improvement shall cause such market order to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

*(5) A market order that has not been executed within 15 seconds shall be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

*(6) A market order may be executed at a price inferior to the market price prevailing at the time it was entered.*

* * * * *

**Odd-Lot Orders**

**Rule 124**

* * * * *

Supplementary Material

* * * * *

.50 [The odd-lot portion of PRL (part of round lot) orders will be executed at the same price as the round lot portion and will be processed through the round lot system.] *The round lot portion of a part of round lot (PRL) order will be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004. The odd lot portion will be executed with the specialist as contra party.*

* * * * *

(Remainder of rule unchanged)

**NYSE Direct+® Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation**

**Rule 1000**

*(a)* [Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid.] An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange[’s] published quotation, *orders on the book, Floor broker agency interest file and specialist interest file, in accordance with, and to the extent provided by, Exchange Rules 1000–1004* and shall be immediately reported as [NYSE] *Exchange* transactions, unless:

(i) The [NYSE’s] *Exchange* published quotation is in the non-firm quote mode;

[(ii) The execution price would be more than five cents away from the last reported transaction price in the subject security on the Exchange];

[(iii)] *(ii)* With respect to a single-sided auto ex order, a better [price exists] *bid or offer is published* in another ITS participating market center *where an automatic execution is immediately available or where such better bid or offer is otherwise protected from a trade-through by Securities and Exchange Commission rule or ITS Plan and such better bid or offer has not been systemically matched on the Exchange, unless the member entering the order indicates in such manner as required by the Exchange that it is contemporaneously satisfying such better bid or offer;*

[(iv) With respect to a single-sided auto ex order, the NYSE’s published bid or offer is 100 shares;]

[(v) A transaction outside the NYSE’s published bid or offer pursuant to Rule 127 is in the process of being completed, in which case the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange];

[(vi)] *(iii)* Trading in the subject security has been halted;

[(vi)] *(iv) The specialist has gapped the quotation in accordance with the policies and procedures of the Exchange;*

*(v) A liquidity replenishment point has been reached. A liquidity replenishment point (‘‘LRP’’) is reached when:*

*(A) The price of an automatic execution would be above (below) a minimum of five cents from the Exchange bid (offer), rounded to the nearest five-cent increment, or*

*(B) An automatic execution reaches a momentum liquidity replenishment point (‘‘MLRP’’) or an automatic execution would result in a transaction at a price on that side of the market outside a MLRP range. A MLRP range is calculated based on high and low transaction prices on the Exchange in a security within the prior 30 seconds. A MLRP is reached when the execution price of a security has moved the greater of twenty-five cents or 1% of its price (rounded to the nearest cent) on the Exchange within 30 seconds or less;*

*(vi) A block size transaction as defined in Rule 127 that involves orders on the book is being reported manually; or*

*(vii) The order is for a security whose price on the Exchange is more than $300.00.*

*(b)(i) Auto ex orders to buy shall trade with the Exchange published best offer. Auto ex orders to sell shall trade with the Exchange published best bid.*

*(ii) Where the volume associated with the Exchange published best bid (offer) is insufficient to fill an auto ex order in its entirety, other than an incoming commitment to trade received through ITS, the unfilled balance of such order (the ‘‘residual’’) shall ‘‘sweep’’ the book i.e., trade with orders on the book and any broker agency interest file and/or specialist interest file capable of execution in accordance with Exchange rules until it is executed in full, its limit price if any is reached, or a liquidity replenishment point is reached, whichever occurs first. After trading with the Exchange published best bid (offer), the unfilled balance of any incoming commitment to trade received through ITS shall be automatically cancelled.*

*(iii) The residual shall trade with the orders on the book and any broker agency interest file and/or specialist interest file capable of execution in accordance with Exchange rules at a single price, such price being the best price at which such orders and files can trade with the residual to the extent possible, or a liquidity replenishment point, whichever comes first (‘‘clean up price’’). Orders on the book and Floor broker agency interest trading with the residual shall be on parity and receive the clean up price. If no orders remain on the book capable of trading at the clean up price, specialist interest may trade and will be on parity to the extent permitted by Exchange rules with broker agency interest at that price if any. Any specialist interest that remains after the residual has traded at the clean up price*

*will be immediately cancelled automatically by the Exchange. Where a bid or offer published by another ITS participating market center where an automatic execution is immediately available is better than the sweep clean up price or where such better bid or offer is otherwise protected from a trade-through by Securities and Exchange Commission rule or ITS Plan, the portion of the sweeping residual that satisfies the size of such better priced bid or offer will be automatically routed as a commitment to trade to the ITS participating market center publishing such better bid or offer.*

*(iv) Any auto ex order residual remaining after the sweep described in (ii) above shall be bid (offered) at the order's limit price, if any, or the LRP whichever is lower (higher), unless the order is designated immediate or cancel, in which case the residual shall be automatically cancelled.*

[Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.]

[During a pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the time the pilot will run.]

* * * * *

**Execution of Auto Ex Orders**

**Rule 1001**

(a) Subject to Rule 1000, auto ex orders shall be executed automatically and immediately reported. The contra side of the execution shall be [orders reflected in the Exchange's published quotation], as follows:

(i) The first contra side bid or offer at a particular price shall be entitled to time priority, but after a trade clears the Floor, all bids and offers at such price shall be on parity with each other;

(ii) All bids or offers on parity shall receive a split of executions in accordance with *Exchange* Rule 72;

(iii) The [specialist shall be responsible for assigning] *assignment of* the number of shares to each contra side bidder and offeror as appropriate, in accordance with *Exchange* Rule 72, with respect to each automatic execution of an auto ex order *shall be done systemically;*

(iv) The specialist shall be the contra party to any automatic execution of an auto ex order where interest reflected in the published quotation against which the auto ex order was executed is no longer available, *except with respect to transactions occurring with the broker agency interest file;*

[(v) A universal contra shall be reported as the contra to each automatic execution of an auto ex order.]

[(b) If the depth of the published bid or offer is not sufficient to fill an auto ex order in its entirety, the unfilled balance of the order shall be routed to the Floor and shall be displayed in the auction market.]

[(c)] *(b)* No published bid or offer shall be entitled to claim precedence based on size with respect to executions against auto ex orders.

* * * * *

**Availability of Automatic Execution Feature**

**Rule 1002**

[Orders designated as ''a] *A*uto ex[''] *orders* in a particular stock, Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200) shall be eligible to receive an automatic execution if entered after the Exchange has disseminated a published bid or offer, until 3:59 p.m. for stocks and Trust Issued Receipts, or 4:14 p.m. for Investment Company Units, or within one minute of any other closing time of the Exchange's floor market. [Orders designated as ''a] *A*uto ex[''] *orders* in a particular stock, Trust Issued Receipt, or Investment Company Unit that are entered prior to the dissemination of a bid or offer, *or* after 3:59 p.m. for stocks and Trust Issued Receipts, after 4:14 p.m. for Investment Company Units, or within one minute of any other closing time, shall be [displayed as limit orders] *displayed as market or limit orders as applicable* [in the auction market] *unless it is an incoming commitment to trade received through ITS or an auto ex order designated as immediate or cancel, in which case such order would be cancelled* .

* * * * *

**Application of Tick Tests**

**Rule 1003**

If a transaction has been agreed upon in the auction market, and an automatic execution involving auto ex orders is reported at a different price before the auction market transaction is reported, any tick test applicable to such auction market transaction shall be based on the last reported trade *on the Exchange* prior to such execution of auto ex orders.

* * * * *

**Election of Stop Orders and Percentage Orders**

**Rule 1004**

Automatic executions of auto ex orders shall elect stop orders, stop limit orders and percentage orders electable at the price of such executions. Any stop orders so elected shall be *automatically* executed pursuant to [the] Exchange['s auction market procedures] *rules,* and shall not be guaranteed an execution at the same price as subsequent automatic executions of auto ex orders.

* * * * *

**[Orders May Not Be Broken Into Smaller Amounts]**

**[Rule 1005**

An auto ex order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order in a stock, Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200), unless the orders are entered by means of separate order entry terminals, and the member or member organization responsible for entry of the orders to the Floor has procedures in place to monitor compliance with the separate terminal requirement.]

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change 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

In the Notice, the Exchange proposed enhancements to the operation of

Direct+, the Exchange's electronic execution facility, and to other Exchange rules. The Exchange believes that, taken together with Amendment Nos. 2 and 3, the proposal would create a unique, integrated market—a hybrid market—that would improve on the speed and efficiency of technology by preserving the advantages of human knowledge and expertise that are central to the agency-auction process. The Exchange believes that by increasing the array of available trading choices, the hybrid market would benefit all customers, from the smallest investors to the largest institutions.

The Exchange believes that the proposed enhancements to Direct+ would offer immediate execution at the best bid and offer without restrictions on order size or order frequency, as well as anonymity and speed to the extent of the displayed volume associated with the bid and offer. Under the proposal, any residual would sweep existing orders on the Display Book® (''book'') until either the order is filled, its limit price (if any) is reached, or a liquidity replenishment point (''LRP'') is reached.

The Exchange describes LRPs as pre-determined price points at which electronic trading would briefly convert to auction market trading. LRPs could be triggered by an electronic sweep or if electronic trading results in rapid price movement over a short period. Because the LRP would convert the market solely to an auction market on a temporary basis, it would moderate volatility by permitting new orders, as well as Crowd and specialist interest, to add liquidity. The Exchange believes that this would promote reasonable continuity and foster the market quality that is a hallmark of the Exchange.

The Exchange believes that the hybrid market proposal would preserve the best aspects of the agency-auction market. For example, customers who want the opportunity for price improvement provided by the auction process would still be able to access the full extent of the book and liquidity represented by brokers on the Floor. The interaction of specialists and brokers in the Crowd would create a value proposition by offering opportunities for price improvement that are central to the auction market process. For instance, by committing capital and adding depth to the market in response to customer demands, specialists would continue to stabilize prices and reduce volatility. Their ability and commitment to inject liquidity into the market, in order to bridge temporary gaps in supply and demand, would keep the market fair and orderly, which is in the interest of all customers. Floor brokers would also continue to play a critical role in the price discovery process. Competition between orders represented by Floor brokers in the Crowd would help ensure fair, orderly, and liquid markets. Interaction between Floor brokers and specialists would provide a flow of information regarding changing market conditions and would serve as a catalyst to trading.

In short, the Exchange believes that the hybrid market would combine the benefits of specialist and Floor broker expertise with the speed and certainty of electronic execution to create a system offering maximum choice to customers without eliminating time-tested trading procedures that have proven immensely successful in providing stable, liquid, and less volatile markets.

The manner in which the Exchange's hybrid market would operate has been described in the Notice. Amendment Nos. 2 and 3 supplement the description of certain aspects of the hybrid market and makes further amendments to the Exchange's rules.

Specifically, the Exchange discusses the following aspects of the hybrid market:

- Execution of auction limit orders and market orders;
- Tick-restricted orders, stop orders, and other orders eligible for automatic execution;
- The broker agency interest file;
- Definition of the Crowd;
- The specialist interest file and algorithm;
- Sweeps and LRP;
- Gap quoting; and
- Availability of automatic executions and autoquote.

Auction Limit Orders and Market Orders

According to the Exchange, proposed Auction Limit (''AL'') orders and market orders not designated for automatic execution would provide an opportunity for price improvement, thereby preserving a very important choice for customers. The objective would be for specialists to represent these orders in the auction market, where the Crowd could offer an opportunity for execution at a price better than the Exchange bid or offer, while retaining as a backup the electronic functionality of automatic execution in case the specialist is unable to interact with the order immediately. Price improvement could also result from the order's participation in an automatic execution. AL and market orders could provide price improvement to the contra-side of an execution.

Under the proposal, AL and market orders would be electronically executed when they arrive at the book if the Exchange quotation is the minimum variation (*e.g.*, 20.45 bid, offered at 20.46). Where the national best bid (offer) is published by another market center,[10] and it causes a minimum variation market when compared with the Exchange best offer (bid), an AL or market order (or the requisite portion thereof) would be automatically routed to such other market center for execution unless the specialist matches the price of the better away offer (bid) (*e.g.*, Assume that an AL or market order to buy arrives, and the Exchange quotation is 20.45 bid, offered at 20.50, and a 20.46 offer is published by another market center. The AL or market order would be electronically routed to such other market center unless the specialist matches the away offer of 20.46).

Under the Exchange's proposal, if not automatically executed or routed away upon entry, AL and market orders to buy would be autoquoted the minimum variation above the Exchange best bid, and those to sell would be autoquoted the minimum variation below the Exchange best offer, thereby becoming the Exchange best bid or offer (*e.g.*, If the quote is 20.45 bid, offered at 20.50, and a market order to buy or an AL buy order with a limit of 20.51 arrives, then the new quote would be 20.46 bid, offered at 20.50. Similarly, if the quote is 20.45 bid, offered at 20.50 and a market order to sell or an AL sell order with a limit of 20.45 arrives, the new quote would be 20.45 bid, offered at 20.49).

Under the proposal, the fact that the bid (offer) is on behalf of an AL or market order would not be shown on NYSE OpenBook. An AL or market order would be shown in the quote at the price it is bidding (offering). An AL order's limit price would be available to the specialist, who would require such information in order to properly represent the order.

Furthermore, the size associated with the bid or offer would be the size of the AL or market order. The size of subsequent AL and market orders on the same side of the market would be aggregated in the bid (offer) and executed based on time priority,

[10] The other market center must be an Intermarket Trading System (''ITS'') participant in which an automatic execution is immediately available or such bid (offer) is otherwise protected from a trade-through by a Commission rule or ITS Plan. For the purpose of Amendment Nos. 2 and 3, any discussion of another market center or an away market refers only to those fitting this description.

consistent with AL orders' limit prices.[11]

Although an AL or market order would risk missing the market in its attempt to obtain price improvement, the Exchange believes that electronic representation would limit that possibility. Once on the book, an AL or market order could participate in any execution, including automatic executions and sweeps (*e.g.*, Assume that the quote is 20.46 bid, offered at 20.50, 2,500 × 2,000, and the bid is an AL order. If a market order designated for automatic execution (an ''NX'' market order) to sell 2,500 shares arrives, that order would automatically execute against the AL order's bid at 20.46).[12]

If an AL or market order has not been executed within 15 seconds of being quoted, the order would automatically execute like any other auto ex order (*e.g.*, Buy orders would execute against the displayed offer, and sell orders would execute against the displayed bid), provided autoquote and automatic executions are available. In addition, three events would cause automatic execution of an AL or market order before 15 seconds has elapsed. The three events are: (i) the arrival of a subsequent order at a better price on the same side of the market as an AL or market order; (ii) the execution of an order on the same side of the market as an AL or market order that exhausts some or all of the displayed contra-side volume or the cancellation of some or all of the displayed contra-side volume; and (iii) the displayed contra-side price improves, creating a minimum variation market or allowing execution of the AL or market order with price improvement. In these situations, the order causing the AL or market order to automatically execute would trade first. Where the limit of an AL order would prevent it from automatically executing, it would be placed on the book at its limit price and handled as a regular limit order.

The Exchange proposes to renumber proposed NYSE Rules 60(h) and 60(i), describing AL and market orders, as proposed NYSE Rules 123F(a) and 123F(b). The application of (ii) above to market orders would amend proposed NYSE Rule 123F(b). Furthermore, the NYSE proposes additional amendments to proposed NYSE Rules 13 and 123F to clarify the operation of AL and market orders.

[11] *See* Exhibit A.

[12] *Id*.

Tick-Restricted Orders, Stop Orders, and Other Orders Eligible for Automatic Execution

As proposed, tick-restricted orders on the book would be filed electronically and participate in automatic executions and sweeps as their ticks and limits, if any, allow. The direction of the sweep relative to the automatic execution would be in the correct direction: buy sweeps would cause short sales and sell plus orders to be executed above the offer, while sell sweeps would cause buy minus orders to be executed below the bid. Sell short orders, other than those involving Regulation SHO[13] pilot securities, would not sweep the book after automatically executing against bid, as the sweep transaction would occur on a minus tick.[14]

Under the proposal, stop orders, including stop limit orders (''stop orders'') on the book would be electronically elected and participate in automatic executions and sweeps by appropriately-priced electing manual or automatic execution transactions.[15] Stop orders would be elected by an automatic execution at the bid or offer price and would trade after the sweep, if any. The sweep price could also elect stop orders. The Exchange proposes amendments to NYSE Rules 13 and 1004 to reflect this. Stop orders elected on the contra-side of the market would trade as part of the sweep because they would add liquidity.

Furthermore, stop orders and CAP–DI orders (convert and parity percentage orders) could be elected at the same time by automatic executions and sweeps. If there is insufficient volume to fill the elected orders, stop orders could be executed first as they become market or marketable limit orders upon their election, whereas the elected portion of CAP–DI orders would revert to CAP–DI status if it is unable to trade. In addition, CAP–DI orders would trade on parity with each other,[16] which could also affect the sequence in which elected stop and CAP–DI orders would trade.

The Exchange proposes to amend NYSE Rule 13 to clarify the types of orders that would be eligible for automatic execution in the hybrid market.[17] These would include auto ex market orders, marketable limit orders, incoming ITS commitments, ''all or none'' (AON) orders, CAP–DI orders, stop orders, stop limit orders, tick-sensitive orders and part of round lot orders.[18] In addition, orders initially eligible for automatic execution that have been cancelled and replaced would remain eligible for automatic execution.

Orders that would be ineligible for automatic execution at this time include ''opening only'' (OPG), ''fill or kill'' (FOK), ''limit on close'' (LOC), ''market on close'' (MOC), ''basis'' (BAS), and odd lot orders. In addition, orders in high-priced securities, currently defined as securities priced above $300, would be ineligible for automatic execution. These would include: Berkshire Hathaway Inc. (BRK.A), Berkshire Hathaway Inc. (BRK.B), Wyeth $2 Convertible Preferred Stock (WYEPR), Markel Corporation (MKL), Pitney Bowes Inc. (PBIPR), The Washington Post Company (WPO), and White Mountains Insurance Group, Ltd. (WTM).

Broker Agency Interest File

The proposed rules provide Floor brokers on the Exchange with the ability to express electronically that which they are currently able to do in the Crowd—represent customer interest at varying prices at or outside the quote with respect to the orders they are handling.

According to the Exchange, the broker agency interest file would serve the public interest by giving customers the benefit of Floor broker knowledge and trading expertise in ''working'' their orders, while not precluding them from participating in electronic executions and sweeps. It would give customers choice and Floor brokers flexibility in representing orders over time at the point of sale, thereby maximizing their ability to obtain the best execution possible. In this way, the hybrid market would meld the value of the agency-auction with the benefits of automatic execution.

Under the proposal, the broker agency interest would not be displayed publicly unless it is at or becomes the Exchange best bid or offer. This is consistent with

[13] *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

[14] *See* Exhibit A.

[15] Investment Company Units, as defined in paragraph 703.16 of the Exchange Listed Company Manual, and Trust Issued Receipts (together, Exchange-Traded Funds) are elected based on bids or offers, rather than transactions. *See* NYSE Rule 13.30.

[16] *See* NYSE Rule 123A.30.

[17] This revises the descriptions of orders ineligible for automatic execution as stated in footnotes 22 and 45 of the Notice and the accompanying text. *See* note 6, *supra*.

[18] A part of round lot (''PRL'') order is an order for one or more units of trading plus an amount less than a unit of trading. NYSE Rule 55 defines a unit of trading as 100 shares unless otherwise designated. Accordingly, an example of a PRL would be an order to buy (sell) 517 shares. The specialist is the contra-side of the odd-lot portion of a PRL.

the Commission's Quote Rule.[19] When a broker's agency interest is at or becomes the Exchange best bid or offer, a minimum of 1,000 shares per broker would be displayed for agency interest greater than or equal to 1,000 shares and would be included in the quote. A broker would have the discretion to display more than 1,000 shares of his or her agency interest at the best bid or offer. The actual amount of a broker's agency interest, if less than 1,000 shares, would be displayed and included in the quote. The displayed agency interest at the best bid or offer would be entitled to parity with displayed orders at the bid or offer price, other than an order or broker interest entitled to priority in accordance with NYSE Rule 72. Broker agency interest at the best bid or offer that is not displayed (''reserve interest'') would yield to displayed interest in the best bid or offer, but would participate in automatic executions provided there is sufficient contra-side liquidity. An auto ex order would trade against the displayed interest in the quote and any reserve at the bid or offer price before it would sweep the book. This would amend proposed NYSE rules.

After an execution, if there is less than 1,000 shares of broker agency interest displayed at the best bid/offer, but additional amount in the reserve, the displayed amount would replenish so that at least 1,000 shares of agency interest at the best bid/offer would be displayed. For example, if there are 1,000 shares of broker agency interest displayed at the best bid/offer, and 500 shares of reserve (undisplayed at that price), and a 500 share order executes against the 1,000 share of displayed interest, the remaining 500 shares of reserve interest would be added to the 500 shares of remaining broker agency interest at the best bid/offer to total 1,000 shares displayed interest at the best bid/offer.

If what is remaining in the displayed broker agency interest and the reserve at the best bid/offer do not equal 1,000 shares, all of the reserve and remaining displayed broker agency interest at that price would be displayed. For example, if there are 1,600 shares of broker agency interest displayed at the best bid/offer, and 300 shares of reserve interest (undisplayed at that price), and a 1,500 share order executes against the 1,600 shares of displayed broker agency interest, then the remaining 100 shares of broker agency interest plus the full amount of the reserve interest (300 shares), totaling 400 shares, would be displayed at the best bid/offer.

In addition, where there is reserve interest at the best bid (offer) and an incoming contra-side auto ex order arrives to trade, there would be two separate Tape prints at the bid (offer) price, if the amount of the incoming order exceeds the displayed interest at the best bid (offer). In such case, the first print would be at the best bid (offer) price for the amount of the displayed interest. The second print, also at the best bid (offer) price, would include any contra-side CAP-DI orders[20] elected by the first print and reserve interest. Any residual remaining on the incoming order would then sweep the book until executed, its limit price, if any, is reached, or an LRP is reached. For example, there are 5,000 shares of broker agency interest at the best bid (offer) consisting of 1,000 shares of displayed interest, which is the best bid, and 4,000 shares of reserve interest. The specialist has a CAP-DI order for 10,000 shares to buy with a limit price, which allows it to trade at the best bid (offer). If an auto-ex order to sell 5,000 shares arrives, it would be automatically executed as follows: 1,000 shares at the best bid prints first. This automatically elects 1,000 shares of the CAP-DI order and then 4,000 shares print at the best bid price. The 4,000 shares consist of 1,000 shares elected from the buy CAP-DI order and 3,000 shares of the reserve interest. The incoming order would have traded a total of 5,000 shares at the bid price. 1,000 shares would remain in the reserve interest.

Furthermore, displayed agency interest in the broker file that establishes the Exchange best bid or offer would be entitled to priority at that price for one trade, as is the case with any other bid or offer. Broker agency interest that is outside the quote would participate on parity during sweeps, providing liquidity to the market.

Floor broker agency interest at the same price would be on parity with each other unless the interest was entitled to priority under NYSE Rule 72, and no interest would be able to invoke precedence based on size.

In addition, Floor brokers with an agency interest file would be required to be in the Crowd, representing those orders. The agency interest file would allow Floor brokers to represent their customers as they do in the auction market, negotiating execution prices without being required to disclose their intentions. The Exchange believes that parity is the agency-auction principle designed as an incentive for Crowd participation in the price discovery process, to deepen liquidity particularly as it relates to the working of orders with potential market impact. It has the very positive effect of lowering execution costs for customers by providing the opportunity to leverage human judgment for price improvement, potentially on both sides of a trade, lowering market volatility.

The broker agency interest file would not be publicly disseminated except for the amount of agency interest displayed at the best bid or offer. The only information concerning the broker agency interest file available to the specialist would be the aggregate amount of agency interest at each price. This aggregate information, which would include any reserve interest at the Exchange best bid or offer unless excluded from the aggregate as described below, could be included in a specialist's response to a member's market probe in accordance with NYSE Rule 115, as amended.

Proposed NYSE Rule 70.20 is amended to provide a Floor broker with the discretion to remove his or her agency interest, including any reserve interest at the best bid (offer), from the aggregate information available to the specialist. Broker agency interest removed from the aggregate would be displayed as described above when it becomes, or is at, the Exchange best bid or offer. If a better bid or offer is made on the Exchange, such interest would no longer be displayed and would not be included in the aggregate information unless the Floor broker chooses otherwise. Broker agency interest removed from the aggregate information would participate in automatic executions and sweeps. It would be the responsibility of the broker representing interest not included in the aggregate information to ensure that such interest is properly represented with respect to any manual trade that may occur because the specialist would not have any knowledge of such interest.

Furthermore, the broker agency file could not include G order[21] interest or customer interest that prevents the specialist from trading on parity with the Crowd pursuant to NYSE Rule 104.10(6)(i)(C).

Proposed NYSE Rule 70.20 has been amended to reflect the matters noted above.

[19] Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[20] CAP-DI orders on the same side of the market as the incoming order could also be elected by this print, but would not trade unless additional interest remains after the incoming order is executed at the bid (offer) price.

[21] ''G'' orders refer to proprietary orders represented pursuant to Section 11(a)(1)(G) of the Act, 15 U.S.C. 78k(a)(1)(G).

Definition of the Crowd

Floor brokers would be permitted to have agency interest files in only one Crowd at a time. The Exchange proposes an amendment to proposed NYSE Rule 70.30 to add that a Crowd would consist of five contiguous panels at a single post where securities are traded.

Specialist Interest File and Algorithms

The Exchange believes that specialists provide value to the market, committing capital to add liquidity and stabilize prices. Specialists' ability and commitment to absorb short-term fluctuations by bridging temporary gaps in supply and demand keeps the Exchange market fair and orderly and lowers volatility.

To assist specialists in this effort and to enable them to more readily comply with their market-making responsibilities, the Exchange proposes to provide specialists with the ability to implement an external quote application interface (Quote API) which would utilize proprietary algorithms based on predetermined parameters that would enable them to electronically represent their dealer account, replicating electronically some of the things specialists are permitted to do manually. This would allow specialists to provide value and liquidity within the context of an electronic market.

Based on predetermined parameters, the algorithms could only: (i) Generate a bid (offer) that would improve the Exchange best bid (offer) price; (ii) withdraw a previously made best bid (offer), provided the algorithmic decision to improve or withdraw a bid or offer is not based on a particular order entering the book; (iii) supplement the size of an existing best bid (offer); (iv) match better bids (offers) published by other market centers; (v) facilitate a single-priced execution at the Exchange best bid or offer, provided the entire order is filled; (vi) layer specialist interest at prices outside the quote, enabling the specialist, to the extent permitted by Exchange rules, to participate in or price improve a sweep; and (vii) provide meaningful price improvement to orders, as described below.

The algorithms would not be able to hit bids or take offers. All specialist trading whether manual or electronically generated by algorithms would have to be in accordance with Exchange Rules. Items (i)–(vii) above reflect proposed amendments to NYSE Rule 104.

The algorithms would enable the specialists on behalf of the dealer account to electronically provide price improvement to automatic executions, provided the following conditions are met: (i) The quotation spread is at least three cents; (ii) the specialist is represented in the published bid or offer in a meaningful amount: the lesser of 10,000 shares or 20% of the respective bid (offer) size; (iii) the order receiving price improvement is of ''retail'' order size, *i.e.*, 2,000 shares or less and the specialist fills the order; and (iv) the price improvement provided by the specialist is (a) at least .02 where the quote spread is .03–.05, (b) at least .03 where the quote spread is .06–.10, (c) at least .04 where the quote spread is .11–.20, and (d) at least .05 where the quote spread is more than .20.

After a sweep, existing specialist interest below the sweep price, in the case of a buy sweep, or above the sweep price, in the case of a sell sweep, that was not included in the sweep due to yielding requirements, would be immediately cancelled so that this interest would not be autoquoted as the Exchange best bid or offer. The algorithms could send a separate message in order to bid or offer at a price inferior to the sweep price, provided Exchange rules governing specialist trading permit bidding or offering at that price.

Furthermore, the algorithms could be designed to have access to public information as well as orders entering the system. As noted above, an algorithmic message improving the Exchange best bid (offer) or withdrawing a previously established best bid (offer) could not be based on an incoming order. Such new bid (offer) could be the minimum variation or more than the previous best bid (offer). An algorithmic message to provide price improvement to an automatic execution generated in reaction to an incoming order would have to comply with the conditions noted above, including price improvement of more than the minimum variation. Electronic messages could not be generated by algorithms while a manual block-size trade is being reported or when autoquote and automatic executions are unavailable. Specialists' use of algorithms would be subject to review by the Exchange's regulatory division.

The algorithms could also generate messages only in reaction to one order at a time and only as that order is entering the system. Algorithms would be required to identify, in the manner required by the Exchange, the specific order to which they are reacting. The fact that algorithms would have generated a message in response to a particular order would not guarantee that the specialist interest would be able to interact with that order, nor would it give the specialist interest priority in trading with that order. Specialist interest that does not trade with the order identified by the algorithms, for example, because the specialist order did not arrive at the book in time, or the specialist has to yield to the book, would be automatically cancelled.

The Exchange believes that the algorithms and specialist interest file would enhance market quality by enabling the specialist to interact with orders electronically, providing capital and liquidity to the market as they do today. Proposed NYSE Rule 104 has been amended to clarify these rules.

Sweeps and Liquidity Replenishment Points

The Exchange believes that LRPs would protect customers by moderating volatility resulting from electronic executions. Where specialists and Floor brokers participate in the price discovery process, volatility moderators would not be necessary, and auction market transactions would not be subject to them. The Exchange represents that the LRP parameters have been selected by the Exchange after careful evaluation and discussions with market participants. They would be designed to impact automatic executions infrequently. When reached, LRPs would allow buyers and sellers to react to fast changing market conditions and provide an opportunity for orders to interact with Crowd interest not encompassed in the broker agency interest file and with specialist interest, enabling the auction market to supplement liquidity and lower volatility. Consistent with the Exchange's goal of expanding customer choice, IOC orders would be cancelled automatically when automatic execution is suspended as a result of a LRP.[22] This would provide customers with the opportunity to obtain an automatic execution in another market, even if that price is inferior to the Exchange best bid or offer consistent with Regulation NMS proposals.[23]

The Exchange proposes two LRPs: a price-based or sweep LRP and a momentum-based LRP.[24] The Exchange represents that the most restrictive LRP would be disseminated via NYSE

[22] IOC orders would be cancelled in all instances when automatic executions are unavailable.

[23] *See* Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004). *See also* Securities Exchange Act Release No. 49749 (May 20, 2004), 69 FR 30142 (May 26, 2004).

[24] In this amendment, the NYSE proposes to eliminate NYSE Rule 1000(a)(ii), which prohibits automatic executions at a price more than five cents away from the last reported transaction price on the Exchange in the relevant security.

OpenBook® or another data distribution channel.

Priced-Based or Sweep LRP

The sweep LRP would be set at the nearest five-cent increment outside the Exchange best bid and offer, that is at least five cents away from the Exchange best bid and offer (*e.g.*, If the Exchange quote is 20.05 bid, offered at 20.10, then the sweep LRP would be 20.00 and 20.15. If the Exchange quote is 20.04 bid, offered at 20.11, then the sweep LRP would be 19.95 and 20.20). When a LRP is reached, the sweeping order would trade at that price to the extent of the volume available and then the market would be autoquoted at the LRP if there is stock remaining on the order. If not, the next best bid (offer) would be autoquoted. Automatic executions and autoquote would be suspended, but incoming orders and cancellations would continue to be reflected automatically on the book. If the displayed bid (offer) on the contra-side cancels, a new bid (offer) would be autoquoted, in effect overriding the suspension (partial autoquote).

Under the proposal, automatic executions and autoquote would resume in no more than five seconds where the sweeping order is filled in its entirety (*e.g.*, no residual exists), where the residual is cancelled (*e.g.*, the sweeping order is IOC), or where the residual's limit price is the LRP price, unless the specialist manually trades or quotes the market before five seconds have elapsed.

Similarly, automatic executions and autoquote would resume in no more than 10 seconds where a residual exists and its limit price is above the LRP price, but it does not create a locked or crossed market, unless the specialist has manually traded or quoted the market before 10 seconds have elapsed. It is expected that the specialist would quote or trade before 10 seconds have elapsed, unless an imbalance exists, a trade is being put together in the Crowd, or market conditions otherwise prevent. In any event, automatic executions and autoquote would resume after 10 seconds.

Finally, where a residual exists limited to a price above the LRP, and the limit price creates a locked or crossed market, or when a locked or crossed market results from the entry of orders and cancellations during the 5 and 10-second periods described above, automatic executions and autoquote would resume with a manual trade. If the locking or crossing residual order cancels, automatic executions and autoquote would resume within the relevant 5 or 10-second timeframe described above, unless a manual trade or quote occurs before then.

Sweeps and Price Protection

The Exchange believes that nothing in this filing or in the operation of sweeps would be inconsistent with or undermine the fundamental tenet of the trade-through rules (''TTR'')—that betters bids and offers published by other market centers are entitled to protection. The proposals, including automatic electronic routing of orders to the market centers displaying better priced bids and offers, would be consistent with the TTR. Best bids (offers) published by away markets that are better than a sweep price would be satisfied in their entirety.[25] As is today, best bids and offers in these markets (*i.e.*, ''top of the book'') would be entitled to price protection. The Exchange believes that intermarket price-time priority has been extensively debated,[26] but has not been viewed to be in the best interest of the national market system. In any event, Regulation NMS proposes to permit customers to sweep multiple markets contemporaneously to access better priced liquidity that may be available.[27]

The ability of the specialist to match a better published bid or offer rather than shipping an order to that bid or offer is permitted today. According to the Exchange, the proposed rules would simply speed the process by permitting the specialist to electronically match or ship. During the sweep, a commitment to trade that would satisfy the full amount of any better bid or offer that is published as the best bid or offer by another market center would be auto-routed to such market (if a trade-through would otherwise occur). According to the Exchange, this would be similarly consistent with the TTR.

According to the Exchange, it has been suggested that the proposed rules would enable the specialist to avoid complying with the TTR by publishing what has been termed a ''preemptive'' 100-share bid or offer. The Exchange believes that this is erroneous. For example, assume that the Exchange quotation is 19.91 bid, offered at 20.01, $100 \times 500$, and that there are offers on the book to sell 100 shares at 20.04, 500 shares at 20.05, 300 shares at 20.07, 100 shares at 20.08, and 1,000 shares at 20.09. If another market center also has published an offer to sell for 500 shares at 20.01, and an NX order to buy 2,000 shares arrives at the Exchange, then 500 shares would automatically execute at 20.01 on the Exchange, and 500 shares would be automatically routed to the other market center as a commitment to trade at 20.01. The remaining 1,000 shares would sweep the Exchange book, trading at 20.08, providing price improvement to the orders on the book.[28] Alternatively, the specialist algorithms could determine to execute the entire order on the Exchange at 20.00. This example presumes that only one market center has a better published bid (offer) than the Exchange best bid (offer) or sweep price. All market centers that have a better published bid (offer) than the price the Exchange would trade at would be satisfied.

Momentum LRP (''MLRP'')

The Exchange believes that excessive volatility could occur in situations other than electronic sweeps. For this reason, the Exchange proposes a LRP based on price movement over a period of time.

A MLRP would be reached when the price of a security has moved the greater of twenty-five cents or 1% of its price,[29] within 30 seconds or less. For example, a MLRP would be reached in a security that is trading at 18.00 when the price moves 0.25 in 30 seconds or less. Also, a MLRP would be reached in a security that is trading at 81.00 when the price moves 0.81 in 30 seconds or less. Intraday price changes would be taken into account and could widen or narrow the MLRP range. (*e.g.*, a security could start the day with an MLRP range of twenty-five cents, with intraday price changes expanding the MLRP range to 1% of its price).

MLRP ranges would be calculated using the high and low trades on the Exchange within the prior 30 seconds. The MLRP range could change based on an event (*e.g.*, a new trade) or the passage of time.[30]

After the auto ex order reaching a MLRP price trades at that price to the extent possible, automatic executions and autoquote would be suspended. The

[25] This presumes that the order is not labeled as an intermarket sweep consistent with the proposed Regulation NMS concept of an intermarket sweep order. Telephone conversation between Kelly Riley, Assistant Director, Division, Commission, and Jeff Rosenstrock, Senior Special Counsel, Market Surveillance, NYSE, on November 15, 2004.

[26] *See, e.g.*, Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) (Commission request for comment on issues relating to market fragmentation).

[27] *See* note 23, *supra*.

[28] Telephone conversation between Cyndi Rodriguez, Special Counsel, Division, Commission, and Don Siemer, Director, Market Surveillance, NYSE, on November 10, 2004.

[29] When calculating 1% of a security's price, the result will be rounded to the nearest cent using usual rounding conventions. For example, if a security is trading at $26.49, and 1% of its price is calculated, this would be rounded down to 0.26. If a security is trading at $26.53 and 1% of its price is calculated, this would be rounded up to 0.27.

[30] *See* Exhibit A.

book would be automatically updated by incoming orders and cancellations. Automatic executions and autoquote would resume in no more than 10 seconds unless the specialist has quoted or traded before then. As noted above, the specialist would be expected to trade or requote the stock in less than 10 seconds unless conditions in the stock prevent this. Where incoming orders and cancellations cause a locked or crossed market, autoquote and automatic executions would resume with a trade.[31]

In addition, a MLRP could cause the suspension of automatic executions on the side of the market where the bid or offer is at a price beyond the MLRP range, as an automatic execution could not occur at that price. For example, if the market is 20.05 bid, offered at 20.10, and the last sale is 20.08, and the MLRP range is 19.80–20.09 based on high and low trades within the operative 30-second period, a trade could take place at the bid price because it would fall within the MLRP range, but a trade could not take place at the offer price (20.10) because it would fall outside the MLRP range. As a result, automatic executions would be suspended on the offer side, but continue on the bid side. This would be indicated systemically in the same way as any other time an automatic execution is unavailable. Autoquoting would continue and orders and cancellations would update the book. Automatic executions would resume when a bid or offer within the MLRP range is autoquoted or the MLRP range changes as a result of the moving 30-second timeframe.

Gap Quoting

Gap quotes[32] would be used by specialists in response to trading scenarios in which price dislocation is expected. Gap quotes would be used to signal the potential price movement so as to attract contra-side liquidity in an attempt to mitigate volatility. Gap quote situations would involve clearly large imbalances compared with the typical trading volume in a security. The size of an imbalance suitable for gapped quoting would be at least 10,000 shares or a quantity of stock having a value of $200,000 or more, although depending on the trading characteristics of the security, the appropriate conditions for gapped quoting could be higher.

The specialist determines when to gap the quotation based on certain market conditions such as a sudden influx of orders on one side of the market, one or more large-size orders with no off-setting interest, or when a member proposes to effect a one-sided block transaction or a cross at a significant premium or discount to the prevailing market. Specialists could only gap the quotation in accordance with Exchange procedures. When the quotation is gapped, automatic executions and autoquote would be suspended, although incoming orders and cancellations would update the book electronically. Better priced orders would be taken into account in the transaction resulting from the gapped quotation. Floor Officials would oversee the gap quote process, including its duration.

Availability of Automatic Executions and Autoquote[33]

The Exchange believes that autoquote and automatic executions would be suspended infrequently and only in certain, limited circumstances: when trading on the Exchange reaches a LRP; when the quote is gapped in accordance with Exchange procedures; when trading in a security has been halted; or when the quote is not firm. A systemic indication would be disseminated when automatic executions are unavailable. Each of these circumstances would serve the public interest; the rationale for and benefit of LRPs and gap quotes are discussed above. No executions, automatic or manual, would be possible when trading has been halted, and it would not be in the customer's best interest to automatically execute against a bid or offer that is not firm.[34]

Autoquote, but not automatic executions, would be suspended during the extremely brief moment it would take to manually report a block-sized transaction.[35] Automatic executions would continue until the size of the bid (offer) decrements to 100 shares. Autoquote (and automatic executions, where the quote has decremented to 100 shares) would resume when the manual reporting is concluded. This would be the only instance in which manual reporting would cause the suspension of autoquote and could cause the suspension of automatic executions. This would protect customer orders on the specialist's book during the execution of block transactions pursuant to NYSE Rules 72(b) and 127 and would facilitate orderly executions in limited ''breakout'' situations when liquidity is present but conditions are such that the existence of a fair and orderly market would depend on the ability of the specialist to quickly and efficiently effect block-size trades that could involve multiple parties.

The Exchange represents that once the hybrid market is implemented, all other instances of manual reporting,[36] autoquote, and automatic executions would continue to operate without suspension. The quote would automatically update to reflect the entry of better bids and offers and cancellations. Automatic executions would continue to take place in the manner described in this proposal. This represents a change to the operation of autoquote and automatic executions as described in Amendment No. 1 of this filing.[37] Although the Exchange expects autoquote and automatic executions to be available at least 99.7% of the time as originally proposed, the Exchange believes that maximizing their availability even more would benefit the Exchange's customers.

Furthermore, when autoquote and automatic executions are suspended, incoming orders and cancellations would continue to arrive at the book, which would be electronically updated to reflect these changes. When the Exchange best bid or offer cancels during a time when autoquote is suspended, the next best bid (offer) on the book would be autoquoted. Auto ex orders, other than IOC orders, would be placed on the book. IOC orders would be cancelled automatically, as are incoming ITS commitments to trade.[38]

The continuation of automatic executions while a manual trade is being reported could result in the manual trade being reported to the Tape out of its proper sequence. Out of sequence trades would be identified as

[31] *Id.*

[32] For a complete description of Gap quotes, see footnote 18 of the Notice, *supra* note 6.

[33] This discussion presumes the Direct+ facility is available. NYSE Rule 1002 provides that automatic executions are available if entered after the Exchange has disseminated a published bid or offer in that stock and until one minute before the closing time of the Exchange's Floor market. In the unlikely event of an equipment failure preventing automatic executions during a time they would otherwise be available, a systemic indication of auto ex unavailability would be made.

[34] The Exchange believes that trading halts and non-firm quotations occur extremely infrequently. For example, during the first nine months of 2004, there have been only four non-firm quote situations. One or more Floor Governors or senior Floor Officials must oversee trading halts and non-firm quotes. *See* NYSE Rule 60. Exchange rules regarding trading halts and non-firm quotes have been approved by the Commission and are in accordance with Rule 11Ac1–1 of the Act, 17 CFR 240.11Ac1–1.

[35] NYSE Rule 127 defines a ''block'' size as at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.

[36] Trades occurring within the Crowd or between the Crowd and the specialist, as either agent or dealer, are reported manually.

[37] *See* Amendment No. 1, *supra* note 5.

[38] The Exchange believes that this would be consistent with concepts discussed in proposed Regulation NMS. *See* note 23, *supra*.

such. If a bid or offer at a better price arrives at the book before a manual report is concluded, the system would automatically report the trade at such better price (*e.g.*, Assume that the quote is 20.05 bid, offered at 20.10, and a broker in the Crowd takes the offer, but before the report of the trade is completed, an offer to sell 1,000 shares at 20.09 arrives at the book. The system would automatically report the trade at 20.09, with the seller being the newly-arriving better offer.)

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [39] in general, and furthers the objectives of Section 6(b)(5) of the Act [40] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is designed to support the principles of Section 11A(a)(1) of the Act [41] in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investors' orders in the best market, and provides an opportunity for investors' orders to be executed without the participation of a dealer.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended by Amendment Nos. 2 and 3 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–NYSE–2004–05 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–05 and should be submitted on or before December 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

**Margaret H. McFarland,**

*Deputy Secretary.*

**Exhibit A—Trading Examples**

*AL Orders and Market Orders*

1. AL and market orders on the same side of the market are aggregated in the quote and executed based on time priority:

The quotation is 20.45 bid, offered at 20.50, 500 × 2,000. An AL order to buy 1,000 shares with a limit of 20.55 arrives. The market is autoquoted the minimum variation (one cent) better than the existing bid, 20.46 bid, offered at 20.50, 1,000 × 2,000. An AL order to buy 500 shares at a limit of 20.57 and a market order to buy 1,000 shares arrive. The market is autoquoted 20.46 bid, offered at 20.50, 2,500 × 2,000, aggregating the volume of the AL and market buy orders. An NX [43] market order to sell 1,500 shares arrives and automatically executes against the bid, filled by the first two AL orders. The market is autoquoted 20.46 bid, offered at 20.50, 1000 × 2000.[44]

2. The execution of an order on the same side of the market that exhausts some or all of the displayed contra-side volume will cause an AL or market order to automatically execute:

The quotation is 20.46 bid, offered at 20.50, 1,000 × 500. The bid is an AL order limited to 20.52. The next best offer on the book is 20.51 for 1,000 shares. An NX market order to buy 500 shares arrives. The NX order automatically executes against the offer at 20.50. The AL buy order automatically executes against the next best offer, 20.51. If 1,000 shares had been offered at 20.50 instead of 500 shares, the AL order automatically executes at 20.50 for 500 shares and 500 shares at 20.51, presuming the AL order's limit permits it to trade at 20.51.

3. The arrival of an order at a better price on the same side of the market as an AL or market order causes the AL or market order to automatically execute:

The quote is 20.46 bid, offered at 20.50. The next best offer on the book is at 20.51. The bid is an AL order. An order to buy at 20.47 arrives. A new bid of 20.47 is autoquoted. The buy AL order automatically executes against the 20.50 offer.

4. A change in the displayed contra-side price that creates a minimum variation market or allows execution of the AL or market order with price improvement causes the AL or market order to automatically execute:

The quote is 20.46 bid, offered at 20.50. The bid is comprised of an AL or market order. A limit order to sell at 20.49 arrives

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78k–1(a)(1).

[42] 17 CFR 200.30–3(a)(12).

[43] Automatic execution orders are designated NX.

[44] The Commission corrected a typographical error in this example. Telephone conversation between Kelly Riley, Assistant Director, Division, Commission, and Don Siemer, Director, Market Surveillance, NYSE, on November 12, 2004.

on the book. The AL or market order automatically executes against this new offer, to the extent of the volume associated with the new offer and then sweeps the book until filled, an LRP is reached or, in the case of an AL order, its limit price is reached.

5. Where the limit of an AL order prevents it from trading, the AL order will be quoted and handled as a regular limit order on the book:

The quote is 20.05 bid, offered at 20.09, 2,000 × 2,000. An AL order arrives to buy 3,000 shares at 20.12, which is autoquoted as the best bid, 20.06 for 3,000 shares. Also on the book are the following offers: 1,500 shares at 20.10, 1,500 shares at 20.11, 1,000 shares at 20.12 and 1,000 shares at 20.13. An NX market order to buy 6,000 shares arrives, automatically executing 2,000 shares at 20.09, with 4,000 shares sweeping the book, executing at 20.12. This execution depletes the liquidity on the book at 20.12. The original AL order is pushed to trade by the NX order, but its limit, 20.12, prevents it from trading at the next available offer price, 20.13. The AL order goes on the book as a regular limit order and the market is autoquoted 20.12 bid, offered at 20.13, 3,000 × 1,000.

*Broker Agency Interest File*

6. A minimum of 1,000 shares of broker agency interest per broker at the Exchange best bid or offer will be displayed at that price and be on parity with other displayed interest, other than interest entitled to priority:

The quote is 20.05 bid, offered at 20.07, 1,500 x 1,000. A Floor broker enters interest in the agency interest file to buy 2,000 shares at 20.04 and to buy 1,000 shares at 20.05. The quote automatically updates to show 2,500 shares to buy at 20.05, which includes the 1,000 shares of broker agency interest to buy at 20.05 because it is at the best bid; the amount shown on NYSE OpenBook® to buy at 20.04 will not change as broker agency interest will not be disseminated. The aggregate broker file information available to the specialist will show 2,000 shares to buy at 20.04, unless the broker has excluded it from the aggregate information. An order arrives on the book to buy 1,500 shares at 20.06. The market autoquotes 20.06 bid, offered at 20.07, 1,500 × 1,000. Only 1,500 shares to buy at 20.05 is shown on NYSE OpenBook,® which does not include any broker agency interest. The aggregate broker information available to the specialist will show 1,000 shares to buy at 20.05 and 2,000 shares to buy at 20.04 unless one or both have been excluded from the aggregate information by the broker.

7. Brokers have discretion to display more than 1,000 shares at the best bid or offer. The displayed size is entitled to parity. Undisplayed reserve at the best bid or offer yields to displayed interest at the best bid or offer.

The quote is 20.31 bid, offered at 20.36, 1,500 × 7,000. The 7,000 share offer side consists of 2,000 shares on the book and 5,000 shares of specialist interest. A Floor broker enters interest in the agency interest file to sell 10,000 shares at 20.36. 1,000 of the shares are displayed and the reserve interest, 9,000 shares, is not displayed. An NX market order to buy 8,000 shares arrives. The following automatic executions take place: 2,000 shares from the book, 1,000 shares from the displayed interest of the Floor broker, and 5,000 shares from the specialist interest trade at 20.36. The 9,000 shares of reserve broker file sell interest does not participate in the trade, since the entire buy order can be filled by the displayed interest.

8. Broker agency interest participates on parity during sweeps:

(a) The quote is 20.05 bid, offered at 20.07, 1,500 × 1,000. The book also shows bids of 1,600 shares to buy at 20.04, 2,000 shares to buy at 20.03, and 1,000 shares to buy at 20.02. Broker agency interest to buy 2,600 shares at 20.04 arrives. An order to sell 4,700 shares at 20.03 arrives and automatically executes. 1,500 shares trade at the bid of 20.05 and the remaining 3,200 shares trade at 20.04, with the book receiving 1,600 shares and the broker agency interest receiving 1,600 shares. 1,000 shares to buy remain in the broker agency interest file at 20.04. The market is autoquoted 20.04 bid, offered at 20.07, 1,000 × 1,000. The volume associated with the bid is the 1,000 shares remaining in the broker agency interest file.

(b) The quote is 20.05 bid, offered at 20.07, 1,500 × 1,000. Also shown on the book is 2,000 shares bid at 20.03 and 1,000 shares bid at 20.02. The broker agency interest file has 2,000 shares bid at 20.04. An order to sell 5,000 shares at 20.03 arrives and automatically executes. 1,500 shares trade at 20.05 (the bid price) and the remainder of the sell order, 3,500 shares, trades at 20.03, the sweep price. Trading at 20.03 are the 2,000 shares of broker agency interest that was in the file to buy at 20.04 and 1,500 shares on the book to buy at 20.03.

*Specialist Interest and Algorithm* [45]

9. Specialist interest may automatically supplement the size of the Exchange best bid and offer, but always yields to orders on the book:

The quote is 20.05 bid, offered at 20.07, 1,500—1,000. The bid is comprised of limit orders on the book. The specialist algorithm automatically generates a bid for 1,000 shares at 20.05. The size of the bid automatically changes to 2,500. A new limit order to buy 500 shares at 20.05 arrives and the size associated with the bid automatically changes to 3,000 shares. Agency interest to buy 1,500 shares at 20.05 is entered in the broker agency interest file. Assuming the broker displays all 1,500 shares, the bid size automatically changes again, to 4,500 shares. The first 1,500 share buy limit order on the book has priority, the 500 share buy limit order on the book and the 1,500 share broker agency buy interest are on parity. The specialist interest must yield to the book. An order to sell 3,500 shares at 20.05 arrives and automatically executes at 20.05. The contra-side consists of the first 1,500 shares to buy, the second order to buy 500 shares and the broker agency buy interest for 1,500 shares.

[45] All specialist trading, whether manual or electronically generated by algorithms, must be in accordance with Exchange Rules. These examples presume compliance with these rules.

10. The specialist algorithm may automatically facilitate a single price execution at the Exchange best bid or offer:

The quote is 20.05 bid, offered at 20.07, 1,000 × 1,000. The next best bid on the book is 2,000 shares at 20.03. An NX market order to sell 2,000 shares arrives and the preset parameters of the algorithm determine to facilitate an execution of the sell order at a single price. The sell order automatically executes against the bid and the specialist automatically buys the remaining 1,000 shares at the bid price of 20.05. Had the specialist not done so, the sell order would have traded at two prices—1,000 shares at 20.05 and 1,000 shares at 20.03. By facilitating a single price execution, the specialist gave price improvement to the sell order.

11. Specialist algorithm may provide price improvement between the bid and offer if certain conditions are met:

(i) The quotation spread is at least three cents;

(ii) The specialist is represented in the published bid or offer: The lesser of 10,000 shares or 20% of the respective bid/offer size;

(iii) The order receiving price improvement is 2,000 shares or less and the entire order is filled; and

(iv) The price improvement provided by the specialist is (a) at least .02 where the quote spread is .03–.05, (b) at least .03 where the quote spread is .06–.10, (c) at least .04 where the quote spread is .11–.20, and (d) at least .05 where the quote spread is more than .20.

The market is 20.31 bid, offered at 20.36, 1,500 × 3,000. The offer size includes 1,000 shares on behalf of the specialist. The specialist interest represents 33% of the offer size (1,000 shares/3,000 shares at 20.36). A limit order arrives to buy 2,000 shares at 20.36. The algorithm determines to provide price improvement to this order and 2,000 shares automatically execute at 20.34. The market then is autoquoted 20.31 bid, offered at 20.36, 1,500 × 3,000.

12. Better priced specialist interest yields to the book at a worse price during a residual sweep:

The quotation is 20.05 bid, offered at 20.07, 1,500 × 1,000. 1,000 shares to buy at 20.04 arrives in the broker agency interest file. Specialist interest arrives to buy 1,000 at 20.04. 2,000 shares to buy are on the book at 20.03. A limit order to sell 3,600 shares at 20.03 arrives and automatically executes, as follows: 1,500 trades against the bid at 20.05, with the remaining amount, 2,100 shares, sweeping the book to trade at 20.03. Orders on the book trade 1,100 shares and the broker agency file trades 1,000 shares. This leaves 900 shares on the book to buy at 20.03. The specialist interest to buy at 20.04 does not trade even though it is better priced, because orders remain on the book to buy at 20.03 and the specialist must yield. If no buy orders on the book capable of trading at 20.03 remained and the sell order had not been filled, the specialist interest would be able to trade as part of the sweep on parity with any broker agency interest at that price.

13. Specialist interest trades during a sweep, adding liquidity and improving a sweep price:

The quotation is 20.05 bid, offered at 20.07, 1,500 × 1,000. 1,000 shares to buy at 20.04 arrived in the broker agency interest file. Specialist interest to buy 1,000 shares at 20.04 arrives. 2,000 shares are on the book to buy at 20.03. A limit order to sell 3,500 shares at 20.03 arrives and automatically executes as follows: 1,500 shares trade against the bid at 20.05, with the remaining 2,000 shares trading with the broker agency buy interest and specialist buy interest at 20.04.

14. During sweeps, specialist interest trades if no orders remain on the book at the sweep price:

The quote is 20.05 bid, offered at 20.07, 1,600 × 1,000. Broker agency interest to buy 800 shares at 20.04 arrives. Specialist interest to buy 800 shares at 20.04 arrives. The book shows 1,000 shares to buy at 20.03. A limit order to sell 3,600 shares at 20.03 arrives. The sell order automatically executes 1,600 shares against the bid at 20.05, with the residual, 2,000 shares, sweeping the book at 20.03. The book trades 1,000 shares, the broker file trades 800 shares and the specialist file trades 200 shares.

15. During a sweep, specialist interest trades on parity with broker interest, as long as no orders on the book at the sweep price remain:

The quote is 20.05 bid, offered at 20.07, 1,500 × 1,000. Broker agency interest to buy 2,000 shares at 20.03 arrives. Specialist interest to buy 2,000 shares at 20.03 arrives. The book shows 1,000 shares to buy at 20.03. A limit order to sell 5,500 shares at 20.03 arrives. The sell order automatically executes 1,500 shares against the bid at 20.05, with the residual, 4,000 shares, sweeping the book to trade at 20.03. The book and the broker file are on parity and each trade 1,000 shares. Once the buy order on the book is filled at 20.03, the specialist interest can trade, on parity with the broker file. The remaining 1,000 shares of broker buy interest and 1,000 shares of specialist buy interest also trade.

16. During a sweep, the best bid or offer displayed on each ITS market center is checked to avoid a trade-through:

The Exchange quote is 20.05 bid, offered at 20.07, 2,000 × 1,000. The ITS best offer is also 20.07 for 1,000 shares, published by market center B. A third market center, P, displays 500 shares to sell; at an inferior offer of 20.08. Also on the book are offers at 20.08 for 1,000 shares, at 20.09 for 1,000 shares, and at 20.10 for 3,000 shares. An NX market order arrives on the Exchange to buy 5,000 shares. 1,000 shares automatically execute against the Exchange offer at 20.07. 1,000 shares of the order are auto routed as a commitment to buy at 20.07 to market center B. The remainder, 3,000 shares, sweep the book to 20.10. However, because the sweep price, 20.10, is inferior to the best offer displayed by market center P (20.08), 500 shares of the buy order residual are auto routed as a commitment to buy at 20.08 to market center P and only 2,500 shares of the buy order trade at 20.10 on the Exchange. If both auto routed commitments are satisfied, the executions are as follows: 1,000 shares at 20.07 on the Exchange, 1,000 shares at 20.07 on market center B, 500 shares at 20.08 on market center P, and 2,500 shares at 20.10 on the Exchange. If all or part of one or both commitments are not satisfied, they will return to the Exchange and trade at the prices then available. Under proposed Regulation NMS,[46] had the member entering the order indicated that it was contemporaneously satisfying better prices away, none of the order would have been auto routed. A new quote is autoquoted, 20.05 bid, offered at 20.10, 2,000 × 2,500.

17. Orders are auto routed to multiple away markets publishing better bids or offers:

The Exchange quote is 20.05 bid, offered at 20.08, 2,000 × 2,500. The national best offer, at 20.07 for 1,000 shares, is published by market center B. A third market center, P, also displays an offer to sell 500 shares at of 20.07. An NX market order to buy 2,500 shares arrives on the Exchange. The specialist would have two options: Match the better displayed offers or ship the order to market centers B and P:

(a) If the better priced offers away are not electronically matched by the specialist, 1,000 shares of the buy order are auto routed as a commitment to buy to market center B and 500 shares of the buy order are auto routed as a commitment to buy to market center P. The remainder, 1,000 shares to buy, automatically executes against the Exchange offer at 20.08.

(b) If the specialist matches the better price offers away, he or she would have to fill the entire buy order of 2,500 shares at 20.07 before trading at 20.08.[47]

18. Specialist algorithm may automatically match the better displayed ITS bid or offer or ship the order:

The Exchange quotation is 20.05 bid, offered at 20.07, 2,000 × 1,000. The better displayed ITS offer to sell 400 shares at 20.06 is published by another market center. A market order to buy 1,400 shares arrives and based on predetermined parameters, the specialist algorithm decides to match or ship:

Option 1—The specialist matches the better displayed offer, automatically executing 1,400 at 20.06.

Option 2—The specialist sends 400 shares of the buy order to the other market center, satisfying the better displayed offer. The remaining 1,000 shares of the buy order is automatically executed against the offer at 20.07.

*Sweep LRP*

19. Where the order sweeping the book is filled after trading at the LRP price or a residual exists limited to the LRP price, automatic executions and autoquote automatically resume in no more than five seconds:

The quotation is 20.30 bid, offered at 20.36, 1,500 × 2,000. The LRP is 20.45. The next best offer is 20.46 for 14,000 shares. The following offers are on the book: 1,000 shares to sell at 20.37, 4,000 shares to sell at 20.38, 1,500 shares to sell at 20.39, 5,000 shares to sell at 20.40, 500 shares to sell at 20.41, 2,000 shares to sell at 20.42, 8,000 shares to sell at 20.43, 3,000 shares to sell at 20.44, 3,000 shares to sell at 20.45, and 14,000 shares to sell at 20.46. An IOC order arrives to buy 36,000 shares at 20.45. 2,000 shares automatically execute against the offer at 20.36. The order sweeps the book to the LRP, trading 28,000 shares at 20.45. The offers on the book from 20.37 to 20.44 receive price improvement at 20.45. The residual, 6,000 shares, automatically cancels. The market is autoquoted 20.30 bid, offered at 20.46, 1,500 × 14,000. Automatic executions and autoquote resume automatically in five seconds if the specialist has not manually traded or re-quoted the market before then.

20. Where the sweeping order is not filled before the LRP is reached, and is able to trade above (below) the LRP, but its limit price does not create a locked or crossed market—automatic executions and autoquote resumes automatically in no later than 10 seconds.

The quotation is 20.30 bid, 20.36 offered, 1,500 × 2,000. The LRP is 20.45. The next best offers on the book are 1,000 shares to sell at 20.37, 4,000 shares to sell at 20.38, 1,500 shares to sell at 20.39, 5,000 shares to sell at 20.40, 500 shares to sell at 20.41, 2,000 shares to sell at 20.42, 8,000 shares to sell at 20.43, 3,000 shares to sell at 20.44, 3,000 shares to sell at 20.45, and 5,000 shares to sell at 20.47. An order to buy 36,000 shares at 20.46 arrives. The first 2,000 automatically executes against the offer at 20.36. The remainder sweeps the book to the LRP at 20.45, with 28,000 being executed. Offers at 20.37 through 20.45 trade at the sweep price of 20.45, receiving price improvement. A residual of 6,000 shares to buy remains limited at 20.46. The market auto-quotes 20.45 bid, offered at 20.47, 6,000 × 5,000. Here, since a LRP is reached and a residual capable of trading at a price above the LRP remains, but the residual does not lock or cross the market, automatic executions and autoquote will automatically resume in 10 seconds unless the specialist manually trades or re-quotes the market before then.

21. Where the order sweeping the book is not filled during the sweep, and is able to trade above (below) the LRP, but the limit price creates a locked or crossed market, automatic executions and autoquote are suspended until a manual trade occurs.

The quotation is 20.30 bid, offered at 20.36, 1,500 × 2000. The LRP is 20.45. Also on the book are the following offers: 1,000 shares to sell at 20.37, 4,000 shares to sell at 20.38, 1,500 shares to sell at 20.39, 5,000 shares to sell at 20.40, 500 shares to sell at 20.41, 2,000 shares to sell at 20.42, 8,000 shares to sell at 20.43, 3,000 shares to sell at 20.44, 3,000 shares to sell at 20.45, and 14,000 shares to sell at 20.46. An order to buy 36,000 shares at 20.46 arrives. 2,000 shares automatically execute against the offer at 20.36. The remainder sweeps the book to the LRP at 20.45. Offers on the book from 20.37 to 20.45, 28,000 shares, trade at 20.45, receiving price improvement. The residual, 6,000 shares to buy cannot continue sweeping because the LRP has been reached. The market is autoquoted the LRP, 20.45, offered at 20.46, the next available offer on the book. Because the residual's limit price, 20.46, creates a locked market, a manual trade or quote is required for automatic execution and autoquote to resume.

[46] *See* note 23, *supra.*

[47] Telephone conversation between Kelly Riley, Assistant Director, Division, Commission, and Jeff Rosenstrock, Senior Special Counsel, Market Surveillance, NYSE, on November 15, 2004.

22. Specialist interest trades during a sweep, adding liquidity and improving a sweep price:

The quotation is 20.30 bid, offered at 20.36, 1,500 × 2,000. The sweep LRP is 20.45. Specialist interest to sell 5,000 shares at 20.37 arrives. The book consists of 1,000 shares offered at 20.37, 4,000 shares offered at 20.38, 1,500 shares offered at 20.39, 5,000 shares offered at 20.40, 500 shares offered at 20.41, 2,000 shares offered at 20.42, 8,000 shares offered at 20.43, 3,000 shares offered at 20.44, and 3,000 shares offered at 20.45. A limit order to buy 29,000 shares at 20.45 arrives. 2,000 shares automatically execute at 20.36, with the residual of the buy order, 27,000 shares, sweeping the book, executing at 20.43. The 5,000 shares of specialist sell interest at 20.37 participate in the sweep. Without the specialist sell interest, the book would have been swept to 20.45 (the LRP), a worse price for the buyer.

23. *Momentum Liquidity Replenishment Point (MLRP).*

**Momentum LRP range is based on the high and low trade prices within a rolling 30 second horizon**

| Trades | | 30 Sec. Range | Momentum LRP | |
|---|---|---|---|---|
| | | | Min | Max |
| 10:04:45 | 19.85 | 19.85 – 19.85 | 19.60 | 20.10 |
| 10:04:50 | 19.87 | 19.85 – 19.87 | 19.62 | 20.10 |
| 10:04:54 | 19.90 | 19.85 – 19.90 | 19.65 | 20.10 |
| 10:05:06 | 19.92 | 19.85 – 19.92 | 19.67 | 20.10 |
| 10:05:11 | 19.95 | 19.85 – 19.95 | 19.70 | 20.10 |
| 10:05:17 | 20.00 | 19.87 – 20.00 | 19.75 | 20.12 |
| 10:05:22 | 20.08 | 19.90 – 20.08 | 19.83 | 20.15 |
| 10:05:25 | 20.15 | 19.92 – 20.15 | 19.90 | 20.17 |
| 10:05:31 | 20.13 | 19.92 – 20.15 | 19.90 | 20.17 |
| 10:05:35 | 20.09 | 19.92 – 20.15 | 19.90 | 20.17 |

30 Second Window

**AutoEx at prices lower than 19.90 and higher than 20.17 would be outside MLRP and not be allowed**

24. MLRP may be reached during an automatic execution, pausing a sweep:

At 10:05:36, the bid is 20.05, offered at 20.09, 1,500 × 1,000. The books shows additional offers of 500 shares to sell at 20.13, 1,000 shares to sell at 20.17, 1,500 shares to sell at 20.21, 1,000 shares to sell at 20.22, and 2,000 shares to sell at 20.25. The MLRP range, based on the high and low trades during the prior 30 seconds (20.15 and 19.92 for the purposes of this example) are 19.90 and 20.17.

An NX market order to buy 1,500 shares arrives. 1,000 shares automatically execute at 20.09 and the residual, 500 shares, sweeps the book, trading at 20.13. The quote automatically updates to 20.05 bid, offered at 20.17, 1,500 × 1,000.

A second later, at 10:05:37, the high and low trades within the new 30-second period are 19.95 and 20.15 and the corresponding new MLRP range is 19.90 and 20.20.

At 10:05:40, a limit order arrives to buy 2,000 shares at 20.21. This crosses the market as the offer is at 20.17. The crossing buy order automatically executes against the offer (1,000 shares) at 20.17, creating a new high trade within the operative 30-second MLRP time parameter. This new high price causes the MLRP to change from 19.90 to 19.92 (20.17 less .25) on the low side. The MLRP on the high side, 20.20 has remained the same. The residual of the buy limit order, 1,000 shares, cannot sweep the book to the next available offer at 20.21, because that price is outside the MLRP range. The market is autoquoted 20.20 bid (the MLRP) for 1,000 shares, 1,500 offered at 20.21. Automatic executions and autoquote are suspended. As the order to buy is capable of trading at 20.21, locking the market, a manual trade clearing the locked condition will cause automatic executions and autoquoting to resume and the quote automatically updates to 20.05 bid, offered at 20.21, 1,500 × 500.

25. MLRP may be reached during a sweep, providing a partial sweep:

At 10:05:36, the bid is 20.05, offered at 20.09, 1,500 × 1,000. The book shows additional offers of 500 shares at 20.13, 1,000 shares at 20.17, 2,000 shares at 20.18, 1,000 shares at 20.19, and 1,500 shares at 20.22. The MLRP range is 19.90–20.20, based on high and low trades within the operative 30-second period (19.92 and 20.15 in this example).

An NX market order to buy 1,500 shares arrives and automatically executes at 20.09. The residual, 500 shares, sweeps the book, trading at the next best offer, 20.13. The quote automatically updates to 20.05 bid, offered at 20.17, 1,500 × 1,000.

At 10:05:40, a limit order to buy 5,000 shares at 20.21 arrives crossing the market. 1,000 shares automatically execute at the offer, 20.17. This creates a new high price within the operative 30-second parameter (20.17) causing the MLRP range to change from 19.90 on the low side to 19.92 (20.17 less .25). The MLRP on the high side remains at 20.20. The buy order residual, 4,000 shares, sweeps the book to 20.19. 3,000 shares trade at that price, exhausting the available liquidity within the MLRP range. The quote automatically updates, bidding the remaining size of the residual, 1,000 shares, at 20.20, the MLRP, offering 1,500 shares at 20.22, the next best offer on the book. An automatic execution cannot occur at 20.22 as that price is outside the MLRP range, so automatic executions and autoquote are suspended. Cancellations and orders are electronically reflected on the book. Electronic executions and autoquote will resume automatically in 10 seconds, unless the specialist manually trades the security before then, or the MLRP range changes.

Once autoquote resumes, the bid will automatically change to 20.21 for 1,000 shares, the limit price and the size of the residual. The offer remains 20.22 for 1,500 shares.

26. *Gap Quote.*

The quotation is 20.08 bid, offered at 20.09, 10,000 × 5,000, last sale at 20.08. Crowd interest arrives to buy 350,000 shares at the market. The specialist executes 5,000 shares at the offer, 20.09, then gaps the quote, making the bid price ''touch'' the last sale price (20.09), showing the size of the imbalance in that bid (345,000 shares). On the contra side, the specialist makes the offer the price where stock may trade if no other sell interest arrives, and the size as 100 shares, to draw in sellers. Thus, *e.g.*, the gap quote[48] is 20.09 bid, offered at 20.30, 345,000 × 100. Automatic executions and autoquote are suspended, but incoming orders and cancellations are reflected electronically on the book. Crowd, specialist interest and other liquidity providers are taken into account in determining the price and size of the next transaction. Automatic executions and autoquote then resume.

27. *Tick-restricted Orders.*

(a) The quotation is 20.05 bid, offered at 20.07, 1,500 × 1,000. Other orders on the book to sell include 1,000 at 20.09 (sell short), and 1,000 at 20.11 (sell plus). An NX market order to buy 2,500 shares arrives. 1,000 shares of the buy order are automatically executed against the 1,000 shares offered at 20.07. The remaining 1,500 shares to buy sweep up to 20.11. The sell short and sell plus orders are executable as the sweep occurs on a direct plus tick. As a result, the 20.09 sell short offer on the book is price improved to 20.11.

(b) The quotation is 20.05 bid, offered at 20.07, 1,500 × 1,000. Also on the book to buy are 1,000 shares (buy minus) at 20.04, 1,000 shares to buy at 20.03 and 1,500 shares to buy at 20.01. An NX order to sell 3,000 shares arrives, automatically executing 1,500 shares against the bid at 20.05, sweeping down to 20.03. The 1,000 share bid at 20.04 was executable as the sweep occurred on a minus tick.

(c) The quotation is 20.05 bid, offered at 20.07, 1,500 × 1,000. Also on the book to buy are 1,000 shares at 20.04, 1,000 shares to buy at 20.03, and 1,500 shares to buy at 20.01. The last sale is at 20.04. An NX order to sell short 3,000 shares arrives. The security in question is not part of the Regulation SHO pilot.[49] 1,500 shares automatically execute at 20.05. The residual, 1,500, cannot sweep the book because that would violate short sale rules. The market is autoquoted 20.04 bid, the next best bid on the book, offered at 20.05, the price at which the sell short order can trade, 1,000 × 1,500.

[FR Doc. 04–25771 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

[48] *See* Securities Exchange Act Release No. 50237 (August 24, 2004), 69 FR 53123 (August 31, 2004) (SR–NYSE–2004–37) (Information Memo 04–27—June 9, 2004). The gapped quote procedures provide that a gapped quotation should remain in place for a reasonable time to allow for interested parties to respond to the order imbalance. What constitutes a reasonable time is determined by the unique circumstances of each gapped quotation situation. However, the gapped quotation generally should last at least 30 seconds unless offsetting interest is received earlier, and generally should not exceed two minutes, unless circumstances require otherwise. The duration of a gapped quote is determined with input from a Floor Official.

[49] *See* note 13, *supra.*

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50668; File No. SR–PCX–2004–90]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Extend the Applicability of the Cross-and-Post Functionality on the Archipelago Exchange Facility to PNP Cross Orders

November 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the PCX. On November 10, 2004, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Exchange proposed the rule change under Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it effective upon filing.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules relating to the Cross and Post Order to make clear that this order type applies to PNP Cross Orders.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

**Rule 7 Equities Trading**

Rule 7.31 Orders and Modifiers

(a)–(r)—No change.

(s)(1)–(2)—No change.

*(3) Following the execution parameters described above, any unexecuted portion of a Cross Order shall be cancelled, unless the Cross Order has been designated as a Cross and Post, as defined in Rule 7.31(ff), in which case any unexecuted portion will be displayed in Arca Book at the cross price.*

(t)–(aa)—No change.

(bb) PNP (Post No Preference) Cross Order. A Cross Order that is to be executed in whole or in part on the Corporation and the portion not so executed is to be canceled, without routing any portion of the Cross Order to another market center. When the cross price is equal to or better than the NBBO and is at the BBO, the relevant portion of the PNP Cross Order will be matched first against displayed orders with priority in the Arca Book, and then the remainder of the PNP Cross Order will be matched. Any unexecuted portion of the PNP Cross will be canceled, *unless the PNP Cross Order has been designated as a Cross and Post, as defined in Rule 7.31(ff), in which case any unexecuted portion will be displayed in Arca Book at the cross price.* The Corporation will cancel either the entire PNP Cross Order at the time of order entry, or the unexecuted portion of a PNP Cross Order *(whether or not it has been designated as a Cross and Post)* at any time during the order execution process, whichever is applicable, if:

(1) The cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37;

(2) The cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.

(cc)–(ee)—No Change.

(ff) Cross-and-Post Order. A Cross Order *or PNP Cross Order* that is to be executed in whole or in part on the Corporation [pursuant to Rule 7.31(s)] where any unexecuted portion of the Cross-and-Post Order will be displayed in the Arca Book at the cross price.

(1)–(2)—No Change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on November 10, 2004, the date that the PCX filed Amendment No. 1.

## 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

As part of its continuing efforts to enhance participation on the Archipelago Exchange (''ArcaEx'') facility, the PCX is proposing to amend PCXE Rule 7.31(ff) to clarify that the Cross-and-Post Order type may be applied to the PNP (Post No Preference) Cross Order type.[7]

Currently, PCXE Rule 7.31(ff) states that the Cross-and-Post Order functionality is limited to Cross Orders defined in PCXE Rule 7.31(s).[8] PCXE Rule 7.31(s) defines the basic ArcaEx Cross Order. Because the ArcaEx rulebook now includes cross order types defined in other paragraphs of PCXE Rule 7.31, the Exchange proposes to clarify PCXE Rule 7.31(ff) so that the Cross-and-Post functionality will be understood to be available for PNP Cross Orders. Accordingly, the Exchange proposes to delete the reference to PCXE Rule 7.31(s) in the current PCXE Rule 7.31(ff) text. In addition, minor changes are proposed for PCXE Rule 7.31(s) to make clear that any unexecuted portion of a basic Cross Order is cancelled.

Further, the Exchange proposes to amend PCXE Rule 7.31(bb), which defines the PNP Cross Order, and PCXE Rule 7.31(ff) to clarify that the Cross and Post functionality will be available for PNP Cross Orders. Currently, the unexecuted portion of any PNP Cross Order cancels as described in PCXE Rule 7.31(bb). The proposed rule change specifies that when Cross and Post functionality is applied to a PNP Cross Order, any unexecuted portion of the PNP Cross will post to the Arca Book if certain pricing conditions provided in the existing rule are met.[9] The Exchange believes that implementing these changes will provide investors and ETP Holders[10] with greater opportunities for executing orders with the Cross-and-Post functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

PCX has designated that the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] The Exchange has stated that 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[15] Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.[18]

## 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–PCX–2004–90 on the subject line.

*Paper comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–PCX–2004–90. 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

[7] *See* PCXE Rule 7.31(bb).

[8] The relevant portion of PCXE Rule 7.31(ff) reads: ''A Cross Order that is to be executed in whole or in part on the Corporation pursuant to Rule 7.31(s) where any unexecuted portion of the Cross-and-Post Order will be displayed in the Arca Book at the cross price.''

[9] *See supra* note 7.

[10] *See* PCXE Rule 1.1 (n).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 4.

[14] *See supra* note 5.

[15] Rule 19b–4(f)(6)(iii) under the Act also requires that a self-regulatory organization provide the Commission with written notice of its intent to file a proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of filing the proposed rule change. The Exchange complied with this requirement.

[16] *See supra* note 4.

[17] *See supra* note 5.

[18] *See supra* note 6.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2004–90 and should be submitted on or before December 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–3269 Filed 11–19–04; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3624, Amendment #3]**

### State of Alabama

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 5, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 3, 2005.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 15, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 10, 3004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–25875 Filed 11–19–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3651]**

### State of North Carolina

Moore County and the contiguous counties of Chatham, Cumberland, Harnett, Hoke, Lee, Montgomery, Randolph, Richmond, and Scotland in the State of North Carolina constitute a disaster area as a result of damages caused by flooding and tornadoes created by remnants of Hurricane Jeanne that occurred on September 20, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 11, 2005, and for economic injury until the close of business on August 10, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| *Homeowners With Credit Available Elsewhere* | 6.375 |
| *Homeowners Without Credit Available Elsewhere* | 3.187 |
| *Businesses With Credit Available Elsewhere* | 5.800 |
| *Businesses and Non-Profit Organizations Without Credit Available Elsewhere* | 2.900 |
| *Others (Including Non-Profit Organizations) With Credit Available Elsewhere* | 4.875 |
| For Economic Injury: | |
| *Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere* | 2.900 |

The number assigned to this disaster for physical damage is 365106 and for economic damage is 9AJ600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 12, 2004.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 04–25876 Filed 11–19–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### National Advisory Council; Public Meeting

The U.S. Small Business Administration's National Advisory Council will be hosting a public meeting via conference call to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, or interested others. The conference call will take place on Monday, November 29, 2004, at 11:30 a.m. eastern standard time. The call in number is 1–866–740–1260 with access code 3711001.

Additionally, we will be using *http://www.readytalk.com* to offer a live display of a PowerPoint Presentation. The access code is the same: 3711001. Please log-in 10 minutes before the conference.

Anyone wishing to make an oral presentation to the Board must contact Balbina Caldwell, Director, National Advisory Council, no later than Friday, November 19, 2004, 409 3rd Street, SW., Washington, DC 20516, (202) 205–6914 phone, or (202) 481–4678 fax, or e-mail: *Balbina.Caldwell@sba.gov*.

**Matthew K. Becker,**

*Committee Management Officer.*

[FR Doc. 04–25752 Filed 11–19–04; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2004–85]**

### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before December 13, 2004.

**ADDRESSES:** Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18657 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Annette K. Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 15, 2004.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

### Petitions for Exemption

*Docket No.:* FAA–2004–18657.

*Petitioner:* The Boeing Company.

*Section of 14 CFR Affected:* 14 CFR 25.857(e) and 25.807(c).

*Description of Relief Sought:* Carriage of 20 supernumeraries on the upper deck of the Boeing Model 747–400 Special Freighter (SF) airplane while maintaining a Class E cargo compartment on the main deck.

[FR Doc. 04–25801 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Riverside County, CA

**AGENCY:** Federal Highway Administration, Department of Transportation.

**ACTION:** Notice of Intent.

**SUMMARY:** The Federal Highway Administration (FHWA), in cooperation with the Riverside County Transportation Commission (RCTC) and the California Department of Transportation (Caltrans), is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed Mid County Parkway (MCP) project. The EIS will study alternatives to implement the proposed Mid County Parkway project in western Riverside County between Interstate 15 (I–15) to the west and State Route 79 (SR 79) to the east.

**FOR FURTHER INFORMATION CONTACT:** Tay Dam, Senior Transportation Engineer, Federal Highway Administration—Los Angeles Metro Office, 201 N. Figueroa Street, Suite 1460, Los Angeles, California 90012. Telephone: (213) 202–3954. Fax: (213) 202–3961 or Cathy Bechtel, Riverside County Transportation Commission, 4080 Lemon Street, 3rd Floor, P.O. Box 12008, Riverside, CA 92502–2208. Telephone: (951) 787–7141. Fax: (951) 787–7920.

**SUPPLEMENTARY INFORMATION:** The proposed Mid County Parkway is located in an area of western Riverside County that is currently undergoing substantial population and employment growth. The study area is located on either side of the existing roadway known as Cajalco Road between I–15 and I–215 and as Ramona Expressway east of I–215. The proposed action would adopt an alignment for the Mid County Parkway and construct a major limited access transportation facility to meet current and projected travel demand for 2030 and I–15 on the west to SR–79 on the east. The purpose of the project is to effectively and efficiently accommodate the regional east-west movement of people and goods between and through the cities of San Jacinto, Perris and Corona. The project will also provide roadway geometries to meet State highway design standards, accommodate the Surface Transportation Assistance Act (STAA) National Network oversized trucks and provide a facility that is compatible with a future multimodal transportation system.

The Mid County Parkway project is a part of the long-term transportation planning project in Riverside County called the Community and Environmental Transportation Acceptability Process (CETAP). CETAP is a component of comprehensive land use and transportation planning in Riverside County known as the Riverside County Integrated Project. CETAP was one of the first seven projects in the nation to be processed under Executive Order 13274 for ''Environmental Stewardship and Transportation Infrastructure Reviews''.

Eight alternatives for the Mid County Parkway project have been developed for evaluation in the EIS, including a no action alternative. Many of the parkway alignment alternatives share common segments. Generally, Alternatives 2 through 5 vary in terms of whether the route is directed north or south of Lake Mathews and whether the route follows a northerly or southerly alignment through the City of Perris. Alternatives 6 and 7 incorporate the General Plan arterial designations for both Cajalco Road and El Sobrante west of Wood Road around Lake Mathews. The parkway component of Alternatives 6 and 7 is limited to the area east of Wood Road.

Alternatives under consideration include: (1) No Project/No Action; (2) North Lake Mathews/North Perris Parkway Alternative; (3) North Lake Mathews/South Perris Parkway Alternative; (4) South Lake Mathews/North Perris Parkway Alternative; (5) South Lake Mathews/South Perris Parkway Alternative; (6) General Plan/North Perris Alternative; (7) General Plan/South Perris Alternative; and (8) General Plan Circulation Element. These basic alternatives will have additional design variations and other engineering details. A final selection of study alternatives and their subset variations will not be made until all public and agency comments are reviewed following the scoping process.

**Note:** As required by the National Environmental Policy Act (NEPA) of 1969, all other reasonable alternatives including a no-build alternative will be considered. These alternatives may be refined, combined with various different alternative elements or be removed from further consideration as more analysis is conducted on the project alternatives. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. Three public scoping meetings will be held in December 2004. Public notice will be given of the time and place of these meetings.

Public hearings will be held after the draft EIS is completed. Public notice will be given of the time and place of the hearings. The draft EIS will be available for public and agency review and comment prior to the formal public hearings.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal program and activities apply to this program)

Issued on November 16, 2004.

**Mr. John E. Dewar,**

*Chief Operating Officer, California Division, Federal Highway Administration.*

[FR Doc. 04–25805 Filed 11–19–04; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–118662–98]**

### 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation. REG–118662–98 (TD 8873), New Technologies in Retirement Plans.

**DATES:** Written comments should be received on or before January 21, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Joe Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the for 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:* New Technologies in Retirement Plans.

*OMB Number:* 1545–1632.

*Regulation Project Number:* REG–118662–98.

*Abstract:* These regulations provide that certain notices and consents require in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 375,000.

*Estimated Time per Respondent:* 1 hr.

*Estimated Total Annual Hours:* 477,563.

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: November 15, 2004.

**Joe Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–25873 Filed 11–19–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–106902–98]**

### 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106902–98 (TD 8833), Consolidated Returns-Consolidated Overall Foreign Losses and Separate Limitation Losses (§ 1.1502–9(c)(2)(iv)).

**DATES:** Written comments should be received on or before January 21, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Joseph Durbala, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Consolidated Returns-Consolidated Overall Foreign Losses and Separate Limitation Losses.

*OMB Number:* 1545–1634. Regulation Project Number: REG–106902–98.

*Abstract:* The regulation provides guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,000.

*Estimated Average Time per Respondent:* 1hr., 30 min.

*Estimated Total Annual Burden Hours:* 3,000.

The following paragraph applies to all of the collections of information covered by this notice:

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

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 15, 2004.

**Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–25874 Filed 11–19–04; 8:45 am]

BILLING CODE 4810–01–P

# Corrections

**Federal Register**

Vol. 69, No. 224

Monday, November 22, 2004

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.

## NUCLEAR REGULATORY COMMISSION

**[NUREG–1600]**

## Revision of the NRC Enforcement Policy

*Correction*

In notice document 04–23900 beginning on page 62485 in the issue of Tuesday, October 26, 2004, make the following correction:

On page 62486, in the table, in the first column, in the ninth line, ''3.7 x $10_4$'' should read ''3.7 x $10^4$.''

[FR Doc. C4–23900 Filed 11–19–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
November 22, 2004

# Part II

# Nuclear Regulatory Commission

## 10 CFR Part 50

## Risk-Informed Categorization and Treatment of Structures, Systems and Components for Nuclear Power Reactors; Final Rule

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 50**

**RIN 3150–AG42**

# Risk-Informed Categorization and Treatment of Structures, Systems and Components for Nuclear Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to provide an alternative approach for establishing the requirements for treatment of structures, systems and components (SSCs) for nuclear power reactors using a risk-informed method of categorizing SSCs according to their safety significance. The amendment revises requirements with respect to ''special treatment,'' that is, those requirements that provide increased assurance (beyond normal industrial practices) that SSCs perform their design basis functions. This amendment permits licensees (and applicants for licenses) to remove SSCs of low safety significance from the scope of certain identified special treatment requirements and revise requirements for SSCs of greater safety significance. In addition to the rulemaking and its associated analyses, the Commission is also issuing a regulatory guide (RG) to implement the rule.

**EFFECTIVE DATE:** December 22, 2004.

**ADDRESSES:** The final rule and related documents are available on NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking Web site contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone (301) 415–1462; e-mail: *tar@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Background
II. Comments on Proposed Rule
III. Final Rule
IV. Pilot Activities
V. Section by Section Analysis
VI. Guidance
VII. Criminal Penalties
VIII. Compatibility of Agreement State Regulations
IX. Availability of Documents
X. Voluntary Consensus Standards (Public Law 104–113)
XI. Finding of No Significant Environmental Impact
XII. Paperwork Reduction Act Statement
XIII. Regulatory Analysis
XIV. Regulatory Flexibility Act Certification
XV. Backfit Analysis
XVI. Small Business Regulatory Enforcement Fairness Act

## I. Background

### *I.1 History and General Background*

The NRC has established a set of regulatory requirements for commercial nuclear reactors to ensure that a reactor facility does not impose an undue risk to the health and safety of the public, thereby providing reasonable assurance of adequate protection to public health and safety. The current body of NRC regulations and their implementation are largely based on a ''deterministic'' approach.

This deterministic approach establishes requirements for engineering margin and quality assurance in design, manufacture, and construction. In addition, it assumes that adverse conditions can exist (*e.g.*, equipment failures and human errors) and establishes a specific set of design basis events (DBEs). The deterministic approach contains implied elements of probability (qualitative risk considerations), from the selection of accidents to be analyzed (*e.g.*, reactor vessel rupture is considered too improbable to be included) to the system level requirements for emergency core cooling (*e.g.*, safety train redundancy and protection against single failure). The deterministic approach then requires that the licensed facility include safety systems capable of preventing and/or mitigating the consequences of those DBEs to protect public health and safety. Those SSCs necessary to defend against the DBEs are defined as ''safety-related,'' and these SSCs are the subject of many regulatory requirements designed to ensure that they are of high quality and high reliability, and have the capability to perform during postulated design basis conditions. Typically, the regulations establish the scope of SSCs that receive special treatment using one of three different terms: ''safety-related,'' ''important to safety,'' or ''basic component.'' The terms ''safety-related ''and ''basic component'' are defined in the regulations, while ''important to safety,'' used principally in the general design criteria (GDC) of Appendix A to 10 CFR part 50, is not explicitly defined.

These prescriptive requirements as to how licensees are to treat SSCs, especially those that are defined as ''safety-related,'' are referred to in the rulemaking as ''special treatment requirements.'' These requirements were developed to provide greater assurance that these SSCs would perform their functions under particular conditions (*e.g.*, seismic events or harsh environments), with high quality and reliability, for as long as they are part of the plant. These include particular examination techniques, testing strategies, documentation requirements, personnel qualification requirements, independent oversight, etc. In many instances, these ''special treatment'' requirements were developed as a means to gain assurance when more direct measures (*e.g.*, testing under design basis conditions or routine operation) could not show that SSCs were functionally capable.

Special treatment requirements are imposed on nuclear reactor applicants and licensees through numerous regulations that have been issued since the 1960's. These requirements specify different scopes of equipment for different special treatment requirements depending on the specific regulatory concern, but are derived from consideration of the deterministic DBEs.

Treatment for an SSC, as a general term and as it will be used in this rulemaking, refers to activities, processes, and/or controls that are performed or used in the design, installation, maintenance, and operation of SSCs as a means of:

(1) Specifying and procuring SSCs that satisfy performance requirements;

(2) Verifying over time that performance is maintained;

(3) Controlling activities that could impact performance; and

(4) Providing assessment and feedback of results to adjust activities as needed to meet desired outcomes.

Treatment includes, but is not limited to, quality assurance, testing, inspection, condition monitoring, assessment, evaluation, and resolution of deviations. The distinction between ''treatment'' and ''special treatment'' is the degree of NRC specification as to what must be implemented for particular SSCs or for particular conditions.

Defense-in-depth is an element of the NRC's safety philosophy that employs successive measures to prevent accidents or mitigate damage if a malfunction, accident, or naturally caused event occurs at a nuclear facility. Defense-in-depth is a philosophy used by the NRC to provide redundancy as well as the philosophy of a multiple-barrier approach against fission product releases. The defense-in-depth philosophy ensures that safety will not be wholly dependent on any single element of the design, construction,

maintenance, or operation of a nuclear facility. The net effect of incorporating defense-in-depth into design, construction, maintenance, and operation is that the facility or system in question tends to be more tolerant of failures and external challenges.

A probabilistic approach to regulation enhances and extends the traditional deterministic approach by allowing consideration of a broader set of potential challenges to safety, providing a logical means for prioritizing these challenges based on safety significance, and allowing consideration of a broader set of resources to defend against these challenges. Until the accident at Three Mile Island (TMI), the NRC only used probabilistic criteria in specialized areas, such as for certain man-made hazards and for natural hazards (with respect to initiating event frequency). The major investigations of the TMI accident recommended that probabilistic risk assessment (PRA) techniques be used more widely to augment traditional non-probabilistic methods of analyzing plant safety.

In contrast to the deterministic approach, PRAs address credible initiating events by assessing the event frequency. Mitigating system reliability is then assessed, including the potential for common cause failures. The probabilistic treatment goes beyond the single failure requirements used in the deterministic approach. The probabilistic approach to regulation is therefore considered an extension and enhancement of traditional regulation by considering risk in a more coherent and complete manner.

The primary need for improving the implementation of defense-in-depth in a risk-informed regulatory system is guidance to determine how many measures are appropriate and how good these should be. Instead of merely relying on bottom-line risk estimates, defense-in-depth is invoked as a strategy to ensure public safety given there exists both unquantified and unquantifiable uncertainty in engineering analyses (both deterministic and risk assessments).

Risk insights can make the elements of defense-in-depth clearer by quantifying them to the extent practicable. Although the uncertainties associated with the importance of some elements of defense may be substantial, the fact that these elements and uncertainties have been quantified can aid in determining how much defense is appropriate from a regulatory perspective. Decisions on the adequacy of, or the necessity for, elements of defense should reflect risk insights gained through identification of the individual performance of each defense system in relation to overall performance.

The Commission published a Policy Statement on the ''Use of Probabilistic Risk Assessment'' on August 16, 1995 (60 FR 42622). In the policy statement, the Commission stated that the use of PRA technology should be increased in all regulatory matters to the extent supported by the state of the art in PRA methods and data, and in a manner that supports the NRC's traditional defense-in-depth philosophy. The policy statement also stated that, in making regulatory judgments, the Commission's safety goals for nuclear power reactors and subsidiary numerical objectives (on core damage frequency and containment performance) should be used with appropriate consideration of uncertainties.

To implement this Commission policy, the NRC staff developed guidance on the use of risk information for reactor license amendments and issued Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.'' This RG provided guidance on an acceptable approach to risk-informed decision-making consistent with the Commission's policy, including a set of key principles. These principles include:

(1) Be consistent with the defense-in-depth philosophy;

(2) Maintain sufficient safety margins;

(3) Any changes allowed must result in only a small increase in core damage frequency or risk, consistent with the intent of the Commission's Safety Goal Policy Statement; and,

(4) Incorporate monitoring and performance measurement strategies.

RG 1.174 states that consistency with the defense-in-depth philosophy will be preserved by ensuring that:

(1) A reasonable balance is preserved among prevention of accidents, prevention of barrier failure, and mitigation of consequences;

(2) An over-reliance on programmatic activities to compensate for weaknesses in equipment or device design is avoided;

(3) System redundancy, independence, and diversity are preserved commensurate with the expected frequency, consequences of challenges to the system, and uncertainties (*e.g.*, no risk outliers);

(4) Defenses against potential common cause failures are preserved, and the potential for the introduction of new common cause failure mechanisms is assessed;

(5) The independence of barriers is not degraded; and,

(6) Defenses against human errors are preserved.

*I.2 Rule Initiation*

In addition to RG 1.174, the NRC also issued other regulatory guides on risk-informed approaches for specific types of applications. These included RG 1.175, Risk-informed Inservice Testing, RG 1.176, Graded Quality Assurance, RG 1.177, Risk-informed Technical Specifications, and RG 1.178, Risk-informed Inservice Inspection. In this respect, the Commission has been successful in developing and implementing a regulatory means for considering risk insights into the current regulatory framework. One such risk-informed application, the South Texas Project (STP) submittal on graded quality assurance, is particularly noteworthy.

In March 1996, STP Nuclear Operating Company (STPNOC) requested that the NRC approve a revised Operations Quality Assurance Program (OQAP) that incorporated the methodology for grading quality assurance (QA) based on PRA insights. The STP graded QA proposal was an extension of the existing regulatory framework. Specifically, the STP approach continued to use the traditional safety-related categorization, but allowed for gradation of safety significance within the ''safety-related'' categorization (consistent with 10 CFR part 50 appendix B) through use of a risk-informed process. Following extensive discussions with the licensee and substantial review, the NRC staff approved the proposed revision to the OQAP on November 6, 1997. Subsequent to NRC's approval, STPNOC identified implementation difficulties associated with the graded QA program. Despite the reduced QA requirement applied for a large number of SSCs in which the licensee judged to be of low safety significance, other regulatory requirements such as environmental qualification, the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV), or seismic requirements, continued to impose substantial burdens. As a result, the replacement of a low safety significant component needed to satisfy other special requirements during a procurement process. These requirements prevented STPNOC from realizing the full potential reduction in unnecessary regulatory burden for SSCs judged to have little or no safety importance. In an effort to achieve the full benefit of the graded QA program (and in fact to go beyond the staff's

previous approval of graded QA), STPNOC submitted a request, dated July 13, 1999, asking for an exemption from the scope of numerous special treatment regulations (including 10 CFR part 50 appendix B) for SSCs categorized as low safety significant or as non-risk significant. STPNOC's exemption was ultimately approved by the staff in August 2001 (further discussion on this exemption request is provided in Section IV.2).

The experience with graded QA was a principal factor in the NRC's determination that rule changes would be necessary to proceed with some activities to risk-inform requirements. The Commission also believes that the development of PRA technology and decision-making tools for using risk information together with deterministic information supported rulemaking activities to allow the NRC to refocus certain regulatory requirements using this type of information.

Under Option 2 of SECY–98–300, ''Options for Risk-Informed Revisions to 10 CFR part 50—'Domestic Licensing of Production and Utilization Facilities,' '' dated December 23, 1998, the NRC staff recommended that risk-informed approaches to the application of special treatment requirements be developed as one application of risk-informed regulatory changes. Option 2 (also referred to as RIP50 Option 2) addresses the implementation of changes to the scope of SSCs needing special treatment while still providing assurance that the SSCs will perform their design functions. Changes to the requirements pertaining to the design basis functional requirements of the plant or the design basis accidents are not included in Option 2. These technical risk-informed changes are addressed under Option 3 of SECY–98–300. The Commission approved proceeding with Option 2 in a staff requirements memorandum (SRM) dated June 8, 1999.

The stated purpose of the ''Option 2'' rulemaking was to develop an alternative regulatory framework that enables licensees, using a risk-informed process for categorizing SSCs according to their safety significance (*i.e.*, a decision that considers both traditional deterministic insights and risk insights), to reduce unnecessary regulatory burden for SSCs of low safety significance by removing these SSCs from the scope of special treatment requirements. As part of this process, those SSCs found to be of risk-significance would be brought under a greater degree of regulatory control through the requirements being added to the rule, which are designed to maintain consistency between actual performance and the performance credited in the assessment process that determines their significance. As a result, both the NRC and industry should be able to better focus their resources on regulatory issues of greater safety significance.

The Commission directed the NRC staff to evaluate strategies to make the scope of the nuclear power reactor regulations that impose special treatment risk-informed. SECY–99–256, ''Rulemaking Plan for Risk-Informing Special Treatment Requirements,'' dated October 29, 1999, was sent to the Commission to obtain approval for a rulemaking plan and issuance of an Advance Notice of Proposed Rulemaking (ANPR). By SRM dated January 31, 2000, the Commission approved publication of the ANPR and approved the rulemaking plan. The ANPR was published in the **Federal Register** on March 3, 2000 (65 FR 11488), for a 75-day comment period, which ended on May 17, 2000. In the rulemaking plan, the NRC proposed to create a new section within part 50, now identified as § 50.69, to contain these alternative requirements.

The Commission received more than 200 comments in response to the ANPR. The NRC staff sent the Commission SECY–00–0194, ''Risk-Informing Special Treatment Requirements,'' dated September 7, 2000, which provided the staff's preliminary views on the ANPR comments and additional thoughts on the preliminary regulatory framework for implementing a rule to revise the scope of special treatment requirements for SSCs. The comments from the ANPR are further discussed in Section IV.1.0 of SECY–02–0176, ''Proposed Rulemaking to Add New Section 10 CFR 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components,'' dated September 30, 2002 (ADAMS accession number ML022630007).

The concept developed for this rule, discussed at length in the ANPR, applies treatment requirements based upon the safety significance of SSCs, determined through consideration of both risk insights and deterministic information. Thus, the risk-informed approach discussed in this rule for establishing an alternative scope of SSCs subject to special treatment requirements uses both risk and traditional deterministic methods in a blended ''risk-informed'' approach.

The NRC staff prepared a proposed rule package and provided it to the Commission in SECY–02–0176. The Commission approved issuance of proposed 10 CFR 50.69 for public comment in a SRM dated March 28, 2003. The proposed 10 CFR 50.69 rule was published for public comment in the **Federal Register** on May 16, 2003 (68 FR 26511). The Commission received 26 sets of comments in response to the proposed rule. The comments are discussed in Section II below.

The NRC staff provided the Commission the draft final rule in SECY–04–0109 dated June 30, 2004. The Commission subsequently approved the final rule subject to the changes denoted during the session and documented in SRM dated October 7, 2004 (ADAMS accession number ML042810516).

*I.3 Rule Overview*

Section 50.69 represents an alternative set of requirements whereby a licensee or applicant may voluntarily undertake categorization of its SSCs consistent with the requirements in § 50.69(c), remove the special treatment requirements listed in § 50.69(b) for SSCs that are determined to be of low individual safety significance, and implement alternative treatment requirements in § 50.69(d). The regulatory requirements not removed by § 50.69(b) continue to apply as well as the requirements specified in § 50.69. The rule contains requirements by which a licensee categorizes SSCs using a risk-informed process, adjusts treatment requirements consistent with the relative significance of the SSC, and manages the process over the lifetime of the plant. To implement these requirements, a risk-informed categorization process is employed to determine the safety significance of SSCs and place the SSCs into one of four risk-informed safety class (RISC) categories. The determination of safety significance is performed by an integrated decision-making process which uses both risk insights and traditional engineering insights. The safety functions include both the design basis functions (derived from the ''safety-related'' definition, which includes external events), as well as, functions credited for severe accidents (including external events). Treatment for the SSCs is required to be applied as necessary to maintain functionality and reliability, and is a function of the category into which the SSC is categorized. Finally, assessment activities are conducted to make adjustments to the categorization and treatment processes as needed so that SSCs continue to meet applicable requirements. The rule contains requirements for obtaining prior NRC review and approval of the categorization process and for

maintaining certain plant records and reports. For a more detailed discussion of the rule requirements refer to Sections III and V of this rule.

It is important to note that this rulemaking effort, while intended to ensure that the scope of special treatment requirements imposed on SSCs is risk-informed, is not intended to allow for the elimination of SSC functional requirements or to allow equipment that is required by the deterministic design basis to be removed from the facility (*i.e.*, changes to the design of the facility must continue to meet the current requirements governing design change; most notably § 50.59). Instead, this rulemaking should enable licensees and the staff to focus their resources on SSCs that make a significant contribution to plant safety by restructuring the regulations to allow an alternative risk-informed approach to special treatment. Conversely, for SSCs that do not significantly contribute to plant safety on an individual basis, this approach should allow an acceptable, though reduced, level of confidence (*i.e.*, ''reasonable confidence'') that these SSCs will satisfy functional requirements. However, continued maintenance of the health and safety of the public will depend on effective implementation of § 50.69 by the licensee or applicant applying the rule at its nuclear power plant.

## II. Public Comments

### *II.1.0 Comments on Proposed Rule*

The Commission published proposed § 50.69 for public comment on May 16, 2003 (68 FR 26511). Twenty-six sets of comments were received (comments are available at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=SSC_PRULE&st=prule*). The Commission requested feedback on several specific issues in Section VI of the proposed rule notice. A summary of the public feedback concerning these issues, as well as a discussion of the more significant comments, follows. A detailed discussion of the issues raised by all comments is contained in a separate document (see Section IX, Availability of Documents).

### *II.1.1 Consideration of More Detailed Language for § 50.69(d)(2) Regarding RISC–3 SSC Treatment Requirements*

As discussed in the proposed rule, the Commission believed that detailed rule language for the treatment of RISC–3 SSCs (*i.e.*, safety-related SSCs that are categorized as low safety significant) was not necessary to provide reasonable confidence in RISC–3 design basis capability and, as a consequence, constructed proposed § 50.69 to contain high-level (*i.e.*, less detailed) RISC–3 treatment requirements. However, the Commission recognized that some stakeholders could disagree with this approach and invited comment on this issue. For the most part, industry commenters asserted that there was no need for more detailed treatment requirements for RISC–3 SSCs in the rule. The state commenters and public interest groups considered the proposed rule language to be inadequate to provide reasonable confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design basis conditions. In reviewing the public comments, the Commission found significant divergence in the interpretation of the proposed rule language by industry commenters from the Commission's expectations as described in the Statement of Considerations—preamble—(SOC) for the proposed rule. After consideration of all stakeholder comments, the Commission revised § 50.69(d)(2) to adopt a more performance-based approach that provides licensees and applicants greater flexibility in establishing RISC–3 treatment consistent with the low safety significance of RISC–3 SSCs. Accordingly, the Commission has removed the more prescriptive requirements regarding RISC–3 treatment activities and adopted rule language that focuses on the performance requirements for RISC–3 SSCs.

### *II.1.2 PRA Requirements*

The Commission requested stakeholder comment on whether the NRC should amend the requirements in § 50.69(c) to require a level 2 internal and external initiating events, all-mode, peer-reviewed PRA that must be submitted to, and reviewed by, the NRC. Stakeholder comments ranged from those supporting such PRA requirements to those who conclude that the proposed PRA requirements in § 50.69(c) are sufficient. The industry commenters stated that additional PRA requirements were not necessary because the other categorization requirements in § 50.69(c) addressed other modes and events not addressed by the PRA and as a result, all sources of risk were addressed. The states and public interest groups supported increased PRA requirements. The Commission concludes that the § 50.69 PRA requirements in the proposed rule are sufficient for this application. The supporting guidance for the rule has been structured such that licensees will gain more benefit when PRA methods are used (beyond the minimum PRA requirements in § 50.69(c)), and where non-PRA methods are used, the requirements and associated implementation guidance account for this situation by requiring a process that tends to conservatively categorize SSCs into RISC–1 and RISC–2 (*i.e.*, no special treatment requirements are removed). There are several other features to the regulatory framework that also contribute to ensuring sound PRA is used such as requiring aspects of the categorization process to be reviewed and approved before implementation, requiring the PRA to be peer reviewed, Integrated Decision-Making Panel (IDP) requirements, provisions for addressing all modes and events regardless of whether in the PRA, feedback and update requirements, and supporting standards. (Also see the Commission's SRM on PRA quality dated December 18, 2003, ADAMS Accession No. ML033520457.)

### *II.1.3 Review and Approval of RISC–3 Treatment*

The Commission requested stakeholder comment on whether the NRC should review and approve the RISC–3 treatment processes being developed by the licensee or applicant before implementation in addition to reviewing the categorization process. Public interest groups and comments from state organizations generally stressed the need for the NRC to review and approve RISC–3 treatment processes in advance of implementation to confirm appropriate treatment will be applied to RISC–3 SSCs given that these SSCs are safety-related. On the other hand, industry commenters did not consider prior review and approval of RISC–3 treatment to be necessary in light of the low safety significance of individual RISC–3 SSCs, other requirements that help maintain safety, and the availability of inspection and enforcement by the NRC. The NRC agrees that the individual low safety significance of RISC–3 SSCs supports allowing licensees to establish treatment for RISC–3 SSCs without prior NRC review. This conclusion is based on the rule containing:

(1) Robust categorization and PRA requirements;

(2) Requirements to show that implementation risk is small;

(3) Feedback requirements of paragraph (e) to help maintain the validity of the categorization process; and

(4) The high-level, performance-based RISC–3 requirements designed to

maintain RISC–3 SSC design basis functional capability.

In addition, a provision has been added to the final rule to make it clear that the treatment applied to RISC–3 SSCs must be consistent with (*i.e.*, maintain the validity of) the categorization process. To provide additional assurance, the NRC intends to conduct sample inspections at nuclear power plants implementing § 50.69 to address programmatic issues related to the categorization and treatment processes (see below).

*II.1.4 Inspection and Enforcement*

The Commission requested stakeholder comment on whether or not changes are needed in the NRC's reactor oversight process including the inspection program and enforcement to enable NRC to exercise the appropriate degree of regulatory oversight of these aspects of facility operation regarding § 50.69. The public comments on the proposed rule indicated general support for providing regulatory oversight of the implementation of processes established under § 50.69 through the NRC's inspection and enforcement process. Some stakeholders considered the current inspection and enforcement process to be sufficient without adjustment. Other stakeholders recommended that the NRC consider additional training and guidance to inspectors to support implementation of § 50.69. Some stakeholders provided specific and constructive suggestions regarding the inspection and enforcement process under § 50.69 including aspects of treatment processes to be inspected, and the application of enforcement discretion. Based on its consideration of this issue, the Commission plans to conduct inspections of § 50.69 implementation. These inspections will be performed on a sampling basis (in terms of the number of plants inspected) and will depend on the number of licensees who decide to implement § 50.69. These sample inspections are intended to gather information that will enable the NRC to assess whether modifications are needed to the ongoing baseline inspection program. The principal focus of the inspection will be on the safety significant aspects of § 50.69 implementation such as categorization and treatment of RISC–1 and RISC–2 SSCs, but the inspection will also consider the implementation of RISC–3 treatment focusing on programmatic and common cause issues, which could undermine the categorization process and its results.

*II.1.5 Operating Experience*

The Commission requested stakeholder feedback regarding the role that relevant operational experience could play in reducing the uncertainty associated with the effects of treatment on performance and specifically sought public comment as to what information might be available and how it could be used to support implementation of this rulemaking. Some stakeholders commented that relevant operating experience argues against the removal of special treatment requirements and that regulatory attention should be increased for this equipment. Other stakeholders suggested that there is a large amount of data that demonstrates that commercial and safety-related SSCs have comparable failure rates with the implication that special treatment requirements can be removed with little impact. The specific study referenced by those stakeholders was not submitted for formal NRC review. The Commission concludes that a single unreviewed study does not provide a sufficient basis to make broad conclusions regarding the performance of SSCs subject to commercial and industrial practices for fabrication, installation, and maintenance. Other stakeholders commented that there are already opportunities for industry to share experience data with existing industry and regulatory programs implying that a new program is not necessary. In some instances, however, those referenced programs will be eliminated for RISC–3 SSCs under § 50.69. To emphasize the importance of applying operating experience in maintaining plant safety, the final rule has been revised to clarify that § 50.69(e)(1) requires the feedback of plant operational experience in addition to the requirements to feed back performance data, plant changes, operational changes, and industry experience. This plant operational information may be obtained from the corrective action program and processes, as well as other sources.

*II.1.6 Other Substantive Issues*

In addition to the issues addressed in Section II.1.5, stakeholders provided substantive comments that caused the NRC to re-examine the § 50.69 framework and make changes. Those issues and comments are discussed below. Additionally, there were several issues that involved a significant number of stakeholder comments, and even though the Commission decided not to revise its approach, those issues and comments are also discussed in this section.

*II.1.6.1 SOC Guidance*

Numerous comments were received from the industry regarding the nature of the information in the proposed rule's SOC supporting both § 50.69(d)(2) and § 50.69(c). Several industry commenters stated that the discussion in the SOC was inconsistent with the rule requirements. For example, some commenters suggested that, contrary to the SOC discussion, the treatment requirements for RISC–3 SSCs in § 50.69(d)(2) would allow exercising of pumps and valves as a means of providing reasonable confidence in the design basis capability of those components. Another commenter claimed that, contrary to the SOC discussion, § 50.69 would allow the leakage tests required by 10 CFR part 50, Appendix J, for containment isolation valves to be eliminated without considering the capability of those valves to close under design basis conditions. Other commenters asserted that the corrective action process alone would be sufficient to satisfy the high-level requirements for feedback and monitoring of RISC–3 SSCs in § 50.69. These industry comments raised concerns regarding the interpretation of the rule language. The Commission clarified the rule requirements and simplified the SOC to focus on the meaning of the rule language (see Sections II.1.6.2 through II.1.6.3, Section V.5.2, and the responses to comments d–32 and e–4 in Table 3 of ''Response to Comments on Proposed § 50.69'' as referenced in Section IX of this document).

*II.1.6.2 RISC–3 Treatment Requirements*

Numerous stakeholder comments were received concerning the § 50.69(d)(2) requirements for RISC–3 SSCs. Some public stakeholders provided their view that the RISC–3 treatment requirements were inadequate in light of previous industry experience (*e.g.*, regarding the use of substandard parts) and that more detailed RISC–3 requirements were needed to address common cause failures, significant degradation, and in general to avoid an increase in risk to the health and safety of the public. Industry stakeholders tended to view the RISC–3 requirements as too prescriptive and beyond what is necessary to maintain reasonable confidence of RISC–3 SSC design basis capability. Some of the industry comments revealed that the rule requirements might not be implemented consistent with the Commission's expectations discussed in the SOC. Therefore, the Commission clarified the

rule and SOC as discussed in the following sections.

*II.1.6.2.1 Fracture Toughness*

In the SOC for the proposed rule, the Commission noted that design requirements for fracture toughness would continue to apply for replacement ASME components categorized as RISC–3 SSCs. One industry commenter asserted that fracture toughness is not a design issue while other commenters argued in general that the SOC discussion exceeded the rule requirements. The Commission emphasizes that the intent of § 50.69 is to remove special treatment requirements while maintaining design requirements for RISC–3 SSCs. The Commission considers fracture toughness to be an important design consideration. Fracture toughness is a property of the material that prevents premature failure of an SSC at abrupt geometry changes, or at small undetected flaws. Adequate fracture toughness of SSCs is necessary to prevent common cause failures due to design basis events, such as earthquakes. To ensure that this design consideration continues to be applicable to § 50.69 licensees, § 50.69(b)(1)(v) was clarified to exclude fracture toughness from the scope of § 50.55a repair and replacement requirements which are removed for RISC–3 SSCs.

*II.1.6.2.2 Consistency With the Categorization Process*

Several industry comments indicated that licensees might not consider the impact of changes in treatment on RISC–3 SSCs as part of the categorization process. For example, one industry commenter asserted that sensitivity studies eliminate the need to specifically consider SSC reliability changes that might occur due to treatment changes. Another industry commenter stated that cross-system common cause interactions are rarely modeled in PRAs. Similarly, another industry commenter indicated that degradation mechanisms resulting from treatment processes are typically not considered in PRAs. The treatment practices for plant SSCs must support the capability credited in the categorization process for there to be reasonable confidence that any increase in risk remains small. Therefore, § 50.69(d)(2) was clarified to explicitly require the treatment of RISC–3 SSCs to be consistent with the categorization process.

*II.1.6.2.3 Voluntary Consensus Standards*

In the SOC for the proposed rule, the Commission discussed the use of voluntary consensus standards as one effective means to establish treatment requirements for RISC–3 SSCs. In its comments, the ASME did not recommend adding a provision on voluntary consensus standards in the rule itself because it considered the SOC to provide adequate guidance for RISC–3 treatment. However, several industry commenters suggested that licensees might only apply general industrial practices when implementing treatment requirements for RISC–3 SSCs. For example, some industry commenters believed that exercising a pump or valve would provide sufficient assurance under § 50.69 of the capability of the pump or valve to perform its design basis safety functions. Although exercising a pump or valve might be consistent with general industrial practices, operating experience has demonstrated that exercising a pump or valve is not sufficient to ensure with reasonable confidence its design basis capability. For example, the Commission modified § 50.55a to require licensees implementing the ASME Code for Operation and Maintenance of Nuclear Power Plants to periodically verify the design basis capability of motor-operated valves to perform their safety functions in light of the recognized inadequacies in stroke-time testing (somewhat more informative than exercising) to assess the operational readiness of those valves. The NRC issued Regulatory Issue Summary 00–03 (March 15, 2000), ''Resolution of Generic Safety Issue 158, Performance of Safety-Related Power-Operated Valves Under Design Basis Conditions,'' to discuss the importance of this issue relative to safety-related air-operated and other power-operated valves. Further, the ASME developed comprehensive pump testing provisions to provide more appropriate testing under significant flow conditions in light of the weakness of the previous Code testing under minimal loading conditions. In SECY–00–0194, the NRC noted that a wide variation existed in industrial practices. Therefore, certain industrial practices may not be sufficient to satisfy the treatment requirements for RISC–3 SSCs in § 50.69. To address these concerns, the Commission clarified the rule requirements to indicate that the treatment of RISC–3 SSCs must be consistent with the categorization process. One way to achieve this consistency could be the application of consensus standards. However, licensees or applicants must recognize that the application of such standards must meet § 50.69(d)(2) requirements to be acceptable. The determination of consistency between treatment and categorization also includes consideration of applicable operational experience, which may be found from such sources as NRC information notices, bulletins, and generic letters; and vendor recommendations.

*II.1.6.2.4 Design Control Process*

In the SOC for the proposed rule, the Commission listed several attributes to be considered as part of the design control process for RISC–3 SSCs in satisfying the high-level treatment requirements in § 50.69. One industry commenter suggested that a focused list of design control attributes be substituted in § 50.69 for the proposed rule language. This list would include selection of suitable materials; verification of design adequacy, and control of design changes. After consideration of these comments, the Commission has decided not to include detailed design control process requirements in the final rule. The final rule requirements require that licensees and applicants ensure with reasonable confidence that RISC–3 SSCs remain capable of performing their safety-related functions under design basis conditions. With respect to design changes, as noted in several places in the notice for the final rule, § 50.69 is not changing design basis functional requirements and § 50.59 remains applicable to all changes to non-special treatment aspects of RISC–3 SSCs. The Commission believes that a performance-based requirement will allow licensees who choose to implement § 50.69 to have greater flexibility to implement treatment that they have determined is needed, commensurate with the safety significance of the SSCs in order to ensure with reasonable confidence that RISC–3 safety-related functional capability is maintained.

*II.1.6.2.5 Design Basis Conditions*

Under § 50.69, RISC–3 SSCs will be exempt from special treatment requirements for qualification methods for environmental conditions and effects and seismic conditions. Nevertheless, RISC–3 SSCs continue to be required to be capable of performing their safety-related functions under applicable environmental conditions and effects and seismic conditions, albeit at a lower level of confidence as compared to RISC–1 SSCs. Based on industry comments on the proposed rule, some

licensees appeared to interpret the proposed rule language as not requiring evaluation of environmental and seismic capability of RISC–3 SSCs. For example, one industry commenter stated that § 50.69 exempts RISC–3 electrical equipment from aging issues and that the rule would not require the establishment of design life for RISC–3 electrical equipment. Contrary to the public comment, a licensee implementing § 50.69 must consider operating life (aging) and combinations of operating life parameters (synergistic effects) in the design of RISC–3 electrical equipment. This is particularly important if the equipment contains materials which are known to be susceptible to significant degradation due to thermal, radiation, and/or wear (cyclic) aging including any known synergistic effects that could impair the ability of the equipment to meet its design basis function. However, the Commission agrees that the applicable rule language can be simplified and has revised the final rule to utilize a performance-based approach to ensuring with reasonable confidence the functional capabilities of RISC–3 SSCs. Accordingly, the final rule has been revised by deleting the reference to the specific conditions that were parenthetically listed in the proposed rule.

*II.1.6.2.6 Corrective Action*

Some public commenters raised concerns regarding the lack of requirements for the consideration of common-cause issues for RISC–3 SSCs. An industry commenter also noted this omission in the proposed rule and provided proposed rule language to resolve this issue. Therefore, the Commission decided to revise § 50.69(d)(2)(ii) to require that, for significant conditions adverse to quality associated with RISC–3 SSCs, measures shall be taken to provide reasonable confidence that the cause of the condition is determined and corrective action is taken to preclude repetition. The revised corrective action requirement is consistent with a proposal by the Nuclear Energy Institute and uses language that is similar to 10 CFR part 50 Appendix B Criterion XVI. As such, this should be a well-understood requirement that minimizes the potential for common cause failures. It is also consistent with the principle of performance-based regulation that non-compliance with the performance requirement should provide sufficient margin such that reasonable assurance of public health and safety continues to be provided.

*II.1.6.2.7 Seismic Experience Data*

Several industry commenters stated that the SOC for the proposed rule might create additional burden on plants licensed before implementation of Appendix A to 10 CFR Part 100. In establishing § 50.69, the Commission does not intend to alter the existing seismic design requirements for RISC–3 SSCs in any plant's design basis. Industry commenters also raised concerns regarding the SOC discussion on use of seismic experience data. In meeting § 50.69, the licensee or applicant must have adequate technical bases to conclude that RISC–3 SSCs will perform their safety-related functions under seismic design basis conditions, which includes the number and magnitude of earthquake events specified for the SSC design. Some commenters implied that it would be acceptable to use ''experience data'' alone to have reasonable confidence that an SSC is capable of functioning during an earthquake even if there is no actual ''experience data'' for the SSC. While the use of experience data is not prohibited by the rule, it may be difficult for a licensee or applicant to show that experience data alone will satisfy the applicable design requirements of 10 CFR part 100 (which § 50.69 leaves intact). The Commission clarified the SOC with respect to the use of seismic experience data and to indicate that § 50.69 will not change the seismic design basis for Unresolved Safety Issue (USI) A–46[1] plants or impose additional seismic requirements for those plants.

*II.1.6.3 Feedback*

Several industry commenters requested adjustments to the feedback requirements in § 50.69(e)(1) to provide more efficient implementation of the rule. Upon consideration of those comments, the Commission revised § 50.69(e)(1) to replace the maximum time interval for updating the categorization and treatment processes from 36 months to two refueling outages, and to indicate that the licensee or applicant may adjust either its categorization process or its treatment processes in satisfying the feedback requirement.

*II.1.6.4 Section 50.46a/Appendix B Requirements for High Point Vents*

A comment was submitted that the NRC should undertake a review of the recently revised § 50.44 to determine whether the new rule contains special treatment requirements that should be within the scope of § 50.69. The Commission agreed with this comment. The Commission noted in the proposed rule (Section III.4.9.3) that there may be a need to scope into § 50.69 certain provisions of the old § 50.44 dependent on the outcome of the effort to risk inform the § 50.44 requirements. The revised § 50.44 has no special treatment requirements. However, when § 50.44 was revised, a portion of the old § 50.44 regarding application of Appendix B requirements to high point vents was moved to § 50.46a. This particular requirement was not risk-informed as part of the § 50.44 effort and was instead simply relocated. Because application of Appendix B is a special treatment requirement, the Appendix B portion of § 50.46a(b) has been included within the scope of § 50.69 by the inclusion of § 50.69(b)(1)(ii).

*II.1.6.5 Basis for RISC–3 SSC Reliability Used in § 50.69(c)(1)(iv) Evaluation*

A number of comments were received regarding the technical basis for the RISC–3 SSC reliability (failure rates) to be used in the risk sensitivity study performed to meet § 50.69(c)(1)(iv) requirements to demonstrate reasonable confidence that any potential risk increase from implementation of the rule is small. Some commenters suggested that licensees or applicants that voluntarily implement the rule should be required to characterize and reasonably bound the specific effects of eliminating treatment on SSC reliability under design basis and severe accident conditions. Other commenters suggested that there is evidence that reductions in treatment (using industry practices) has no impact on SSC reliability.

The NRC recognizes that the reliability of RISC–3 SSCs could potentially decrease (RISC–3 SSC failure rates increase) due to the reduction in treatment applied to these SSCs as a result of § 50.69 implementation. This is the reason why the Commission requires in the rule that the licensee demonstrate with reasonable confidence that any potential risk increase due to implementation of the rule will be small. However, the NRC also recognizes that it is difficult a priori to relate specific changes in treatment directly to specific changes in SSC reliability. The rule has been constructed to account for this difficulty. First, the categorization process that a licensee uses must comply with the rule's requirements. Second, this categorization process will be reviewed and approved by the NRC

[1] In December 1980 the NRC designated ''Seismic Qualification of Equipment in Operating Plants'' as an unresolved safety issue. For more information refer to GL 87–02.

before implementation. These steps are to have high confidence that SSCs are appropriately categorized so that RISC–3 SSCs are of low individual safety significance. Third, licensees are required to provide reasonable confidence that any risk increase due to implementation is acceptably small and this assessment must be supported by a supporting technical justification that discusses why the assessment adequately addresses the potential reliability changes for RISC–3 SSCs. This basis may include reliance on the capability of the licensee's data collection, feedback, and corrective action , which are also addressed by requirements of the rule. Finally, the rule has been revised to clarify the linkage between treatment and categorization and specifically to ensure that the treatment process is consistent with the categorization process, including the risk sensitivity study (*i.e.*, maintain that any risk increase due to reduced treatment is acceptably small). Therefore, the rule is structured to contain:

(1) Robust categorization and PRA requirements;

(2) Requirements to show that implementation risk is small;

(3) A new provision to make it clear that the treatment applied to RISC–3 SSCs must be consistent with (*i.e.*, maintain the validity of) the categorization process;

(4) Feedback requirements of § 50.69(e) to maintain the validity of the categorization process; and,

(5) The high-level RISC–3 requirements designed to maintain RISC–3 SSC design basis functional capability.

Thus, the Commission finds that the rule, as revised, has the appropriate provisions for addressing the concerns regarding the basis for RISC–3 SSC reliability used in the risk sensitivity study to be performed to meet the § 50.69(c)(1)(iv) requirement to demonstrate with reasonable confidence that any potential risk increase from implementation of the rule is small.

*II.1.6.6 RISC–1 and RISC–2 Treatment Requirements and Crediting SSCs*

A number of industry stakeholders commented on the treatment requirements applicable to RISC–1 and RISC–2 SSCs in § 50.69(d)(1). These stakeholders commented that this requirement obligated a licensee implementing § 50.69 to evaluate treatment applied to all safety significant SSCs to ensure adequacy of treatment and cited this as an added burden that is neither necessary nor appropriate because RISC–1 SSCs are already subjected to full regulatory requirements. They also commented that it appeared that this requirements was extending special treatment requirements (such as Appendix B) to RISC–2 SSCs. In fact there was a general consensus of comments that any additional treatment requirements for RISC–1 and RISC–2 SSCs should be removed from the SOC or that the SOC be clarified to address the specific beyond design basis scope of additional regulatory controls. First, the Commission notes that § 50.69(d)(1) does not require licensees or applicants to evaluate the application of special treatment requirements to RISC–1 SSCs. These requirements are to maintain the design basis functional requirements with a high level of assurance. The special treatment requirements remain intact and unchanged, and hence there is no reason that an evaluation of the application of special treatment requirements should be required. Secondly, the Commission notes that it is not the intent of § 50.69(d)(1) to simply extend special treatment requirements such as Appendix B to RISC–1 and RISC–2 beyond design basis functions. Instead, the focus of § 50.69(d)(1) is on the PRA credited performance of RISC–1 and RISC 2 SSCs for beyond design basis conditions, and specifically for ensuring that there is a valid technical basis for the credit taken in the PRA (*i.e.*, there must be a valid technical basis for the failure rate/probability of the SSC performing the function). The basis for this credit should already be established and documented in the PRA supporting documentation, so this should not be an additional burden for licensees to capture and implement. If an existing technical basis does not exist or is insufficient to support the credit taken in the PRA, then § 50.69(d)(1) would require that a technical basis be developed for the credit taken; potentially including the creation of a treatment program for the SSC that validates the capability credited.

Regarding the issue of ''credited'' SSCs, several commenters stated that the SOC implied an enormous program would be required if a licensee decides to selectively implement § 50.69 for a set of systems. It was commented that this enormous program would result due to the application of §§ 50.69(d)(1) and 50.69(e)(2) to maintain credited performance within the PRA and thereby enable the selected set of SSCs to be categorized as low safety significant. As the Commission has already noted, § 50.69(d)(1) obligates licensees to have a basis to support the performance of RISC–1 and RISC–2 SSCs credited in the PRA used in the categorization process, including the performance credited for beyond design basis conditions. This is an important aspect of the rule. The categorization process will result in a number of safety-related SSCs being determined to be of low safety significance (*i.e.*, RISC–3) and subject to reduced treatment. This determination of low safety significance will implicitly take credit for the performance capability of other SSCs in the PRA, some or all of which may not be included in the scope of the licensee's categorization process (due to the allowance for licensees to selectively implement the rule and to phase that implementation over time). To maintain the validity of the categorization process, and more importantly to maintain any potential risk increase as small, it is necessary to maintain the ''credited'' SSCs per § 50.69, and this means the application of §§ 50.69(d)(1) and 50.69(e)(2) requirements as suggested by the comment.

*II.1.6.7 Adequate Protection Comments*

The NRC received several comments indicating that the proposed regulation would not maintain adequate protection of public health and safety. The Commission disagrees with these comments and concludes that both the proposed rule requirements and the final rule requirements maintain adequate protection for the reasons discussed in Section III.7.0 of this notice.

*II.1.6.8 License Amendment*

A commenter stated that the requirement to prepare, submit, and then receive approval of a license amendment to implement § 50.69 is a disincentive to its use. The commenter argued that, in light of the desire to move to a more performance-based regulatory regime, voluntary implementation of § 50.69 should be developed by licensees using the requirements in the rule and any attendant regulatory guidance, with routine NRC inspection serving to verify acceptable compliance. The Commission has decided not to revise § 50.69 in response to this comment. The Commission continues to conclude that (as discussed in Section III.6.0 of this rule) the review of the license amendment submittal will involve substantial engineering judgment on the part of NRC reviewers, inasmuch as the rule does not contain objective, non-discretionary criteria for assessing the adequacy of the PRA process, PRA

review results and sensitivity studies. Consistent with the Commission's decision in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315 (1996), the final rule requires NRC approval to be provided by issuance of a license amendment.

## III. Final Rule

The Commission is establishing § 50.69 as an alternative set of requirements whereby a licensee or applicant may undertake categorization of its SSCs consistent with the requirements in § 50.69(c) and adjust treatment requirements per § 50.69(d) based upon the resulting significance. Under this approach, a licensee or applicant is allowed to remove the special treatment requirements listed in § 50.69(b) for SSCs that are determined to be of low safety significance while potentially enhancing requirements for treatment of other SSCs that are found to be safety significant. The requirements establish a process by which a licensee categorizes SSCs using a risk-informed process, adjusts treatment requirements consistent with the relative significance of the SSC, and manages the process over the lifetime of the plant. To implement these requirements, a risk-informed categorization process is employed to determine the safety significance of SSCs and place the SSCs into one of four RISC categories. It is important that this categorization process be robust to enable the Commission to remove requirements for SSCs determined to be of low safety significance. The determination of safety significance is performed by an integrated decision-making process which uses both risk insights and traditional engineering insights. The safety functions include both the design basis functions (derived from the ''safety-related'' definition, which includes external events), as well as functions credited for severe accidents (including external events). Treatment requirements for the SSCs are applied as necessary to maintain functionality and reliability and are a function of the category into which the SSC is categorized. Finally, assessment activities are conducted to make adjustments to the categorization and treatment processes as needed so that SSCs continue to meet applicable requirements. The rule also contains requirements for obtaining NRC approval of the categorization process and for maintaining plant records and reports.

### *III.1.0 Categorization of SSCs*

Section 50.69 defines four RISC categories into which SSCs are categorized. Four categories were chosen because it is the simplest approach for transitioning between the previous SSC classification scheme and the new scheme used in § 50.69. The depiction in Figure 1 provides a conceptual understanding of the new RISC categories. The figure depicts the current safety-related versus nonsafety-related SSC categorization scheme with an overlay of the new risk-informed categorization. In the traditional deterministic approach, SSCs were generally categorized as either ''safety-related'' (as defined in § 50.2) or nonsafety-related. This division is shown by the vertical line in the figure. Risk insights, including consideration of severe accidents, can be used to identify SSCs as being safety significant or low safety significant (shown by the horizontal line). Hence, the application of a risk-informed categorization results in SSCs being grouped into one of four categories as represented by the four boxes in Figure 1.

Box 1 of Figure 1 depicts safety-related SSCs that a risk-informed categorization process determines are significant contributors to plant safety. These SSCs are termed RISC–1 SSCs. RISC–2 SSCs, depicted by box 2 in Figure 1, are nonsafety-related SSCs that the risk-informed categorization determines to be significant contributors to plant safety. The third category are those SSCs that are safety-related SSCs and that a risk-informed categorization process determines are not significant individual contributors to plant safety. These SSCs are termed RISC–3 SSCs and are depicted by box 3 in Figure 1. Finally, there are SSCs that are nonsafety-related and that a risk-informed categorization process determines are not significant contributors to plant safety. These SSCs are termed RISC–4 SSCs and are depicted by box 4 in Figure 1.

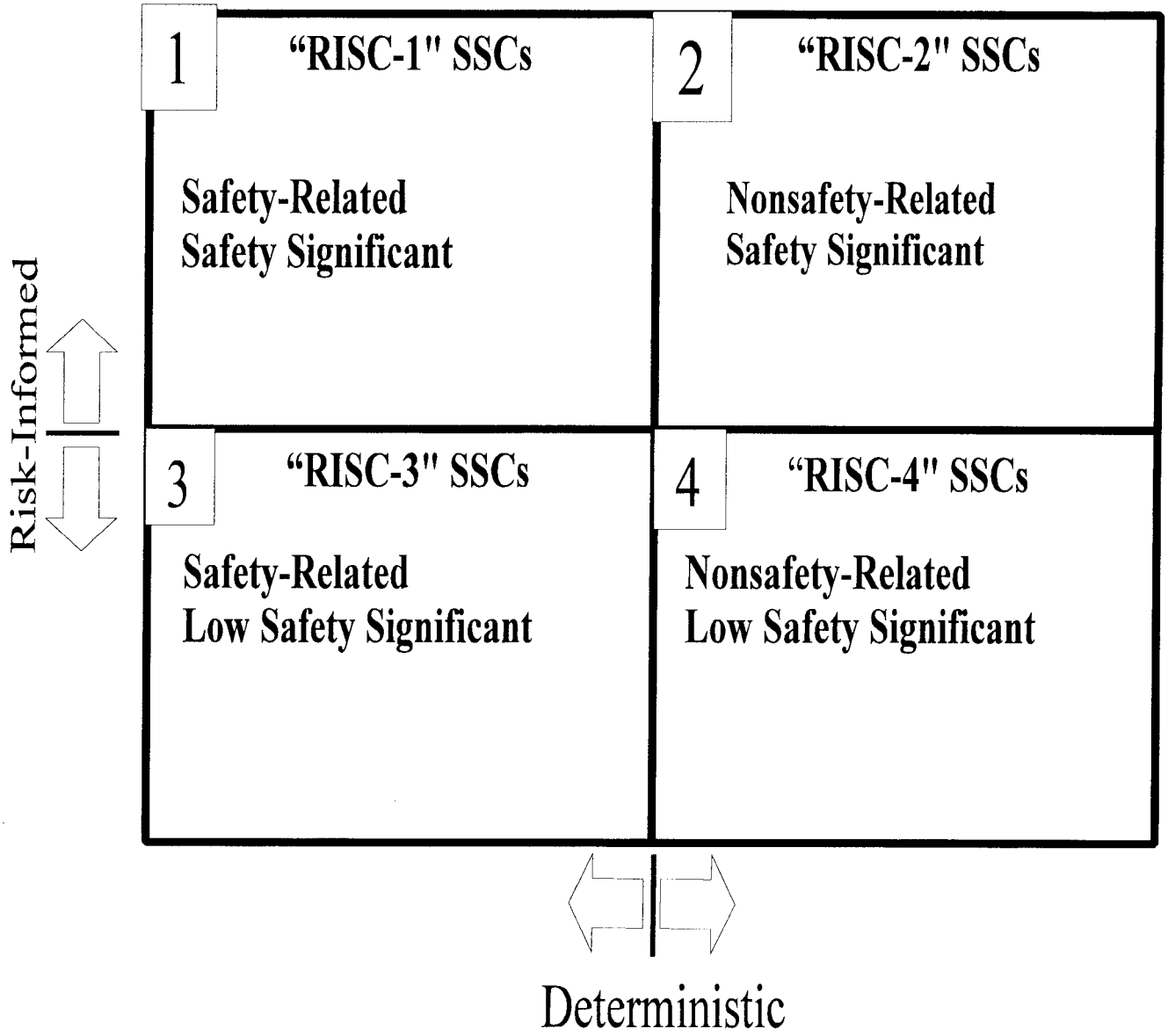



Figure 1

Section 50.69 defines the terminology ''safety significant function'' as functions whose loss or degradation could have a significant adverse effect on defense-in-depth, safety margins, or risk. This definition was chosen to be consistent with the concepts described in RG 1.174. The rule maintains more treatment requirements on SSCs that perform safety significant functions (RISC–1 and RISC–2 SSCs) than on SSCs that perform low safety significant functions to ensure that defense-in-depth and safety margins are maintained. The rule also requires that the licensee or applicant provide reasonable confidence that the change in risk associated with implementation of § 50.69 will be small.

*III.2.0 Methodology for Categorization*

The cornerstone of § 50.69 is the establishment of a robust, risk-informed categorization process that provides high confidence that the safety significance of SSCs is correctly determined considering all relevant information. As such, all the categorization requirements incorporated into § 50.69 are to achieve this objective. Essentially, the process is structured to ensure that all relevant information pertaining to SSC safety significance is considered by a panel (referred to as either an expert panel or an integrated decision-making panel (IDP)) that has the expertise and capabilities for making a sound decision regarding the SSC's categorization, and that the assembled information is considered in a manner that ensures the Commission's criteria for risk-informed applications are satisfied (*i.e.,* defense-in-depth is maintained, reasonable confidence that safety margins are maintained, reasonable confidence that any risk increase is small, and a monitoring and performance assessment

strategy is used). This process enables SSCs to be placed in the correct RISC category so that the appropriate treatment requirements will be applied commensurate with the SSC's safety significance. A safety significant SSC is an SSC that performs a safety significant function as defined in § 50.69. The rule requires that SSC safety significance be determined using quantitative information from a PRA that reasonably represents the as-built, as-operated, current plant configuration, and which at a minimum covers internal events at full power. The categorization process must address both internal events and external events for all modes of operation and can use other available risk analyses and traditional engineering information to supplement the quantitative PRA results to address modes and events not within the scope of the PRA.

Section 50.69(c)(1)(i) ensures that the PRA is adequate for this application. Section 50.69(c)(1)(iii) requires that defense-in-depth is maintained as part of the categorization process. Section 50.69(c)(1)(iv) requires that the revised treatment applied to RISC–3 SSCs be considered for its potential impact on risk. As an example, the Commission's position is that the containment and its systems are important in the preservation of defense-in-depth (in terms of both large early and large late releases). As part of maintaining defense-in-depth, a licensee must demonstrate that the function of the containment as a barrier (including fission product retention and removal) is not significantly degraded when SSCs that support the functions are moved to RISC–3.

Section 50.69(c)(2) requires the risk insights and other traditional information to be evaluated by the IDP and this panel must be comprised of expert, plant-knowledgeable members whose expertise includes PRA, safety analysis, plant operation, design engineering, and system engineering. Because the IDP makes the final determination about the safety significance of an SSC, the Commission concludes that the requirements in § 50.69(c)(2) are necessary for the composition of the panel to be experienced personnel who possess diverse knowledge and insights in plant design and operation and who are capable in the use of deterministic knowledge and risk insights to categorize SSCs.

As mentioned previously, the § 50.69 categorization process requires that available deterministic and probabilistic information pertaining to SSC safety significance be considered in the decision process. The information considered must reasonably reflect the as-built and as-operated plant so that the decisions are based upon correct information, leading to proper categorization. Where applicable, the information is to come from a PRA that is adequate for this application (*i.e.*, categorization of SSC safety significance). From this perspective, the IDP decision process can be viewed as an extension of the previous process for determining SSC safety classification (*i.e.*, safety-related or nonsafety-related), in that it is making use of relevant risk information that was not considered or not available when the SSCs were initially classified. The IDP makes the final determination of the safety significance of SSCs using a process that takes all this information into consideration, in a structured, documented manner. The structure provides consistency to decisions that may be made over time and the documentation gives both the licensee and the NRC the ability to understand the basis for the categorization decision, should questions arise at a later date.

Section 50.69(c)(1)(ii) contains general requirements for consideration of SSCs, modes of operation, and initiating events not modeled in the PRA. As a result, the implementing guidance plays a significant role in effective implementation and bolsters the need for NRC review and approval of the categorization process before implementation.

The PRA used to provide the risk information to the categorization process is required to be subjected to a peer review. The peer review focuses on the PRA's completeness and technical adequacy for determining the importance of particular SSCs, including consideration of the scope, level of detail, and technical quality of the PRA model, the assumptions made in the development of the results, and the uncertainties that impact the analysis. This provides confidence that for IDP decisions that use PRA information, the results of the categorization process provide a valid representation of the risk importance of SSCs.

Before a licensee may implement § 50.69, the NRC must approve the categorization process through a license amendment. This is necessary because of the importance of the PRA and categorization process to successful implementation of the rule. This review and approval of the categorization process is a one-time, process approval (*i.e.*, the approval is not restricted to a set of systems or structures, and can be applied to any system or structure in the plant and the licensee is not required to come back to the NRC for review of the categorization process provided that licensee remains within the scope of the NRC's safety evaluation). The NRC's review of the § 50.69 submittal will determine whether § 50.69 requirements are satisfied and consider the adequacy of the PRA; focusing on the results of the peer review and the actions taken by the licensee to address any peer review findings. The Commission has determined that a focused NRC review of the PRA is necessary because there are key assumptions and modeling parameters that can have a significant impact on the results so that NRC review of their adequacy for this application is considered necessary to verify that the overall categorization process will yield acceptable decisions.

Section 50.69(c)(1)(iv) requires reasonable confidence that the increase in the overall plant core damage frequency (CDF) and large early release frequency (LERF) resulting from potential decreases in the reliability of RISC–3 SSCs as a result of the changes in treatment be small. The rule further requires the licensee (or applicant) to describe the evaluations to be performed to meet this requirement. As presented in RG 1.174, the NRC considers small changes to be relative and to depend on the current plant CDF and LERF (hence we also refer to ''acceptably small'' changes in other portions of this notice since small can be different for different plants with different baseline levels of risk). For plants with total baseline CDF of 10–4 per year or less, small means CDF increases of up to 10–5 per year and for plants with total baseline CDF greater than 10–4 per year, small means CDF increases of up to 10–6 per year. However, if there is an indication that the CDF may be considerably higher than 10–4 per year, the focus of the licensee should be on finding ways to decrease rather than increase CDF and the licensee may be required to present arguments as to why steps should not be taken to reduce CDF for the reduction in special treatment requirements to be considered. For plants with total baseline LERF of $10^{-5}$ per year or less, small LERF increases are considered to be up to $10^{-6}$ per year, and for plants with total baseline LERF greater than 10–5 per year, small LERF increases are considered to be up to 10–7 per year. However, if there is an indication that the baseline CDF or LERF may be considerably higher than $10^{-4}$ or $10^{-5}$, respectively, the licensee either must find ways to reduce risk and present the arguments to the NRC staff before implementation of § 50.69, otherwise it

is likely that the NRC will deny the § 50.69 application. This is consistent with the guidance in Section 2.2.4 of RG 1.174. It should be noted that this allowed increase shall be applied to the overall categorization process, even for those licensees that will implement § 50.69 in a phased manner. This means that the allowable potential increase in risk must be determined in a cumulative way for all SSCs being categorized under § 50.69.

Section 50.69 is structured to maintain the design basis functional requirements of the plant. These requirements (that maintain design basis functional requirements) when considered in conjunction with the requirements to provide reasonable confidence that the potential change in risk is small (as previously discussed), also provide reasonable confidence that safety margins are maintained. Specifically, licensees are required to ensure with reasonable confidence that RISC–3 SSCs remain capable of performing their design basis functions and these SSCs must remain capable of performing their design basis function, *e.g.*, by providing a reliability that is not significantly degraded, to provide reasonable confidence that any increases in CDF or LERF will be acceptably small.

Section 50.69(c)(1)(iv) requires applicants and licensees to perform evaluations to assess the potential impact on risk from changes to treatment. Further, § 50.69(d)(2) requires that the treatment applied to RISC–3 SSCs be consistent with the categorization process. For SSCs modeled in the PRA, the licensee or applicant might conduct a risk sensitivity study that assesses the impact of changes in SSC failure probabilities or reliabilities that might occur due to the revised treatment. For example, a licensee could increase the failure rates of RISC–3 SSCs by appropriate factors to provide insights into the potential changes in risk that might result from reduced treatment (*e.g.*, reduced maintenance, testing, inspection, and quality assurance). For other SSCs, other types of evaluations would be used to provide the basis for concluding that the potential increase in risk would be small. Under § 50.69(b)(2)(iv), a licensee will need to submit its basis supporting the evaluations that estimate the potential change in risk. A licensee is required by § 50.69(b)(2)(iv) to consider potential effects of common-cause interaction susceptibility and potential impacts from known degradation mechanisms.

The rule focuses on common-cause effects because significant increases in common-cause failures could invalidate the evaluations performed to show that any potential change in risk due to implementation of § 50.69 would be small. With respect to known degradation mechanisms, this is an acknowledgment that certain treatment requirements have evolved over time to deal with these mechanisms (*e.g.*, use of particular inspection techniques or frequencies), and that when contemplating changes to treatment, the lessons from this experience are to be taken into account.

For SSCs categorized by means other than PRA models, the licensee needs to provide a basis to conclude that any potential increase in risk that might result from reduced treatment would be small. These requirements are included in § 50.69 so that a licensee has a basis for concluding that the evaluations performed to provide reasonable confidence that only a acceptably small change in risk will result remain valid.

In addition, the rule requires that implementation be performed for an entire system or structure and not for selected components within a system or structure. This required scope ensures that all safety functions associated with a system or structure are properly identified and evaluated when determining the safety significance of individual components within a system or structure and that the entire set of components that comprise a system or structure are considered and addressed.

### *III.3.0 Treatment Requirements*

The final rule applies treatment requirements to SSCs commensurate with their safety significance.

### *III.3.1 RISC–1 and RISC–2 Treatment*

For SSCs determined by the IDP to be safety significant (*i.e.*, RISC–1 and RISC–2 SSCs), § 50.69 maintains the current regulatory requirements (*i.e.*, it does not remove any requirements from these SSCs) for special treatment. These current requirements are adequate for addressing design basis performance of these SSCs. Additionally, § 50.69(d)(1) requires that sufficient treatment be applied to support the credit taken for these SSCs for beyond design basis events. For example, in developing the PRA model, a licensee must determine the availability, capability, and reliability of RISC–1 and RISC–2 SSCs in performing specific functions under various plant conditions. These functions may be beyond the design basis for individual SSCs. Further, the conditions under which those functions are to be performed may exceed the design basis conditions for the applicable SSCs. Section 50.69(d)(1) requires the treatment applied to RISC–1 and RISC–2 SSCs to be consistent with the performance credited in the categorization process. This includes credit with respect to prevention and mitigation of severe accidents. In some cases, licensees might need to enhance the treatment applied to RISC–1 or RISC–2 SSCs to support the credit taken in the categorization process, or conversely adjust the credit for performance of the SSC in the categorization process to reflect actual treatment practices and/or documented performance capability. In addition, § 50.69(e) requires monitoring and adjustment of treatment processes or categorization decisions as needed based upon operational experience.

### *III.3.2 RISC–3 Treatment*

Section 50.69(d)(2) imposes requirements that are intended to maintain RISC–3 SSC design basis capability. Although individually RISC–3 SSCs are not significant contributors to plant safety, they do perform functions necessary to respond to certain design basis events of the facility. Thus, collectively, RISC–3 SSCs can be safety significant and as such, it is important to maintain their design basis functional capability. Maintenance of RISC–3 design basis functionality is important to ensure that defense-in-depth and safety margins are maintained. As a result, § 50.69(d)(2) requires that licensees or applicants ensure with reasonable confidence that RISC–3 SSCs remain capable of performing their safety-related functions under design basis conditions, including seismic conditions and environmental conditions and effects throughout their service life. To support this requirement, § 50.69(d)(2) contains inspection, testing, and corrective action requirements, and in addition requires that the treatment of RISC–3 SSCs be consistent with the categorization process. The requirements are performance-based and give licensees the flexibility to implement treatment that they have determined is needed, commensurate with the low safety significance of the SSCs in order to provide reasonable confidence that their safety-related functional capability is maintained. In this context, ''reasonable confidence'' is a somewhat reduced level of confidence as compared with the relatively high level of confidence provided by the current special treatment requirements. These alternative treatment requirements for RISC–3 SSCs represent a relaxation of those special treatment requirements that are removed for RISC–3 SSCs by the rule. For example, the alternative

treatment requirements for RISC–3 SSCs in § 50.69 are less detailed than provided in the special treatment requirements and allow significantly more flexibility by licensees in treating RISC–3 SSCs. The Commission is allowing greater flexibility and a lower level of assurance to be provided for RISC–3 SSCs in recognition of their low individual safety significance and this recognition includes a consideration for the potential change in reliability that might occur when treatment is reduced from what had previously been required by the special treatment requirements.

In implementing the rule requirements, licensees will need to obtain data or information sufficient to make a technical judgement that RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions, and to enable the licensee to take actions to restore equipment performance consistent with corrective action requirements included in the rule.

Effective implementation of the treatment requirements should result in reasonable confidence that RISC–3 SSCs will perform their safety-related function under normal and design basis conditions. This level of confidence is both less than that associated with RISC–1 SSCs, which are subject to all special treatment requirements, and consistent with the low individual safety significance of RISC–3 SSCs.

It is noted that changes that affect any non-treatment aspects of an SSC (*e.g.*, changes to the SSC design basis functional requirements) are still required to be evaluated in accordance with other regulatory requirements, such as § 50.59. The Commission, in developing § 50.69, is drawing a distinction between treatment (managed through § 50.69) and design changes (managed through other processes, such as § 50.59). As previously noted, this rulemaking is only risk-informing the scope of special treatment requirements. The process and requirements established in § 50.69 do not extend to making changes to the design basis functional requirements of SSCs.

*III.3.3 RISC–4 Treatment*

Section § 50.69 does not impose any new treatment requirements on RISC–4 SSCs. Instead, RISC–4 SSCs are simply removed from the scope of any applicable special treatment requirements identified in § 50.69(b)(1). This is justified in view of their low significance considering both safety-related and risk information. Requirements applicable to RISC–4 SSCs not removed by § 50.69(b)(1) continue to apply. Any changes (beyond changes to special treatment requirements) must be made per existing design change control requirements including § 50.59, as applicable.

*III.4.0 Removal of RISC–3 and RISC–4 SSCs From the Scope of Special Treatment Requirements*

Through the application of § 50.69, RISC–3 and RISC–4 SSCs are removed from the scope of the specific special treatment requirements listed in § 50.69(b)(1). The special treatment requirements were originally imposed to provide a high level of assurance that safety-related SSCs would perform when called upon with high reliability. As previously noted, the requirements include extensive quality assurance requirements and qualification testing requirements, as well as inservice inspection and testing requirements. These requirements can be quite demanding and expensive, as indicated in the data provided in the regulatory analysis on procurement costs. The Commission concluded that, in light of the low individual safety significance of RISC–3 SSCs, it is unnecessary to have the same high level of assurance that they would perform as designed. This is because some increased likelihood of their individual failure can be tolerated without significant impact to safety. Thus, the Commission decided to remove the RISC–3 and RISC–4 SSCs from those detailed, specific requirements that provided the high level of assurance. However, the functional requirements for these SSCs remain. As an example, a RISC–3 component must still be designed to withstand any harsh environment it would experience under a design basis event, but the NRC will not require that this capability be demonstrated by a qualification test. Further, the performance (and treatment) of these RISC–3 SSCs remain under regulatory control, but in a different way. Instead of the special treatment requirements, the Commission has set forth more general requirements by which a licensee is to maintain functionality. These requirements give the licensee more latitude in applying treatment to maintain the design basis functional capability of the RISC–3 SSCs. The more general requirements that the Commission is specifying for the RISC–3 SSCs include inspection, testing, and corrective action, as a means of maintaining functionality. As discussed elsewhere in the SOC of this rule, the Commission concludes that the requirements in § 50.69 will maintain adequate protection of public health and safety if effectively implemented by licensees. Hence, implementation of § 50.69 should result in a better focus for both the licensee and the regulator on issues that pertain to plant safety and is consistent with the Commission's policy statement for the use of PRA.

In some cases, the Commission concluded that the RISC–3 and RISC–4 SSCs could be removed from the scope of specific special treatment requirements, while in other cases the Commission concluded that only partial removal was appropriate. Finally, there was a set of requirements initially identified as special treatment for which the Commission is not removing RISC–3 and RISC–4 SSCs from their scopes. These requirements are discussed in Section III.4.10.

*III.4.1 Reporting Requirements Under 10 CFR Part 21 and § 50.55(e)*

Section 206 of the Energy Reorganization Act of 1974 (ERA) requires the directors and responsible officers of nuclear power plant licensees and firms supplying ''components of any facility or activity * * * licensed or otherwise regulated by the Commission'' to ''immediately report'' to the Commission if they have information that such facility, activity, or basic components supplied to such facility or activity either fails to comply with the AEA, or Commission rule, regulation, order or license ''relating to substantial safety hazards,'' or contains a ''defect which could create a substantial safety hazard * * *'' *Id.*, paragraph (a). Congress adopted Section 206 to ensure that individuals, and responsible directors and officers of licensees and firms supplying important components to nuclear power plants notify the NRC in a timely fashion of potentially significant safety problems or noncompliance with NRC requirements. The NRC then may assess the reported information and take any necessary regulatory action in a timely fashion to protect public health and safety or common defense and security. Congress did not include definitions for the terms, ''components,'' ''basic components,'' or ''substantial safety hazard,'' in Section 206, but instead directed the Commission to issue regulations defining these terms.

The Commission's regulations implementing Section 206 appear in 10 CFR part 21 and § 50.55(e) for license holders and construction permit holders, respectively. The Commission established definitions of ''basic component,'' ''defect,'' and ''substantial safety hazard'' in part 21 on the premise that the deterministic regulatory paradigm embedded in the Commission's regulations would

continue to be the appropriate basis for determining the safety significance of an SSC, and therefore, the extent of the reporting obligation under Section 206. This is most evident in the § 21.3 definition of ''basic component,'' which is similar to the definition of ''safety-related'' SSCs in § 50.2 (originally embodied in § 50.49). Part 21 also recognizes that Congress did not intend that every potential noncompliance or ''defect'' in a component raises such significant safety issues that the NRC must be informed of every identified or potential noncompliance or defect. Instead, Congress limited the Section 206 reporting requirement to those instances of noncompliance and defects that represent a ''substantial safety hazard.'' Thus, part 21 limits the reporting requirement to instances of noncompliance and defects representing ''substantial safety hazard,'' which part 21 defines as:

A loss of safety function to the extent there is a major reduction in the degree of protection afforded to public health and safety for any facility or activity licensed, other than for export, pursuant to parts 30, 40, 50, 60, 61, 63, 70, 71, or 72 of this chapter.

Finally, Part 21 establishes that a licensee or vendor should ''immediately report'' potential noncompliance or defects to the NRC in a telephonic ''notification'' (*see* § 21.3) within two (2) days of receipt of information identifying a noncompliance or defect in a basic component (*see* § 21.21(d)). In addition, part 21 requires that vendors/suppliers of basic components must make notifications to purchasers or licensees of a reportable noncompliance or deviation within five (5) working days of completion of evaluations for determining whether noncompliance or deviation constitutes a substantial safety hazard (*see* § 21.21(b)). Thus, Part 21 establishes a reporting scheme for immediate reporting of the most safety significant noncompliances and defects, as contemplated by Section 206 of the ERA.

Section 50.69 substitutes a risk-informed approach for regulating nuclear power plant SSCs for the current deterministic approach. Therefore, it is necessary from the standpoint of regulatory coherence to determine: (1) what categories of SSCs (*i.e.*, RISC–1, RISC–2, RISC–3, and RISC–4) should be subject to part 21 and § 50.55(e) reporting under § 50.69 and whether changes to part 21 and/or § 50.55(e) are necessary to ensure proper reporting of substantial safety hazards caused by these SSCs; and (2) the appropriate reporting obligations of licensees and vendors under § 50.69, and whether changes to part 21 and/or § 50.55(e) are necessary to impose the intended reporting obligations on these entities under § 50.69.

*III.4.1.1 RISC–1, RISC–2, RISC–3, and RISC–4 SSCs*

After consideration of the underlying purposes of Section 206 and the risk-informed approach embodied in § 50.69 (which blends both deterministic and risk information), the Commission believes that RISC–1 SSCs should be subject to the reporting requirements in part 21 and § 50.55(e) because of their high safety significance. The NRC should be informed of any potential defects or noncompliance with respect to RISC–1 SSCs so that it may evaluate the significance of the defects or noncompliance and take appropriate action. The fact that properly-categorized RISC–1 SSCs in all likelihood fall within the Commission's definition of ''basic components'' and are currently subject to part 21 and § 50.55(e) provides confirmation that the Commission's determination is prudent.

Similarly, the Commission believes that SSCs categorized as RISC–4 should continue to be beyond the scope of, and not be subject to, part 21 and § 50.55(e). SSCs properly categorized as RISC–4 have little or no risk significance. It is highly unlikely that any significant regulatory action would be taken by the NRC based upon information on defects or instances of noncompliance in RISC–4 SSCs so reporting them serves no regulatory purpose. Again, the fact that SSCs properly categorized as RISC–4 do not otherwise fall within the definition of ''basic component'' and, therefore, are not subject to part 21 and § 50.55(e) provides some confirmation of the prudence of the Commission's determination.

Thus, the most problematic issue from the standpoint of regulatory coherence is determining the appropriate scope of reporting for RISC–2 and RISC–3 SSCs. For the following reasons, the Commission proposes that neither RISC–2 nor RISC–3 SSCs be subject to part 21 and § 50.55(e) reporting requirements.

The Commission begins by considering the regulatory objective of Part 21 and § 50.55(e) reporting under Section 206 and believes that there are two parallel regulatory purposes inherent in these reporting schemes. The first objective is to ensure that the NRC is immediately informed of a potentially significant noncompliance or defect in supplied components (in the broad sense of ''basic components'' as defined in § 21.3) so that the NRC may make a determination if such a safety hazard requires that immediate NRC regulatory action be taken at one or more nuclear power plants to ensure adequate protection to public health and safety or common defense and security. The second is to ensure that nuclear power plant licensees are immediately informed of a potentially significant noncompliance or defect in supplied components. This reporting allows a licensee using these components to immediately evaluate the noncompliance or defect to determine if a safety hazard exists at the plant and take timely corrective action as necessary. In both cases, the regulatory objective is limited to components that have the highest significance with respect to ensuring adequate protection to public health and safety and common defense and security and whose failure or lack of proper functioning could create an imminent safety hazard so that immediate evaluation of the situation and implementation of necessary corrective action is necessary to ensure adequate protection. In the context of a construction permit, the safety hazard is two-fold:

(1) That a noncompliance or defect could be incorporated into construction where it could never be detected; and,

(2) That a noncompliance or defect would, upon initial operation and without prior indications of failure, create a substantial safety hazard.

The Commission believes that the regulatory objectives embodied in part 21 and § 50.55(e) reporting remain the same regardless of whether the nuclear power plant is operating under the existing, deterministic regulatory system or the alternative, risk-informed system embodied in § 50.69. In both cases, the reporting scheme should focus on immediate reporting to the NRC and licensee of potentially significant noncompliances and defects that could create a substantial safety hazard requiring immediate evaluation and corrective action to ensure continuing adequate protection. Accordingly, in determining whether RISC–2 and RISC–3 SSCs should be subject to part 21 reporting, the Commission assessed whether failure or malfunction of these SSCs could reasonably lead to a safety hazard so that immediate evaluation of the situation and implementation of necessary corrective action is necessary to ensure adequate protection.

For RISC–2 SSCs, the Commission does not believe their failure or malfunction could reasonably lead to a safety hazard so that immediate licensee and NRC evaluation of the situation and implementation of necessary corrective action is necessary to ensure adequate

protection. Although a RISC–2 SSC may be of significance for particular sequences and conditions, for the reasons discussed below, the Commission believes that no RISC–2 SSC, in and of itself, is of such significance that its failure or lack of function would necessitate immediate notification and action by licensees and the NRC.

The categorization process embodied in § 50.69 determines the relative significance of SSCs, with those in RISC–1 and RISC–2 being more significant than those in RISC–3 or RISC–4. This does not mean that any RISC–2 SSC would rise to the level of necessitating immediate action if defects were identified.

RISC–1 SSCs are viewed as being of sufficient safety significance to require part 21 reporting. It is the capability provided by these RISC–1 SSCs for purposes of satisfying safety-related functional requirements that also leads to RISC–1 SSCs being safety-significant, as these are key functions in prevention and mitigation of severe accidents. Thus, RISC–1 SSCs are generally significant for a range of events and conditions and, as the primary means of accident prevention and mitigation, the Commission wants to continue to achieve the high level of quality, reliability, preservation of margins, and assurance of performance of current regulatory requirements.

By contrast, RISC–2 SSCs are less important than RISC–1 SSCs because they do not play a role in prevention and mitigation of design basis events (*i.e.*, the SSCs that assure the integrity of the reactor coolant boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the applicable exposure guidelines set forth in § 50.34(a)(1) or § 100.11). For example, they are not part of the reactor protection system or engineered safety features that perform critical safety functions such as reactivity control, inventory control and heat removal. When viewed from a deterministic standpoint, RISC–2 SSCs are not considered to rise to the level of a potential substantial safety hazard. From the risk-informed perspective, SSCs may end up classified as RISC–2 for a number of reasons. The classification might occur because: (1) they contribute to plant risk by initiating transients that could lead to severe accidents (if multiple failures of other mitigating SSCs were to occur); or (2) they can reduce risk by providing backup mitigation to RISC–1 SSCs in response to an event.

The Commission recognizes that noncompliance by, or defects in, RISC–2 SSCs, which could increase risk, such as by more frequent initiation of a transient, may appear to constitute a ''substantial safety hazard.'' However, upon closer examination, the Commission believes otherwise. The risk significance of such ''transient-initiating'' RISC–2 SSCs depends upon their frequency of initiation, with resultant consequences depending upon the failure of multiple other components of varying types in different systems. Further, their risk significance, as identified by the categorization process, is a result of the reliability (failure rates) currently being achieved for these SSCs treated as commercial-grade components, which includes the possibility of noncompliances and defects. Because requirements on RISC–2 SSCs are not being reduced, there is no reason to believe that their performance would degrade as a result of implementation of § 50.69. In fact, by better understanding of their safety significance, and through the added requirements in this rule for RISC–2 SSCs to achieve consistency between their categorization and treatment, performance should, at a minimum, be maintained and in some cases, enhanced. As discussed in Sections III.3 and III.5 of this rule, the Commission is imposing additional regulatory controls on RISC–2 SSCs to prevent their performance from degrading. In addition, the Commission is requiring: (1) that licensees evaluate treatment being applied for consistency with the performance credited in the categorization; (2) monitoring of the performance of these SSCs; (3) corrective actions; and (4) reporting when a loss of a safety significant function occurs. Thus, there are requirements for corrective action by the licensee if noncompliances involving these SSCs are identified. The Commission concludes that these requirements are sufficient to preclude the need for Part 21 reporting, because no RISC–2 SSC is so significant as to necessitate immediate Commission (or licensee) action.

For RISC–2 SSCs that provide backup mitigation to RISC–1 SSCs, the Commission also finds it prudent and desirable from a risk-informed standpoint to provide an enhanced level of assurance that RISC–2 SSCs can perform their safety significant functions, but the failure or malfunction of these RISC–2 SSCs does not raise a concern about imminent safety hazards. Moreover, over the last several years, the current fleet of power reactors have been subjected to a number of risk studies, including NUREG–1150, and other generic and plant-specific reviews. While some safety improvements have been identified as a result of these reviews, none has been of such significance as to require immediate action. This essentially means that no SSCs categorized as RISC–2 would rise to the level of significance that their failure or lack of functionality would constitute a substantial safety hazard requiring immediate NRC regulatory action. For example, in the case of two key risk scenarios, Station Blackout and Anticipated Transient Without Scram, the Commission imposed regulatory requirements to reduce risk from these events. However, the rules were issued as cost-beneficial safety improvements. The Commission believes its conclusion about the relative significance of RISC–2 SSCs is also supported by plant-specific risk studies, such as the Individual Plant Examination (IPE) and Individual Plant Examination of External Events (IPEEE),[2] conducted to identify (and correct) any plant-specific vulnerabilities to severe accident risk. NRC's review of the licensee submittals has not identified any situations requiring immediate action for protection of public health and safety. In addition, as part of license renewal reviews, the NRC reviews severe accident mitigation alternatives (SAMAs), to identify and evaluate plant design changes with the potential for improving severe accident safety performance. In the license renewals completed to date, only a few candidate SAMAs have been found to be cost-beneficial (and none were considered necessary to provide adequate protection of public health and safety).

In light of risk assessments and actions that have already been implemented, the Commission believes there would be no SSCs categorized

[2] In Generic letter 88–20, dated November 23, 1988, licensees were requested to perform individual plant examinations to identify plant-specific vulnerabilities to severe accidents that might exist in their facilities and report the results to the Commission. As part of their review and report, licensees were asked to determine any cost-beneficial improvements to reduce risk. In supplement 4 to the generic letter dated June 28, 1991, this request was extended to include external events (*e.g.*, earthquakes, fires, floods). The NRC staff reviewed the plant-specific responses and prepared a staff evaluation report on each submittal. Further, the set of results were presented in NUREG–1560, IPE Program: Perspectives on Reactor Safety and Plant Performance. A similar report on IPEEE results was issued as NUREG–1742. In addition, as discussed in SECY–00–0062, the staff has conducted IPE follow-up activities with owners groups and licensees to confirm that identified improvements have been implemented and if any other actions were warranted.

under § 50.69 as RISC–2 whose failure would represent a significant and substantial safety hazard so that immediate notification under Part 21 and NRC regulatory action is required. Accordingly, the results of these risk assessments provide additional confidence to the Commission that Part 21 requirements need not be imposed on RISC–2 SSCs.

The Commission also considered if notification of component defects should be required from the perspective of other potentially-affected licensees. The set of SSCs that are RISC–2 would vary from site to site because it depends upon the specifics of plant design and operation, particularly for the balance-of-plant which typically differs more from plant to plant than does the nuclear steam supply portion. Further, the suppliers of these components would vary. Therefore, the specific type of notifications under Part 21, for the purposes of NRC assessment of generic implications of component defects and to assure notification of licensees with the same components in service, would not fulfill a useful regulatory function. The Commission notes that although Part 21 and § 50.55(e) (component defect) reporting will not be required for RISC–2 SSCs, § 50.69(g) contains enhanced reporting requirements applicable to loss of system function attributable to, inter alia, failure or lack of function of RISC–2 SSCs. This is discussed in greater detail in Section III.5.

Therefore, because of the more supporting role that the RISC–2 SSCs play with respect to ensuring critical safety functions, a noncompliance or defect in a RISC–2 SSC would not result in a substantial safety hazard such that immediate licensee and NRC evaluation of the situation and implementation of corrective action is necessary to ensure adequate protection. Thus, the Commission believes that a noncompliance or defect in a RISC–2 SSC does not constitute a substantial safety hazard for which reporting is necessary under Part 21. Accordingly, the Commission concludes that reporting requirements to comply with Section 206 of the ERA are not necessary for RISC–2 SSCs and that the scope of Part 21 and § 50.55(e) reporting requirements exclude RISC–2 SSCs.

The Commission also concludes that RISC–3 SSCs should not be subject to Part 21 and § 50.55(e) reporting. A failure of a properly-categorized RISC–3 SSC should result in only a small change in risk and should not result in a major degradation of essential safety-related equipment (see NUREG–0302, Rev. 1)[3]. As previously discussed, the body of regulatory requirements (*i.e.*, the retained requirements and the requirements contained in this rule) are sufficient, if effectively implemented, so that simultaneous failures in multiple systems (as would be necessary to lead to a substantial safety hazard involving RISC–3 SSCs) would not occur. Further, the broad applicability of information from a single RISC–3 SSC that would be provided under Part 21 and § 50.55(e) reporting would be questionable because of the significant changes in treatment for RISC–3 SSCs allowed under § 50.69. Accordingly, the Commission concludes that RISC–3 SSCs should not be subject to reporting requirements of Part 21 and § 50.55(e).

The Commission concludes that Part 21 reporting requirements extend only to RISC–1 SSCs because they are important in ensuring public health and safety. RISC–2 SSCs are not subject to reporting because they play a lesser role than RISC–1 SSCs in protection of public health and safety and with the significant changes in treatment allowed under § 50.69, no regulatory purpose would be served by Part 21 reporting (as previously discussed). Individually, RISC–3 and RISC–4 SSCs have little or no risk significance and no regulatory purpose would be served by subjecting RISC–3 and RISC–4 SSCs to Part 21 and § 50.55(e).

The Commission does not believe that any changes to Part 21 or § 50.55(e) are necessary to accomplish its conclusions with respect to RISC–2 and RISC–3 SSCs. The Commission believes this is consistent with the statutory requirements in Section 206 of the ERA. Section 206 does not contain any definition of ''substantial safety hazard,'' but contains a direction to the Commission to define this term by regulation. Nothing in the legislative history suggests that Congress had in mind a fixed and unchanging concept of ''substantial safety hazard'' or that the term was limited to deterministic regulatory principles. Hence, the Commission has broad discretion and authority to determine the appropriate scope of reporting under Section 206.

The Commission believes that the current definition of ''substantial safety hazard'' in § 21.3 is broadly written to permit the Commission to interpret it as applying, in the context of a risk-informed regulatory approach, only to RISC–1 SSCs. Section 50.69 embodies a risk-informed regulatory paradigm that is different in key respects from the Commission's historical deterministic approach and applies the risk-informed approach to classifying a nuclear power plant's SSCs according to the SSC's risk significance. SSCs that are classified as RISC–1 are those that represent the most important SSCs from both a risk and deterministic standpoint: they perform the key functions of preventing, controlling, and mitigating accidents and controlling risk. Failure of RISC–1 SSCs represent, from a risk-informed regulatory perspective, the most important and significant safety concerns (*i.e.*, a ''substantial safety hazard''). Therefore, the Commission believes that, in the context of the risk-informed regulatory approach embodied in § 50.69, it is reasonable for the Commission to interpret ''substantial safety hazard'' as applying only to RISC–1 SSCs and that reporting under Section 206 may be limited to RISC–1 SSCs.

The Commission considered two alternative approaches for limiting the reporting requirements in Part 21 and § 50.55(e) to RISC–1 SSCs:

(1) Interpreting ''basic component'' to encompass a risk-informed view of what SSCs the term encompasses; and,

(2) Including a second definition of ''basic component'' in § 21.3, which would apply only to those portions of a plant that have been categorized in accordance with § 50.69 and would be defined as an SSC categorized as RISC–1 under § 50.69.

The Commission does not believe that the Part 21 definition of ''basic component'' may easily be read as simultaneously permitting both a deterministic concept of basic component and risk-informed concept, inasmuch as the Part 21 definition was drawn from, and was intended to be consistent with the definition of ''safety-related SSC'' in § 50.2. The § 50.2 definition of ''afety-related SSC'' refers to the ability of the SSC to remain functional during ''design basis events.'' The term, ''design basis events'' in Commission practice has referred to the deterministic approach of defining the events and conditions (*e.g.*, shutdown, normal operation, and accident) for which an SSC is expected to function (or not fail). Identification of design basis events is inherently different conceptually when compared to a risk-

[3] NUREG–0302, ''Remarks Presented (Questions and Answers Discussed) At Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliances.'' Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Public File Area O1–F21, Rockville, MD.

informed approach, which attempts to identify all possible outcomes (or a reasonable surrogate) and assign a probability to each outcome and consequence before integrating the probability of the total set of outcomes. The Commission rejected the second approach of adopting an alternative definition of ''basic component,'' because a change to the definition in § 21.3 could be misunderstood as a change to the reporting requirements for licensees who choose not to comply with § 50.69.

*III.4.1.2 Reporting Obligations of Vendors for RISC–3 SSCs*

The reporting requirements of Section 206 apply to individuals, directors, and responsible officers of a firm constructing, owning, operating or supplying the basic components of any NRC-licensed facility or activity. Nuclear power plant licensees and nuclear power plant construction permit holders who are subject to reporting under Section 206, Part 21, and § 50.55(e) will continue to provide for such reporting by those entities. Section 206 also imposes a reporting obligation on ''vendors'' (*i.e.*, firms who supply basic components to nuclear power plant licensees and construction permit holders). The Commission does not intend to change the reporting obligations under Part 21 or § 50.55(e) for licensees, construction permit holders, or vendors with respect to RISC–1 SSCs and the Commission does not intend to require reporting under Part 21 and § 50.55(e) for RISC–2, RISC–3 or RISC–4 SSCs.

Thus, a vendor who supplied a safety-related component to a licensee that was subsequently classified by the licensee as RISC–3 would no longer be legally obligated to comply with Part 21 or § 50.55(e) reporting requirements. However, as a practical matter that vendor would likely continue to comply with Part 21 or § 50.55(e). Vendors are informed of their Part 21 or § 50.55(e) obligations as part of the contract supplying the basic component to the licensee/construction permit holder. Vendors supplying basic components that have been categorized as RISC–3 at the time of contract ratification would know that they have no Part 21 or § 50.55(e) obligations. However, vendors that provide (or in the past provided) safety-related SSCs would not know, absent communication from the licensee or construction permit holder implementing § 50.69, whether the SSCs that they provided under contract as safety-related are now categorized as RISC–3, thereby removing the vendor's reporting obligation under Part 21 or § 50.55(e). Failing to inform a vendor that a safety-related SSC that it provided is no longer subject to Part 21 or § 50.55(e) reporting because of its reclassification as a RISC–3 SSC could result in unnecessary reporting to the licensee and the NRC. It may also result in unnecessary expenditure of resources by the vendor in determining whether a problem with a supplied SSC rises to the level of a reportable defect or noncompliance under the existing provisions of Part 21 and § 50.55(e).

To address the potential for unnecessary reporting under § 50.69, the Commission considered including a new requirement in either § 50.69 or Part 21 and § 50.55(e). The new provision would require the licensee or construction permit holder to inform a vendor that a safety-related SSC that it provided has been categorized as RISC–3. After consideration, the Commission believes that it is unlikely that this provision would result in any great reduction in the potential scope of reporting by vendors. The NRC does not receive many Part 21 reports, so the overall reporting burden to be reduced may be insubstantial. Furthermore, the Commission believes that the proposal could cause confusion, inasmuch as a vendor may supply many identical components to a licensee/holder, with some of the items intended for use in SSCs categorized as RISC–3 and other items intended in nonsafety-related applications. A vendor would have some difficulty in determining whether the problem with the supplied SSC potentially affects the SSC categorized as RISC–3 (as opposed to the supplied SSC used in nonsafety-related applications). The Commission also believes there may be some value in notification of the NRC when defects are identified, as they may reveal issues about the quality processes or implications for basic components at other facilities. Finally, the NRC notes that the vendor has already been compensated by the licensee for the burden associated with Part 21 and § 50.55(e) as part of the initial procurement process. For these reasons, the Commission is not adopting a provision in § 50.69, Part 21, or § 50.55(e) requiring a licensee or construction permit holder to inform a vendor of safety-related SSCs that its SSCs have been categorized as RISC–3.

*III.4.1.3 Criminal Liability Under Section 223.b. of the AEA*

As discussed earlier, Section 206 of the ERA authorizes the imposition of civil penalties for a licensee's and vendor's failure to report instances of noncompliance or defects in ''basic components'' that create a ''substantial safety hazard.'' However, in addition to the civil penalties authorized by Section 206, criminal penalties may be imposed under Section 223.b. of the AEA on an individual director, officer, or employee of a firm that supplies components to a nuclear power plant, that knowingly and willfully violate regulations that results (or could have resulted) in a ''significant impairment of a basic component * * *.'' Licensees, applicants, and vendors should note the difference in the definition of ''basic component'' in Part 21 versus the definition set forth in Section 223.b:

For the purposes of this subsection, the term ''basic component'' means a facility structure, system, component or part thereof necessary to assure—

(1) The integrity of the reactor coolant pressure boundary;

(2) The capability to shutdown the facility and maintain it in a safe shutdown condition; or

(3) The capability to prevent or mitigate the consequences of accidents that could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The U.S. Department of Justice is responsible for prosecutorial decisions involving violations of Section 223.b.

*III.4.1.4 Posting Requirements*

Both AEA Section 223.b and ERA Section 206 require posting of their statutory requirements at the premises of all licensed facilities. This is implemented through 10 CFR parts 19 and 21.

As a result of implementation of § 50.69, rights and responsibilities of licensee workers would be slightly different. For instance, SSCs categorized as RISC–3 would no longer be subject to Part 21. However, RISC–1 SSCs (and ''safety-related'' SSCs not yet categorized per § 50.69) are subject to the Part 21 requirements. No additional responsibilities for identification or notification are involved. The supporting information, such as procedures to be made available to workers, would need to reflect the reduction in scope of requirements. For the reasons already mentioned, the Commission concludes that there would be no impact on vendors with respect to posting requirements in that these changes in categorization would be ''transparent'' to them as suppliers.

*III.4.2 Section 50.49 Environmental Qualification of Electrical Equipment*

The general requirement that certain SSCs be designed to be compatible with environmental conditions associated

with postulated accidents is contained in GDC–4. Section 50.49 was written to provide specific programmatic requirements for a qualification program and documentation for electrical equipment, and thus, is a special treatment requirement.

Section 50.49(b) imposes requirements on licensees to have an environmental qualification program that meets the requirements contained therein. It defines the scope of electrical equipment important to safety that must be included under the environmental qualification program. Further, this regulation specifies methods to be used for qualification of the equipment for identified environmental conditions and documentation requirements.

RISC–3 and RISC–4 SSCs are removed from the scope of the requirements of § 50.49 by § 50.69(b)(2)(ii). For SSCs categorized as RISC–3 or RISC–4, the Commission has concluded that for low safety significant SSCs, additional assurance, such as that provided by the detailed provisions in § 50.49 for testing, documentation files and application of margins, are not necessary (for the reasons stated in Section III.4.0). The requirements in GDC–4 as they relate to RISC–3 and RISC–4 SSCs, and the design basis requirements for these SSCs, including the environmental conditions such as temperature and pressure, remain in effect. Thus, these SSCs must continue to remain capable of performing their safety-related functions under design basis environmental conditions.

*III.4.3 Section 50.55a(f), (g), and (h) Codes and Standards*

Section 50.69(b)(2)(iv) removes RISC–3 SSCs from the scope of certain provisions of § 50.55a, relating to Codes and Standards. The provisions being removed are those that relate to ''treatment'' aspects, such as inspection and testing, but not those pertaining to design requirements established in § 50.55a. Each of the subsections being removed is discussed in the paragraphs below.

Section 50.55a(f) incorporates by reference provisions of the ASME Code, as endorsed by NRC, that contains inservice testing requirements. These are special treatment requirements. Through this rulemaking, RISC–3 SSCs are removed from the scope of these requirements and instead are subject to the requirements in § 50.69(d)(2). For the reasons discussed in Section III.4.0, the Commission has determined that for low safety significant SSCs, it is not necessary to impose the specific detailed provisions of the Code, as endorsed by NRC, and these requirements can be replaced by the more ''high-level'' alternative treatment requirements, which allow greater flexibility to licensees in implementation.

Section 50.55a(g) incorporates by reference provisions of the ASME Code, as endorsed by NRC, that contain the inservice inspection, and repair and replacement requirements for ASME Class 2 and Class 3 SSCs. The Commission will not remove the repair and replacement provisions of the ASME Code required by § 50.55a(g) for ASME Class 1 SSCs, even if they are categorized as RISC–3, because those SSCs constitute principal fission product barriers as part of the reactor coolant system or containment. For Class 2 and Class 3 SSCs that are shown to be of low safety significance and categorized as RISC–3, the additional assurance obtained from the specific provisions of the ASME Code is not considered necessary. However, the Commission has not removed the requirements for fracture toughness specified for ASME Class 2 and Class 3 SSCs because fracture toughness is a significant design parameter for the material used to construct the SSC. Fracture toughness is a property of the material that prevents premature failure of an SSC at abrupt geometry changes, or at small undetected flaws. Adequate fracture toughness of SSCs is necessary to prevent common cause failures due to design basis events, such as earthquakes.

Section 50.55a(h) incorporates by reference the requirements in either IEEE 279, ''Criteria for Protection Systems for Nuclear Power Generating Stations,'' or IEEE 603–1991, ''IEEE Standard Criteria for Safety Systems for Nuclear Power Generating Stations.'' Within these IEEE standards are special treatment requirements. Specifically, Sections 4.3 and 4.4 of IEEE 279 and Sections 5.3 and 5.4 of IEEE 603–1991 contain quality and environmental qualification requirements. RISC–3 SSCs are being removed from the scope of this special treatment requirement.

*III.4.4 Section 50.65 Monitoring the Effectiveness of Maintenance*

The Commission is removing RISC–3 and RISC–4 SSCs from the scope of the requirements of § 50.65 (except for paragraph (a)(4)). The basis for this removal is provided in Section III.4.0 and the following discussion.

Section 50.65, the Maintenance Rule, imposes requirements for licensees to monitor the effectiveness of maintenance activities for safety significant plant equipment to minimize the likelihood of failures and events caused by the lack of effective maintenance. Specifically, § 50.65 requires the performance of SSCs defined in § 50.65(b) to either be monitored against licensee established goals in a manner sufficient to provide confidence that the SSCs are capable of fulfilling their intended functions, or demonstrated to be effectively controlled through the performance of appropriate preventative maintenance. The rule further requires that where performance does not match the goals, appropriate corrective action shall be taken. Included within the scope of § 50.65(b) are SSCs that are relied upon to remain functional during design basis events or in emergency operating procedures and nonsafety-related SSCs whose failure could result in the failure of a safety function or cause a reactor scram or activation of a safety-related system.

Sections 50.65(a)(1), (a)(2), and (a)(3) impose action requirements; thus, they are special treatment requirements. Upon implementation of § 50.69, a licensee is not required to apply maintenance rule monitoring, goal setting, corrective action, alternate demonstration, or periodic evaluation treatments required by § 50.65(a)(1), (a)(2), and (a)(3) to RISC–3 and RISC–4 SSCs. The rule includes provisions for a licensee to use performance information to feedback into its processes to adjust treatment (or categorization) when results so indicate in § 50.69(e)(3). However, this requirement does not require the specific monitoring and goal setting as required in § 50.65, in consideration of the lower safety significance of these SSCs.

RISC–1 and RISC–2 SSCs that are currently within the scope of § 50.65(b) remain subject to existing maintenance rule requirements. Furthermore, § 50.69(e)(2) requires additional monitoring, evaluation and appropriate action for these SSCs.

The removal of RISC–3 and RISC–4 SSCs from the scope of requirements does not include § 50.65(a)(4), which contains requirements to assess and manage the increase in risk that may result from maintenance activities. The requirements in § 50.65(a)(4) remain in effect. Section 50.65(a)(4) already includes provisions by which a licensee can limit the scope of the assessment required to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. Thus, there is no need to revise the requirements to permit a licensee to apply requirements commensurate with SSC safety-significance.

*III.4.5 Sections 50.72 and 50.73 Reporting Requirements*

This rule removes the requirements in § 50.72 and § 50.73 for RISC–3 and RISC–4 SSCs. Sections 50.72 and 50.73 contain requirements for licensees to report events involving certain SSCs. These reporting requirements are special treatment requirements. The NRC requires event reports in part so that it can follow-up on corrective action for these circumstances. Through this rulemaking, the Commission is removing RISC–3 and RISC–4 SSCs from the scope of these requirements. The broad applicability of information obtained under § 50.72 and § 50.73 for RISC–3 SSCs would be questionable because of the significant changes in treatment allowed under § 50.69 (see the similar discussion for Part 21 in Section III.4.1.1). Therefore, the Commission does not consider the burden associated with reporting events or conditions only affecting these SSCs to be warranted.

*III.4.6 10 CFR Part 50, Appendix B Quality Assurance Requirements*

This rule removes RISC–3 and RISC–4 SSCs from the scope of requirements in Appendix B to 10 CFR part 50. Appendix B contains requirements for a quality assurance program meeting specified attributes. The intent of Appendix B to 10 CFR part 50, and the complementary regulations, is to provide quality assurance requirements for the design, construction, and operation of nuclear power plants. The quality assurance requirements of Appendix B are to provide adequate confidence that an SSC will perform satisfactorily in service. These requirements were developed to be applied to safety-related SSCs. In the implementation of Appendix B, a licensee is bound to detailed and prescriptive quality requirements to apply to activities affecting those SSCs. As such, these requirements meet the Commission's definition of special treatment requirements. These requirements are removed from application to RISC–3 and RISC–4 SSCs because their low individual safety significance does not warrant the level of quality requirements that currently exist with Appendix B.

*III.4.7 10 CFR Part 50, Appendix J Containment Leakage Testing*

Section 50.69(b)(1)(x) removes a subset of RISC–3 and RISC–4 SSCs from the scope of the requirements in Appendix J to 10 CFR part 50 that pertain to containment leakage testing. Specifically, RISC–3 and RISC–4 SSCs that meet specified criteria in § 50.69(b)(1)(x) are removed from the scope of the requirements for Type B and Type C testing. It is important to note that this removes only the Appendix J leakage testing requirements from these SSCs. These SSCs must still be capable of performing their design basis functions (*i.e.*, to close or isolate containment). The basis for the removal of the Appendix J leakage testing requirements follows.

One of the conditions of all operating licenses for water-cooled power reactors as specified in § 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in Appendix J to 10 CFR part 50. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment, and systems and components that penetrate containment of water-cooled power reactors and establish the acceptance criteria for these tests. As such, these tests are special treatment requirements. The purposes of the tests are to assure that:

(1) Leakage through the primary reactor containment, or through systems and components penetrating primary containment, shall not exceed allowable leakage rate values as specified in the technical specifications; and

(2) Periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment.

Appendix J includes two options; Option A and Option B. Option A includes prescriptive requirements while Option B identifies performance-based requirements and criteria for preoperational and subsequent periodic leakage rate testing. A licensee may choose either option for meeting the requirements of Appendix J.

The discussion contained in Appendix J to 10 CFR part 50 can be divided into two categories. Parts of Appendix J contain testing requirements. Other parts contain information, such as definitions or clarifications, necessary to explain the testing requirements. A review of Appendix J did not identify any technical requirements other than those describing the methods of the required testing. Therefore, Appendix J was considered to be, in its entirety, a special treatment requirement.

Although the 1995 revision to Appendix J was characterized as risk-informed, the changes were not as extensive as those expected by inclusion of Appendix J within the scope of § 50.69. The 1995 revision to Appendix J primarily decreased testing frequencies, whereas risk-informing the scope of SSCs that are subject to Appendix J testing removes some components from testing (*i.e.*, to the extent that defense-in-depth is maintained in accordance with the risk-informed categorization process).

*III.4.7.1 Types of Tests Required by Appendix J*

Appendix J testing is divided into three types: Type A, Type B, and Type C. Type A tests are intended to measure the primary reactor containment overall integrated leakage rate after the containment has been completed and is ready for operation and at periodic intervals thereafter. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary. Primary reactor containment penetrations required to be Type B tested are identified in Appendix J. Type C tests are intended to measure containment isolation valve (CIV) leakage rates. The containment isolation valves required to be Type C tested are identified in Appendix J.

*III.4.7.2 Reduction in Scope for Appendix J Testing*

*Type A Testing:* The Commission is not changing the Type A testing requirements of Appendix J.

*Type B Testing:* The Commission is not changing the Type B testing requirements for air lock door seals, including door operating mechanism penetrations that are part of the containment pressure boundary and doors with resilient seals or gaskets, except for seal-welded doors. However, the Commission concludes that Type B testing is not necessary for other penetrations that are determined to be of low safety significance and that meet one or both of the following criteria:

1. Penetrations pressurized with the pressure being continuously monitored.

2. Penetrations are 1 inch nominal size or less.

*Type C Testing:* The Commission concludes that Type C testing is not necessary for valves that are determined to be of low safety significance and that meet one or more of the following criteria:

1. The valve is required to be open under accident conditions to prevent or mitigate core damage events.

2. The valve is normally closed and in a physically closed, water-filled system.

3. The valve is in a physically closed system whose piping pressure rating exceeds the containment design

pressure rating and is not connected to the reactor coolant pressure boundary.

4. The valve size is 1-inch nominal pipe size or less.

The Commission has made a determination that the size specified in § 50.69(b)(x) and identified above is acceptable. At this time, the NRC has not determined that a larger size is acceptable for application to § 50.69, nor has the NRC received such a proposal. At this time, for the Commission to entertain a larger penetration/CIV size, and subsequently revise the rule language to reflect any such review (assuming that such a size is acceptable) would likely cause the NRC to re-notice § 50.69 for stakeholder comment. Licensees and applicants are free to pursue exemptions (to § 50.69(b)(x)) to this criteria if they conclude a larger penetration opening can be justified for their containment design. If such a proposal is ultimately reviewed and accepted, and can be applied generically, the NRC will consider a revision to § 50.69 to reflect the new criteria.

*III.4.7.3 Basis for Reduction of Scope*

The first category of penetrations which are excluded from Type B testing are penetrations that are pressurized with the pressures in the penetrations being continuously monitored by licensees. This monitoring would detect significant leakage from the penetrations. The monitoring of the pressures in the penetrations, in conjunction with the requirements for RISC–3 SSCs (including taking corrective action when an SSC fails), ensures with reasonable confidence, without the need for Type B testing, that these penetrations are functional.

The second category of penetrations excluded from Type B testing are penetrations that are 1 inch nominal size or less. These penetrations do not contribute to large early releases. Accordingly, the failure of such penetrations does not contribute in a significant way to safety or increased risk. The Commission concludes that such penetrations will not be subject to Type B testing.

Regarding Type C containment leakage testing, the Commission finds that for the four categories of containment isolation valves identified in § 50.69(b)(1)(x), the removal of Type C testing requirements is reasonable because even without Type C testing, the probability of significant leakage during an accident (*i.e.*, leakage to the extent that public health and safety is affected) is small.

Appendix J to 10 CFR part 50 deals only with leakage rate testing of the primary reactor containment and its penetrations. It assumes that CIVs are in their safe position. No failure is assumed that causes the CIVs to be open when they are supposed to be closed. The valve would be open if needed to transmit fluid into or out of containment to mitigate an accident or closed if not needed for this purpose. For purposes of this evaluation, it is assumed that an open valve is capable of being closed. The licensee or applicant implementing § 50.69 must apply treatment to RISC–3 CIVs that ensures with reasonable confidence that those valves are capable of performing their safety-related function to close under design basis conditions. Testing to ensure the capability of CIVs to reach their safe position is not within the scope of Appendix J and as such is not within the scope of this evaluation. Therefore, the valves addressed by this evaluation are considered to be closed, but may be leaking. The increase in risk due to these SSCs being removed from the scope of Appendix J requirements is negligible.

The acceptability of the removal of Appendix J leakage testing for the RISC–3 CIVs is based on the assumption that those valves are capable of achieving the full seated position by means of the actuator. Therefore, even though a RISC–3 CIV might be exempt from Appendix J leakage testing, the RISC–3 CIV must meet the treatment requirements in § 50.69(d) to provide reasonable confidence that the CIV can perform its safety function (*e.g.*, to close) under design basis conditions. Because it is likely that most CIVs will be categorized as RISC–3, the licensee or applicant must evaluate the proposed change in the treatment of RISC–3 CIVs to ensure that defense-in-depth is maintained by ensuring with reasonable confidence that the RISC–3 CIVs are capable of performing their safety-related functions under design basis conditions. Although the licensee or applicant is allowed flexibility in addressing this issue, the rule requires that the licensee or applicant ensure with reasonable confidence the capability of RISC–3 CIVs to perform their safety functions to maintain defense-in-depth as discussed in RG 1.174.

Past studies (*e.g.*, NUREG–1150, ''Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants; Final Summary Report,'' dated December 1990) show that the overall reactor accident risks are not sensitive to variations in containment leakage rate. This is because reactor accident risk is dominated by accident scenarios in which the containment either fails or is bypassed. These very low probability scenarios dominate predicted accident risks due to their high consequences.

The Commission examined the effect of containment leakage on risk in more detail as part of the Appendix J to 10 CFR part 50, Option B, rulemaking. The results of these studies are applicable to this evaluation. NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' dated September 1995, calculated the containment leakage necessary to cause a significant increase in risk and found that the leakage rate must typically be approximately 100 times the Technical Specification leak rate, $L_a$. It is improbable that even the leakage of multiple valves in the categories under consideration would exceed this amount. Operating experience shows that most measured leaks are much less than 100 times $L_a$. A more direct estimate of the increase in risk for the revision to Appendix J can be obtained from the Electric Power Research Institute (EPRI) report TR–104285, ''Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals,'' dated August 1994. This report examined the change in the baseline risk (as determined by a plant's IPE risk assessment) due to extending the leakage rate test intervals. For the pressurized water reactor (PWR) large dry containment examined in the EPRI report, for example, the percent increase in baseline risk from extending the Type C test interval from 2 years to 10 years was less than 0.1 percent. While this result was for a test interval of 10 years vs. the current proposal to do no more Type C testing of the subject valves for the life of a plant, the analysis may reasonably apply to this situation because it contains several conservative assumptions that offset the 10-year time interval. These assumptions include the following:

1. The study used leakage rate data from operating plants. Any leakage over the plant's administrative leakage limit was considered a leakage failure. An administrative limit is a utility's internal limit and does not imply violation of any Appendix J limits. Therefore, the probability of a leakage failure is overestimated.

2. Failure of one valve to meet the administrative limit does not imply that the penetration would leak because containment penetrations typically have redundant isolation valves. While one valve may leak, the other valve may remain leak-tight. The study assumed that failure of one valve in a series failed the penetration. Therefore, the probability of a penetration leak is overestimated.

3. The analysis assumed possible leakage of all valves subject to Type C testing, not just those subject to the relief per § 50.69.

According to this analysis, the removal of SSCs from the scope of Appendix J requirements does not have a significant effect on risk. The NUREG–1493 analysis shows that the amount of leakage necessary to significantly increase risk is two orders of magnitude greater than a typical Technical Specification leakage rate limit. Therefore, the risk to the public will not significantly increase due to the relief from the requirements of Appendix J to 10 CFR part 50.

*III.4.8 Appendix A to 10 CFR Part 100 (and Appendix S to 10 CFR Part 50 (Seismic Requirements))*

Section 50.69(b)(1)(xi) removes RISC–3 and RISC–4 SSCs from the requirement in Appendix A to 10 CFR part 100 to demonstrate that SSCs are designed to withstand the safe shutdown earthquake (SSE) by qualification testing or specific engineering methods. GDC–2 requires that SSCs ''important to safety'' be capable of withstanding the effects of natural phenomena, such as earthquakes. The requirements of 10 CFR part 100 pertain to reactor site criteria and Appendix A addresses seismic and geologic siting criteria used by the Commission to evaluate the suitability of plant design bases considering these characteristics. Sections VI(a)(1) and (2) of Appendix A to 10 CFR part 100 address the engineering design for the SSE and operating basis earthquake (OBE), respectively. Section 50.69 excludes RISC–3 and RISC–4 SSCs from the scope of the requirements of Sections VI(a)(1) and (2) of Appendix A to 10 CFR part 100, only to the extent that the rule requires testing and specific types of analyses to demonstrate that safety-related SSCs are designed to withstand the SSE and OBE. It is only these aspects of Appendix A to 10 CFR part 100 that are considered special treatment requirements. As discussed in Section III.4.0 of this rulemaking, because of the low individual safety significance of the RISC–3 and RISC–4 SSCs, the additional assurance provided by qualification testing (or specific methods of analysis) is not considered necessary.

Appendix A to part 100 is applicable for current operating reactors. The seismic design requirements are set forth in Appendix S to part 50 for new plant applications. The NRC has determined that Appendix S does not need to be included within the scope of § 50.69 because the wording of the requirements with respect to ''qualification'' by testing or specific types of analysis is not present in Appendix S. Therefore, a revision to the regulations is not necessary to permit a licensee to implement means other than qualification testing or the specified methods to demonstrate SSC capability.

*III.4.9 Section 50.46a(b) Appendix B Requirements for Reactor Coolant System Vents*

The Commission established new requirements for combustible gas control in § 50.44 using risk insights and issued the revised rule on September 16, 2003 (68 FR 54123). As part of the § 50.44 rulemaking, portions of the old § 50.44 were relocated to more appropriate regulations. In particular, requirements formerly located in § 50.44 were relocated to § 50.46a(b) concerning the design of vents and associated controls, instruments, and power sources and the need for these components to conform to 10 CFR part 50 Appendix B. This rule removes RISC–3 SSCs from the scope of Appendix B quality assurance requirements, as discussed in Section III.4.6. These same arguments apply to the requirements in § 50.46a(b) where Appendix B is being imposed on a specific set of components. As such, this rule removes the RISC–3 and RISC–4 SSCs from the scope of Appendix B requirements contained in § 50.46a(b). This applies only to the requirements relating to Appendix B in § 50.46a(b); the remaining requirements of § 50.46a remain unchanged.

*III.4.10 Requirements Not Removed by § 50.69(b)(1)*

In the following paragraphs, the Commission discusses certain rules that were considered as candidates for removal as requirements for RISC–3 and RISC–4 SSCs during development of this rulemaking. These rules were identified as candidate rules in SECY–99–256. They are not part of this rulemaking for the reasons stated.

*III.4.10.1 Section 50.34 Contents of Applications*

Section 50.34 identifies the required information that applicants must provide in preliminary and final safety analysis reports. Because § 50.69 contains the documentation requirements for licensees and applicants who choose to implement § 50.69, and these requirements do not conflict with § 50.34, it is not necessary to revise § 50.34 to implement § 50.69.

*III.4.10.2 Section 50.36 Technical Specifications*

Section 50.36 establishes operability, surveillance, limiting conditions for operation and other requirements on certain SSCs. Because this rule specifies testing and related requirements, it was considered as a candidate special treatment rule. However, the Commission concluded that it was not appropriate to revise § 50.36 for several reasons.

Currently, the NRC staff and the industry are developing risk-informed improvements to technical specifications. These improvements, or initiatives, are intended to maintain or improve safety while reducing unnecessary burden, and to bring technical specifications into congruence with the Commission's other risk-informed regulatory requirements, in particular risk management requirements of the Maintenance Rule in 10 CFR 50.65(a)(4). Eight initiatives for fundamental improvements to the Standard Technical Specifications (TS) have been proposed. Two of the initiatives have been approved and offered to licensees for adoption, and six are being developed by the industry and NRC staff. All of the initiatives involve, to some prescribed degree, assessing and managing plant risk using a configuration risk management program consistent with and in some cases exceeding the requirements of the Maintenance Rule in 10 CFR 50.65. The two approved initiatives involve: permitting the extension of up to one surveillance interval of an inadvertently missed surveillance; and, permitting plant mode transitions with inoperable equipment, anticipating the imminent return of the equipment to operability. The six initiatives under development involve: shutting down to hot shutdown rather than cold shutdown to repair equipment; permitting the temporary extension of allowed outage times; permitting the determination of surveillance frequencies through the use of an approved methodology; permitting time to restore equipment operability rather than immediately shutting down; providing extended time to restore support systems to operability; and, revising the scope of technical specifications to include only on risk significant systems, which would require rulemaking.

Improved standard TSs have already resulted in the relocation of requirements for less important SSCs to other documents. Given the ongoing regulatory efforts to risk-inform the TSs, it was not considered necessary to scope

§ 50.36 into § 50.69 as a special treatment requirement.

*III.4.10.3 Section 50.44 Combustible Gas Control*

During the effort to identify candidate special treatment rules (refer to SECY–99–256), certain provisions within § 50.44 were identified as containing special treatment requirements in that they specified conformance with Appendix B for particular design features, specified requirements for qualification, and related statements. For proposed § 50.69, the Commission elected not to identify § 50.44 as a special treatment rule, and instead decided to wait on the outcome of the effort to risk inform § 50.44. The Commission subsequently rebaselined the requirements in § 50.44 using risk insights and issued the revised rule on September 16, 2003 (68 FR 54123). As a result, the NRC concludes that there is no need to include § 50.44 within the scope of § 50.69. However, as part of the September 16, 2003, rulemaking, portions of the old § 50.44 were relocated to more appropriate regulations. In particular, requirements were relocated to § 50.46a(b) concerning the design of vents and associated controls, instruments, and power sources and the need for these components to conform to 10 CFR Part 50 Appendix B. Because this aspect of the relocated requirements is a special treatment requirement (and this same requirement was also identified in the old § 50.44 as being a special treatment requirement) it is now captured within the scope of § 50.69(b)(1) as discussed in Section III.4.9.

*III.4.10.4 Section 50.48 (Appendix R and GDC 3) Fire Protection*

Initially, fire protection requirements were considered to be within the scope of this rulemaking effort. There are augmented quality provisions applied to fire protection systems and these augmented quality provisions are considered special treatment requirements. However, these provisions are not contained in the Commission's regulations and therefore a revision to the rules (*i.e.*, to scope them into § 50.69) is not required to support a change (*i.e.*, changes to these requirements can be made without a revision to the rules). Additionally, the Commission has issued a final rule that would allow licensees to voluntarily adopt National Fire Protection Association (NFPA)–805 requirements in lieu of other fire protection requirements. NFPA–805 sets forth requirements for establishing and implementing a risk-informed fire protection program. Inasmuch as the NRC has addressed fire protection in another rulemaking, fire protection requirements were not included in the scope of the § 50.69 rulemaking.

*III.4.10.5 Section 50.59 Changes, Tests, and Experiments*

There is no change is being made to § 50.59 as a result of § 50.69, however, the Commission does not believe that a § 50.59 evaluation need be performed when a licensee implements § 50.69 and thereby changes the special treatment requirements applied to RISC–3 and RISC–4 SSCs. Accordingly, § 50.69(f) contains language that removes the requirement for licensees to perform § 50.59 evaluations for the changes in special treatment that stem from § 50.69 implementation. The process of adjusting treatment for RISC–3 and RISC–4 SSCs does not need to be subject to § 50.59 because the rulemaking already provides the decision process for categorization and determination of revision to requirements resulting from the categorization. Because it is only in the area of treatment for RISC–3 and RISC–4 SSCs that might be viewed as involving a reduction in requirements, these are the only aspects for which this rule provision applies. As required by § 50.69(f), the licensee or applicant will be required to update the FSAR appropriately to reflect incorporation of its treatment processes into the FSAR. However, it is important to recognize that changes that may affect any non-treatment aspects of an SSC (*e.g.*, changes to the SSC design basis functional requirements) are required to be evaluated in accordance with the requirements of § 50.59. The Commission, in developing § 50.69, is drawing a distinction between treatment (managed through § 50.69) and design changes (managed through other processes such as § 50.59). As previously noted, this rulemaking is only risk-informing the scope of special treatment requirements. The process and requirements established in § 50.69 do not extend to making changes to the non-treatment portion of the design basis of SSCs.

*III.4.10.6 Appendix A to 10 CFR Part 50 General Design Criteria (GDC)*

The NRC has concluded that the GDC of Appendix A to 10 CFR Part 50 do not need to be revised because they specify design requirements and do not specify special treatment requirements. Because this rulemaking is not revising the non-treatment portion of the design basis of the facility, the GDC should remain intact and are not within the scope of § 50.69. This subject is discussed in more detail in the NRC's action on the South Texas exemption request, in which their request for exemption from certain GDCs was denied as being unnecessary to accomplish what was proposed (see Section IV.2.0).

*III.4.10.7 10 CFR Part 52 Early Site Permits, Standard Design Certifications and Combined Operating Licenses*

Part 52 cross-references regulations from other parts of Chapter 10 of the Code of Federal Regulations, most notably Part 50. Therefore, it was initially considered for inclusion in this rulemaking effort. However, the ''applicability'' paragraph (§ 50.69(b)) makes clear that § 50.69 is available to applicants for, and holders of a facility license. Accordingly, there is no need to revise Part 52 to assure the availability of § 50.69. There are issues associated with Part 52 design certifications and these are currently excluded from the group of entities who may adopt the provisions of 50.69 as discussed in Section V.3.0.

*II.4.10.8 10 CFR Part 54 License Renewal*

10 CFR part 54, which sets forth the license renewal requirements for nuclear power reactors, was identified as a candidate special treatment requirement in SECY–99–256. The Part 54 aging management requirements are special treatment requirements in that they provide assurance that SSCs will continue to meet their licensing basis requirements during the renewed license period. Section 54.4 explicitly defines the scope of the license renewal rule using the traditional deterministic approach. Part 54 imposes aging management requirements in § 54.21 on the scope of SSCs meeting § 54.4.

In SECY–00–0194, the NRC staff provided its preliminary view that RISC–3 SSCs should not be removed from the scope of Part 54 and that licensees can renew their licenses in accordance with Part 54 by demonstrating that the § 50.69 treatment provides adequate aging management in accordance with § 54.21. The NRC staff suggested that no changes are necessary to Part 54 to implement § 50.69 either before renewing a licensing or after license renewal.

The goal of the license renewal program is to establish a stable, predictable, and efficient license renewal process. The Commission believes that a revision of Part 54 at this time could have a significant effect on the stability and consistency of the processes established for preparation of license renewal applications and for NRC staff review. Further, as discussed

below, the Commission believes that the requirements in Part 54 are compatible with the § 50.69 approach, including use of risk information in establishing treatment (aging management) requirements. Refer to Section V.3.0 for additional discussion regarding the implementation of § 50.69 for a facility that has already received a renewed license. Thus, Part 54 requires no changes at this time. However, in the future, the Commission will consider whether revisions to the scope of Part 54 are appropriate.

The 1995 amendment to Part 54 excluded active components to ''reflect a greater reliance on existing licensee programs that manage the detrimental effects of aging on functionality, including those activities implemented to meet the requirements of the maintenance rule'' (May 8, 1995; 60 FR 22471). Although § 50.69 removes RISC–3 components from the scope of the maintenance rule requirements in § 50.65(a)(1), (a)(2), and (a)(3), a licensee is required under § 50.69(d)(2) to provide confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design-basis conditions when challenged. The SOC for Part 54 also indicated the Commission's recognition that risk insights could be used in evaluating the robustness of an aging management program (May 8, 1995; 60 FR 22468).

*III.4.10.9 Other Requirements*

In the ANPR and related documents, the NRC staff and stakeholders suggested a number of other regulatory requirements that might be candidates for inclusion in § 50.69. These included § 50.12 (exemptions), § 50.54(a), (p), and (q) (plan change control), and § 50.71(e) (FSAR updates). As the rulemaking progressed, the Commission concluded that these requirements did not need to be changed to allow a licensee to adopt § 50.69.

*III.5.0 Feedback, Documentation, and Reporting Requirements*

The validity of the categorization process relies on ensuring that the performance and condition of SSCs continue to be maintained consistent with applicable assumptions. Changes in the level of treatment applied to an SSC might result in changes in the reliability of the SSCs credited in the categorization process. Additionally, plant changes, changes to operational practices, and plant and industry operational experience may impact categorization process results. Consequently, the rule contains requirements for updating the categorization and treatment processes when conditions warrant to assure that continued SSC performance is consistent with the categorization process and results.

Specifically, the rule requires licensees to review the changes to the plant, operational practices, applicable plant and industry operational experience, and, as appropriate, update the PRA and SSC categorization. The review must be performed in a timely manner but no longer than once every two refueling outages. In addition, licensees are required to obtain sufficient information on SSC performance to verify that the categorization process and its results remain valid. For RISC–1 SSCs, much of this information may be obtained from present programs for inspection, testing, surveillance, and maintenance. However, for RISC–2 SSCs and for RISC–1 SSCs credited for beyond design basis accidents, licensees need to ensure that sufficient information is obtained. For RISC–3 SSCs, there is a relaxation of the requirements for obtaining information when compared to the applicable special treatment requirements. However, sufficient information still needs to be obtained. The rule requires considering performance data, determining if adverse changes in performance have occurred, and making the necessary adjustments so that desired performance is achieved so that the evaluations conducted to meet § 50.69(c)(1)(iv) remain valid. The feedback and adjustment process is crucial to ensuring that the SSC performance is maintained consistent with the categorization process and its results.

Taking timely corrective action is an essential element for maintaining the validity of the categorization and treatment processes used to implement § 50.69. For safety significant SSCs, all current requirements continue to apply and, as a consequence, Appendix B corrective action requirements are applied to the design basis aspects of RISC–1 SSCs to ensure that conditions adverse to quality are corrected. For both RISC–1 and RISC–2 SSCs, requirements are included in § 50.69(e)(2) for monitoring and for taking action when SSC performance degrades.

When a licensee or applicant determines that a RISC–3 SSC does not meet its established acceptance criteria for performance of design basis functions, the rule requires that a licensee perform timely corrective action (§ 50.69(d)(2)(ii)). Further, as part of the feedback process, the review of operational data may reveal inappropriate credit for reliability or performance and a licensee would need to re-visit the findings made in the categorization process or modify the treatment for the applicable SSCs (§ 50.69(e)(3)). These provisions would then restore the facility to the conditions that were considered in the categorization process and would also restore the capability of the SSCs to perform their functions.

Section 50.69(f) requires the licensee or applicant to document the basis for its categorization of SSCs before removing special treatment requirements. Section 50.69(f) also requires the licensee or applicant to update the final safety analysis report to reflect which systems have been categorized.

Finally, § 50.69(g) requires reporting of events or conditions that prevented, or would have prevented, a RISC–1 or RISC–2 SSC from performing a safety significant function. Because the categorization process has determined that RISC–2 SSCs are of safety significance, NRC is interested in reports about circumstances where a safety significant function was, or would have been, prevented because of events or conditions. This reporting will enable NRC to be aware of situations impacting those functions found to be significant under § 50.69, so that NRC can take any actions deemed appropriate.

Properly implemented, these requirements ensure that the validity of the categorization process and results are maintained throughout the operational life of the plant.

*III.6.0 Implementation Process Requirements*

The Commission is making the provisions of § 50.69 available to both applicants for licenses and to holders of facility licenses for light-water reactors. The rule is limited to light-water reactors because the Commission does not yet have substantial experience or information sufficient to develop risk-informed requirements applicable to non-light water reactors. Consequently, the technical aspects of the rule (*e.g.*, providing reasonable confidence that risk increases are small), including the implementation guidance, are specific to light-water reactor designs.

Section 50.69 relies on a robust categorization process to provide reasonable confidence that the safety significance of SSCs is correctly determined. To ensure a robust categorization is employed, § 50.69 requires the categorization process to be reviewed and approved by the NRC before implementation of § 50.69 by following the license amendment

process of § 50.90 or as part of the license application review. While detailed regulatory guidance has been developed to provide guidance for implementing categorization consistent with the rule requirements, the Commission concluded that a prior review and approval was still necessary to enable the NRC staff to review the scope and quality of the plant-specific PRA; taking into account industry peer review results. The NRC staff will also review other evaluations and approaches that may be used, such as margins-type analyses, as well as examine any aspects of the proposed categorization process that are not consistent with the NRC's regulatory guidance for implementing § 50.69. Thus, the rule requires that a licensee who wishes to implement § 50.69 submit an application for license amendment to the NRC containing information about the categorization process and about the industry peer review process employed. An applicant would submit this information as part of its license application. The NRC will approve, by license amendment, a request to allow a licensee to implement § 50.69 if it is satisfied that the categorization process to be used meets the requirements in § 50.69.

NEI submitted a paper, ''License Amendments: Analysis of Statutory and Legal Requirements'' (NEI Analysis) in a July 10, 2002, letter to the Director of the Office of Nuclear Reactor Regulation (NRR). In this analysis, NEI contends that approval of a licensee's/applicant's request to implement § 50.69 need not be accomplished by a license amendment. NEI essentially argues that the rule does not increase the licensee's operating authority, but merely provides a ''different means of complying with the existing regulations * * *'' Id., p.8. The Commission disagrees with this position, inasmuch as § 50.69 permits the licensee/applicant, once having obtained approval from the NRC, to depart from compliance with the ''special treatment'' requirements set forth in those regulations delineated in § 50.69. NEI also argues that the NRC's review and approval of the SSC categorization process under § 50.69 is analogous to the review and approval process in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315 (1996), which the Commission determined did not require a license amendment. Unlike the Perry case, where the license already provided for the possibility of material withdrawal schedule changes and the governing ASTM standard set forth objective, non-discretionary criteria for changes to the withdrawal schedule, § 50.69 does not contain these criteria for assessing the adequacy of the categorization process, PRA peer review results, and the basis for sensitivity studies. Hence, the NRC's approval of a request to implement § 50.69 will involve substantial professional judgment and discretion. The Commission does not agree with NEI's assertion that the NRC's approval of a request to implement § 50.69 may be made without a license amendment in accordance with the Perry decision.

The Commission does not believe it is necessary to perform a prior review of the treatment processes to be implemented for RISC–3 SSCs in lieu of the special treatment requirements. Instead, the NRC has developed § 50.69 to contain requirements that ensure the categorization process is sufficiently robust to provide reasonable confidence that SSC safety significance is correctly determined; sufficient requirements on RISC–3 SSCs to provide a level of assurance that these SSCs remain capable of performing their design basis functions commensurate with their individual low safety significance; and requirements for obtaining information concerning the performance of these SSCs to help enable corrective actions to be taken before RISC–3 SSC reliability degrades beyond the values used in the evaluations conducted to satisfy § 50.69(c)(1)(iv). The NRC concludes that compliance with these requirements, in conjunction with inspection of § 50.69 licensees, is a sufficient level of regulatory oversight for these SSCs.

The Commission included requirements in the rule for documenting categorization decisions to facilitate NRC oversight of a licensee's or applicant's implementation of the alternative requirements. The rule also includes provisions to have the FSAR and other documents updated to reflect the revised requirements and progress in implementation. These requirements will allow the NRC and other stakeholders to remain knowledgeable about how a licensee is implementing its regulatory obligations as it transitions from past requirements to the revised requirements in § 50.69. As part of these provisions, the Commission has concluded that requiring evaluations under § 50.59 (for changes to the facility or procedures as described in the FSAR) or under § 50.54(a) (for changes to the quality assurance plan) is not necessary for those changes directly related to implementation of § 50.69. For implementation of treatment processes for low safety significant SSCs, in accordance with the rule requirements contained in § 50.69, the Commission concludes that requiring further review if NRC approval might be required for these changes is an unnecessary burden. Thus, a licensee is permitted to make changes concerning treatment requirements that might be contained in these documents. The Commission is limiting this relief to changes directly related to implementation (with respect to treatment processes). Changes that affect any non-treatment aspects of an SSC (*e.g.*, changes to the SSC design basis functional requirements) are still required to be evaluated in accordance with other regulatory requirements such as § 50.59. This rulemaking is only risk-informing the scope of special treatment requirements. The process and requirements established in § 50.69 do not extend to making changes to the non-treatment portion of the design basis.

*III.7.0 Adequate Protection*

The Commission concludes that § 50.69 provides reasonable assurance of adequate protection of public health and safety because the principles listed below were used in the development of § 50.69 and because these principles will continue to be employed in the NRC's continuing regulatory oversight of § 50.69 implementation. Those principles are:

(a) Reasonable confidence that the net increase in plant risk is small;

(b) Defense-in-depth is maintained;

(c) Reasonable confidence that safety margins are maintained; and

(d) Monitoring and performance assessment strategies are used.

These principles were established in RG 1.174, which provided guidance on an acceptable approach to risk-informed decision-making consistent with the 1995 Commission policy on the use of PRA. Section 50.69 was developed to incorporate these principles, both to ensure consistency with Commission policy, and to ensure that the rule maintains adequate protection of public health and safety.

The following discusses how § 50.69 meets the four criteria, and as a result, maintains adequate protection of public health and safety.

*III.7.1 Net Increase in Risk Is Small*

Section 50.69(c) requires the use of a robust, risk-informed categorization process that ensures that all relevant information concerning the safety significance of an SSC is considered by a competent and knowledgeable panel who makes the final determination of the safety significance of SSCs. The NRC review and approval of the licensee's

categorization process ensures that it meets the requirements of § 50.69(c) and that, as a result, the correct SSC safety significance is determined with high confidence. Correctly determining safety significance of an SSC provides confidence that special treatment requirements are only removed from SSCs with low individual safety significance and that these requirements continue to be satisfied for SSCs of safety significance. The rule requires that the potential net increase in risk from implementation of § 50.69 be assessed and that reasonable confidence be provided that this risk change is small. These requirements to provide reasonable confidence that the net change in risk is acceptably small as part of the categorization decision, in conjunction with the rule requirements for maintaining design basis functions and the processes noted below for feedback and adjustment over time, all contribute to preventing risk from increasing beyond the ranges that the NRC has considered to be appropriate as discussed in the RG 1.174 acceptance guidelines. As a result, these requirements are a contributing element for maintaining adequate protection of public health and safety.

*III.7.2 Defense-in-Depth Is Maintained*

Section 50.69 (c)(1)(iii) requires that defense-in-depth be maintained as part of the categorization requirements of § 50.69(c)(1) and as a result, defense-in-depth is considered explicitly in the categorization process. Thus, SSCs that otherwise might be considered low safety significant, but are important to defense-in-depth as discussed in the implementation guidance, will be categorized as safety significant (and will remain subject to special treatment requirements). For safety significant SSCs (*i.e.*, RISC–1 and RISC–2 SSCs), all current special treatment requirements remain (*i.e.*, the rule does not remove any of these requirements) to provide high confidence that they can perform design basis functions. Additionally, § 50.69(d)(1) requires sufficient treatment be applied to support the credit taken for these SSCs for beyond design basis events. For RISC–3 SSCs, § 50.69 imposes high-level treatment requirements that when effectively implemented, maintain the capability of RISC–3 SSCs to perform their design basis functions. Thus, the complement of SSCs installed at the facility that provide defense-in-depth will continue to be available and capable of performing the functions necessary to support defense-in-depth. The rule does not change the design basis functional requirements of the facility, which were established based upon defense-in-depth considerations. Accordingly, the Commission concludes that § 50.69 maintains defense-in-depth.

*III.7.3 Safety Margins Are Maintained*

Section 50.69(c)(1)(iv) requires that evaluations be performed that provide reasonable confidence that sufficient safety margins are maintained. This is provided by a combination of:

(1) Maintaining all existing functional and treatment requirements on RISC–1 and RISC–2 SSCs and additionally ensuring, through the application of sufficient treatment and feedback requirements, that any credit for these SSCs for beyond design basis conditions is valid and maintained;

(2) Maintaining the design basis functional requirements of the facility for all SSCs, including RISC–3 SSCs as described in Section III.7.2; and

(3) Requiring a licensee to have reasonable confidence that the overall increase in risk that may result due to implementation of § 50.69 is small.

Maintaining all current requirements on RISC–1 and RISC–2 SSCs and requiring sufficient treatment be applied to support the credit taken for these SSCs for beyond design basis events provides assurance that the safety significant SSCs continue to perform as credited in the categorization process. Maintaining design basis functional requirements for RISC–3 SSCs ensures that these SSCs continue to be designed to criteria that enable them to perform their design basis functions. The reduction in treatment applied to RISC–3 SSCs results in an increased level of uncertainty concerning the functionality of RISC–3 SSCs. This reduction in treatment may result in an increase in RISC–3 SSC failure rates (*i.e.*, a reduction in RISC–3 SSC reliability). To address this possibility and its relationship to safety margin, § 50.69 requires that there be reasonable confidence that any potential increases in CDF and LERF that might stem from changes in RISC–3 SSC reliability due to reduced treatment permitted by § 50.69, be small. As discussed in Section III.7.4, the rule requires (through monitoring requirements) that the SSCs must be maintained so that they continue to be capable of performing their design basis functions. For these reasons, the Commission concludes that § 50.69 maintains sufficient safety margins.

*III.7.4 Monitoring and Performance Assessment Strategies Are Used*

Section 50.69(e) contains requirements that ensure that the risk-informed categorization and treatment processes are updated and maintained over time. Data that reflect operational practices, the facility configuration, plant and industry experience, and SSC performance are required to be fed back into the PRA and the categorization process on a periodic basis and when appropriate, adjustments to the categorization and/or treatment processes are required to maintain the validity of these processes. In addition, § 50.69(g) contains requirements that reports are made to NRC of conditions preventing RISC–1 and RISC–2 SSCs from performing their safety significant functions. Together, these requirements maintain the validity of the risk-informed categorization and treatment processes so that the above criteria will continue to be satisfied over the life of the facility.

*III.7.5 Summary and Conclusions*

Section § 50.69 contains requirements that:

1. Provide reasonable confidence that any net risk increase from implementation of its requirements is small;
2. Maintain defense-in-depth;
3. Provide reasonable confidence that safety margins are maintained; and
4. Require the use of monitoring and performance assessment strategies.

Together, these requirements result in a rule that is consistent with the Commission's policy on the use of PRA and, more importantly, maintains adequate protection of public health and safety.

## IV. Pilot Activities

*IV.1.0 Pilot plants*

To aid in the development of the rule and associated implementation guidance, several plants volunteered to conduct pilot activities with the objective of exercising the proposed NEI implementation guidance and using the feedback and lessons-learned to improve both the implementation guidance and the governing regulatory framework. There were two separate pilot efforts. The first pilot effort focused on the categorization guidance and IDP performance. This effort is discussed in Section IV.1.1 Categorization Pilot. The second pilot effort is ongoing and is focused on the § 50.69 submittal and its review. This pilot effort is discussed in Section IV.1.2 Submittal Pilot.

*IV.1.1 Categorization Pilot*

The categorization pilot effort was supported by three of the industry owners groups who identified pilots for their reactor types and participated by piloting sample systems using the draft

NEI implementation guidance. Supporting the pilot effort were the Westinghouse Owners Group with lead plants Wolf Creek and Surry, the BWR Owners Group with lead plant Quad Cities, and the CE Owners Group with lead plant Palo Verde. The B&W Owners Group did not participate, but did follow the pilot activities.

The NRC staff's participation and principal point of interaction in the pilot effort was primarily in observation of the deliberations of the IDP. By observing the IDP, the NRC staff was able to view the culmination of the categorization effort and gain good insights regarding both the robustness of the categorization process in general and the IDP decision-making process specifically. Following each of the pilot IDPs, the NRC staff developed and issued a trip report containing its observations.

The following points set forth the principal lessons learned and key feedback from the NRC staff's observations of the pilot activities:

- Potential treatment changes and their potential effects need to be understood by the IDP as part of the deliberations on categorization.
- The pilots showed the importance of documenting IDP decisions and the basis for them. The rule contains a requirement for the categorization basis to be documented (and records retained) in § 50.69(f).
- The pilots experienced difficulty in explicit consideration about safety margins, especially in view of the fact that functionality must be retained. In the first draft rule language posted, requirements were included for the IDP to consider safety margins in its deliberations. On the basis of the pilot experience, NRC adjusted its approach to safety margins to include this in the section of the rule that requires consideration of effects of changes in treatment and the use of evaluations as the means of providing reasonable confidence safety margins are maintained.
- The need for a number of improvements to the industry implementation guidance provided in NEI 00–04 were noted. For example, two areas for improvement were the defense-in-depth matrix presented therein and the need for more specific guidance on making decisions where quantitative information is not available. These lessons learned were factored into the revised version of NEI 00–04.
- During the pilot activity, pressure boundary (''passive'') functions were also categorized using the draft version of an ASME Code Case on categorization available at that time. A separate categorization process was used for these passive functions because it was recognized by pilot participants that the approach for these SSCs must be somewhat different than for ''active'' functions due to considerations such as spatial interaction. Specifically, if a pressure boundary SSC failed, the resulting high-energy release or flooding might impact other equipment in physical proximity, so the process needed to account for those effects in addition to the significance of the SSC that initially failed. Improvements to the ASME Code Case for categorization of piping (and related components) were identified and fed back into the code development process.
- The pilot experiences also revealed the intricacies of the relationship between ''functions'' (which play a role in decisions on safety significance) and ''components'' (importance measures are associated with components and treatment is also generally applied on a component basis). Because a particular component may support more than one function, the categorization of the component needs to correspond with the most significant function and means must be provided for a licensee to ''map'' the components to the functions they support.
- At each pilot, the NRC noted that the IDP needed to include consideration of long term containment heat removal in characterizing SSCs. The NRC considers retention of long term containment heat removal capability important to defense-in-depth for light water reactors.
- Finally, a number of lessons were learned about how to conduct the IDP process, such as training needs, materials to be provided to the panel, etc. As a result of this feedback, NEI revised NEI 00–04 (discussed in Section VI).

*IV.1.2 Submittal Pilot*

The submittal pilot effort is a currently ongoing effort that focuses on the § 50.69 submittal and the NRC staff's review and approval of that submittal. This pilot effort is supported by the Westinghouse Owners Group with lead plants Wolf Creek and Surry. The objectives of this pilot effort are to:

- Enable the staff to develop reviewer guidance for review and approval of the § 50.69 submittal.
- To acquire experience with the use of RG 1.201 and use this experience to improve the guidance and address the technical interpretation/implementation issues identified in RG 1.201.
- Enable industry to develop (beyond RG 1.201/NEI 00–04) the specific information that will be required for a license amendment submittal that will be submitted for prior staff review and approval for implementing § 50.69.

The NRC staff will use the results of this pilot effort to improve RG 1.201 and to develop the reviewer guidance for § 50.69 submittals. Industry expects to use the results of the pilot to develop a template for a § 50.69 license amendment submittal.

*IV.2.0 South Texas Exemption as Proof of Concept*

A major element of the rulemaking plan described in SECY–99–256 was the review of the STPNOC exemption request. The review of the STPNOC exemption request was viewed as a proof-of-concept prototype for this rulemaking rather than a pilot because it preceded development of draft rule language or related implementation guidance.

By letter dated July 13, 1999, STPNOC requested approval of exemption requests to enable implementation of processes for categorizing the safety significance of SSCs and treatment of those SSCs consistent with its categorization process. The STPNOC process included many similar elements to that described in this rulemaking, but with some differences. Their process identified SSCs as being either high, medium, low or non-risk significant. The scope of the exemptions requested included only those safety-related SSCs that have been categorized as low safety significant or as non-risk significant using STPNOC's categorization process. The licensee indicated that the categorization and treatment processes would be implemented over the remaining licensed period of the facility. Thus, the basis for the exemptions granted was the NRC staff's approval of the licensee's categorization process and alternative treatment elements, rather than a comprehensive review of the final categorization and treatment of each SSC (review of the process rather than the results is also the approach planned under the rulemaking). As a result of discussions with the staff on a number of topics, STPNOC submitted a revised exemption request on August 31, 2000.

On November 15, 2000, the NRC staff issued a draft safety evaluation (SE)(ADAMS accession number ML003761558), based on the revised exemption requests. Following the licensee's response to the draft SE, the staff prepared SECY–01–0103 dated June 12, 2001 (ADAMS accession number ML011560317), to inform the Commission of the staff's finding regarding the STPNOC exemption

review. The staff approved the STPNOC exemption requests by letter dated August 3, 2001 (ADAMS accession number ML011990368).

The NRC has applied lessons learned from the review of the STPNOC exemption request in developing § 50.69 and the description of intended implementation of the rule in this SOC. For example, in the STPNOC review, the NRC staff reviewed the categorization process proposed by the licensee in detail. With respect to § 50.69, the NRC continues to require a robust categorization with a detailed staff review.

The rule specifies the requirement that the licensee shall ensure with reasonable confidence functionality and further specifies some high-level requirements for RISC–3 SSC treatment. Under § 50.69, the NRC will not review and approve licensee's RISC–3 treatment programs. Licensees will have to establish appropriate performance-based SSC treatment to maintain the validity of the categorization process and its results. The rule requires that licensees adjust the categorization or treatment processes, as appropriate, in response to the SSC performance information obtained as part of the treatment process.

## V. Section-by-Section Analysis

### *V.1.0 Section 50.8 Information Collection*

This rule includes a revision to § 50.8(b). This section pertains to approval by the Office of Management and Budget (OMB) of information collection requirements associated with particular NRC requirements. Because the new § 50.69 includes information collection requirements, a conforming change to § 50.8(b) is necessary to list § 50.69 as one of these rules. See also Section XII of the SOC for discussion about information collection requirements of § 50.69.

### *V.2.0 Section 50.69(a) Definitions*

Section 50.69(a) provides the definition for the four RISC categories and the definition of the term ''safety significant function.'' RISC–1 SSCs are safety-related SSCs (as defined in § 50.2) and that are found to be safety significant (using the risk-informed categorization process being established by this rule). RISC–2 SSCs are SSCs that do not meet the safety-related definition, but determined to be safety significant. RISC–3 SSCs are safety-related SSCs that are determined to be low safety significant on an individual basis. Finally, RISC–4 SSCs are SSCs that are not safety-related and that are determined to be low safety significant. The NRC selected the terms ''safety significant'' and ''low safety significant'' as the best representations of their meaning. Every component (if categorized) is either safety significant or low safety significant. The ''low'' category could include those SSCs that have no safety significance, as well as some SSCs that individually are not safety significant, but collectively can have a significant impact on plant safety (and hence the need for maintaining the design basis capability of these SSCs). Similarly, within the category of ''safety significant,'' some SSCs have more safety significance than others; so it did not appear appropriate to call them all ''high safety significant.'' The RISC definitions of paragraph (a) are used in subsequent paragraphs of § 50.69 where the treatment requirements are applied to SSCs as a function of RISC category.

The definitions provided in paragraph (a) are written in terms of SSCs that perform functions. In the categorization process, it is the various functions performed by systems that are assessed to determine their safety significance. For those functions of significance, the structures and components that support that function are then designated as being of that RISC category. Then, the treatment requirements are specified for the SSCs that perform those functions. Where an SSC performs functions that fall in more than one category, the treatment requirements derive from the more safety significant function (*i.e.*, if a component has both a RISC–1 and a RISC–3 function, it is treated as RISC–1).

The rule also contains a definition of ''safety-significant'' function. NRC selected the term ''safety-significant'' instead of ''risk-significant'' because the categorization process employed in § 50.69 considers both probabilistic and deterministic information in the decision process. Thus, it is more accurate to represent the outcome as a determination of overall safety significance, that includes the consideration of risk, as opposed to characterizing the outcome as purely ''risk-significance.''

Those functions that are not determined to be safety significant are considered to be low safety-significant. The determination as to which functions are safety significant is done by following the categorization process outlined in paragraph (c), as implemented following the guidance in RG 1.201, ''Guidelines for Categorizing Structures, Systems, and Components in Nuclear Power Plants According to their Safety Significance.''

### *V.3.0 Section 50.69(b) Applicability*

Section 50.69(b) may be voluntarily implemented by:

(1) A holder of a license to operate a light water reactor (LWR) nuclear power plant under this part;

(2) Holders of Part 54 renewed LWR licenses;

(3) An applicant for a construction permit or operating license under this part; and

(4) An applicant for a design approval, a combined license, or manufacturing license under Part 52 of this chapter.

For current licensees, implementation will be through a license amendment as set forth in § 50.90. This review and approval of the categorization process is a one-time process approval (*i.e.*, the approval is not restricted to a set of systems or structures, and instead can be applied to any system or structure in the plant). The licensee is not required to come back to the NRC for review of the categorization process provided they remain within the scope of the NRC's safety evaluation. Until the request is approved, a licensee is free to develop (at their own risk) the § 50.69 processes and perform the § 50.69 categorization. However, they must continue to follow existing requirements until approval. Upon approval of the categorization process, the licensee can implement the results of the categorization process including the revised § 50.69 treatment requirements.

For part 54 license holders, implementation is the same as that for a holder of an operating license under part 50, that is, to apply for an amendment to the (renewed) license. For the case where a licensee renewed its license first and then implemented § 50.69, a licensee might revise some aging management programs for RISC–3 SSCs, consistent with the requirements of § 50.69. The Commission believes that there should be little or no impediment for doing so because the categorization process that allows for the reduction in the special treatment requirements for RISC–3 components is expected to provide an appropriate level of safety for the respective structures, systems and components.

In the development of § 50.69, questions were considered regarding the impact to licensees that implement § 50.69 and subsequently apply to renew their license. Because part 54 includes scoping criteria that bring safety-related components within its scope, these components could not be exempted without amending part 54 to allow for their exclusion. However, there are still options available to

applicants for renewal that have implemented § 50.69 first. Because § 50.69 includes alternative treatment requirements for RISC–3 components, an applicant may be able to provide an evaluation that justifies why these alternative treatment criteria (§ 50.69(d)(2)) provide a sufficient demonstration that aging management of the components will be achieved during the renewal period to ensure the functionality of the structure, system, or component. In addition, in the 1995 amendment to part 54, the Commission recognized that risk insights could be used in evaluating the robustness of an aging management program. The NRC staff has already received and accepted one proposal (Arkansas Unit 1) for a risk-informed program for small-bore piping which demonstrates that risk arguments can be used to a degree.

Adopting § 50.69 requirements for an applicant for a construction permit or operating license under this part requires that the applicant first design the facility to meet the current part 50 requirements. Specifically, to use the § 50.69 requirements requires that SSCs first be classified into the traditional safety-related and nonsafety-related classifications. This establishes the design basis functional requirements for the facility, which as previously stated, § 50.69 is not changing. Once the SSC categorization has been done consistent with the safety-related definition in § 50.2, then § 50.69 can be used to categorize SSCs into RISC–1, RISC–2, RISC–3, and RISC–4 and the alternative treatment requirements of § 50.69 implemented. A new applicant who chooses to adopt the § 50.69 requirements, must seek approval of the categorization process as part of its license application and, following NRC approval, would be able to procure RISC–3 SSCs to § 50.69 requirements before initial plant operation.

An applicant for a design approval, a combined license, or manufacturing license under part 52 of this chapter may adopt § 50.69 requirements. An applicant for a design approval, or manufacturing license would follow a process very similar (from the standpoint of § 50.69) to that described above for an applicant for a construction permit or operating license under part 50 (*i.e.*, SSCs must first be classified into the traditional safety-related and nonsafety-related classifications which establishes the design basis functional requirements for the facility and then § 50.69 can be used to categorize SSCs into RISC–1, RISC–2, RISC–3, and RISC–4). Because § 50.69 includes elements of procurement and installation, as well as inservice activities, implementation of the rule by a holder of a manufacturing license or by a part 52 applicant that references such a design would place restrictions on the eventual operator of the facility. The entity that actually constructs and operates the facility would also have to implement § 50.69 to maintain consistency with the categorization process and feedback requirements. Otherwise, the operator would be required to meet other part 50 requirements, such as Appendix B or § 50.55a, which may not be compatible with the facility as manufactured by the manufacturing licensee.

An applicant for a part 52 combined license can apply § 50.69 to a referenced design certification that did not comply with § 50.69 provided the design is a LWR design that used the safety-related definition in § 50.2. An applicant who references a certified design and wishes to implement § 50.69 would include the specified information in § 50.69(b)(2) as part of its application for a license. This does not mean that an applicant would actually construct the facility per all parts 50 and 100 requirements first, before applying § 50.69. Instead, the facility needs to be designed per these requirements, but following approval of the application request under § 50.69(b)(4), RISC–3 SSCs could be procured per the requirements of § 50.69(d).

The final rule excludes applicants for standard design certifications from the group of entities who may take advantage of the provisions of § 50.69. In considering whether to extend the applicability of § 50.69 to design certifications, the Commission identified a number of difficult issues which would have to be resolved to support such an extension. For example, it is unclear whether the dynamic process of recategorizing SSCs under § 50.69 would be inconsistent with the special change restrictions in § 52.63(a), thereby requiring the inclusion of a special change provision in the individual design certification rule. Inasmuch as the proposed rule did not include a provision that would have allowed design certification applicants to use § 50.69, the NRC has not had the benefit of the views of the industry and the public on these issues. Moreover, the industry has not expressed any interest in submitting a design certification using the principles of § 50.69. Accordingly, the final rule does not address the issue of applying § 50.69 to new design certifications; issues associated with the application of § 50.69 to design certification rulemaking can be addressed on a case-by-case basis as necessary. In the future, the Commission could initiate rulemaking to extend § 50.69 to new design certifications after the NRC has had some experience in this area. For much the same reasons, the rule does not provide a process for changing an existing design certification rule to voluntarily comply with § 50.69. In addition, a rulemaking would be necessary to change an existing certified design (*see* Section VIII of Appendix A to 10 CFR part 52), and it is unlikely that such a change would satisfy the requirements of § 52.63(a)(1). A request for a generic change to adopt § 50.69 would not meet the special backfit requirements of Section VIII. Therefore, the NRC would not review the request. Additionally, the NRC would not want to expend resources reviewing changes to designs that may not be referenced. However, applicants for COLs that reference a certified design could adopt § 50.69 and the rule provides for that approach.

The rule provisions were devised to provide means for licensees and applicants for light water reactors to implement § 50.69. In view of some of the specific provisions of the rule, for example, ''safety-related'' definition and use of CDF/LERF metrics, the Commission is making this rule applicable only to light-water reactor designs.

*V.3.1 Section 50.69(b)(1) Removal of RISC–3 and RISC–4 SSCs From the Scope of Treatment Requirements*

Section 50.69 (b)(1) lists the specific special treatment requirements from whose scope the RISC–3 and RISC–4 SSCs are being removed through the application of § 50.69. In this paragraph, each regulatory requirement (or portions thereof) removed by this rulemaking is listed in a separate item, numbered from § 50.69(b)(1)(i) through (b)(1)(xi). The basis for removal of these requirements was discussed in Section III.4. These requirements are being removed due to the low safety significance of RISC–3 and RISC–4 SSCs as determined by an approved risk-informed categorization process meeting the requirements of § 50.69(c). The special treatment requirements for RISC–3 SSCs are replaced with the high-level, performance-based requirements in § 50.69(d)(2) that require the licensee to provide reasonable confidence that RISC–3 SSCs will continue to be capable of performing their safety-related functions under design basis conditions. These performance-based RISC–3 requirements in paragraph (d)(2) are discussed below in greater detail. Note that special treatment requirements are not removed from any

SSCs until the NRC approves the categorization process and a licensee (or applicant) has categorized those SSCs using the requirements of § 50.69(c) to provide the documented basis for the decision that they are of low safety significance.

*V.3.2 Section 50.69 (b)(2) Application Process*

Section 50.69(b)(2) requires a licensee who voluntarily seeks to implement § 50.69 to submit an application for a license amendment under § 50.90 that contains the following information:

(i) A description of the categorization process that meets the requirements of § 50.69(c).

(ii) A description of the measures taken to assure that the quality and level of detail of the systematic processes that evaluate the plant for internal and external events during normal operation, low power, and shutdown (including the plant-specific PRA, margins-type approaches, or other systematic evaluation techniques used to evaluate severe accident vulnerabilities) are adequate for the categorization of SSCs.

(iii) Results of the PRA review process to be conducted to meet § 50.69(c)(1)(i).

(iv) A description of, and basis for acceptability of, the evaluations to be conducted to satisfy § 50.69(c)(1)(iv). The evaluations must include the effects of common cause interaction susceptibility, and the potential impacts from known degradation mechanisms for both active and passive functions, and address internally and externally initiated events and plant operating modes (*e.g.*, full power and shutdown conditions).

Regarding the categorization process description, the NRC expects that most licensees and applicants will commit to RG 1.201 which endorses NEI 00–04, with some conditions and exceptions. If a licensee or applicant wishes to use a different approach, the submittal must provide a sufficient description of how the categorization would be conducted. As part of the submittal, a licensee or applicant is to describe the measures they have taken to assure that the plant-specific PRA, as well as other methods used, are adequate for application to § 50.69. The measures described include such items as any peer reviews performed, any actions taken to address peer review findings that are important to categorization, and any efforts to compare the plant-specific PRA to the ASME PRA standard. The NRC has developed reviewer guidance applicable to these submittals that is described in Section VI. The licensee or applicant must also describe what measures they have used for the methods other than a PRA to determine their adequacy for this application.

Further, the licensee or applicant is required to include information about the evaluations they intend to conduct to provide reasonable confidence that the potential increase in risk would be small. This includes any risk sensitivity study for RISC–3 SSCs, including the basis for whatever change in reliability is being assumed for these analyses. A licensee must provide sufficient information to the NRC, describing the risk sensitivity study and other evaluations and the basis for their acceptability as appropriately representing the potential increase in risk from implementation of the requirements in this rule.

RISC–3 SSCs are defined as having low individual safety significance under § 50.69. Licensees and applicants must implement effective treatment, consisting of, at a minimum, inspection, testing, and corrective action, to maintain RISC–3 SSC functionality as required by § 50.69(d)(2). This treatment need not be described to the NRC as part of the § 50.69 submittal as provided in § 50.69(b)(2).

*V.3.3 Section 50.69 (b)(3) Approval for Licensees*

Section 50.69(b)(3) provides that the Commission will approve a licensee's implementation of this section by license amendment if it determines that the proposed process for categorization of RISC–1, RISC–2, RISC–3, and RISC–4 SSCs satisfies the requirements of § 50.69(c).

The NRC will review the description of the categorization process set forth in the application to confirm that it contains the elements required by the rule. The NRC will also review the information provided about the plant-specific PRA, including the peer review process to which it was subjected, and methods other than a PRA relied upon in the categorization process. The NRC intends to use review guidance (discussed in more detail in Section VI) for this purpose. The NRC will approve the licensee's use of § 50.69 by issuing a license amendment.

*V.3.4 Section 50.69(b)(4) Process for Applicants*

Section 50.69(b)(4) requires that an applicant for a license, standard design approval, or manufacturing license that chooses to implement § 50.69 must submit the information listed in § 50.69(b)(2) as part of its application. The rule is structured to transition from the ''safety-related'' classification (and related treatment requirements) to a ''safety significant'' classification. Thus, an applicant would first need to design the facility to meet applicable Part 50 design requirements and then apply the requirements of § 50.69. This information must be submitted in addition to other technical information necessary to meet § 50.34. The NRC will provide its approval of implementation of § 50.69, if it concludes that the rule requirements are met, as part of its action on the application.

*V.4.0 Section 50.69(c) Categorization Process Requirements*

Section 50.69(c) establishes the requirements for the risk-informed categorization process including requirements for the supporting PRA. Licensees or applicants who wish to adopt the requirements of § 50.69 will need to make a submittal (per § 50.69(b)(2) or § 50.69(b)(4) respectively) that discusses how their proposed categorization process, supporting PRA, and evaluations meet the § 50.69(c) requirements. As described in Section III.2.0, these requirements are intended to ensure that the risk-informed § 50.69 categorization process determines the appropriate safety significance of SSCs with high confidence. The introductory paragraph of § 50.69(c) states that SSCs must be categorized as RISC–1, RISC–2, RISC–3, or RISC–4 by a process that determines whether the SSC performs one or more safety significant functions and identifies those functions.

*V.4.1 Section 50.69(c)(1)(i) Results and Insights From a Plant-Specific Probabilistic Risk Assessment*

Section 50.69(c)(1)(i) contains the requirements for the PRA itself, and how it is to be used in the categorization process. The PRA must have sufficient capability and quality to support the categorization of the SSCs. Section V.4.1.1 discusses these requirements in more detail. The PRA and associated sensitivity studies are used primarily in the categorization of the SSCs as to their safety significance as discussed in Section V.4.1.2, and the PRA is also used to perform evaluations to assess the potential risk impact of the proposed change in treatment of the RISC–3 SSCs, as discussed in Section V.4.4.

*V.4.1.1 Scope, Capability, and Quality of the PRA To Support the Categorization Process*

As required in § 50.69(c)(1)(ii), initiating events from sources both internal and external to the plant and for all modes of operation, including low power and shutdown modes, must

be considered when performing the categorization of SSCs. It is recognized that few licensees have fully developed PRA models that cover such a scope. However, as a minimum, the PRA to be used to support categorization under § 50.69(c)(1) must model internal initiating events occurring at full power operations. The PRA will have to be able to calculate both core damage frequency and large early release frequency to meet the requirement in § 50.69(c)(iv). The PRA must reasonably represent the current configuration and operating practices at the plant to meet § 50.69(c)(1)(ii). The PRA model should be of sufficient technical quality and level of detail to support the categorization process. This means that it represents a coherent, integrated model, and has sufficient detail to support the categorization of SSCs into the safety significant and low safety significant categories.

The quality and scope of the plant-specific PRA will be assessed by the NRC taking into account appropriate standards and peer review results. The NRC has prepared a regulatory guide (RG 1.200) on determining the technical adequacy of PRA results for risk-informed activities. As one step in the assurance of technical quality, the PRA must have been subjected to a peer review process assessed against a standard or set of acceptance criteria that is endorsed by the NRC. Thus, the NRC will rely on the NEI Peer Review Process, as modified in the NRC's approval, or the ASME/ANS Peer Review Process, as modified in the NRC's approval both of which are (or will be) documented in RG 1.200. As discussed in Section VI, NRC has also developed review guidelines for considering the sufficiency of a PRA that was subjected to the NEI peer review process for this application in § 50.69. This guidance was developed based on an earlier draft version of NEI 00–04 and could be useful in ensuring the adequacy of the PRA for this application. The submittal requirements listed in § 50.69(b)(2) include a requirement to provide information about the quality of the PRA analysis and other supporting analyses and about the peer review results.

*V.4.1.2 Risk Categorization Process Based on PRA Information*

For SSCs modeled in the PRA, the typical categorization process relies on the use of importance measures as a screening method to assign the preliminary safety significance of SSCs. (Other methodologies such as success path identification methodologies can also be used, however, this discussion will focus on the use of importance measures because these are the most commonly used methods to identify safety significance of SSCs using a PRA, for example, in the implementation of § 50.65). The determination of the safety significance of SSCs by importance measures is also important because it can identify potential risk outliers and therefore, changes that exacerbate these outliers can be avoided; and it can facilitate IDP deliberations of SSCs that are not modeled in the PRA, for example, events from the ranked list can be used as surrogates for those SSCs that are not modeled or are only implicitly modeled in the PRA.

For SSCs modeled in the PRA, SSC importance is effectively determined (*see* § 50.69(c)(1)(iv)) based on both CDF and LERF. Importance measures should be chosen so that the IDP can be provided with information on the relative contribution of an SSC to total risk. Examples of importance measures that can accomplish this are: the Fussell-Vesely (F–V) importance and the Risk Reduction Worth (RRW) importance. Importance measures should also be used to provide the IDP with information on the margin available should an SSC fail to function. The Risk Achievement Worth (RAW) importance and the Birnbaum importance are example measures that are suitable for this purpose.

In choosing screening criteria to be used with the PRA importance measures, it should be noted that importance measures do not directly relate to changes in the absolute value of risk. Therefore, the final criteria for categorizing SSCs into the safety significant and the low safety significant categories must be based on an assessment of the potential overall impact of SSC categorization and a comparison of this potential impact to the acceptance guidelines for changes in CDF and LERF. However, typically in the initial screening stages, an SSC with F–V < 0.005 based on CDF and LERF, and RAW < 2 based on CDF and LERF can be considered as potentially low safety-significant. In addition, the appropriateness of the importance measures in specifically addressing SSC CCF contributions and associated screening criteria should be considered. IDP consideration of § 50.69(c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) should be carried out to confirm the low safety significance of these SSCs.

In determining the safety significance of SSCs, consideration should be given to the potential for the multiple failure modes for the SSC. PRA basic events represent specific failure events and failure modes of SSCs. The determination of SSC safety significance should take into account the effects of all associated basic PRA events (such as failure to start and failure to run), including indirect contributions through associated common cause failure (CCF) events.

Because importance measures are typically evaluated on the basis of individual events, single-event importance measures have the potential to dismiss all elements of a system or group despite the system or group having a high importance when taken as a whole. Conversely, there may be grounds for screening groups of SSCs, owing to the unimportance of the systems of which they are elements. One approach around this problem is to first determine the importance of system functions performed by the selected plant systems. If necessary, each component in a system is then evaluated to identify the system function(s) supported by that component. SSCs may be initially assigned the same category as the most limiting system function they support. System operating configuration, reliability history, recovery time available, and other factors can then be considered when evaluating the effect on categorization from an SSC's redundancy or diversity. The primary consideration in the process is whether the failure of an SSC will fail or severely degrade the safety function. If the answer is no, then a licensee may factor into the categorization the SSC's redundancy, as long as the SSC's reliability credited in the categorization process and that of its redundant counterpart(s) have been taken into account.

When the PRA used in the importance analyses includes models for external initiating events and/or plant operating modes other than full power, caution should be used when considering the results of the importance calculations. The PRA models for external initiating events (*e.g.*, events initiated by fires or earthquakes) and for low power and shutdown plant operating modes may be more conservative and have a greater degree of uncertainty than for internal initiating events. Use of conservative models can influence the calculation of importance measures by moving more SSCs into the low safety significance category. Therefore, when PRA models for external event initiators and for the low power and shutdown modes of operation are available and used, the importance measures should be evaluated for each analysis separately and collectively, and the results of these evaluations should be provided to the IDP.

As part of the demonstration of PRA adequacy, the sensitivity of SSC importance to uncertainties in the parameter values for component availability/reliability, human error probabilities, and CCF probabilities should be evaluated. Results of these sensitivity analyses should be provided to the IDP. The following should be considered in IDP deliberations on the sensitivity study results:

(1) The change in event importance when the parameter value is varied over its uncertainty range for the event probability can in some cases provide SSC categorization results that are different. Therefore, in considering the sensitivity of component categorization to uncertainties in the parameter values, the IDP should ensure that SSC categorization is not affected by data uncertainties.

(2) PRAs typically model recovery actions, especially for dominant accident sequences. Estimating the success probability for the recovery actions involves a certain degree of subjectivity. The concerns in this case stem from situations where very high success probabilities are assigned to a sequence, resulting in related components being ranked as low risk contributors. Furthermore, it is not desirable for the categorization of SSCs to be impacted by recovery actions that sometimes are only modeled for the dominant scenarios. Sensitivity analyses should be used to show how the SSC categorization would change if recovery actions were removed. The IDP should ensure that the categorization is not unduly impacted by the modeling of recovery actions.

(3) CCFs are modeled in PRAs to account for dependent failures of redundant components within a system. CCF probabilities can impact PRA results by enhancing or obscuring the importance of components. A component may be ranked as a high risk contributor mainly because of its contribution to CCFs or a component may be ranked as a low risk contributor mainly because it has negligible or no contribution to CCFs. The IDP should ensure that the categorization is not unduly impacted by the modeling of CCFs. The IDP should also be aware that removing or relaxing requirements may increase the CCF contribution, thereby changing the risk impact of an SSC.

*V.4.2 Section 50.69(c)(1)(ii) Integrated Assessment of SSC Function Importance*

Section 50.69(c)(1)(ii) contains requirements for an integrated, systematic process to address events including those not modeled in the PRA, including both design basis and severe accident functions. For various reasons, many SSCs in the plant will not be modeled explicitly in the PRA. Therefore, the categorization process must determine the safety significance of these SSCs by other means. Because importance measures are not available for use as screening, other criteria or considerations must be used by the IDP to determine the significance. Guidance on how these deliberations should be conducted is included in the NRC regulatory guidance associated with this rule, and in the industry guidance.

Section 50.69(c)(1)(ii) requires that all aspects of the processes used to categorize SSC must ''reasonably reflect'' the current plant configuration, operating practices, and applicable operating experience. The terminology, ''reasonably reflect,'' was selected to allow for appropriate PRA modeling and also to make clear that the PRA and categorization processes do not need to be instantaneously revised when a plant change occurs (see also requirements in § 50.69(e)(1) on PRA updating).

*V.4.3 Section 50.69(c)(1)(iii) Maintaining Defense-in-Depth*

Section 50.69(c)(1)(iii) requires that the categorization process maintain defense-in-depth. To satisfy this requirement, when categorizing SSCs as low safety significant, the IDP must demonstrate that defense-in-depth is maintained. Defense-in-depth is adequate if the overall redundancy and diversity among the plant's systems and barriers is sufficient to ensure the risk acceptance guidelines discussed in Section V.4.4 are met, and that:

- Reasonable balance is preserved among prevention of core damage, prevention of containment failure or bypass, and mitigation of consequences of an offsite release.
- System redundancy, independence, and diversity is preserved commensurate with the expected frequency of challenges, consequences of failure of the system, and associated uncertainties in determining these parameters.
- There is no over-reliance on programmatic activities and operator actions to compensate for weaknesses in the plant design.
- Potential for common cause failures is taken into account.

The Commission's position is that the containment and its systems are important in the preservation of defense-in-depth (in terms of both large early and large late releases). Therefore, as part of meeting the defense-in-depth principle, a licensee should demonstrate that the function of the containment as a barrier (including fission product retention and removal) is not significantly degraded when SSCs that support the functions are moved to RISC–3 (*e.g.*, containment isolation or containment heat removal systems). The concepts used to address defense-in-depth for functions required to prevent core damage may also be useful in addressing issues related to those SSCs that are required to preserve long-term containment integrity. Where a licensee categorizes containment isolation valves or penetrations as RISC–3, the licensee should address the impact of the change in treatment to ensure that defense-in-depth continues to be satisfied. Where the impact of changes in treatment does not support the reliability assumptions in the categorization process, the licensee should resolve this situation by adjustments to the categorization process assumptions or treatment of the component.

*V.4.4 Section 50.69(c)(1)(iv) Include Evaluations To Provide Reasonable Confidence That Sufficient Safety Margins Are Maintained and That Any Potential Increases in CDF and LERF Resulting From Changes in Treatment Permitted by Implementation of § 50.69(b)(1) and § 50.69(d)(2) Are Small*

Section 50.69(c)(1)(iv) specifies that the categorization process include evaluations to provide reasonable confidence that as a result of implementation of revised treatment permitted for RISC–3 SSCs, sufficient safety margins are maintained and any potential increases in CDF and LERF are small. Safety margins can be maintained if the licensee maintains the functionality of the SSCs following implementation of the revised requirements and if periodic inspection, testing, and corrective action activities are adequate to prevent, detect and correct significant SSC performance and reliability degradation. Later sections of this SOC provide discussion on the treatment the licensee will implement to ensure with reasonable confidence that RISC–3 SSCs remain capable of performing their safety functions under design basis conditions. The requirements of the rule to show that sufficient safety margins are maintained and that potential increases in risk are acceptably small are discussed below.

As part of their submittal, a licensee or applicant is to describe the evaluations to be conducted for purposes of providing reasonable confidence that there would be no more than an acceptably small (potential) increase in risk. For SSCs included in the PRA, the Commission expects a risk sensitivity study (evaluation) to be

performed to provide a basis for concluding that if the reliability of these RISC–3 SSCs should collectively degrade because of the changes in treatment, the potential risk increase would be small. Satisfying the rule requirement that the risk increase is acceptably small presumes that the increase in failure rates credited in the PRA risk sensitivity study bounds any reasonable estimate of the increase that may be expected as a result of the changes in treatment; also considering the feedback and corrective action aspects of the rule.

The categorization process encompasses both active and passive functions of SSCs. Section 50.69(b)(2)(iv) includes the requirement that the change-in-risk evaluations performed to satisfy § 50.69(c)(1)(iv) must address potential impacts from known degradation mechanisms on both active and passive functions. The manner of addressing these potential impacts may be either qualitative or quantitative and may rely on the maintenance of current programs that address these degradation mechanisms (*e.g.*, microbiologically-induced corrosion, flow-assisted corrosion) and/or may incorporate existing risk-informed approaches (*e.g.*, risk-informed inservice inspection).

One mechanism that could lead to large increases in CDF/LERF is extensive, across system common cause failures. These CCFs could occur where the mechanisms that lead to failure, in the absence of special treatment, are sufficiently rapidly developing or are not self-revealing that there would be few opportunities for early detection and corrective action. Thus, when deciding how much to assume that SSC reliability might change, the applicant or licensee is expected to consider potential effects of common-cause interaction susceptibility, including cross-system interactions and potential impacts from known degradation mechanisms; while also considering the feedback and corrective actions aspects of the rule.

Those aspects of treatment that are necessary to prevent SSC degradation or failure from known degradation mechanisms, to the extent that the results of the evaluations are invalidated, must be retained. Identifying those aspects will involve an understanding of what the degradation mechanisms are and what elements of treatment are sufficient to prevent the degradation.

The treatment for all RISC–3 SSCs may not be the same. As an example, motor operated valves (MOVs) operating in a severe environment (*e.g.*, in the steam tunnel) would be more susceptible to failure because of grease degradation if they were not regularly maintained and tested. However, not all MOVs, even if they have the same design and are identical in other respects, will be exposed to the same environment. Therefore, the other MOVs may not be as susceptible to failure as those in the steam tunnel and less frequent maintenance and testing would be acceptable. While it may be simpler to increase the unreliability or unavailability of all the RISC–3 SSCs by a certain bounding factor to demonstrate that the change in risk is acceptably small, this example suggests that it may also be appropriate to use different factors for different groups of SSCs depending on the impact of reducing treatment on those SSCs.

Section 50.69(c)(1)(iv) requires reasonable confidence that the increase in the overall plant CDF and LERF resulting from potential decreases in the reliability of RISC–3 SSCs as a result of the changes in treatment, be small. The rule further requires the licensee or applicant to describe the evaluations to be performed to meet this requirement. As presented in RG 1.174, the NRC considers small changes to be relative and to depend on the current plant CDF and LERF (hence we also refer to ''acceptably small'' changes in other portions of this notice since small can be different for different plants with different baseline levels of risk). For plants with total baseline CDF of $10^{-4}$ per year or less, small means CDF increases of up to $10^{-5}$ per year and for plants with total baseline CDF greater than $10^{-4}$ per year, small means CDF increases of up to $10^{-6}$ per year. However, if there is an indication that the CDF may be considerably higher than $10^{-4}$ per year, the focus of the licensee should be on finding ways to decrease rather than increase CDF and the licensee may be required to present arguments as to why steps should not be taken to reduce CDF for the reduction in special treatment requirements to be considered. For plants with total baseline LERF of $10^{-5}$ per year or less, small LERF increases are considered to be up to $10^{-6}$ per year, and for plants with total baseline LERF greater than $10^{-5}$ per year, small LERF increases are considered to be up to $10^{-7}$ per year. However, if there is an indication that the baseline CDF or LERF may be considerably higher than $10^{-4}$ or $10^{-5}$, respectively, the licensee either must find ways to reduce risk and present the arguments to the staff before implementation of § 50.69, otherwise it is likely that the staff will reject the § 50.69 application. This is consistent with the guidance in Section 2.2.4 of RG 1.174. It should be noted that this allowed increase shall be applied to the overall categorization process, even for those licensees that will implement § 50.69 in a phased manner.

If a PRA model does not exist for the external initiating events or the low power and shutdown operating modes, justification should be provided, on the basis of bounding analyses or qualitative considerations, that the effect on risk (from the unmodeled events or modes of operation) is not significant and that the total effect on risk from modeled and unmodeled events and modes of operation is small, consistent with Section 2.2.4 of RG 1.174.

*V.4.5 Section 50.69(c)(1)(v) System or Structure Level Review*

Section 50.69(c)(1)(v) specifies that the categorization be done at the system or structure level; not for selected components within a system. A licensee or applicant is allowed to implement § 50.69 for a subset of the plant systems and structures (*i.e.*, partial implementation) and to phase in implementation over time. However, the implementation, including the categorization process, must address entire systems or structures; not selected components within a system or structure. Note that this requirement should be understood to exclude entire support systems (*e.g.*, if system A is categorized as RISC–3, but is dependent on system B components which in turn have been categorized as RISC–1, then system A is understood not to include the system B components and is not to be categorized as RISC–1). This required scope ensures that all safety functions associated with a system or structure are properly identified and evaluated when determining the safety significance of individual components within a system or structure and that the entire set of components that comprise a system or structure are considered and addressed.

*V.4.6 Section 50.69(c)(2) Use of Integrated Decision-Making Panel*

Section 50.69(c)(2) sets forth the requirements for using an IDP to make the determination of safety significance, and for the composition of the IDP. The fundamental requirement for the categorization process (as stated in § 50.69(c)(1)(ii)) is that it include use of an integrated systematic process. The determination of safety significance of SSCs is to be performed as part of an integrated decision-making process. By ''integrated decision-making process,'' the Commission means a process that integrates both risk insights and

traditional engineering insights. In categorizing SSCs as low safety-significant, defense-in-depth must be maintained (per § 50.69(c)(1)(iii)) and there must be reasonable confidence that sufficient safety margin is maintained by showing that any increases in risk are small per § 50.69(c)(1)(iv). To account for each of these factors and to account for risk insights not found in the plant-specific PRA, § 50.69(c)(2) requires that the final categorization of each SSC be performed using an integrated decision-making panel (IDP). A structured and systematic process using documented criteria must be used to guide the decision-making process. Categorization is an iterative process based on expert judgment to integrate the qualitative and quantitative elements that impact SSC safety significance. The insights and varied experience of IDP members are relied on to ensure that the final result reflects a comprehensive and justifiable judgment.

The panel must be composed of experienced personnel who possess diverse knowledge and insights in plant design and operation and who are capable in the use of deterministic knowledge and risk insights in making SSC classifications. The NRC places significant reliance on the capability of a licensee to implement a robust categorization process that relies heavily on the skills, knowledge, and experience of the people that implement the process, in particular on the qualifications of the members of the IDP. The IDP must be composed of a group of individuals who collectively have expertise in plant operation, design (mechanical and electrical) engineering, system engineering, safety analysis, and probabilistic risk assessment. At least three members of the IDP should have a minimum of five years experience at the plant, and there should be at least one member of the IDP who has worked on the modeling and updating of the plant-specific PRA for a minimum of three years.

The IDP should be trained in the specific technical aspects and requirements related to the categorization process. Training should address at a minimum the purpose of the categorization; present treatment requirements for SSCs including requirements for design basis events; PRA fundamentals; details of the plant-specific PRA including the modeling, scope, and key assumptions, the interpretation of risk importance measures, and the role of sensitivity studies and the change-in-risk evaluations; and the defense-in-depth philosophy and requirements to maintain defense-in-depth.

The licensee or applicant (through the IDP) shall document its decision criteria for categorizing SSCs as safety significant or low safety significant pursuant to § 50.69(f)(1). Decisions of the IDP should be arrived at by consensus. Differing opinions should be documented and resolved, if possible. If a resolution cannot be achieved concerning the safety significance of an SSC, then the SSC should be classified as safety-significant. SSC categorization shall be revisited by the licensee or applicant (through the IDP) when the PRA is updated or when the other criteria used by the IDP are affected by changes in plant operational data or changes in plant design or plant procedures. Requirements for PRA updating are contained in § 50.69(e)(1).

*V.5.0 Section 50.69(d) Treatment Requirements for Structures, Systems, and Components*

Treatment requirements applicable to RISC–1, RISC–2, and RISC–3 SSCs are specified in § 50.69(d). Any regulatory requirements applicable to RISC–1, RISC–2, RISC–3, and RISC–4 SSCs not removed by § 50.69(b)(1) continue to apply.

*V.5.1 Section 50.69(d)(1) RISC–1 and RISC–2 Treatment*

Section 50.69(d)(1) requires that a licensee or applicant ensure that RISC–1 and RISC–2 SSCs perform their functions consistent with the categorization process assumptions by evaluating treatment being applied to these SSCs to ensure that it supports the key assumptions in the categorization process that relate to their assumed performance. This rule language means that the licensee or applicant must evaluate the treatment associated with those key assumptions in the PRA that relate to performance of particular SSCs. For example, if a relief valve was being credited with capability to relieve water (as opposed to its design condition of steam), such an evaluation would look at whether the component has been determined to be able to perform as assumed.

Because RISC–1 and RISC–2 SSCs are the safety significant SSCs and their performance as credited in the PRA is important to maintaining an acceptable level of plant risk, given that special treatment requirements are being removed from RISC–3 SSCs, it is a key and necessary part of § 50.69 to ensure these SSCs can perform as credited in the PRA. However, the requirements in § 50.69(d)(1) do not extend special treatment requirements to RISC–1 beyond design basis functions and to RISC–2 SSCs.

The performance conditions for beyond design basis capabilities of RISC–1 SSCs credited in the PRA are not subject to the requirements of 10 CFR Part 50, Appendix B. However, plant SSCs credited for beyond design basis capabilities must have a valid technical basis for the credit (*i.e.*, the failure rate/probability of the SSC performing the beyond design basis function) given in the PRA. Further, the basis for this credit should already be established and documented in the PRA supporting documentation so this should not be an additional burden for licensees to capture and implement. If an existing technical basis does not exist or is insufficient to support the credit taken for beyond design basis capability (*e.g.*, the supporting test program does not test the SSC at the beyond design basis conditions), the licensee or applicant is required by § 50.69(d)(1) to develop a technical basis for the credit taken in the PRA potentially including a treatment program for the SSC that validates the capability credited.

For SSCs categorized as RISC–1 or RISC–2, all existing applicable requirements continue to apply (*i.e.*, no special treatment requirements are removed by § 50.69). This rule does not require licensees to evaluate the effectiveness of special treatment requirements for RISC–1 SSCs to ensure that they are capable of performing their design basis functions. The special treatment requirements in other NRC regulations address the design basis capability of RISC–1 SSCs.

The categorization process will result in a number of safety-related SSCs being determined to be of low safety significance (*i.e.*, RISC–3) and subject to reduced treatment. This determination of low safety significance will implicitly take credit for the performance capability of other SSCs in the PRA, some, or all of which, may not be included in the scope of the licensee's categorization process (due to the allowance for licensees to selectively implement the rule and to phase that implementation over time). To maintain the validity of the categorization process, and more importantly to maintain any potential risk increase as small, it is necessary to maintain the ''credited'' SSCs per § 50.69, and this means the application of § 50.69(d)(1) and § 50.69(e)(2) requirements.

*V.5.2 Section 50.69(d)(2) RISC–3 Treatment*

Section 50.69(d)(2) requires that the licensee or applicant must ensure with reasonable confidence that RISC–3 SSCs

remain capable of performing their safety-related functions under design basis conditions, including seismic conditions and environmental conditions and effects throughout their service life. By ''reasonable confidence'', the Commission means that the licensee or applicant is required to provide a ''reasonable confidence'' level with regard to maintaining the capability of RISC–3 safety-related functions. As indicated previously in this notice, ''reasonable confidence'' is a level of confidence that is both less than that associated with RISC–1 SSCs which are subject to all the special treatment requirements, and consistent with their individual low safety significance. The term ''ensure'' is intended to convey the Commission's determination that the licensee is under a legally-binding regulatory requirement to provide the requisite ''reasonable confidence.''

Although § 50.69(b)(1) removes for RISC–3 SSCs the environmental qualification requirements of § 50.49, it does not eliminate the requirements in 10 CFR part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' that electric equipment important to safety be capable of performing their intended functions under the applicable environmental conditions. For example, GDC–4 of 10 CFR part 50, Appendix A, requires that SSCs important to safety be designed to accommodate the effects of, and to be compatible with, the environmental conditions and effects associated with normal operation, maintenance, testing, and postulated accidents. To satisfy the provisions of GDC–4 of 10 CFR part 50, Appendix A, the licensee or applicant must address environmental conditions such as temperature, pressure, humidity, chemical effects, radiation, and submergence; and environmental effects such as aging and synergisms. In accordance with § 50.69(d)(2), the licensee or applicant must design electric equipment important to safety so they are capable of performing their intended functions under applicable environmental conditions and effects throughout their service life. If RISC–3 electrical equipment is relied on to perform its safety-related function beyond its design life, § 50.69(d)(2) requires the licensee or applicant to have a basis for the continued capability of the equipment under adverse environmental conditions and effects.

Under § 50.69, RISC–3 SSCs would continue to be required to function under design basis seismic conditions (such as design load combinations of normal and accident conditions with earthquake motions), but would not be required to be qualified by testing or specific engineering methods in accordance with the requirements stated in 10 CFR part 100, Appendix A. A licensee or applicant who adopts the rule would no longer be required to meet certain requirements in Appendix A to part 100, Sections VI(a)(1) and VI(a)(2), to the extent that those requirements have been interpreted as mandating qualification testing and specific engineering methods to demonstrate that RISC–3 SSCs are designed to withstand the Safe Shutdown Earthquake and Operating Basis Earthquakes. The rule does not remove the design requirements related to the capability of RISC–3 SSCs to remain functional considering Safe Shutdown Earthquake and Operating Basis Earthquake seismic loads, including applicable concurrent loads. The rule does not change the design input earthquake loads (magnitude of the loads and number of events) or the required load combinations used in the design of RISC–3 SSCs. For example, for the replacement of an existing safety-related SSC that is subsequently categorized as RISC–3, the same seismic design loads and load combinations would still apply. The rule would permit the licensee or applicant to select a technically defensible method to show that RISC–3 SSCs will remain functional when subject to design earthquake loads. Several public comments on the proposed rule supported the use of earthquake experience data as a method to demonstrate SSCs will remain functional during earthquakes. If the licensee or applicant chooses to use only earthquake experience data to demonstrate that the SSC will perform its safety-related function, with no further engineering evaluation, then the earthquake experience data must envelope the SSC design basis, including the number of earthquake events and the design load combinations. Additionally, if the SSC is required to function during or after the earthquake, the experience data would need to contain explicit information that the SSC actually functioned during or after the design basis earthquake events as required by the SSC design basis. The successful performance of an SSC after the earthquake event does not demonstrate it would have functioned during the event. Implementation of § 50.69 does not change the seismic design basis for USI A–46 facilities and, therefore, does not impose additional requirements on these facilities.

Section 50.69(d)(2) should not be interpreted to extend or expand design basis conditions to SSCs where such conditions were not previously part of its design basis.

Section 50.69(d)(2) requires that the treatment of RISC–3 SSCs be consistent with the categorization process. This rule language means that, when establishing the treatment for RISC–3 SSCs, the licensee or applicant must take into account the assumptions in the categorization process regarding the design basis capability and reliability of RISC–3 SSCs to perform their safety-related functions throughout their service life. The evaluation by the licensee or applicant of the consistency of the treatment of RISC–3 SSCs with the categorization process may be qualitative so long as it provides reasonable confidence of the design basis capability of RISC–3 SSCs, based on plant-specific and industry-wide operational experience and vendor information. In establishing treatment for RISC–3 SSCs, the licensee or applicant is responsible for addressing applicable vendor recommendations and operational experience such that the treatment established for RISC–3 SSCs provides reasonable confidence for design basis capability. For example, operational experience might be described in NRC information notices or identified in responses to NRC bulletins, generic letters, or other licensee commitment documents. The treatment applied to RISC–3 SSCs must also support the assumptions used in justifying the removal of requirements applicable to those SSCs. For example, where a licensee or applicant intends as part of implementing § 50.69 to eliminate leakage testing required in 10 CFR Part 50, Appendix J, for containment isolation valves, the treatment applied to those valves must support the assumption that they are capable of closing under design basis conditions.

Some public comments on the proposed rule suggested that a reference to general industrial practices would be sufficient to satisfy the requirements for the treatment for RISC–3 SSCs. However, as described in NUREG/CR–6752, ''A Comparative Analysis of Special Treatment Requirements for Systems, Structures, and Components (SSCs) of Nuclear Power Plants with Commercial Requirements of Non-Nuclear Power Plants,'' significant variation exists in the application of industrial practices at nuclear power plants. Hence, a simple reference to these practices does not provide a basis to satisfy the rule's requirements. To satisfy the requirement that the treatment of RISC–3 SSCs be consistent with the categorization process, the licensee or applicant must establish

treatment that provides reasonable confidence SSCs perform their safety-related functions under design basis conditions and is consistent with the assumptions in the categorization process (*e.g.*, reliability levels). The licensee or applicant must either establish treatment that provides this level of reliability or use consensus standards that provide a proven level of reliability based on experience. In using consensus standards, the licensee or applicant must note that combining or omitting provisions of standards might result in ineffective implementation of § 50.69 by causing RISC–3 SSCs to be incapable of performing their design basis safety functions. The NRC considers the ASME code cases endorsed in § 50.55a and listed in RG 1.84, 1.147, and 1.192 to be one acceptable method of establishing treatment of RISC–3 SSCs, where applicable, in that those applicable endorsed code cases adjust treatment based on the safety significance of the components.

Under § 50.69, most special treatment requirements will be removed from RISC–3 SSCs, which will typically comprise a large percentage of safety-related SSCs in a nuclear power plant. These special treatment requirements will be replaced with the high-level treatment requirements in § 50.69(d)(2) that will allow significant reduction in the treatment applied to RISC–3 SSCs. This reduction in treatment can introduce common-cause concerns and weaken defenses against them. Therefore, § 50.69(d)(2) requires that inspection, testing and corrective action be provided for RISC–3 SSCs. The inspection and testing requirement in § 50.69(d)(2)(i) is to provide sufficient performance data for RISC–3 SSCs to determine if the reduction in treatment has adversely affected their design basis capability and to provide reasonable confidence that the SSC can perform its safety function throughout their service life. The corrective action requirement in § 50.69(d)(2)(ii) is to address SSC failures and provide reasonable confidence in avoiding future problems. These requirements are necessary to provide reasonable confidence that RISC–3 safety related functional capability is maintained and thereby avoid adverse impacts on the reliability and availability of multiple RISC–3 SSCs, which could reduce plant safety beyond the categorization process assumptions or results and invalidate the risk sensitivity results.

A licensee or applicant may not simply assume that a sensitivity study that increases the failure probability for all RISC–3 SSCs simultaneously, with no additional basis to support it, would necessarily bound the potential change in risk that could result due to implementation of § 50.69. There is a potential that risk due to implementation of § 50.69 could increase as a result of the reduction in treatment due to common-cause interactions or degradation, and this impact might not be uniform across the population of RISC–3 SSCs. For example, if a licensee were to simply eliminate maintenance, testing, or lubrication of pumps or valves, it could significantly impact performance of those specific components and the impact might exceed the cumulative impact of individually reducing the reliability of all RISC–3 SSCs by a few percent or less. Public comments on the proposed rule indicated that cross-system common-cause interactions and degradation mechanisms are typically addressed through the treatment processes applied to plant equipment, rather than being addressed in the categorization process. In satisfying the rule, the licensee or applicant must consider potential common-cause interactions and degradation mechanisms in establishing treatment for RISC–3 SSCs so there is a reasonable basis to support the assumptions made for the risk sensitivity study.

*V.5.2.1 Section 50.69(d)(2)(i) Inspection and Testing*

Section 50.69(d)(2)(i) requires the licensee to conduct periodic inspection and testing activities to determine whether RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions.

The prescriptive special treatment requirements in §§ 50.55a and 50.65 for inspection, testing, and surveillance have been removed for RISC–3 SSCs. In lieu of those prescriptive requirements, the final rule requires the licensee or applicant to implement inspection and testing of RISC–3 SSCs sufficient to provide reasonable confidence that RISC–3 SSCs remain capable of performing their safety-related functions under design basis conditions throughout their service life. The licensee or applicant may apply industrial practices for the treatment of RISC–3 SSCs if those practices maintain the capability of the RISC–3 SSCs to perform their design-basis safety functions.

With respect to RISC–3 pumps and valves, the rule language in § 50.69(d)(2)(i) means that the licensee or applicant must implement periodic testing or inspection sufficient to provide reasonable confidence that these pumps and valves will be capable of performing their safety-related functions under design basis conditions. To determine that the pump or valve will remain capable of performing its safety-related function, the licensee or applicant will need to obtain sufficient operational information or performance data to provide with reasonable confidence that the RISC–3 pumps and valves will be capable of performing their safety-related functions if called upon to function under operational or design basis conditions over the interval between periodic testing or inspections. In addition, the operational information and performance data must be sufficient to satisfy the requirements of § 50.69(d)(2)(i) for use in identifying the need for corrective action under § 50.69(d)(2)(ii) and in providing information for feedback to the categorization and treatment processes under § 50.69(e)(3).

In some cases, a licensee or applicant implementing § 50.69 might apply more rigorous test methods than previously applied to satisfy the ASME Code inservice testing provisions because § 50.69 does not specify restrictive time limits on test intervals that were provided in the ASME Code. As a result, § 50.69 allows significant flexibility by the licensee or applicant in verifying the design basis capability of their safety-related SSCs categorized as RISC–3. However, the licensee or applicant needs to consider the lessons learned over the last 20 years regarding SSC performance in establishing the treatment for RISC–3 SSCs. Contrary to suggestions in some public comments on the proposed rule, operating experience and research does not support an assumption that exercising a valve or pump will provide reasonable confidence of design-basis capability in that such exercising will not detect service-induced aging or degradation that could prevent the component from performing its design basis functions in the future, and therefore is insufficient by itself to satisfy § 50.69(d)(2)(i). The licensee or applicant may develop the type and frequency of tests or inspections for RISC–3 pumps and valves provided they are sufficient to conclude that the pump or valve will perform its safety-related function throughout the service life. The provisions for risk-informed inspection and testing in applicable ASME code cases (as incorporated in § 50.55a) would constitute one effective approach for satisfying the § 50.69 requirements.

*V.5.2.2 Section 50.69(d)(2)(ii) Corrective Action Process*

Section 50.69(d)(2)(ii) requires that conditions that would prevent a RISC–3 SSC from performing its safety-related functions under design basis conditions must be corrected in a timely manner. In the case of significant conditions adverse to quality, the rule requires that measures be taken to provide reasonable confidence that the cause of the condition is determined and corrective action taken to preclude repetition. Significant conditions adverse to quality include common-cause concerns for multiple RISC–3 SSCs or concerns related to the validity of the categorization process or its results. For example, if measuring and test equipment is found to be in error or defective, the licensee or applicant will be responsible for determining the functionality of safety-related SSCs checked using that equipment to prevent the occurrence of common-cause problems that might invalidate the categorization process assumptions and results. Effective implementation of the corrective action process would include timely response to information from plant SSCs, overall plant operations, and industry generic activities that might reveal performance concerns for RISC–3 SSCs on both an individual and common-cause basis. Contrary to some public comments on the proposed rule, the corrective action process alone is insufficient to monitor the effects of reduced treatment on RISC–3 SSCs, and therefore the Commission has incorporated feedback requirements into § 50.69.

*V.6.0 Section 50.69(e) Feedback and Process Adjustment*

Section 50.69(e)(1) requires the licensee or applicant to review changes to the plant, operational practices, applicable plant and industry operational experience and, as appropriate, update the PRA and SSC categorization and treatment processes, in a timely manner, but no longer than every two refueling outages for RISC–1, RISC–2, RISC–3, and RISC–4 SSCs. The date the NRC grants the license amendment to implement 10 CFR 50.69 begins the updating interval and provides a recognizable date for the periodic updating of the categorization and treatment processes. Depending on the timing of license amendment issuance (for example, just before a refueling outage), the licensee or applicant might have minimal plant changes, operational practices, or operational experience to review in updating the categorization and treatment processes in the early phases of implementing the rule. If plant changes, operational practices, or operational experience would result in a significant adverse impact on plant safety or public health and safety, the licensee or applicant must update the categorization or treatment processes in a timely manner without waiting for the two refueling outage schedule. The information collected under § 50.69(e)(2) and (e)(3) would be among the information used to determine the need for updating the categorization or treatment processes in a timely manner required under § 50.69(e)(1). The plant and industry operational experience referred to in § 50.69(e)(1) includes the data collected under § 50.69(e)(3) for RISC–3 SSCs. In addition to the periodic updating of the quantitative reliability information, the feedback of plant operational experience is intended to include qualitative information on the performance of plant SSCs obtained through the corrective action program and processes as well as from applicable vendor recommendations and operational experience. For example, lessons learned from operational experience might be described in NRC information notices or implemented in response to NRC bulletins or generic letters. The evaluation of the categorization process includes verifying the continued validity of the risk sensitivity study and the associated SSC performance assumptions.

Section 50.69(e)(2) requires the licensee or applicant to monitor the performance of RISC–1 and RISC–2 SSCs and make adjustments as necessary to either the categorization (*i.e.*, by moving other RISC–3 or RISC–4 SSCs back into RISC–1 or RISC–2 until the change in risk is acceptably small) or treatment processes so the categorization process and results are maintained valid. To meet this requirement, the licensee or applicant must monitor all unavailabilities and functional failures so they can determine when adjustments to the categorization or treatment processes are needed. The licensee or applicant will also need to monitor SSCs that are credited in the PRA for performing beyond design basis functions (if applicable) that are not necessarily included in the scope of an existing maintenance rule program.

The categorization process will result in a number of safety-related SSCs being determined to be of low safety significance (*i.e.*, RISC–3) and subject to reduced treatment. This determination of low safety significance will implicitly take credit for the performance capability of other SSCs in the PRA, some, or all of which, may not be included in the scope of the licensee's categorization process (due to the allowance for licensees to selectively implement the rule and to phase that implementation over time). To maintain the validity of the categorization process, and more importantly to maintain any potential risk increase as small, it is necessary to maintain the ''credited'' SSCs per § 50.69.

In § 50.69(e)(3) the rule requires the licensee or applicant to consider the performance data collected in § 50.69(d)(2)(i) for RISC–3 SSCs to determine whether there are any adverse changes in performance such that the SSC unreliability values approach or exceed the values used in the evaluations conducted to meet § 50.69(c)(iv) and to make adjustments as necessary to either the categorization or treatment processes so the categorization process and results are maintained valid. Based on the review of this information, if SSC reliability degrades so as not to support the categorization process assumptions, the licensee or applicant must adjust the treatment to improve SSC reliability or make appropriate changes to the categorization of SSCs.

*V.7.0 Section 50.69(f) Program Documentation and Change Control and Records*

Section 50.69(f) contains administrative requirements for keeping information current, handling planned changes to programs and processes, and records. Each requirement is discussed below.

Section 50.69(f)(1) states that the licensee or applicant shall document the basis for categorization of SSCs in accordance with this section before removing any requirements. The documentation must address why a component was determined to be either safety significant or low safety significant based upon the requirements in § 50.69(c).

Section 50.69(f)(2) specifies that the licensee must update its FSAR to reflect which systems have been categorized using the provisions of § 50.69. Systems that are categorized by § 50.69 will have their treatment revised consistent with the RISC category into which the SSC is categorized and the associated treatment requirements of § 50.69(d). This provision is included to maintain clear information, at a minimum level of detail, about which requirements a licensee is satisfying. However, detailed information about particular SSCs is not required to be submitted to the NRC. For an applicant, this updating would be expected to be either part of the original

application or as a supplement to the FSAR under § 50.34(b). For licensees, the updating must be in accordance with the provisions of § 50.71(e).

Once the NRC has completed its review of a § 50.69 application, the licensee can adjust its treatment processes provided that the requirements of § 50.69 are met. NRC does not plan to perform a pre-implementation review of the revised treatment requirements under § 50.69(d). However, the Commission recognizes that existing information in the quality assurance (QA) plan or in the FSAR may need to be revised to reflect the changes to treatment that are made as a result of implementation of § 50.69. Any revisions to these documents are to be submitted to NRC in accordance with the existing requirements of § 50.54(a)(2) and § 50.71(e), respectively.

Section 50.69(f)(3) specifies that for initial implementation of the rule, changes to the FSAR for implementation of this rule need not include a supporting § 50.59 evaluation of changes directly related to implementation. Future changes to the treatment processes and procedures for § 50.69 implementation may be made, provided the requirements of the rule and § 50.59 continue to be met. While the licensee is to update its programs to reflect implementation of § 50.69, the Commission concluded that no additional review under § 50.59 is necessary for such changes to these parts of the FSAR that might occur.

Section 50.69(f)(4) specifies that for initial implementation of the rule, changes to the quality assurance plan directly related to implementation of this rule need not be considered a reduction in commitment for the purposes of § 50.54(a). Future changes to the treatment processes and procedures for § 50.69 implementation may also be made, provided the requirements of the rule and § 50.54(a) continue to be met. While the licensee is to update its programs to reflect implementation of § 50.69, the Commission concluded that no additional NRC staff review under § 50.54(a) is necessary for changes to these parts of the QA plan.

No specific change control process is being established for the categorization process outlined by § 50.69(c). At this time, the NRC is unable to determine generic criteria for the control of changes to the categorization process during its implementation that could be included in § 50.69. As a result, the NRC will review and approve a license amendment submittal containing the licensee or applicant's categorization process and intends to impose a license condition upon which the categorization process approval is based to control categorization process changes. The license condition will require the licensee to notify the NRC in advance of implementing changes with respect to specific aspects of the categorization process. With experience in the application of § 50.69, the NRC might modify the rule to specify generic criteria for the control of changes to the categorization process during implementation of the rule.

No explicit requirements are included in § 50.69 for the period for retention of records. The rule specifies only a few specific types of records that must be prepared (*e.g.*, those for the basis for categorization in § 50.69(f)(1)). In accordance with § 50.71(c), these records are to be maintained until the Commission terminates the facility license.

*V.8.0 Section 50.69(g) Reporting*

Section 50.69(g) provides a new reporting requirement applicable to events or conditions that prevented, or would have prevented, a RISC–1 or RISC–2 SSC from performing a safety significant function. Most events involving these SSCs will meet existing § 50.72 and § 50.73 reporting criteria. However, it is possible for events and conditions to arise that impact whether RISC–1 or RISC–2 SSCs would perform beyond design basis functions consistent with the performance capability credited in the categorization process. This reporting requirement is intended to capture these situations. The reporting requirement is contained in § 50.69, rather than as a revision of § 50.73, so that its applicability only to those facilities that have implemented § 50.69 is clear. The existing reporting requirements in § 50.72 and § 50.73 are removed for RISC–3 (and RISC–4) SSCs under § 50.69(b)(vii) and (viii).

*V.9.0 Inspection of 10 CFR 50.69 Implementation*

The NRC will review and update, as appropriate, the current inspection procedures under the NRC Reactor Oversight Process to incorporate inspection guidance for monitoring the implementation of § 50.69 at nuclear power plants. The NRC intends to conduct sample inspections of plants implementing § 50.69 in a manner that is sensitive to conditions that could significantly increase risk. These sample inspections are intended to gather information that will enable the NRC to assess whether modifications are needed to the ongoing baseline inspection program. The sample inspections will focus on the implementation of the categorization process approved as part of the NRC review of the § 50.69 license amendment request. The sample inspections will also evaluate the treatment established under § 50.69 with primary attention directed to programmatic and common-cause issues; including those associated with known degradation mechanisms. The inspections might help provide operating experience information on RISC–3 SSCs that can also be provided to other licensees.

## VI. Guidance

*VI.1 Regulatory Guide and Implementation Guidance for § 50.69*

NEI submitted a proposed implementation guide for this rulemaking in the form of NEI 00–04, ''10 CFR 50.69 SSC Categorization Guideline''. As part of the effort to develop the rule, the NRC staff reviewed drafts of this document and in addition, NEI 00–04 was used in the pilot programs discussed earlier. The objective of the staff's review was to determine the acceptability of the proposed implementing guidance, with the intent that the NEI guidance could be endorsed in an NRC regulatory guide. The revision of NEI 00–04 submitted on April 14, 2004 forms the basis for the NRC RG ''Guidelines for Categorizing Structures, Systems and Components in Nuclear Power Plants According to Their Safety Significance.'' Availability of this document is noted in Section IX.

The NRC staff's review of NEI 00–04 resulted in several areas where the staff finds it necessary to identify clarifications, limitations, and conditions to the NEI guidance or to include further guidance to supplement the document, as it is currently written. These clarifications, limitations, and conditions, and the reasons therefore, are set forth in Section C of RG 1.201. These issues are best resolved by testing the guide against actual applications. Therefore, this RG is being issued for trial use. This RG does not establish any final staff positions, and may be revised in response to experience with its use. As such, this trial regulatory guide does not establish a staff position for purposes of the Backfit Rule, 10 CFR 50.109, and any changes to this RG prior to staff adoption in final form will not be considered to be backfits as defined in 10 CFR 50.109(a)(1). This will ensure that the lessons learned from regulatory review of pilot and follow-on applications are adequately addressed in this document and that the guidance is sufficient to enhance regulatory

stability in the review, approval, and implementation in the use of PRAs and their results in the risk informed categorization process required by 10 CFR 50.69.

The NRC staff and NEI continue to interact on the implementation guidance. Consequently, it is expected that NEI will submit an improved revision to NEI 00–04 that will enable the NRC to issue a RG with fewer clarifications, limitations, and conditions, and as a consequence, the NRC is delaying issuance of the RG.

*VI.2 Review Guidance Concerning PRA Quality and Peer Review*

RG 1.200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' provides guidance on the NRC position on voluntary consensus standards for PRA (in particular on the ASME standard for internal events PRAs) and associated industry PRA documents (*e.g.*, NEI 00–02, ''Probabilistic Risk Assessment Peer Review Process Guideline''). Further, this guide will be modified to address PRA standards on fire, external events, and low power and shutdown modes, as they become available. The NRC has also developed a draft supporting Standard Review Plan, SRP 19.1, to provide guidance to the staff on how to determine if a PRA providing results being used in a decision is technically acceptable.

In a letter dated April 24, 2000, NEI requested that the NRC staff review the suitability of the peer review process described in NEI 00–02 to address PRA quality issues for this application. NRC issued a request for additional information on September 19, 2000, to which NEI responded by letter dated January 18, 2001. By letter dated April 2, 2002 (ADAMS accession number ML020930632), the NRC staff sent to NEI, draft staff review guidance that was developed as a result of its review of NEI 00–02, for intended use for § 50.69 applications.

The draft staff review guidance is for a focused review of the plant-specific PRA based on a review of NEI 00–02 and NEI 00–04. To reach the conclusion that the PRA results support the proposed categorization, the review guidance is structured to lead the staff reviewer to look for evidence that the impact of a given peer review issue on PRA results has been adequately addressed in the peer review report and, when necessary, has been identified for consideration by the IDP, or to request further information from the licensee.

## VII. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act, as amended, the Commission is issuing a rule to add § 50.69 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule are subject to criminal enforcement. Criminal penalties, as they apply to regulations in Part 50, are discussed in § 50.111.

## VIII. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517, September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations and, although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

## IX. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

*Public Document Room (PDR).* The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

*Rulemaking Web site (Web).* The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov*. These documents may be viewed and downloaded electronically via this Web site.

*NRC's Public Electronic Reading Room (PERR).* The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

**Note:** Public access to documents, including access via ADAMS and the PDR, has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. However, access to the documents identified in this rule continues to be available through the rulemaking web site at *http://ruleforum.llnl.gov,* which was not affected by the ADAMS shutdown. Please check with the listed NRC contact concerning any issues related to document availability.

| Document | PDR | Web | PERR |
|---|---|---|---|
| Response to Public Comments | X | X | ML042990011 |
| Environmental Assessment | X | X | ML041040236 |
| Regulatory Analysis | X | X | ML041000474 |
| Industry Implementation Guidance | X | X | ML041120253 |
| Regulatory Guide | X | X | ML041340087 |
| Final Rule SRM | X | X | ML042810516 |
| SRM on PRA Quality | X | X | ML033520457 |

## X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is using the following Government-unique standard (RG 1.201, June 2004). The Commission notes the development of voluntary consensus standards on PRAs, such as an ASME Standard on Probabilistic Risk Assessment for Nuclear Power Plant Applications. RG 1.201 and RG 1.200 (PRA Technical Adequacy) discuss how this standard could be used for the purpose of the internal events, full-power PRA.

In addition, the Commission acknowledges development of risk-informed code cases by the ASME on categorization of certain components, particularly with respect to pressure boundary considerations. RG 1.201 explicitly notes these code cases and that they could be proposed by a licensee or applicant as part of the means for satisfying the rule requirements. The government standards allow use of these voluntary consensus standards, but do not require

their use. The Commission does not believe that these other standards are sufficient to provide the overall construct for the alternative approach to categorization and treatment of SSCs that is the goal of this rulemaking. For example, the current standards do not address all types of components that might be categorized, nor do standards currently exist for addressing the PRA requirements for all initiating events and modes of operation. Additionally, there are no voluntary consensus standards that can address other parts of the approach laid out such as determining the basis for the evaluations to show an acceptably small increase in risk. The NRC is not aware of any voluntary consensus standard that could be used instead of the Government-unique standards.

## XI. Finding of No Significant Environmental Impact: Environmental Assessment: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. As set forth in the final environmental assessment, this action will not have a significant environmental impact principally because it is structured to maintain the design basis functional requirements for the SSCs in the facility, because the rule contains feedback and process adjustment requirements to maintain the validity of the categorization process over time, and because the standards and requirements applicable to radiological releases and effluents are not affected by this rulemaking.

The NRC requested public comments on any aspect of the environmental assessment. No public comments were received. The NRC requested the views of the States on the environmental assessment for this rule. No State comments were received. Availability of the final environmental assessment is provided in Section IX.

## XII. Paperwork Reduction Act Statement

This rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

The burden to the public for these information collections is estimated to average 1,032 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503. You may also e-mail comments to John_A._Asalone@omb.eop.gov or comment by telephone at (202) 395–4650.

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## XIII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Availability of the regulatory analysis is provided in Section IX.

## XIV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

## XV. Backfit Analysis

The NRC has determined that the Backfit Rule does not apply to this rule; therefore, a backfit analysis is not required for this rule. As a voluntary alternative to existing requirements, the final rule does not impose different or new requirements on 10 CFR part 50 licensees or applicants and thus does not constitute a backfit pursuant to § 50.109.

## XVI. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

## List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat.1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); See 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. (42 U.S.C. 5841). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.8 paragraph (b) is revised to read as follows:

### § 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.69, 50.70, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and appendices A, B, E, G, H, I, J, K, M, N,O, Q, R, and S to this part.

* * * * *

■ 3. A new § 50.69 is added under center heading ''Issuance, Limitations, and Conditions of Licenses and Construction Permits'' to read as follows:

**§ 50.69 Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.**

(a) Definitions.

*Risk-Informed Safety Class (RISC)–1 structures, systems, and components (SSCs)* means safety-related SSCs that perform safety significant functions.

*Risk-Informed Safety Class (RISC)–2 structures, systems and components (SSCs)* means nonsafety-related SSCs that perform safety significant functions.

*Risk-Informed Safety Class (RISC)–3 structures, systems and components (SSCs)* means safety-related SSCs that perform low safety significant functions.

*Risk-Informed Safety Class (RISC)–4 structures, systems and components (SSCs)* means nonsafety-related SSCs that perform low safety significant functions.

*Safety significant function* means a function whose degradation or loss could result in a significant adverse effect on defense-in-depth, safety margin, or risk.

(b) Applicability and scope of risk-informed treatment of SSCs and submittal/approval process. (1) A holder of a license to operate a light water reactor (LWR) nuclear power plant under this part; a holder of a renewed LWR license under part 54 of this chapter; an applicant for a construction permit or operating license under this part; or an applicant for a design approval, a combined license, or manufacturing license under part 52 of this chapter; may voluntarily comply with the requirements in this section as an alternative to compliance with the following requirements for RISC–3 and RISC–4 SSCs:

(i) 10 CFR part 21.

(ii) The portion of 10 CFR 50.46a(b) that imposes requirements to conform to Appendix B to 10 CFR part 50.

(iii) 10 CFR 50.49.

(iv) 10 CFR 50.55(e).

(v) The inservice testing requirements in 10 CFR 50.55a(f); the inservice inspection, and repair and replacement (with the exception of fracture toughness), requirements for ASME Class 2 and Class 3 SSCs in 10 CFR 50.55a(g); and the electrical component quality and qualification requirements in Section 4.3 and 4.4 of IEEE 279, and Sections 5.3 and 5.4 of IEEE 603–1991, as incorporated by reference in 10 CFR 50.55a(h).

(vi) 10 CFR 50.65, except for paragraph (a)(4).

(vii) 10 CFR 50.72.

(viii) 10 CFR 50.73.

(ix) Appendix B to 10 CFR part 50.

(x) The Type B and Type C leakage testing requirements in both Options A and B of Appendix J to 10 CFR part 50, for penetrations and valves meeting the following criteria:

(A) Containment penetrations that are either 1-inch nominal size or less, or continuously pressurized.

(B) Containment isolation valves that meet one or more of the following criteria:

(*1*) The valve is required to be open under accident conditions to prevent or mitigate core damage events;

(*2*) The valve is normally closed and in a physically closed, water-filled system;

(*3*) The valve is in a physically closed system whose piping pressure rating exceeds the containment design pressure rating and is not connected to the reactor coolant pressure boundary; or

(*4*) The valve is 1-inch nominal size or less.

(xi) Appendix A to part 100, Sections VI(a)(1) and VI(a)(2), to the extent that these regulations require qualification testing and specific engineering methods to demonstrate that SSCs are designed to withstand the Safe Shutdown Earthquake and Operating Basis Earthquake.

(2) A licensee voluntarily choosing to implement this section shall submit an application for license amendment under § 50.90 that contains the following information:

(i) A description of the process for categorization of RISC–1, RISC–2, RISC–3 and RISC–4 SSCs.

(ii) A description of the measures taken to assure that the quality and level of detail of the systematic processes that evaluate the plant for internal and external events during normal operation, low power, and shutdown (including the plant-specific probabilistic risk assessment (PRA), margins-type approaches, or other systematic evaluation techniques used to evaluate severe accident vulnerabilities) are adequate for the categorization of SSCs.

(iii) Results of the PRA review process conducted to meet § 50.69(c)(1)(i).

(iv) A description of, and basis for acceptability of, the evaluations to be conducted to satisfy § 50.69(c)(1)(iv). The evaluations must include the effects of common cause interaction susceptibility, and the potential impacts from known degradation mechanisms for both active and passive functions, and address internally and externally initiated events and plant operating modes (*e.g.*, full power and shutdown conditions).

(3) The Commission will approve a licensee's implementation of this section if it determines that the process for categorization of RISC–1, RISC–2, RISC–3, and RISC–4 SSCs satisfies the requirements of § 50.69(c) by issuing a license amendment approving the licensee's use of this section.

(4) An applicant choosing to implement this section shall include the information in § 50.69(b)(2) as part of application. The Commission will approve an applicant's implementation of this section if it determines that the process for categorization of RISC–1, RISC–2, RISC–3, and RISC–4 SSCs satisfies the requirements of § 50.69(c).

(c) SSC Categorization Process. (1) SSCs must be categorized as RISC–1, RISC–2, RISC–3, or RISC–4 SSCs using a categorization process that determines if an SSC performs one or more safety significant functions and identifies those functions. The process must:

(i) Consider results and insights from the plant-specific PRA. This PRA must at a minimum model severe accident scenarios resulting from internal initiating events occurring at full power operation. The PRA must be of sufficient quality and level of detail to support the categorization process, and must be subjected to a peer review process assessed against a standard or set of acceptance criteria that is endorsed by the NRC.

(ii) Determine SSC functional importance using an integrated, systematic process for addressing initiating events (internal and external), SSCs, and plant operating modes, including those not modeled in the plant-specific PRA. The functions to be identified and considered include design bases functions and functions credited for mitigation and prevention of severe accidents. All aspects of the integrated, systematic process used to characterize SSC importance must reasonably reflect the current plant configuration and operating practices, and applicable plant and industry operational experience.

(iii) Maintain defense-in-depth.

(iv) Include evaluations that provide reasonable confidence that for SSCs categorized as RISC–3, sufficient safety

margins are maintained and that any potential increases in core damage frequency (CDF) and large early release frequency (LERF) resulting from changes in treatment permitted by implementation of §§ 50.69(b)(1) and (d)(2) are small.

(v) Be performed for entire systems and structures, not for selected components within a system or structure.

(2) The SSCs must be categorized by an Integrated Decision-Making Panel (IDP) staffed with expert, plant-knowledgeable members whose expertise includes, at a minimum, PRA, safety analysis, plant operation, design engineering, and system engineering.

(d) Alternative treatment requirements.—(1) RISC–1 and RISC 2 SSCs. The licensee or applicant shall ensure that RISC–1 and RISC–2 SSCs perform their functions consistent with the categorization process assumptions by evaluating treatment being applied to these SSCs to ensure that it supports the key assumptions in the categorization process that relate to their assumed performance.

(2) RISC–3 SSCs. The licensee or applicant shall ensure, with reasonable confidence, that RISC–3 SSCs remain capable of performing their safety-related functions under design basis conditions, including seismic conditions and environmental conditions and effects throughout their service life. The treatment of RISC–3 SSCs must be consistent with the categorization process. Inspection and testing, and corrective action shall be provided for RISC–3 SSCs.

(i) Inspection and testing. Periodic inspection and testing activities must be conducted to determine that RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions; and

(ii) Corrective action. Conditions that would prevent a RISC–3 SSC from performing its safety-related functions under design basis conditions must be corrected in a timely manner. For significant conditions adverse to quality, measures must be taken to provide reasonable confidence that the cause of the condition is determined and corrective action taken to preclude repetition.

(e) Feedback and process adjustment.—(1) RISC–1, RISC–2, RISC–3 and RISC–4 SSCs. The licensee shall review changes to the plant, operational practices, applicable plant and industry operational experience, and, as appropriate, update the PRA and SSC categorization and treatment processes. The licensee shall perform this review in a timely manner but no longer than once every two refueling outages.

(2) RISC–1 and RISC–2 SSCs. The licensee shall monitor the performance of RISC–1 and RISC–2 SSCs. The licensee shall make adjustments as necessary to either the categorization or treatment processes so that the categorization process and results are maintained valid.

(3) RISC–3 SSCs. The licensee shall consider data collected in § 50.69(d)(2)(i) for RISC–3 SSCs to determine if there are any adverse changes in performance such that the SSC unreliability values approach or exceed the values used in the evaluations conducted to satisfy § 50.69(c)(1)(iv). The licensee shall make adjustments as necessary to the categorization or treatment processes so that the categorization process and results are maintained valid.

(f) Program documentation, change control and records. (1) The licensee or applicant shall document the basis for its categorization of any SSC under paragraph (c) of this section before removing any requirements under § 50.69(b)(1) for those SSCs.

(2) Following implementation of this section, licensees and applicants shall update their final safety analysis report (FSAR) to reflect which systems have been categorized, in accordance with § 50.71(e).

(3) When a licensee first implements this section for a SSC, changes to the FSAR for the implementation of the changes in accordance with § 50.69(d) need not include a supporting § 50.59 evaluation of the changes directly related to implementation. Thereafter, changes to the programs and procedures for implementation of § 50.69(d), as described in the FSAR, may be made if the requirements of this section and § 50.59 continue to be met.

(4) When a licensee first implements this section for a SSC, changes to the quality assurance plan for the implementation of the changes in accordance with § 50.69(d) need not include a supporting § 50.54(a) review of the changes directly related to implementation. Thereafter, changes to the programs and procedures for implementation of § 50.69(d), as described in the quality assurance plan may be made if the requirements of this section and § 50.54(a) continue to be met.

(g) *Reporting.* The licensee shall submit a licensee event report under § 50.73(b) for any event or condition that prevented, or would have prevented, a RISC–1 or RISC–2 SSC from performing a safety significant function.

Dated in Rockville, Maryland this 15th day of November 2004.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 04–25665 Filed 11–19–04; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Monday,
November 22, 2004

# Part III

# Department of Housing and Urban Development

**24 CFR Part 92**

**HOME Investment Partnerships Program; Amendments to Homeownership Affordability Requirements; Interim Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 92**

**[Docket No. FR–4940–I–01]**

**RIN 2501–AD06**

## HOME Investment Partnerships Program; Amendments to Homeownership Affordability Requirements

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule revises the homeownership affordability requirements of the HOME Investment Partnership program. First, the interim rule clarifies that, upon the sale of HOME-assisted homeownership housing before the close of the required affordability period, a participating jurisdiction may recapture an amount less than or equal to the net proceeds of the sale. Second, the interim rule also provides a participating jurisdiction with the flexibility to invest additional HOME funds in homebuyer housing for which HOME funds have already been used.

**DATES:** *Effective Date:* December 22, 2004.

*Comment Due Date:* January 21, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Electronic comments may be submitted through either:

- The Federal eRulemaking Portal: at *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

**FOR FURTHER INFORMATION CONTACT:** Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 800–877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The HOME Investment Partnerships program (HOME program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625, approved November 28, 1990) (NAHA). Through the HOME program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing for very low-income and low-income families. Generally, HOME funds must be matched by non-federal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing, and through tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including grants, loans, advances, equity investments, interest subsidies, and other forms of assistance that HUD approves. HUD's regulations for the HOME Program are located in 24 CFR part 92.

Section 215(b) of NAHA establishes affordability requirements for HOME-assisted homeownership housing. These requirements apply to both the initial sale to a HOME-assisted homebuyer and to any subsequent resale by that homebuyer during the applicable period of affordability. Specifically, the statute provides that participating jurisdictions must impose restrictions that either require that: (1) The HOME-assisted housing be resold to another low-income homebuyer at an affordable price; or (2) the HOME-assisted housing may be resold to any homebuyer regardless of income, but the subsidy to the original homebuyer must be recaptured unless the net proceeds of the sale are insufficient.

Under the second provision discussed above (*i.e.*, the recapture of the subsidy), NAHA limits the amount of the recaptured assistance to an amount equal to the net proceeds of the resale. Specifically, Section 215(b)(3)(B) of NAHA requires that a participating jurisdiction adopt restrictions to recapture the HOME investment ''except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance.''

HUD has implemented the homeownership affordability requirements, including the recapture provisions, at § 92.254. The regulation does not explicitly track the statutory language limiting recaptures to the amount of the net proceeds. However, § 92.254(a)(5)(ii)(3) allows net proceeds to be shared if they are not sufficient to recapture the full HOME investment and enables the homeowner to recover the downpayment and any capital improvement investment.

### II. This Interim Rule

This interim rule revises the affordability requirements for homeownership housing assisted under the HOME program. This section of the preamble describes the specific changes that will be made by this interim rule.

#### *A. Limitation of Recapture to Net Proceeds*

This interim rule revises § 92.254 to clarify that recaptures are limited to the amount of the net proceeds and to more closely track the statutory language of NAHA. Specifically, the interim rule explicitly provides that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing, and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the participating jurisdiction may recapture an amount less than or equal to the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and any closing costs. The new regulatory language conforms the regulation to the statutory language in Section 215(b)(3)(B) of NAHA. That section limits repayment of HOME assistance to recapture out of net proceeds when the property is sold before the affordability restrictions expire. For example, a low-income homebuyer receives $10,000 in HOME assistance to purchase a home and sells the property during the period of affordability. The net proceeds of the sale ''after the seller pays the first mortgage and closing costs—is $7,500. The new regulatory language reflects the statute in limiting the maximum amount that the participating jurisdiction may recapture up to the $7,500 available from the sale, as opposed to the entire $10,000.

#### *B. Investment of Additional HOME Funds in Homeownership Projects*

In addition to clarifying the repayment requirements, this interim

rule will provide an additional tool for the participating jurisdiction to preserve HOME-assisted homebuyer housing. Specifically, the interim rule creates a new § 92.254(a)(9) to provide flexibility to participating jurisdictions to invest additional HOME funds to preserve homebuyer housing for which HOME funds were already used.

The interim rule permits participating jurisdictions to use additional HOME funds to acquire the housing through a purchase option, right of first refusal or other preemptive right before foreclosure, to acquire the housing at the foreclosure sale, to undertake any necessary rehabilitation, and to provide assistance to another eligible homebuyer. The participating jurisdiction may invest additional HOME funds whether the housing was subject to resale restrictions or to recapture requirements.

New § 92.254(a)(9) authorizes the use of additional HOME funds to preserve the HOME-assisted homeownership housing stock on which the affordability requirements would lapse upon foreclosure. If a participating jurisdiction forecloses on a HOME loan, it receives the housing and can preserve affordability without additional cost to the HOME program. Accordingly, the interim rule does not permit the use of additional HOME funds in the case of foreclosure of a defaulted HOME loan.

The per-unit HOME subsidy limit in § 92.250 applies to the total HOME funds used for the housing (*i.e.*, the original amount plus the additional amount). To provide some relief from this requirement, the interim rule permits HOME ''administrative'' funds to be used so long as they do not exceed the cap on administrative funds in § 92.207. HUD believes this use of funds is a reasonable administrative cost of the HOME program. To the extent administrative funds are used, they can be reimbursed, in whole or in part, when the housing is sold to a homebuyer. The reimbursement of administrative funds will be considered a return of grant funds and all returned funds will continue to be available for administrative and planning costs. Any additional amount realized from the sale of the housing will be HOME program income.

## III. Justification for Interim Rulemaking

In general, before issuing a rule for effect, HUD publishes it for public comment, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if HUD finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (see 24 CFR 10.1). For the following reasons, HUD has determined that good cause exists to publish this rule for effect without soliciting prior public comments.

The interim rule revises § 92.254 to more closely track the statutory language of NAHA regarding recapture of HOME homeownership assistance. The amendment does not impose a new regulatory obligation, nor modify an existing requirement. Rather, the new regulatory language conforms the HOME program regulations to the statutory language in Section 215(b)(3)(B) of NAHA. That section limits repayment of HOME assistance to recapture out of net proceeds when the property is sold before the affordability restrictions expire. Since the recapture limitation is statutory in nature, HUD does not have the discretion to revise the new regulatory language in response to public comments. Accordingly, it is unnecessary to delay the effectiveness of this regulatory change in order to solicit prior public comment.

In addition to clarifying the repayment requirements, this interim rule will make a change to the HOME homeownership affordability requirements. Specifically, the interim rule provides flexibility to participating jurisdictions to invest additional HOME funds to preserve homebuyer housing for which HOME funds were already used. This change will not impose a new regulatory burden on participating jurisdictions but, rather, provide them with an additional tool to preserve HOME-assisted homebuyer housing. Accordingly, HUD believes it would be contrary to the public interest to delay effectiveness of this change to solicit public comment.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, it recognizes the value of public comment in the development of its regulations. Therefore, HUD has issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

## IV. Findings and Certifications

### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in Section 3(f) of the Order (although not an economically significant regulatory action, as provided under Section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

### *Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons.

First, the majority of jurisdictions that are statutorily eligible to receive HOME formula allocations are relatively larger cities, counties or states. The new regulatory language regarding recaptures will not have any impact on participating jurisdictions. Rather, the change will conform the HOME program regulations to the statutory language in Section 215(b)(3)(B) of NAHA. That section limits repayment of HOME

assistance to recapture out of net proceeds when the property is sold before the affordability restrictions expire. Second, the interim rule provides flexibility to participating jurisdictions to invest additional HOME funds to preserve homebuyer housing for which HOME funds were already used. To the extent this change has any impact on participating jurisdictions, it will be a beneficial one of providing them with an additional tool to preserve HOME-assisted homebuyer housing.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number for the HOME Program is 14.239.

**List of Subjects in 24 CFR Part 92**

Administrative practice and procedure, Grant programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR part 92 as follows:

## PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 1. The authority citation for 24 CFR part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12701–12839.

■ 2. In § 92.254, add two sentences at the end of paragraph (a)(5)(ii)(A) and add new paragraph (a)(9) to read as follows:

### § 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(5) * * *

(ii) * * *

(A) * * * In establishing its recapture requirements, the participating jurisdiction is subject to the limitation that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the participating jurisdiction can only recapture the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

* * * * *

(9) *Preserving affordability.* (i) Notwithstanding § 92.214(a)(6), to preserve the affordability of housing that was previously assisted with HOME funds and subject to the requirements of § 92.254(a), a participating jurisdiction may use additional HOME funds to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or to acquire the housing at the foreclosure sale, to undertake any necessary rehabilitation, and to provide assistance to another homebuyer. The housing must be sold to a new eligible homebuyer in accordance with the requirements of § 92.254(a). Additional HOME funds may not be used if the mortgage in default was funded with HOME funds.

(ii) The total amount of original and additional HOME assistance may not exceed the maximum per-unit subsidy amount established under § 92.250. Alternatively to charging the cost to the HOME program under § 92.206, the participating jurisdiction may charge the cost to 2 the HOME program under § 92.207, as a reasonable administrative cost of its HOME program, so that the additional HOME funds for the housing are not subject to the maximum per-unit subsidy amount.

* * * * *

Dated: October 22, 2004.

**Alphonso Jackson,**

*Secretary.*

[FR Doc. 04–25753 Filed 11–19–04; 8:45 am]

BILLING CODE 4210–32–P

# Reader Aids

**Federal Register**

Vol. 69, No. 224

Monday, November 22, 2004

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, NOVEMBER

63317–63438 ..... 1
63439–63916 ..... 2
63917–64244 ..... 3
64245–64474 ..... 4
64475–64636 ..... 5
64637–64828 ..... 8
64829–65052 ..... 9
65053–65366 .....10
65367–65514 .....12
65515–67040 .....15
67041–67262 .....16
67263–67500 .....17
67501–67632 .....18
67633–67804 .....19
67805–68052 .....22

## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7838 .....65041
7839 .....65043
7840 .....65045
7841 .....65047
7842 .....65049
7843 .....65051
7844 .....65511
7845 .....65515
7846 .....67501

**Executive Orders:**
12163 (Amended by EO 13361) .....67633
12170 (See Notice of November 9, 2004) .....65513
12938 (See Notice of November 4, 2004) .....64637
13067 (See Notice of November 1, 2004) .....63915
13094 (See Notice of November 4, 2004) .....64637
13361 .....67633

**Administrative Orders:**
Notices:
Notice of November 1, 2004 .....63915
Notice of November 4, 2004 .....64637
Notice of November 9, 2004 .....65513
Presidential Determinations:
No. 2005-05 of October 20, 2004 .....63917
No. 2005-06 of October 22, 2004 .....64475

**5 CFR**

**Proposed Rules:**
307 .....64503

**7 CFR**

Ch. XXX .....64477
27–52 .....65053
301 .....64639, 67041
319 .....65053
905 .....64641
1580 .....63317
1775 .....65517
1776 .....67263
1777 .....65517
1778 .....65517
1780 .....65517
1942 .....65517
1955 .....65520
3570 .....65517
4274 .....65517
4279 .....64829

**Proposed Rules:**
923 .....63958
1005 .....67670
1006 .....67670
1007 .....67670
1260 .....65386
1717 .....64689
1782 .....65546
1951 .....65546
1955 .....65546
1956 .....65546
4280 .....65554

**8 CFR**

215 .....64477, 65508
235 .....64477, 65508
252 .....64477, 65508

**9 CFR**

71 .....64644
77 .....64644
78 .....64245, 64644, 67501
79 .....64644
80 .....64644
85 .....64644
93 .....64644

**10 CFR**

50 .....68808
74 .....64249
431 .....63574

**Proposed Rules:**
2 .....67070
30 .....67070
40 .....67070
50 .....67070
52 .....67070
63 .....67070
70 .....67070
72 .....67070
73 .....64690, 67070
76 .....67070
150 .....67070
430 .....67680

**11 CFR**

102 .....63919
106 .....63919
109 .....63919

**12 CFR**

5 .....64478
19 .....65067
201 .....67635
509 .....64249

**Proposed Rules:**
615 .....67070
617 .....67074

**13 CFR**

105 .....63921

**14 CFR**

23 ....67636
25 ....64651, 67492
39 ....63439, 63440, 63442, 63443, 64251, 64253, 64255, 64482, 64653, 64832, 64835, 64836, 64839, 64842, 64846, 64847, 64849, 64850, 64852, 64854, 64856, 64858, 65520, 65522, 65523, 65528, 65531, 65533, 65535, 67043, 67045, 67047, 67050, 67805, 67807, 67809
71 ....64656, 65069, 65367, 65368, 67052, 67215, 67638, 67811
97 ....63318, 65538
121 ....67492

**Proposed Rules:**

23 ....67860
39 ....63336, 63960, 63962, 63963, 63965, 63968, 64260, 64262, 64263, 64504, 64506, 64510, 64513, 64515, 64517, 64520, 64523, 64525, 64530, 64534, 64537, 64539, 64692, 64695, 64869, 64871, 65059, 65097, 65099, 65101, 65103, 65105, 65388, 65391, 67864, 67867, 67869
61 ....67258
71 ....63970, 63972, 63973, 63974, 63975, 63976, 63978, 65107
382 ....64364

**15 CFR**

740 ....64483, 64490, 64657
744 ....64657, 65368, 65539
748 ....64483
774 ....64483, 64490

**Proposed Rules:**

700 ....67872
732 ....65555
736 ....65555
740 ....65555
744 ....65555
752 ....65555
764 ....65555
772 ....65555

**16 CFR**

603 ....63922
613 ....63922
614 ....63922

**Proposed Rules:**

Ch. I ....64698
310 ....67287

**17 CFR**

37 ....67811
38 ....67811
40 ....67503
41 ....67503
145 ....67503
249 ....67053

**Proposed Rules:**

1 ....64873
228 ....67392
229 ....67392
230 ....67392
239 ....67392
240 ....67392
243 ....67392
270 ....64816
274 ....67392

**18 CFR**

375 ....64659

**19 CFR**

10 ....63445
178 ....63445

**Proposed Rules:**

206 ....64541
207 ....64541

**20 CFR**

404 ....67018

**Proposed Rules:**

404 ....64702, 67039

**21 CFR**

180 ....65540
522 ....67817, 67818
558 ....67263

**Proposed Rules:**

101 ....67513
341 ....63482
890 ....64266

**22 CFR**

51 ....67053
171 ....63934

**24 CFR**

5 ....65024
81 ....63580
92 ....68850

**Proposed Rules:**

81 ....63576
203 ....65324

**26 CFR**

31 ....67054

**Proposed Rules:**

1 ....64546, 65108, 65555, 67075, 67681, 67873
31 ....67075

**27 CFR**

24 ....67639

**28 CFR**

0 ....65542

**29 CFR**

4022 ....65543
4044 ....65543

**Proposed Rules:**

458 ....64226

**30 CFR**

**Proposed Rules:**

56 ....67681
57 ....67681
58 ....67681
70 ....67681
71 ....67681
72 ....67681
75 ....67681
90 ....67681

**33 CFR**

117 ....63574, 64494, 64860, 65369, 65371, 67055, 67056
165 ....65373
402 ....64258
403 ....64258

**Proposed Rules:**

Ch. I ....63979, 65555
110 ....64546, 64549, 64551
117 ....64553, 64875, 67294
165 ....64555

**36 CFR**

7 ....65348

**Proposed Rules:**

7 ....65556
1228 ....67692
1234 ....63980

**37 CFR**

2 ....63320
7 ....63320

**39 CFR**

20 ....63946
111 ....63452
501 ....67508

**Proposed Rules:**

111 ....64877
3001 ....65563, 67514

**40 CFR**

52 ....63321, 63324, 63947, 64259, 64661, 64860, 65069, 65375, 65378, 67058, 67060, 67062, 67645, 67819
63 ....63452
81 ....64133, 64860
131 ....67218
180 ....63950, 63954, 65073, 65081
239 ....65381
258 ....65381
268 ....67647
271 ....64861

**Proposed Rules:**

52 ....63981, 64703, 65117, 65393, 65394, 67100, 67694, 67880
63 ....63489
136 ....64704, 64707
194 ....64558
268 ....67695
271 ....64880
720 ....65565

**41 CFR**

**Proposed Rules:**

51-2 ....65395
51-3 ....65395
51-4 ....65395

**42 CFR**

403 ....66236
405 ....66236
410 ....66236
411 ....66236
412 ....66922
413 ....66922
414 ....66236
418 ....66236
419 ....65682
424 ....66236
484 ....66236
486 ....66236

**43 CFR**

**Proposed Rules:**

2530 ....67880

**44 CFR**

64 ....63456

**Proposed Rules:**

67 ....63338

**45 CFR**

**Proposed Rules:**

98 ....64881

**46 CFR**

501 ....64398
535 ....64398

**Proposed Rules:**

531 ....63981

**47 CFR**

1 ....65544
2 ....67823, 67853
13 ....64664
22 ....67823, 67853
24 ....67823, 67853
73 ....63458, 64681, 64682, 65381, 65382, 65545, 67265, 67266
74 ....67823, 67853
78 ....67823, 67853
80 ....64664
90 ....67823, 67853

**Proposed Rules:**

2 ....65570, 67880
22 ....67880
24 ....67880
27 ....63459
64 ....65401
73 ....65118, 65119, 65120, 67296, 67297, 67882
74 ....67880
78 ....67880
80 ....65570
90 ....67880

**48 CFR**

201 ....63326
202 ....63326
204 ....63327
205 ....63327
208 ....63327, 62328
209 ....65088
210 ....63328
211 ....67854
212 ....63329, 62330, 65089
214 ....65089
217 ....67855
219 ....63328, 67855
224 ....67856
226 ....63327
227 ....67856
228 ....65090
231 ....63331
235 ....63327, 65091, 67857
251 ....67858
252 ....63327, 62328, 65088, 65091, 67856, 67858
1804 ....63458
1815 ....63458
1816 ....63458
1817 ....63458
1823 ....63458
1837 ....63458
1852 ....63458

**Proposed Rules:**

Ch. 2 ....65121
2 ....63436
5 ....63436
7 ....63436
23 ....65330
52 ....65330
204 ....65121

208 ....65121
209 ....65121
212 ....65121
213 ....65121
215 ....65121
217 ....65121
219 ....65121
222 ....65121
223 ....65121
225 ....65121
227 ....65121
233 ....65121
235 ....65121
236 ....65121
237 ....65121
239 ....67883, 67884, 67885
242 ....65121
247 ....65121
252 ....65121, 67885
253 ....65121

**49 CFR**

40 ....64865
171 ....64462
172 ....64462
173 ....64462
222 ....67858
229 ....67858
501 ....63957
541 ....63957
571 ....64495, 67068, 67654, 67660, 67663
574 ....64500

**Proposed Rules:**

171 ....65294
172 ....65294
173 ....65294
175 ....65294
229 ....63890
238 ....63890
379 ....63997
381 ....63997
385 ....63997
390 ....63997
395 ....63997
571 ....65126
1522 ....65332
1540 ....65258
1542 ....65258
1544 ....65258
1546 ....65258
1548 ....65258

**50 CFR**

300 ....65382, 67267, 67268
622 ....65092
635 ....67268
648 ....63460, 67284, 67780
660 ....63332, 62333, 64501, 65093, 67285, 67508, 67509, 67510
679 ....64683, 67668

**Proposed Rules:**

17 ....64710, 64884, 64889
223 ....65127
229 ....65127
600 ....67100
622 ....67104, 67106
648 ....63341, 63498, 67528
679 ....67107

## 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.

## RULES GOING INTO EFFECT NOVEMBER 22, 2004

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Bees, beekeeping byproducts, and used beekeeping equipment; importation; published 10-21-04

**AGRICULTURE DEPARTMENT**

**Rural Utilities Service**

Grants:

Household Water Well System Program; published 10-6-04

Revolving Fund Program; revolving funds for financing water and wastewater projects; published 10-6-04

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Coastal pelagic species; published 10-21-04

**DEFENSE DEPARTMENT**

Acquisition regulations:

Architect-engineer services contracting; published 11-22-04

Freedom of Information Act; implementation; published 11-22-04

Government supply sources; contractor use; published 11-22-04

Obsolete research and development contracting procedures removed; published 11-22-04

Small disadvantaged businesses and leader company contracting; published 11-22-04

Technical amendments; published 11-22-04

Technical data conformity; written assurance; published 11-22-04

**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; published 10-21-04

Warm air furnaces, heating, air conditioning, and water-heating equipment, and electric motors; published 10-21-04

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Ambient air quality standards, national—

8-hour ozone standard; designated nonattainment areas reclassified; published 9-22-04

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Maryland; published 10-21-04

Air quality implementation plans; approval and promulgation; various States:

California; published 9-21-04

Air quality implementation plans; approval and promulgation; various States; and air programs; State authority delegations:

North Dakota; published 10-21-04

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

Alabama; published 10-25-04

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Animal drugs, feeds, and related products:

Estradiol; published 11-22-04

Trenbolone acetate and estradiol benzoate; published 11-22-04

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Equal employment opportunity; published 10-22-04

Grants:

Faith-based organizations; participation in Native American programs; equal treatment of all program participants; published 10-22-04

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Puerto Rico and US Virgin Islands reef fish; comments due by 12-1-04; published 11-16-04 [FR 04-25430]

Northeastern United States fisheries—

Atlantic sea scallop fishery; comments due by 12-1-04; published 11-1-04 [FR 04-24344]

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 12-3-04; published 11-18-04 [FR 04-25642]

International fisheries regulations:

Fraser River sockeye and pink salmon; inseason orders; comments due by 12-2-04; published 11-17-04 [FR 04-25524]

Marine mammals:

Incidental taking—

Dolphin and tuna conservation; tuna purse seine vessels in Eastern Tropical Pacific Ocean; classification and permit application changes; comments due by 11-29-04; published 10-29-04 [FR 04-24008]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Accounting for unallowable costs; comments due by 11-29-04; published 9-28-04 [FR 04-21640]

**EDUCATION DEPARTMENT**

Civil rights:

Boy Scouts of America Equal Acess Act; implementation; comments due by 12-3-04; published 10-19-04 [FR 04-23290]

**ENERGY DEPARTMENT**

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Virginia; comments due by 11-29-04; published 10-29-04 [FR 04-24240]

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 11-29-04; published 10-29-04 [FR 04-24238]

Iowa; comments due by 12-3-04; published 11-3-04 [FR 04-24531]

Texas; comments due by 11-29-04; published 10-29-04 [FR 04-24127]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments

until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Allethrin, etc.; comments due by 11-29-04; published 9-29-04 [FR 04-21695]

Bacillus thuringiensis var. aizawai strain PS811 (Cry1F insecticidal protein); comments due by 11-29-04; published 9-30-04 [FR 04-21877]

Carfentrazone-ethyl; comments due by 11-29-04; published 9-29-04 [FR 04-21586]

Citrate Esters; comments due by 11-29-04; published 9-29-04 [FR 04-21587]

Cyazofamid; comments due by 11-29-04; published 9-30-04 [FR 04-21931]

Dichlormid; comments due by 11-29-04; published 9-30-04 [FR 04-21930]

Fenamidone; comments due by 11-29-04; published 9-29-04 [FR 04-21694]

Fludioxonil; comments due by 11-29-04; published 9-29-04 [FR 04-21803]

Forchlorfenuron; comments due by 11-29-04; published 9-30-04 [FR 04-21932]

Mesotrione; comments due by 11-29-04; published 9-30-04 [FR 04-21934]

Methoxyfenozide; comments due by 11-29-04; published 9-29-04 [FR 04-21804]

Octanal; comments due by 11-29-04; published 9-30-04 [FR 04-21937]

Sodium thiosulfate; comments due by 11-29-04; published 9-30-04 [FR 04-21933]

Superfund program:

Landowner liability protection; standards for conducting appropriate inquiries into previous ownership, uses; and environmental conditions of property; comments due by 11-30-04; published 9-17-04 [FR 04-20972]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

**FEDERAL COMMUNICATIONS COMMISSION**

Radio services, special:

Fixed microwave services—

37.0-38.6 GHz and 38.6-40.0 GHz bands; competitive bidding; comments due by 12-3-04; published 10-4-04 [FR 04-22194]

Private land mobile services—

800 MHz band; public safety interference proceeding; ex parte presentations, etc.; comments due by 12-2-04; published 11-22-04 [FR 04-25261]

Radio stations; table of assignments:

Louisiana; comments due by 11-29-04; published 10-20-04 [FR 04-23458]

Louisiana; correction; comments due by 11-29-04; published 11-10-04 [FR 04-25064]

Various States; comments due by 11-29-04; published 10-20-04 [FR 04-23457]

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Accounting for unallowable costs; comments due by 11-29-04; published 9-28-04 [FR 04-21640]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Human drugs:

Labeling of drug products (OTC)—

Standardized format; implementation date delay; comments due by 12-2-04; published 9-3-04 [FR 04-18842]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

**HOMELAND SECURITY DEPARTMENT**

United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT):

Biometric data collection from additional travelers; expansion to 50 most highly trafficked land border ports of entry; comments due by 12-1-04; published 11-5-04 [FR 04-24811]

**HOMELAND SECURITY DEPARTMENT**

**Transportation Security Administration**

Hazardous materials drivers; security threat assessments; fees; comments due by 12-1-04; published 11-10-04 [FR 04-25122]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations—

Sacramento Mountains checkerspot butterfly; comments due by 11-29-04; published 11-8-04 [FR 04-24869]

**MERIT SYSTEMS PROTECTION BOARD**

Practice and procedure:

Electronic filing; implementation; comments due by 11-29-04; published 9-27-04 [FR 04-21589]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Accounting for unallowable costs; comments due by 11-29-04; published 9-28-04 [FR 04-21640]

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

Presidential records:

Denial of access; appeals extension; comments due by 11-30-04; published 10-1-04 [FR 04-22051]

**NUCLEAR REGULATORY COMMISSION**

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

Nuclear equipment and material; export and import:

Security policies; high-risk radioactive material license requirements; comments due by 11-30-04; published 9-16-04 [FR 04-20855]

**PERSONNEL MANAGEMENT OFFICE**

Acquisition regulations:

Federal Employees Group Life Insurance—

Administrative policy, practices, and clarifying language changes; comments due by 12-3-04; published 10-4-04 [FR 04-21922]

**SMALL BUSINESS ADMINISTRATION**

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

Standards of conduct and employee restrictions and responsibilities; comments due by 12-3-04; published 11-3-04 [FR 04-24498]

**OFFICE OF UNITED STATES TRADE REPRESENTATIVE**

**Trade Representative, Office of United States**

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 11-29-04; published 9-30-04 [FR 04-21650]

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

Bombardier; comments due by 12-3-04; published 11-3-04 [FR 04-24543]

Eagle Aircraft; comments due by 11-29-04; published 10-22-04 [FR 04-23623]

Pilatus Aircraft Ltd.; comments due by 12-3-04; published 11-1-04 [FR 04-24323]

Pratt & Whitney; comments due by 11-29-04; published 9-29-04 [FR 04-21812]

Pratt & Whitney Canada; comments due by 11-30-04; published 10-1-04 [FR 04-21913]

Rolls-Royce Deutschland; comments due by 12-3-04; published 10-4-04 [FR 04-22192]

Class E airspace; comments due by 11-30-04; published 10-26-04 [FR 04-23868]

**TRANSPORTATION DEPARTMENT**

**Federal Motor Carrier Safety Administration**

Motor carrier safety standards:

Drivers' hours of service—

Compliance requirements; electronic on-board recorders use; comments due by 11-30-04; published 9-1-04 [FR 04-19907]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Estate and gift taxes:

Generation-skipping transfer tax; predeceased parent rule; public hearing; comments due by 12-2-04; published 9-3-04 [FR 04-20165]

**VETERANS AFFAIRS DEPARTMENT**

Adjudication; pensions, compensation, dependency, etc.:

Accrued benefits; death compensation and special rules applicable upon beneficiary's death; comments due by 11-30-04; published 10-1-04 [FR 04-21541]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 4381/P.L. 108–392**

To designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the ''Harvey and Bernice Jones Post Office Building''. (Oct. 30, 2004; 118 Stat. 2245)

**H.R. 4471/P.L. 108–393**

Homeownership Opportunities for Native Americans Act of 2004 (Oct. 30, 2004; 118 Stat. 2246)

**H.R. 4481/P.L. 108–394**

Wilson's Creek National Battlefield Boundary Adjustment Act of 2004 (Oct. 30, 2004; 118 Stat. 2247)

**H.R. 4556/P.L. 108–395**

To designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the ''General William Carey Lee Post Office Building''. (Oct. 30, 2004; 118 Stat. 2249)

**H.R. 4579/P.L. 108–396**

Truman Farm Home Expansion Act (Oct. 30, 2004; 118 Stat. 2250)

**H.R. 4618/P.L. 108–397**

To designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, as the ''Anthony I. Lombardi Memorial Post Office Building''. (Oct. 30, 2004; 118 Stat. 2251)

**H.R. 4632/P.L. 108–398**

To designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the ''Archie Spigner Post Office Building''. (Oct. 30, 2004; 118 Stat. 2252)

**H.R. 4731/P.L. 108–399**

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program. (Oct. 30, 2004; 118 Stat. 2253)

**H.R. 4827/P.L. 108–400**

To amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area. (Oct. 30, 2004; 118 Stat. 2254)

**H.R. 4917/P.L. 108–401**

Federal Regulatory Improvement Act of 2004 (Oct. 30, 2004; 118 Stat. 2255)

**H.R. 5027/P.L. 108–402**

To designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the ''Specialist Eric Ramirez Post Office''. (Oct. 30, 2004; 118 Stat. 2257)

**H.R. 5039/P.L. 108–403**

To designate the facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, as the ''Eva Holtzman Post Office''. (Oct. 30, 2004; 118 Stat. 2258)

**H.R. 5051/P.L. 108–404**

To designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''. (Oct. 30, 2004; 118 Stat. 2259)

**H.R. 5107/P.L. 108–405**

Justice for All Act of 2004 (Oct. 30, 2004; 118 Stat. 2260)

**H.R. 5131/P.L. 108–406**

Special Olympics Sport and Empowerment Act of 2004 (Oct. 30, 2004; 118 Stat. 2294)

**H.R. 5133/P.L. 108–407**

To designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the ''Martha Pennino Post Office Building''. (Oct. 30, 2004; 118 Stat. 2297)

**H.R. 5147/P.L. 108–408**

To designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the ''Evan Asa Ashcraft Post Office Building''. (Oct. 30, 2004; 118 Stat. 2298)

**H.R. 5186/P.L. 108–409**

Taxpayer-Teacher Protection Act of 2004 (Oct. 30, 2004; 118 Stat. 2299)

**H.R. 5294/P.L. 108–410**

John F. Kennedy Center Reauthorization Act of 2004 (Oct. 30, 2004; 118 Stat. 2303)

**S. 129/P.L. 108–411**

Federal Workforce Flexibility Act of 2004 (Oct. 30, 2004; 118 Stat. 2305)

**S. 144/P.L. 108–412**

To require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land. (Oct. 30, 2004; 118 Stat. 2320)

**S. 643/P.L. 108–413**

Hibben Center Act (Oct. 30, 2004; 118 Stat. 2325)

**S. 1194/P.L. 108–414**

Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (Oct. 30, 2004; 118 Stat. 2327)

**Last List November 8, 2004**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **1, 2 (2** Reserved) | (869–052–00001–9) | 9.00 | [4] Jan. 1, 2004 |
| **3** (2003 Compilation and Parts 100 and 101) | (869–052–00002–7) | 35.00 | [1] Jan. 1, 2004 |
| **4** | (869–052–00003–5) | 10.00 | Jan. 1, 2004 |
| **5 Parts:** | | | |
| 1–699 | (869–052–00004–3) | 60.00 | Jan. 1, 2004 |
| 700–1199 | (869–052–00005–1) | 50.00 | Jan. 1, 2004 |
| 1200–End | (869–052–00006–0) | 61.00 | Jan. 1, 2004 |
| **6** | (869–052–00007–8) | 10.50 | Jan. 1, 2004 |
| **7 Parts:** | | | |
| 1–26 | (869–052–00008–6) | 44.00 | Jan. 1, 2004 |
| 27–52 | (869–052–00009–4) | 49.00 | Jan. 1, 2004 |
| 53–209 | (869–052–00010–8) | 37.00 | Jan. 1, 2004 |
| 210–299 | (869–052–00011–6) | 62.00 | Jan. 1, 2004 |
| 300–399 | (869–052–00012–4) | 46.00 | Jan. 1, 2004 |
| 400–699 | (869–052–00013–2) | 42.00 | Jan. 1, 2004 |
| 700–899 | (869–052–00014–1) | 43.00 | Jan. 1, 2004 |
| 900–999 | (869–052–00015–9) | 60.00 | Jan. 1, 2004 |
| 1000–1199 | (869–052–00016–7) | 22.00 | Jan. 1, 2004 |
| 1200–1599 | (869–052–00017–5) | 61.00 | Jan. 1, 2004 |
| 1600–1899 | (869–052–00018–3) | 64.00 | Jan. 1, 2004 |
| 1900–1939 | (869–052–00019–1) | 31.00 | Jan. 1, 2004 |
| 1940–1949 | (869–052–00020–5) | 50.00 | Jan. 1, 2004 |
| 1950–1999 | (869–052–00021–3) | 46.00 | Jan. 1, 2004 |
| 2000–End | (869–052–00022–1) | 50.00 | Jan. 1, 2004 |
| **8** | (869–052–00023–0) | 63.00 | Jan. 1, 2004 |
| **9 Parts:** | | | |
| 1–199 | (869–052–00024–8) | 61.00 | Jan. 1, 2004 |
| 200–End | (869–052–00025–6) | 58.00 | Jan. 1, 2004 |
| **10 Parts:** | | | |
| 1–50 | (869–052–00026–4) | 61.00 | Jan. 1, 2004 |
| 51–199 | (869–052–00027–2) | 58.00 | Jan. 1, 2004 |
| 200–499 | (869–052–00028–1) | 46.00 | Jan. 1, 2004 |
| 500–End | (869–052–00029–9) | 62.00 | Jan. 1, 2004 |
| **11** | (869–052–00030–2) | 41.00 | Feb. 3, 2004 |
| **12 Parts:** | | | |
| 1–199 | (869–052–00031–1) | 34.00 | Jan. 1, 2004 |
| 200–219 | (869–052–00032–9) | 37.00 | Jan. 1, 2004 |
| 220–299 | (869–052–00033–7) | 61.00 | Jan. 1, 2004 |
| 300–499 | (869–052–00034–5) | 47.00 | Jan. 1, 2004 |
| 500–599 | (869–052–00035–3) | 39.00 | Jan. 1, 2004 |
| 600–899 | (869–052–00036–1) | 56.00 | Jan. 1, 2004 |
| 900–End | (869–052–00037–0) | 50.00 | Jan. 1, 2004 |
| **13** | (869–052–00038–8) | 55.00 | Jan. 1, 2004 |
| **14 Parts:** | | | |
| 1–59 | (869–052–00039–6) | 63.00 | Jan. 1, 2004 |
| 60–139 | (869–052–00040–0) | 61.00 | Jan. 1, 2004 |
| 140–199 | (869–052–00041–8) | 30.00 | Jan. 1, 2004 |
| 200–1199 | (869–052–00042–6) | 50.00 | Jan. 1, 2004 |
| 1200–End | (869–052–00043–4) | 45.00 | Jan. 1, 2004 |
| **15 Parts:** | | | |
| 0–299 | (869–052–00044–2) | 40.00 | Jan. 1, 2004 |
| 300–799 | (869–052–00045–1) | 60.00 | Jan. 1, 2004 |
| 800–End | (869–052–00046–9) | 42.00 | Jan. 1, 2004 |
| **16 Parts:** | | | |
| 0–999 | (869–052–00047–7) | 50.00 | Jan. 1, 2004 |
| 1000–End | (869–052–00048–5) | 60.00 | Jan. 1, 2004 |
| **17 Parts:** | | | |
| 1–199 | (869–052–00050–7) | 50.00 | Apr. 1, 2004 |
| 200–239 | (869–052–00051–5) | 58.00 | Apr. 1, 2004 |
| 240–End | (869–052–00052–3) | 62.00 | Apr. 1, 2004 |
| **18 Parts:** | | | |
| 1–399 | (869–052–00053–1) | 62.00 | Apr. 1, 2004 |
| 400–End | (869–052–00054–0) | 26.00 | Apr. 1, 2004 |
| **19 Parts:** | | | |
| 1–140 | (869–052–00055–8) | 61.00 | Apr. 1, 2004 |
| 141–199 | (869–052–00056–6) | 58.00 | Apr. 1, 2004 |
| 200–End | (869–052–00057–4) | 31.00 | Apr. 1, 2004 |
| **20 Parts:** | | | |
| 1–399 | (869–052–00058–2) | 50.00 | Apr. 1, 2004 |
| 400–499 | (869–052–00059–1) | 64.00 | Apr. 1, 2004 |
| 500–End | (869–052–00060–9) | 63.00 | Apr. 1, 2004 |
| **21 Parts:** | | | |
| 1–99 | (869–052–00061–2) | 42.00 | Apr. 1, 2004 |
| 100–169 | (869–052–00062–1) | 49.00 | Apr. 1, 2004 |
| 170–199 | (869–052–00063–9) | 50.00 | Apr. 1, 2004 |
| 200–299 | (869–052–00064–7) | 17.00 | Apr. 1, 2004 |
| 300–499 | (869–052–00065–5) | 31.00 | Apr. 1, 2004 |
| 500–599 | (869–052–00066–3) | 47.00 | Apr. 1, 2004 |
| 600–799 | (869–052–00067–1) | 15.00 | Apr. 1, 2004 |
| 800–1299 | (869–052–00068–0) | 58.00 | Apr. 1, 2004 |
| 1300–End | (869–052–00069–8) | 24.00 | Apr. 1, 2004 |
| **22 Parts:** | | | |
| 1–299 | (869–052–00070–1) | 63.00 | Apr. 1, 2004 |
| 300–End | (869–052–00071–0) | 45.00 | Apr. 1, 2004 |
| **23** | (869–052–00072–8) | 45.00 | Apr. 1, 2004 |
| **24 Parts:** | | | |
| 0–199 | (869–052–00073–6) | 60.00 | Apr. 1, 2004 |
| 200–499 | (869–052–00074–4) | 50.00 | Apr. 1, 2004 |
| 500–699 | (869–052–00075–2) | 30.00 | Apr. 1, 2004 |
| 700–1699 | (869–052–00076–1) | 61.00 | Apr. 1, 2004 |
| 1700–End | (869–052–00077–9) | 30.00 | Apr. 1, 2004 |
| **25** | (869–052–00078–7) | 63.00 | Apr. 1, 2004 |
| **26 Parts:** | | | |
| §§ 1.0–1–1.60 | (869–052–00079–5) | 49.00 | Apr. 1, 2004 |
| §§ 1.61–1.169 | (869–052–00080–9) | 63.00 | Apr. 1, 2004 |
| §§ 1.170–1.300 | (869–052–00081–7) | 60.00 | Apr. 1, 2004 |
| §§ 1.301–1.400 | (869–052–00082–5) | 46.00 | Apr. 1, 2004 |
| §§ 1.401–1.440 | (869–052–00083–3) | 62.00 | Apr. 1, 2004 |
| §§ 1.441–1.500 | (869–052–00084–1) | 57.00 | Apr. 1, 2004 |
| §§ 1.501–1.640 | (869–052–00085–0) | 49.00 | Apr. 1, 2004 |
| §§ 1.641–1.850 | (869–052–00086–8) | 60.00 | Apr. 1, 2004 |
| §§ 1.851–1.907 | (869–052–00087–6) | 61.00 | Apr. 1, 2004 |
| §§ 1.908–1.1000 | (869–052–00088–4) | 60.00 | Apr. 1, 2004 |
| §§ 1.1001–1.1400 | (869–052–00089–2) | 61.00 | Apr. 1, 2004 |
| §§ 1.1401–1.1503–2A | (869–052–00090–6) | 55.00 | Apr. 1, 2004 |
| §§ 1.1551–End | (869–052–00091–4) | 55.00 | Apr. 1, 2004 |
| 2–29 | (869–052–00092–2) | 60.00 | Apr. 1, 2004 |
| 30–39 | (869–052–00093–1) | 41.00 | Apr. 1, 2004 |
| 40–49 | (869–052–00094–9) | 28.00 | Apr. 1, 2004 |
| 50–299 | (869–052–00095–7) | 41.00 | Apr. 1, 2004 |
| 300–499 | (869–052–00096–5) | 61.00 | Apr. 1, 2004 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 500–599 | (869–052–00097–3) | 12.00 | [5]Apr. 1, 2004 |
| 600–End | (869–052–00098–1) | 17.00 | Apr. 1, 2004 |
| **27 Parts:** | | | |
| 1–199 | (869–052–00099–0) | 64.00 | Apr. 1, 2004 |
| 200–End | (869–052–00100–7) | 21.00 | Apr. 1, 2004 |
| **28 Parts:** | | | |
| 0–42 | (869–052–00101–5) | 61.00 | July 1, 2004 |
| 43–End | (869–052–00102–3) | 60.00 | July 1, 2004 |
| **29 Parts:** | | | |
| 0–99 | (869–052–00103–1) | 50.00 | July 1, 2004 |
| 100–499 | (869–052–00104–0) | 23.00 | July 1, 2004 |
| 500–899 | (869–052–00105–8) | 61.00 | July 1, 2004 |
| 900–1899 | (869–052–00106–6) | 36.00 | July 1, 2004 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–052–00107–4) | 61.00 | July 1, 2004 |
| 1910 (§§ 1910.1000 to end) | (869–052–00108–2) | 46.00 | [8]July 1, 2004 |
| 1911–1925 | (869–052–00109–1) | 30.00 | July 1, 2004 |
| 1926 | (869–052–00110–4) | 50.00 | July 1, 2004 |
| 1927–End | (869–052–00111–2) | 62.00 | July 1, 2004 |
| **30 Parts:** | | | |
| 1–199 | (869–052–00112–1) | 57.00 | July 1, 2004 |
| 200–699 | (869–052–00113–9) | 50.00 | July 1, 2004 |
| 700–End | (869–052–00114–7) | 58.00 | July 1, 2004 |
| **31 Parts:** | | | |
| 0–199 | (869–052–00115–5) | 41.00 | July 1, 2004 |
| 200–End | (869–052–00116–3) | 65.00 | July 1, 2004 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2]July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2]July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2]July 1, 1984 |
| 1–190 | (869–052–00117–1) | 61.00 | July 1, 2004 |
| 191–399 | (869–052–00118–0) | 63.00 | July 1, 2004 |
| 400–629 | (869–052–00119–8) | 50.00 | [8]July 1, 2004 |
| 630–699 | (869–052–00120–1) | 37.00 | [7]July 1, 2004 |
| 700–799 | (869–052–00121–0) | 46.00 | July 1, 2004 |
| 800–End | (869–052–00122–8) | 47.00 | July 1, 2004 |
| **33 Parts:** | | | |
| 1–124 | (869–052–00123–6) | 57.00 | July 1, 2004 |
| 125–199 | (869–052–00124–4) | 61.00 | July 1, 2004 |
| 200–End | (869–052–00125–2) | 57.00 | July 1, 2004 |
| **34 Parts:** | | | |
| 1–299 | (869–052–00126–1) | 50.00 | July 1, 2004 |
| 300–399 | (869–052–00127–9) | 40.00 | July 1, 2004 |
| 400–End | (869–052–00128–7) | 61.00 | July 1, 2004 |
| **35** | (869–052–00129–5) | 10.00 | [6]July 1, 2004 |
| **36 Parts** | | | |
| 1–199 | (869–052–00130–9) | 37.00 | July 1, 2004 |
| 200–299 | (869–052–00131–7) | 37.00 | July 1, 2004 |
| 300–End | (869–052–00132–5) | 61.00 | July 1, 2004 |
| **37** | (869–052–00133–3) | 58.00 | July 1, 2004 |
| **38 Parts:** | | | |
| 0–17 | (869–052–00134–1) | 60.00 | July 1, 2004 |
| 18–End | (869–052–00135–0) | 62.00 | July 1, 2004 |
| **39** | (869–052–00136–8) | 42.00 | July 1, 2004 |
| **40 Parts:** | | | |
| 1–49 | (869–052–00137–6) | 60.00 | July 1, 2004 |
| 50–51 | (869–052–00138–4) | 45.00 | July 1, 2004 |
| 52 (52.01–52.1018) | (869–052–00139–2) | 60.00 | July 1, 2004 |
| 52 (52.1019–End) | (869–052–00140–6) | 61.00 | July 1, 2004 |
| 53–59 | (869–052–00141–4) | 31.00 | July 1, 2004 |
| 60 (60.1–End) | (869–052–00142–2) | 58.00 | July 1, 2004 |
| 60 (Apps) | (869–052–00143–1) | 57.00 | July 1, 2004 |
| 61–62 | (869–052–00144–9) | 45.00 | July 1, 2004 |
| 63 (63.1–63.599) | (869–052–00145–7) | 58.00 | July 1, 2004 |
| 63 (63.600–63.1199) | (869–052–00146–5) | 50.00 | July 1, 2004 |
| 63 (63.1200–63.1439) | (869–052–00147–3) | 50.00 | July 1, 2004 |
| 63 (63.1440–63.8830) | (869–052–00148–1) | 64.00 | July 1, 2004 |
| 64–71 | (869–052–00150–3) | 29.00 | July 1, 2004 |
| 72–80 | (869–052–00151–1) | 62.00 | July 1, 2004 |
| 81–85 | (869–052–00152–0) | 60.00 | July 1, 2004 |
| 86 (86.1–86.599–99) | (869–052–00153–8) | 58.00 | July 1, 2004 |
| 86 (86.600–1–End) | (869–052–00154–6) | 50.00 | July 1, 2004 |
| 87–99 | (869–052–00155–4) | 60.00 | July 1, 2004 |
| 100–135 | (869–052–00156–2) | 45.00 | July 1, 2004 |
| 136–149 | (869–052–00157–1) | 61.00 | July 1, 2004 |
| 150–189 | (869–052–00158–9) | 50.00 | July 1, 2004 |
| 190–259 | (869–052–00159–7) | 39.00 | July 1, 2004 |
| 260–265 | (869–052–00160–1) | 50.00 | July 1, 2004 |
| 266–299 | (869–052–00161–9) | 50.00 | July 1, 2004 |
| 300–399 | (869–052–00162–7) | 42.00 | July 1, 2004 |
| 400–424 | (869–052–00163–5) | 56.00 | [8]July 1, 2004 |
| 425–699 | (869–052–00164–3) | 61.00 | July 1, 2004 |
| 700–789 | (869–052–00165–1) | 61.00 | July 1, 2004 |
| 790–End | (869–052–00166–0) | 61.00 | July 1, 2004 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3]July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3]July 1, 1984 |
| 3–6 | | 14.00 | [3]July 1, 1984 |
| 7 | | 6.00 | [3]July 1, 1984 |
| 8 | | 4.50 | [3]July 1, 1984 |
| 9 | | 13.00 | [3]July 1, 1984 |
| 10–17 | | 9.50 | [3]July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3]July 1, 1984 |
| 19–100 | | 13.00 | [3]July 1, 1984 |
| 1–100 | (869–052–00167–8) | 24.00 | July 1, 2004 |
| 101 | (869–052–00168–6) | 21.00 | July 1, 2004 |
| 102–200 | (869–052–00169–4) | 56.00 | July 1, 2004 |
| 201–End | (869–052–00170–8) | 24.00 | July 1, 2004 |
| **42 Parts:** | | | |
| 1–399 | (869–050–00169–1) | 60.00 | Oct. 1, 2003 |
| *400–429 | (869–052–00172–4) | 63.00 | Oct. 1, 2004 |
| 430–End | (869–050–00171–3) | 64.00 | Oct. 1, 2003 |
| **43 Parts:** | | | |
| 1–999 | (869–050–00172–1) | 55.00 | Oct. 1, 2003 |
| 1000–end | (869–050–00173–0) | 62.00 | Oct. 1, 2003 |
| **44** | (869–050–00174–8) | 50.00 | Oct. 1, 2003 |
| **45 Parts:** | | | |
| *1–199 | (869–052–00177–5) | 60.00 | Oct. 1, 2004 |
| *200–499 | (869–052–00178–3) | 34.00 | Oct. 1, 2004 |
| 500–1199 | (869–050–00177–2) | 50.00 | Oct. 1, 2003 |
| 1200–End | (869–050–00178–1) | 60.00 | Oct. 1, 2003 |
| **46 Parts:** | | | |
| 1–40 | (869–050–00179–9) | 46.00 | Oct. 1, 2003 |
| 41–69 | (869–050–00180–2) | 39.00 | Oct. 1, 2003 |
| 70–89 | (869–050–00181–1) | 14.00 | Oct. 1, 2003 |
| 90–139 | (869–050–00182–9) | 44.00 | Oct. 1, 2003 |
| 140–155 | (869–050–00183–7) | 25.00 | Oct. 1, 2003 |
| 156–165 | (869–050–00184–5) | 34.00 | Oct. 1, 2003 |
| 166–199 | (869–050–00185–3) | 46.00 | Oct. 1, 2003 |
| 200–499 | (869–050–00186–1) | 39.00 | Oct. 1, 2003 |
| 500–End | (869–050–00187–0) | 25.00 | Oct. 1, 2003 |
| **47 Parts:** | | | |
| 0–19 | (869–050–00188–8) | 61.00 | Oct. 1, 2003 |
| 20–39 | (869–050–00189–6) | 45.00 | Oct. 1, 2003 |
| 40–69 | (869–050–00190–0) | 39.00 | Oct. 1, 2003 |
| 70–79 | (869–050–00191–8) | 61.00 | Oct. 1, 2003 |
| 80–End | (869–050–00192–6) | 61.00 | Oct. 1, 2003 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–050–00193–4) | 63.00 | Oct. 1, 2003 |
| 1 (Parts 52–99) | (869–050–00194–2) | 50.00 | Oct. 1, 2003 |
| 2 (Parts 201–299) | (869–050–00195–1) | 55.00 | Oct. 1, 2003 |
| 3–6 | (869–050–00196–9) | 33.00 | Oct. 1, 2003 |
| 7–14 | (869–050–00197–7) | 61.00 | Oct. 1, 2003 |
| 15–28 | (869–050–00198–5) | 57.00 | Oct. 1, 2003 |
| 29–End | (869–050–00199–3) | 38.00 | [9]Oct. 1, 2003 |
| **49 Parts:** | | | |
| 1–99 | (869–050–00200–1) | 60.00 | Oct. 1, 2003 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 100–185 | (869–050–00201–9) | 63.00 | Oct. 1, 2003 |
| 186–199 | (869–050–00202–7) | 20.00 | Oct. 1, 2003 |
| 200–399 | (869–050–00203–5) | 64.00 | Oct. 1, 2003 |
| 400–599 | (869–050–00204–3) | 63.00 | Oct. 1, 2003 |
| 600–999 | (869–052–00207–1) | 19.00 | Oct. 1, 2004 |
| 1000–1199 | (869–050–00206–0) | 26.00 | Oct. 1, 2003 |
| 1200–End | (869–048–00207–8) | 33.00 | Oct. 1, 2003 |
| **50 Parts:** | | | |
| 1–16 | (869–050–00208–6) | 11.00 | Oct. 1, 2003 |
| 17.1–17.95 | (869–050–00209–4) | 62.00 | Oct. 1, 2003 |
| 17.96–17.99(h) | (869–050–00210–8) | 61.00 | Oct. 1, 2003 |
| 17.99(i)–end | (869–050–00211–6) | 50.00 | Oct. 1, 2003 |
| 18–199 | (869–050–00212–4) | 42.00 | Oct. 1, 2003 |
| 200–599 | (869–050–00213–2) | 44.00 | Oct. 1, 2003 |
| 600–End | (869–050–00214–1) | 61.00 | Oct. 1, 2003 |
| CFR Index and Findings Aids | (869–052–00049–3) | 62.00 | Jan. 1, 2004 |
| Complete 2004 CFR set | | 1,342.00 | 2004 |
| Microfiche CFR Edition: | | | |
| Subscription (mailed as issued) | | 325.00 | 2004 |
| Individual copies | | 2.00 | 2004 |
| Complete set (one-time mailing) | | 298.00 | 2003 |
| Complete set (one-time mailing) | | 298.00 | 2002 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.