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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–2004–19817; Directorate Identifier 2004–NM–237–AD; Amendment 39–13896; AD 2004–25–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This AD requires regularly performing a complete electrical shutdown of the airplane to reset the integrated standby instrument system (ISIS). This AD is prompted by reports indicating that an airplane lost the ISIS, then, during the same flight, lost all electronic instrument system (EIS) display units. We are issuing this AD to prevent loss of the ISIS, which, if combined with loss of all EIS display units, could reduce the flightcrew's situational awareness and contribute to loss of control of the airplane or impact with obstacles or terrain.

DATES: Effective December 22, 2004.

We must receive comments on this AD by February 7, 2005.

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

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

For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can 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.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19817; the directorate identifier for this docket is 2004–NM–237–AD.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Examining the Docket

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

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

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A318, A319, A320, and A321 series airplanes. The DGAC advises that an Airbus Model A340 series airplane lost the integrated standby instrument system (ISIS), then, during the same flight, lost all electronic instrument system (EIS) display units. Investigation revealed that the ISIS failure is caused by a time-counter fault that occurs after 145 hours of continuous power supply to the ISIS. Loss of the ISIS, if combined with loss of all EIS display units, could reduce the flightcrew's situational awareness and contribute to loss of control of the airplane or impact with obstacles or terrain.

The subject ISIS on certain Airbus Model A340 series airplanes is also installed on certain Airbus Model A318, A319, A320, and A321 series airplanes. Therefore, airplanes of all of these models may be subject to the identified unsafe condition.

The DGAC has issued French Emergency Airworthiness Directive UF–2004–168, dated October 20, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France 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. According to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we

need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent loss of the ISIS, which, if combined with loss of all EIS display units, could reduce the flightcrew's situational awareness and contribute to loss of control of the airplane or impact with obstacles or terrain. This AD requires regularly performing a complete electrical shutdown of the airplane to reset the ISIS.

Differences Between the AD and French Emergency Airworthiness Directive

This AD differs from the French Emergency Airworthiness Directive in that this AD does not allow resetting the circuit breaker as a means of resetting the ISIS. This AD instead requires a complete electrical shutdown of the airplane, which the French Emergency Airworthiness Directive provides as an alternative means of resetting the ISIS. The decision to not allow resetting the circuit breaker is based on FAA policy that pulling circuit breakers is not an acceptable means of routinely removing electrical power from airplane systems. This policy is based on the fact that use of a circuit breaker as a switch will degrade the ability of the circuit breaker to trip at its rated current trip point.

Interim Action

We consider this AD interim action. We are currently considering requiring the installation of an upgraded ISIS standard, which would eliminate the need to regularly perform a complete electrical shutdown of the airplane. However, the planned compliance time for this installation would allow enough time to provide notice and opportunity for public comment on the merits of the modification.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–19817; Directorate Identifier 2004–NM–237–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, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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.*

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–25–08 Airbus: Amendment 39–13896. Docket No. FAA–2004–19817; Directorate Identifier 2004–NM–237–AD.

Effective Date

(a) This AD becomes effective December 22, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes, certificated in any category; on which Airbus Modification 27620 (reference Airbus Service Bulletin A320–34–1261) has been done.

Unsafe Condition

(d) This AD was prompted by a report indicating that an airplane lost the integrated standby instrument system (ISIS), then, during the same flight, lost all electronic instrument system (EIS) display units. The FAA is issuing this AD to prevent loss of the ISIS, which, if combined with loss of all EIS display units, could reduce the flightcrew's situational awareness and contribute to loss of control of the airplane or impact with obstacles or terrain.

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.

Requirement for Complete Electrical Shutdown

(f) Within 3 days after the effective date of this AD, or within 5 days after the last ISIS reset or complete electrical shutdown of the airplane, whichever is first, perform a complete electrical shutdown of the airplane to reset the ISIS. Repeat the electrical shutdown of the airplane at intervals not to exceed 5 days.

Note 1: This AD does not allow resetting the circuit breaker as a means of resetting the ISIS.

Note 2: There is no terminating action available at this time for the requirement to regularly perform a complete electrical shutdown of the airplane.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) French Emergency Airworthiness Directive UF–2004–168, dated October 20, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) None.

Issued in Renton, Washington, on November 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26790 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19815; Directorate Identifier 2004–NM–215–AD; Amendment 39–13894; AD 2004–25–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, and 747–300 Series Airplanes; and Model 747SP and 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, and 747–300 series airplanes; and Model 747SP and 747SR series airplanes. This AD requires revising the airplane flight manual to prohibit operation of the autopilot/flight director in command mode with performance management system selected on the speed mode switch during cruise in reduced vertical separation minimum (RVSM) airspace. This AD is prompted by reports of unexpected autopilot disconnects induced by the passing of another airplane within 1,000 feet below the airplane while they were operating in RVSM airspace. We are issuing this AD to prevent unexpected disconnect of the autopilot during operation in RVSM airspace due to close passage of another airplane, which may result in altitude deviation, and consequently, could lead to a possible mid-air collision or a near miss with aggressive evasive action (by either or both airplanes). Aggressive maneuvering at cruise altitudes and airspeeds could result in loss of control of the airplane and/or injury to passengers and crew.

DATES: Effective December 22, 2004.

We must receive comments on this AD by February 7, 2005.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19815; the directorate identifier for this docket is 2004–NM–215–AD.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Examining the Dockets

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

FOR FURTHER INFORMATION CONTACT: *Technical information:* Samuel Slentz, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6483; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: We have received reports of two separate incidents in which a Boeing Model 747–200 airplane equipped with a performance management system (PMS) had an unexpected autopilot disconnect induced by the passing of another airplane within 1,000 feet below the airplane while operating in reduced vertical separation minimum (RVSM) airspace. In both incidents, the PMS-equipped airplane lost 300 to 400 feet of altitude, causing it to come within approximately 650 feet of the other, lower aircraft (starting at 1,000 feet separation), and received a traffic collision and avoidance system (TCAS) resolution advisory (RA) with instructions to ''climb, climb.''

The PMS installed in certain Boeing Model 747 airplanes has an interlock that is activated with radar altitude. This interlock disconnects the autopilot upon receipt of a valid radar altitude signal of less than 2,500 feet. Because there is no means to accurately determine how the airplane is trimmed

when using the PMS, it cannot be predicted which direction the airplane will fly or how far it will depart from an assigned altitude. Unexpected disconnect of the autopilot during operation in RVSM airspace, if not corrected or if manual control is not promptly established, may result in altitude deviation, and consequently, could lead to a possible mid-air collision or a near miss with aggressive evasive action (by either or both airplanes). Aggressive maneuvering at cruise altitudes and airspeeds could result in loss of control of the airplane and/or injury to passengers and crew.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to prevent unexpected disconnect of the autopilot during operation in RVSM airspace, which could result in altitude deviation causing a mid-air collision or a near miss with aggressive evasive action (by either or both airplanes). Aggressive maneuvering at cruise altitudes and airspeeds could cause the airplane to exceed its structural limits, which could result in loss of control of the airplane and/or injury to passengers and crew. This AD requires revising the airplane flight manual to prohibit operation of the autopilot/flight director in command mode with performance management system selected on the speed mode switch during cruise in RVSM airspace.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

Changes to 14 CFR Part 39/Effect on the AD Relating to Special Flight Permits

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). This material is included in part 39, except that the office authorized to approve AMOCs is identified in each individual AD. However, as amended, part 39 provides for the FAA to add special requirements for operating an airplane to a repair facility to do the work required by an airworthiness directive. For purposes of this AD, we have determined that such a special flight permit is prohibited.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19815; Directorate Identifier 2004–NM–215–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, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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.*

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–25–06 Boeing: Amendment 39–13894. Docket No. FAA–2004–19815; Directorate Identifier 2004–NM–215–AD.

Effective Date

(a) This AD becomes effective December 22, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, and 747–300 series airplanes; and Model 747SP and 747SR series airplanes; certificated in any category; having variable numbers listed in Table 1 of this AD or modified in accordance with Supplemental Type Certificate SA960GL or SA1080EA–D; excluding airplanes on which Boeing Service Bulletin 747–34–2294, dated May 25, 1989, or Boeing Service Bulletin 747–34–2296, dated July 1, 1989, has been accomplished.

TABLE 1.—CERTAIN APPLICABLE AIRPLANES BY VARIABLE NUMBERS

RA521–RA528 inclusive.
RA532–RA535 inclusive.
RA537–RA548 inclusive.
RA671–RA675 inclusive.
RA677.
RB071–RB075 inclusive.
RB601–RB607 inclusive.
RB681–RB685 inclusive.
RB687.
RB690–RB693 inclusive.
RB695–RB697 inclusive.
RB721–RB723 inclusive.
RD055.
RD082.
RD083.
RD221–RD227 inclusive.
RD231–RD235 inclusive.
RD301.
RD302.
RD381–RD383 inclusive.
RD461.
RD601–RD607 inclusive.
RD741.
RD781–RD783 inclusive.
RG173.
RG174.
RH101.
RH102.
RJ321.
RJ322.
RR024.
RR025.
RR261–RR263 inclusive.
RR264–RR267 inclusive.
RR361.
RR362.
RR451.
RR522.
RR526.
RR551–RR556 inclusive.
RR566.
RS001.
RS002.
RS211.
RS212.
RS221.
RS222.
RS232.
RS233.
RS235.
RS236.
RS237–RS241 inclusive.
RS251–RS259 inclusive.
RS263.

TABLE 1.—CERTAIN APPLICABLE AIRPLANES BY VARIABLE NUMBERS—Continued

RS265–RS268 inclusive.
RS292.
RS311–RS320 inclusive.
RS699.
RS701–RS703 inclusive.
RS711–RS713 inclusive.
RS731.
RS732.
RS741–RS743 inclusive.
RS771.
RS786.

Unsafe Condition

(d) This AD was prompted by reports of unexpected autopilot disconnects induced by the passing of another airplane within 1,000 feet below the airplane while they were operating in reduced vertical separation minimum (RVSM) airspace. The FAA is issuing this AD to prevent unexpected disconnect of the autopilot during operation in RVSM airspace due to close passage of another airplane, which may result in altitude deviation, and consequently, could lead to a possible mid-air collision or a near miss with aggressive evasive action (by either or both airplanes). Aggressive maneuvering at cruise altitudes and airspeeds could result in loss of control of the airplane and/or injury to passengers and crew.

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.

Airplane Flight Manual Revision

(f) Within 10 days after the effective date of this AD, revise the Limitations section of the Boeing 747 Airplane Flight Manual (AFM) to include the following statement. This may be done by inserting a copy of this AD in the AFM.

''Operation of the autopilot/flight director in command mode with Performance Management System (PMS) selected on the speed mode switch during cruise in Reduced Vertical Separation Minimum (RVSM) airspace is prohibited.

Use of PMS generated airspeeds and autopilot modes (*e.g.,* IAS/Mach) with manually crew-entered airspeeds (via Mode Selector Panel) are allowed.''

Note 1: When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Special Flight Permit

(g) Special flight permits (14 CFR 21.197 and 21.199) are not allowed.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) None.

Issued in Renton, Washington, on November 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26792 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19328; Airspace Docket No. 04–ACE–57]

Modification of Class E Airspace; Nebraska City, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Nebraska City, NE.

DATES: *Effective Date:* 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 26, 2004 (69 FR 62403). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 26, 2004.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26848 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19326; Airspace Docket No. 04–ACE–55]

Modification of Class E Airspace; Oberlin, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Oberlin, KS.

DATES: *Effective Date:* 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: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 26, 2004 (69 FR 62404). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 26, 2004.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26849 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19671; Airspace Docket No. 04–AWA–07]

RIN 2120–AA66

Modification of Control Areas 1143L and 1146L

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal descriptions of Control Areas 1143L and 1146L to remove references to the Nantucket, MA, Nondirectional Beacon (NDB), which has been taken out of service and decommissioned by the FAA. The legal descriptions are being revised to use a geographical point based on latitude/longitude coordinates in place of the former NDB references. This action will enhance safety by removing references to a decommissioned navigational aid from controlled airspace descriptions.

EFFECTIVE DATES: 0901 UTC, March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Control areas are Class E airspace areas that provide controlled airspace (beyond 12 nautical miles from the coast of the United States) where there is a requirement to provide IFR en route air traffic control (ATC) services and within which the United States is applying domestic ATC procedures. ControlAreas 1143L and 1146L are located offshore to the east of Cape Cod, Massachusetts.

On June 17, 2004, the FAA's New England Regional Office requested that action be taken to modify the legal descriptions of Control Areas 1143L and 1146L to remove references to the Nantucket, MA, NDB. The NDB has been removed from service and decommissioned by the FAA, therefore, it can no longer be used in legal descriptions.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by revising the legal descriptions of Control Areas 1143L and 1146L to remove references to the Nantucket, MA, NDB which has been removed from service. This modification substitutes the latitude/longitude coordinates of the former geographic position of the Nantucket NDB (lat. 40°16′07″ N., long. 70°10′48″ W.) in place of all references to the NDB in the two Control Area descriptions. This modification, therefore, simply changes the means of identifying points in the legal descriptions without altering the actual boundaries or altitudes of control areas. Further, this change will enhance safety by removing from the descriptions a navigation aid that is no longer available for pilots' use in navigation.

Because this action is an administrative change that does not alter the existing boundaries or altitudes of the Control Areas, and is needed for safety reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

Control Areas are published in paragraph 6007, of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Control Areas listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E, AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6007 Offshore airspace areas.

* * * * *

Control 1143L [Revised]

That airspace extending upward from 5,500 feet MSL within tangent lines drawn from the circumference of a 4.3-mile radius circle centered on lat. 41°16′07″ N., long. 70°10′48″ W., to a 13-mile radius circle centered at the midway point on a direct line between lat. 41°16′07″ N., long. 70°10′48″ W., and the Yarmouth, NS, Canada, NDB to a 4.3-mile radius circle centered on the Yarmouth NDB excluding that airspace within the confines of Federal airways and east of long. 67°00′00″ W.

* * * * *

Control 1146L [Revised]

That airspace extending upward from 5,500 feet MSL within a 5-mile radius circle centered on lat. 41°16′07″ N., long. 70°10′48″ W., and that airspace bounded by a line drawn from the tangent of the 5-mile radius circle centered on lat. 41°16′07″ N., long. 70°10′48″ W., to lat. 42°05′20″ N., long. 67°59′58″ W.; to lat. 42°19′00″ N., long. 67°59′58″ W.; to lat. 43°00′00″ N., long. 67°00′00″ W.; to lat. 41°52′00″ N., long. 67°00′00″ W.; to lat. 41°46′00″ N., long. 67°59′58″ W.; to the tangent of the 5-mile radius circle centered on lat. 41°16′07″ N., long. 70°10′48″ W.

* * * * *

Issued in Washington, DC, on December 1, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–26845 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 040907254–4254–01]

RIN 0691–AA52

Direct Investment Surveys: BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2004

AGENCY: Bureau of Economic Analysis, Commerce

ACTION: Final rule.

SUMMARY: This final rule amends regulations for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

The BE–10 survey is conducted once every five years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The benchmark survey will be conducted for 2004. The benchmark survey covers virtually the entire universe of U.S. direct investment abroad in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter. It obtains universe data on financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

The final rule: Increases the exemption level for reporting on the BE–10B(SF) short form from $7 million to $25 million and on the BE–10B Bank form from $7 million to $10 million; increases the exemption level for reporting on the BE–10B(LF) long form from $100 million to $150 million; and increases the exemption level for reporting only selected items on the BE–10A form from $100 million to $150 million. In conjunction with these increases in exemption levels, BEA is introducing an abbreviated short form, Form BE–10B Mini, for reporting nonbank foreign affiliates with assets, sales or gross operating revenues, and net income (loss) less than or equal to $25 million but greater than $10 million.

DATES: This final rule will be effective January 6, 2005.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9890 or e-mail (*obie.whichard@bea.gov*).

SUPPLEMENTARY INFORMATION: In the August 17, 2004, **Federal Register**, 69 FR 51020–51024, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change.

This final rule amends 15 CFR 806.16 to set forth the reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2004.

Description of Changes

The BE–10, Benchmark Survey of U.S. Direct Investment Abroad, is a mandatory survey and is conducted once every 5 years by BEA, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March 2005; responses will be due by May 31, 2005, for respondents required to file fewer than 50 foreign affiliate report forms and by June 30, 2005 for those required to file 50 or more forms.

This final rule: (1) Increases the exemption level for reporting on the BE–10B(SF) short form from $7 million to $25 million and on the BE–10B Bank form from $7 million to $10 million; (2) increases the exemption level for reporting on the BE–10B(LF) long form from $100 million to $150 million; and (3) increases the exemption level for reporting only selected items on the BE–10A form from $100 million to $150 million. In conjunction with these increases in exemption levels, an abbreviated short form is introduced for reporting nonbank foreign affiliates with assets, sales or gross operating revenues, and net income (loss) less than or equal to $25 million but with at least one of these items greater than $10 million.

In addition to the changes in the reporting criteria mentioned above, BEA will expand reporting requirements on the BE–10B(SF) so that certain items that previously had been reportable only for majority-owned affiliates with assets, sales or gross operating revenues, or net income (loss) over $50 million will now be reportable for all majority-owned affiliates being filed on the BE–10B(SF).

BEA will add questions to the BE–10A form and BE–10B(LF) long form to collect detail on: (1) The broad occupational structure of employment; (2) premiums earned and claims paid for U.S. Reporters and foreign affiliates operating in the insurance industry; (3)

finished goods purchased for resale for U.S. Reporters and foreign affiliates operating in the wholesale and retail trade industries; and (4) research and development performed for affiliated persons or for others. In addition, BEA will expand the income statement on the BE–10B(SF) short form to include items on the long form and to add questions to the BE–10A Bank and BE–10B Bank forms to collect information on sales of services and on interest received and paid.

To offset the burden imposed by these additional questions, BEA will remove questions on: (1) U.S. trade in goods by product; (2) U.S. Reporter exports to unaffiliated foreign persons by country of destination; and (3) composition of external finances for the U.S. Reporter. In addition, BEA will replace sales by country of destination on the BE–10B(LF) with sales by major countries/regions.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(b) of the Act provides that with respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The benchmark surveys are BEA's censuses, intended to cover the universe of U.S. direct investment abroad in terms of value. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the U.S. direct investment position abroad and of the operations of U.S. parent companies and their foreign affiliates.

The survey will consist of an instruction booklet, a claim for not filing the BE–10, and a number of report forms. The amount and type of data required to be reported vary according to the size of the U.S. Reporters or foreign affiliates, whether they are banks or nonbanks and, for foreign affiliates, whether or not they are majority-owned by U.S. direct investors. For purposes of the BE–10 survey, a ''bank'' is a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, savings and loans, savings banks, bank holding companies, and financial holding companies. The report forms that will be used in the survey consist of the following:

1. Form BE–10A—Report for nonbank U.S. Reporters;
2. Form BE–10A BANK—Report for U.S. Reporters that are banks;
3. Form BE–10B(LF) (Long Form)—Report for majority-owned nonbank foreign affiliates of nonbank U.S. parents with assets, sales, or net income greater than $150 million (positive or negative);
4. Form BE–10B(SF) (Short Form)—Report for majority-owned nonbank foreign affiliates of nonbank U.S. parents with assets, sales, or net income greater than $25 million but not greater than $150 million (positive or negative); minority-owned nonbank foreign affiliates of nonbank U.S. parents with assets, sales, or net income greater than $25 million (positive or negative); and nonbank affiliates of U.S. bank parents with assets, sales, or net income greater than $25 million (positive or negative);
5. Form BE–10B Mini—Report for nonbank foreign affiliates with assets, sales, or net income greater than $10 million but not greater than $25 million (positive or negative); and
6. Form BE–10B BANK—Report for foreign affiliates that are banks.

Although the survey is intended to cover the universe of U.S. direct investment abroad, to reduce respondent burden, foreign affiliates with assets, sales, and net income each equal to or less than $10 million (positive or negative) are exempt from being reported on Form BE–10B(SF), BE–10B Mini, or BE–10B BANK (but must be listed, along with selected identification information and data, on Form BE–10A SUPPLEMENT A or BE–10A BANK SUPPLEMENT A).

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O.12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act (PRA).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number. The OMB control number for the BE–10 is 0608–0049; the collection will display this number.

The survey is expected to result in the filing of reports from approximately 3,875 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 110 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for the 2004 survey is estimated at 428,750 hours.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230 (Fax: 202–606–5311); and Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0049, Attention PRA Desk Officer for BEA, via the Internet at *pbugg@omb.eop.gov*, or by Fax at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. A BE–10 report is required of any U.S. company that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise at any time during the U.S. company's 2004 fiscal year. Companies that have direct investments abroad tend to be quite large. To reduce the reporting burden on smaller U.S. companies, U.S. Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $150 million (positive or negative) are required to report only selected items on the BE–10A form for U.S. Reporters in addition to forms they may be required to file for their foreign affiliates.

No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, U.S. investment abroad, Penalties, Reporting and recordkeeping requirements.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR Part 806 is revised to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173); E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.16 is revised to read as follows:

§ 806.16 Rules and regulations for BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2004.

A BE–10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 2004. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2004, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, that is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE–10 survey;

(2) Completing and returning the ''BE–10 Claim for Not Filing'' by the due date of the survey; or

(3) Filing the properly completed BE–10 report (comprising Form BE–10A or BE–10A BANK and Forms BE–10B(LF), BE–10B(SF), BE–10B Mini and/or BE–10B BANK) by May 31, 2005, or June 30, 2005, as required.

(b) *Who must report.* (1) A BE–10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person's 2004 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 2004 fiscal year, a ''BE–10 Claim for Not Filing'' must be filed by the due date of the survey; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 2004 fiscal year, a BE–10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even if the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 2004 fiscal year.

(4) The amount and type of data required to be reported vary according to the size of the U.S. Reporters or foreign affiliates, whether they are banks or nonbanks, and, for foreign affiliates, whether they are majority-owned or minority-owned by U.S. direct investors. For purposes of the BE–10 survey, a ''majority-owned'' foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent; all other affiliates are referred to as ''minority-owned'' affiliates. In addition, a ''bank'' is a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, savings and loans, savings banks, bank holding companies, and financial holding companies. Elsewhere in this section, when ''bank'' is used, it refers to all such organizations.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates.* (1) *Form BE–10A (Report for nonbank U.S. Reporter).* A BE–10A report must be completed by a U.S. Reporter that is not a bank. If the U.S. Reporter is a corporation, Form BE–10A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter's primary line of business is not in banking (or related financial activities), but the Reporter also has

ownership in a bank, the bank, including all of its domestic subsidiaries or units, must file on the BE–10A BANK form and the nonbanking U.S. operations not owned by the bank must file on the BE–10A.

(i) If for a nonbank U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $150 million (positive or negative) at any time during the Reporter's 2004 fiscal year, the U.S. Reporter must file a complete Form BE–10A and, as applicable, a BE–10A SUPPLEMENT A listing each, if any, foreign affiliate that is exempt from being reported on Form BE–10B(LF), BE–10B(SF), BE–10B Mini, or BE–10B BANK. It must also file a Form BE–10B(LF), BE–10B(SF), BE–10B Mini, or BE–10B BANK, as appropriate, for each nonexempt foreign affiliate.

(ii) If for a nonbank U.S. Reporter none of the three items listed in paragraph (c)(1)(i) of this section was greater than $150 million (positive or negative) at any time during the Reporter's 2004 fiscal year, the U.S. Reporter is required to file on Form BE–10A only certain items as designated on the form and, as applicable, a BE–10A SUPPLEMENT A listing each, if any, foreign affiliate that is exempt from being reported on Form BE–10B(LF), BE–10B(SF), BE–10B Mini, or BE–10B BANK. It must also file a Form BE–10B(LF), BE–10B(SF), BE–10B Mini, or BE–10B BANK, as appropriate, for each nonexempt foreign affiliate.

(2) *Form BE–1OB(LF), (SF), or Mini (Report for nonbank foreign affiliate).* (i) A BE–10B(LF) (Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $150 million (positive or negative) at any time during the affiliate's 2004 fiscal year.

(ii) A BE–10B(SF) (Short Form) must be filed:

(A) For each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $25 million but for which none of these items was greater than $150 million (positive or negative), at any time during the affiliate's 2004 fiscal year, and

(B) For each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $25 million (positive or negative), at any time during the affiliate's 2004 fiscal year, and

(C) For each nonbank foreign affiliate of a U.S. bank Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $25 million (positive or negative), at any time during the affiliate's 2004 fiscal year.

(iii) A BE–10B Mini must be filed for each nonbank foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $10 million but for which none of these items was greater than $25 million (positive or negative), at any time during the affiliate's 2004 fiscal year.

(iv) Notwithstanding paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section, a Form BE–10B(LF), (SF), or Mini must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, *i.e.*, a Form BE–10B(LF), (SF), Mini, or BANK must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks, bank holding companies, or financial holding companies.* (1) *Form BE–10A BANK (Report for a U.S. Reporter that is a bank).* A BE–10A BANK report must be completed by a U.S. Reporter that is a bank. For purposes of filing Form BE–10A BANK, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had any foreign affiliates at any time during its 2004 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $10 million (positive or negative) at any time during the affiliate's 2004 fiscal year, the U.S. Reporter must file a Form BE–10A BANK and, as applicable, a BE–10A BANK SUPPLEMENT A listing each, if any, foreign affiliate, whether bank or nonbank, that is exempt from being reported on Form BE–10B(SF), BE–10B Mini, or BE–10B BANK. It must also file a Form BE–10B(SF) or BE–10B Mini for each nonexempt nonbank foreign affiliate and a Form BE–10B BANK for each nonexempt bank foreign affiliate.

(ii) If the U.S. bank Reporter had no foreign affiliates for which any one of the three items listed in paragraph (d)(2)(i) of this section was greater than $10 million (positive or negative) at any time during the affiliate's 2004 fiscal year, the U.S. Reporter must file a Form BE–10A BANK and a BE–10A BANK SUPPLEMENT A, listing all foreign affiliates exempt from being reported on Form BE–10B(SF), BE–10B Mini, or BE–10B BANK.

(2) *Form BE–10B BANK (Report for a foreign affiliate that is a bank).* (i) A BE–10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $10 million (positive or negative) at any time during the affiliate's 2004 fiscal year.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE–10B BANK must be filed for a foreign bank affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, *i.e.*, a Form BE–10B(LF), (SF), Mini, or BANK must be filed for all affiliates upward in a chain of ownership. However, a Form BE–10B BANK is not required to be filed for a foreign bank affiliate in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE–10A BANK SUPPLEMENT A.

(e) *Due date.* A fully completed and certified BE–10 report comprising Form BE–10A or 10A BANK and Form(s) BE–10B(LF), (SF), Mini, or BANK (as required) is due to be filed with BEA not later than May 31, 2005 for those U.S. Reporters filing fewer than 50, and June 30, 2005 for those U.S. Reporters filing 50 or more, Forms BE–10B(LF), (SF), Mini, or BANK.

[FR Doc. 04–26764 Filed 12–6–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 31, 53, 55, 156, 301, and 602

[TD 9163]

RIN 1545–BB29

Automatic Extension of Time To File Certain Information Returns and Exempt Organization Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the automatic extension of time to file certain information returns and exempt organization returns. The final regulations adopt temporary rules that removed the requirement for a signature and an explanation to obtain an automatic extension of time to file these returns. The final regulations also remove the requirement for a signature to obtain an automatic extension of time to file corporation income tax returns. The final regulations affect taxpayers who need an extension of time to file certain information returns, exempt organization returns, and/or corporation income tax returns.

DATES: *Effective Date:* These regulations are effective on December 7, 2004.

Applicability Date: For dates of applicability, see §§ 1.6081–3(e), 1.6081–8(g), 1.6081–9(f), and 31.6081(a)–1(d).

FOR FURTHER INFORMATION CONTACT: Charles A. Hall, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1, 25, 31, 53, 55, 156, 301, and 602 under section 6081 of the Internal Revenue Code, relating to extensions of time to file Federal tax returns.

On June 11, 2003, the IRS published final and temporary regulations (TD 9061) in the **Federal Register** (68 FR 34797). A cross-reference notice of proposed rulemaking (REG–107618–02) was published in the **Federal Register** (68 FR 34875) on the same day. Subsequently, the IRS published a correction to the final and temporary regulations dated September 18, 2003 (68 FR 54660).

The temporary regulations provide an automatic extension of time to file certain information returns and exempt organization returns. The temporary regulations also removed the previously applicable rules requiring a signature and an explanation to obtain an automatic extension of time to file these returns. In addition, the temporary regulations made other minor changes to conform the regulations under section 6081 to current law and practice.

No comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held.

Explanation of Provisions

This Treasury decision removes the temporary regulations and adopts the proposed regulations as final regulations with the changes explained below.

The first change relates to the automatic extension of time to file exempt organization returns. Section 1.6081–9(a) of the proposed regulations provides that exempt organizations may automatically extend the time for filing Form 990 (series) returns for three months. This language inadvertently included exempt organizations organized in corporate form (corporate filers) that file Forms 990–T, ''Exempt Organization Business Income Tax Return'' (and proxy tax under section 6033(e)), who previously could obtain a six-month extension of time to file each year. The IRS and the Treasury Department did not intend to make any changes regarding the extension period for corporate filers of the Form 990–T. Therefore, these final regulations clarify that corporate filers of the Form 990–T may obtain a six-month automatic extension of time to file by properly filing Form 8868.

Furthermore, in reviewing the regulations under section 6081, the IRS and the Treasury Department determined that it was appropriate to amend § 1.6081–3 to eliminate the requirement for corporations to provide a signature on Form 7004, ''Application for Automatic Extension of Time To File Corporation Income Tax Return,'' to obtain a six-month automatic extension of time to file a corporation income tax return. Section 1.6081–3, like all other regulations providing for automatic extensions of time to file, does not require the taxpayer to explain why the extension is needed. Section 1.6081–3, however, unlike the other automatic extensions of time to file, does require a signature on the Form 7004. This signature requirement is an impediment to filing the Form 7004 electronically. The IRS and the Treasury Department have determined that there is no need for a signature requirement for the automatic corporation income tax return extension. Thus, to promote consistency and to remove barriers to electronic filing, this Treasury decision removes the signature requirement from § 1.6081–3.

In addition to removing the signature requirement, this Treasury decision revises § 1.6081–3 to reflect the repeal of section 6152, which allowed corporations to pay tax in installments. A similar revision is made to § 301.6651–1, relating to the addition to tax for failure to file return or pay tax. For a corporation that obtains an automatic extension of time to file under § 1.6081–3, the existing rules in § 301.6651–1(c)(4) provide that there is reasonable cause (and therefore no addition to tax) for failure to pay tax for the period of the extension if the corporation made payments on a schedule consistent with the installment payment schedule in section 6152, paid at least 90% of its tax due on or before the due date for the return, and paid any balance due on or before the extended due date. This Treasury decision removes the requirement that the corporation make payments on a schedule consistent with section 6152.

Section 1.6081–8 allows filers and transmitters of information returns on Form 1099 (series), 1098 (series), 5498 (series), W–2 (series), W–2G, 1042–S, and 8027 to request an automatic 30-day extension of time to file without having to sign Form 8809 and provide an explanation. An explanation and a signature are required if filers and transmitters need additional time to file after receiving the automatic 30-day extension. These regulations also permit employers to obtain an extension of time to file the Social Security Administration copy of Forms W–2 and W–3 without providing a statement of the reasons for requesting the extension.

The final regulations clarify that filers and transmitters are eligible for only one automatic extension of time to file. Filers and transmitters filing Forms W–2 on an expedited basis under § 31.6071(a)–1(a)(3)(ii) may receive an automatic extension of time to file Forms W–2 under Rev. Proc. 96–57, 1996–2 C.B. 389. These filers and transmitters are not eligible to obtain the 30-day automatic extension under § 1.6081–8(b). If these filers and transmitters need additional time, they may request an extension under the generally applicable procedures for obtaining additional extensions of time to file Form W–2.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a

regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, therefore, notice of the amendments to §§ 1.6081–3 and 301.6651–1 and public procedure thereon is not required. Because these amendments merely remove a restriction (signature requirement) and otherwise make only nonsubstantive changes to remove references to prior law, a delayed effective date pursuant to 5 U.S.C. 553(d) is also not required.

In addition, because the regulation does 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, the notice of proposed rulemaking preceding this regulation and the amendments to §§ 1.6081–3 and 301.6651–1 have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 25, 31, 53, 55, 156, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for § 1.6081–8T and § 1.6081–9T and adding entries in numerical order to read in part as follows:

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

Section 1.6081–8 also issued under 26 U.S.C. 6081(a).

Section 1.6081–9 also issued under 26 U.S.C. 6081(a). * * *

■ **Par. 2.** Section 1.6081–1 is amended by revising paragraph (a) to read as follows:

§ 1.6081–1 Extension of time for filing returns.

(a) *In general.* The Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by subtitle A of the Code and which is required under the provisions of subtitle A or F of the Code or the regulations thereunder. However, other than in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months, and the extension of time for filing the return of a DISC (as defined in section 992(a)), as specified in section 6072(b), shall not be granted. Except in the case of an extension of time pursuant to § 1.6081–5, an extension of time for filing an income tax return shall not operate to extend the time for the payment of the tax unless specified to the contrary in the extension. For rules relating to extensions of time for paying tax, see § 1.6161–1.

* * * * *

■ **Par. 3.** Section 1.6081–3 is revised to read as follows:

§ 1.6081–3 Automatic extension of time for filing corporation income tax returns.

(a) *In general.* A corporation or an affiliated group of corporations filing a consolidated return will be allowed an automatic 6-month extension of time to file its income tax return after the date prescribed for filing the return if the following requirements are met:

(1) An application must be submitted on Form 7004, ''Application for Automatic Extension of Time To File Corporation Income Tax Return,'' or in any other manner as may be prescribed by the Commissioner.

(2) The application must be filed on or before the date prescribed for the filing of the return of the corporation (or the consolidated return of the affiliated group of corporations) with the Internal Revenue Service office designated in the application's instructions.

(3) The corporation (or affiliated group of corporations filing a consolidated return) must remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(4) The application must include a statement listing the name and address of each member of the affiliated group if the affiliated group will file a consolidated return.

(b) *No extension of time for the payment of tax.* Any automatic extension of time for filing a corporation income tax return granted under paragraph (a) of this section shall not operate to extend the time for payment of any tax due on such return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing a notice of termination to the corporation (parent corporation in the case of an affiliated group of corporations filing a consolidated return). The notice shall be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination shall be sufficient for all purposes when mailed to the corporation at the address shown on Form 7004 or to the corporation's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *No extension for DISCs.* Paragraphs (a) through (c) of this section shall not apply to returns filed by a DISC pursuant to section 6011(c)(2).

(e) *Effective date.* This section applies to requests for extension of time to file corporation income tax returns due after December 7, 2004.

■ **Par. 4.** Section 1.6081–8 is added to read as follows:

§ 1.6081–8 Automatic extension of time to file certain information returns.

(a) *In general.* Except as provided in paragraph (f) of this section, a person required to file an information return (the filer) on Form W–2 series, W–2G, 1042–S, 1098 series, 1099 series, 5498

series, or 8027 will be allowed one automatic 30-day extension of time to file the return after the date prescribed for filing the return if the filer or the person transmitting the return for the filer (the transmitter) files an application in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an application must—

(1) Be submitted on Form 8809, ''Request for Extension of Time To File Information Returns,'' or in any other manner as may be prescribed by the Commissioner; and

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return.

(c) *Penalties.* See sections 6652, 6693, 6721, 6722, and 6723 for failure to file an information return.

(d) *Additional 30-day extension of time to file*—(1) *In general.* This paragraph (d) provides procedures for obtaining an additional extension of time for filing an information return on a form listed in paragraph (a) of this section. No extension of time will be granted under this paragraph (d) unless the filer or transmitter has first obtained an automatic extension under this section.

(2) *Procedures.* In the case of an information return on a form listed in paragraph (a) of this section, one additional 30-day extension of time to file the return may be allowed if the filer or transmitter submits a request for the additional extension before the expiration of the automatic 30-day extension. The request must—

(i) Be submitted on Form 8809 or in any other manner as may be prescribed by the Commissioner;

(ii) Explain in detail why the additional time is needed;

(iii) Be signed by the filer or transmitter; and

(iv) Otherwise satisfy the requirements of § 1.6081–1.

(e) *No effect on time to provide statement to recipients.* An extension under this section of time to file an information return does not extend the due date for providing a statement to the person with respect to whom the information is required to be reported.

(f) *Form W–2 filed on expedited basis.* This section does not apply to a return on Form W–2 (series) if the procedures authorized in § 31.6081(a)–1(a)(2)(ii) of this chapter allow an automatic extension of time to file the return.

(g) *Effective date.* This section applies to requests for extension of time to file information returns due after December 7, 2004.

§ 1.6081–8T [Removed]

■ **Par. 5.** Section 1.6081–8T is removed.

■ **Par. 6.** Section 1.6081–9 is added to read as follows:

§ 1.6081–9 Automatic extension of time to file exempt organization returns.

(a) *In general.* A corporation required to file a return on Form 990–T will be allowed an automatic six-month extension of time to file the return after the date prescribed for filing if the corporation files an application in accordance with paragraph (b) of this section. In any other case, an exempt organization required to file a return on Form 990 (series, except for Form 990–C), 1041–A, 4720, 5227, 6069, or 8870 will be allowed an automatic three-month extension of time to file the return after the date prescribed for filing if the exempt organization files an application in accordance with paragraph (b) of this section. For guidance on extensions of time for an exempt organization to file Form 990–C, ''Farmer's Cooperative Association Income Tax Return,'' or Form 1120–POL, ''U.S. Income Tax Return for Certain Political Organizations,'' see § 1.6081–3.

(b) *Requirements.* To satisfy this paragraph (b), an application for an automatic extension under this section must—

(1) Be submitted on Form 8868, ''Application for Extension of Time To File an Exempt Organization Return,'' or in any other manner as may be prescribed by the Commissioner;

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the return;

(3) Show the full amount properly estimated as tentative tax for the exempt organization for the taxable year; and

(4) Be accompanied by the full remittance of the amount properly estimated as tentative tax which is unpaid as of the date prescribed for the filing of the return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the exempt organization a notice of termination. The notice must be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination must be mailed to the address shown on the application for extension or to the exempt organization's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See sections 6651 and 6652(c) for failure to file an exempt organization return or failure to pay the amount shown as tax on the return.

(e) *Coordination with § 1.6081–1.* No extension of time will be granted under § 1.6081–1 for filing an exempt organization return listed in paragraph (a) of this section until an automatic extension has been allowed pursuant to this section.

(f) *Effective date.* This section applies to requests for extensions of time to file an exempt organization return due after December 7, 2004.

§ 1.6081–9T [Removed]

■ **Par. 7.** Section 1.6081–9T is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 8.** The authority citation for part 25 continues to read in part as follows:

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

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 9.** The authority citation for part 31 is amended by removing the entry for § 31.6081(a)–1T to read in part as follows:

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

Section 31.6081(a)–1 also issued under 26 U.S.C. 6081.* * *

■ **Par. 10.** Section 31.6081(a)–1 is amended by:

1. Revising paragraph (a)(2)(i).
2. Adding paragraph (d).

The revision and addition reads as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(2) *Information returns of employers on Forms W–2 and W–3*—(i) *In general.* The Commissioner may grant an extension of time in which to file the Social Security Administration copy of Forms W–2 and the accompanying transmittal form which constitutes an information return under § 31.6051–2(a). For further guidance regarding extensions of time to file the Social Security Administration copy of Forms W–2 and W–3, see § 1.6081–8 of this chapter.

* * * * *

(d) *Effective date.* Paragraph (a)(2)(i) of this section applies to requests for extensions of time to file the Social Security Administration copy of Forms W–2 and W–3 due after December 7, 2004.

§ 31.6081(a)–1T [Removed]

■ **Par. 11.** Section 31.6081(a)–1T is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 12.** The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

■ **Par. 13.** The first sentence of the authority citation for part 55 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6071, 6091, and 7805. * * *

PART 156—EXCISE TAX ON GREENMAIL

■ **Par. 14.** The authority citation for part 156 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805.

■ **Par. 15.** In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column in its place:

Section	Remove	Add
1.6081–2(f), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–4(c), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–5(a)(1)	1.6031–1(e)(2)	1.6031(a)–1(e)(2)
1.6081–6(d), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–7(d), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
25.6081–1, second sentence	district director or director of the service center.	Commissioner.
31.6081(a)–1(b), first sentence	district director or director of a service center	Commissioner.
53.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is
53.6081–1(b), first sentence	to the district director or director of the service center with whom the return is to be filed.	in accordance with the instructions to the extension request form
55.6081–1, first sentence	District directors and directors of service centers are.	The Commissioner is
156.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is
156.6081–1(b), first sentence	to the district director or director of the service center with whom the return is to be filed.	in accordance with the instructions to the extension form.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 16.** The authority citation for part 301 continues to read as follows:

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

§ 301.6651–1 [Amended]

■ **Par. 17.** Section 301.6651–1(c)(4) introductory text is amended by removing the language ''or (b)'', removing paragraph (c)(4)(i), and redesignating paragraphs (c)(4)(ii) and (c)(4)(iii) as paragraphs (c)(4)(i) and (c)(4)(ii), respectively.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

■ **Par. 19.** In § 602.101, paragraph (b) is amended by removing the entries for §§ 1.6081–8T and 1.6081–9T from the table.

Approved: November 23, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–26837 Filed 12–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9144]

RIN 1545–BA75

Statutory Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects final regulations (TD 9144) that were published in the **Federal Register** on Monday, August 3, 2004 (69 FR 46401) and corrected on Monday, October 18, 2004 (69 FR 61309). The final regulations relate to statutory options.

DATES: This document is effective on August 3, 2004.

FOR FURTHER INFORMATION CONTACT: Erinn Madden, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9144) that are the subject of these corrections are under sections 421, 422, and 424 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9144) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Parts 1 and 602 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 and continues to read in part as follows:

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

§ 1.421–1 [Corrected]

■ 1. Section 1.421–1(j)(2), the second sentence is amended by removing the language ''the REG–122917–02 or this section.'' and adding the language ''REG–122917–02 or this section.'' in its place.

§ 1.421–2 [Corrected]

■ 2. Section 1.421–2(f)(2), the second sentence is amended by removing the language ''corporation at least 6 months after August 3, 2004, taxpayers may rely on either the REG–122917–02 or section.'' and adding the language ''corporation occurring at least 6 months after August 3, 2004, taxpayers may rely on either REG–122917–02 or this section.'' in its place.

§ 1.422–1 [Corrected]

■ 3. Section 1.422–1(b)(3), *Example 2*, the fourth sentence is amended by removing the language ''consequences of the disposition and the holding period for capital gain purposes begin on the vesting date, six months after exercise.'' and adding the language ''consequences of the disposition, and the holding period for capital gain purposes begins on the vesting date, six months after exercise.'' in its place.

§ 1.422–4 [Corrected]

■ 4. Section 1.422–4(d), *Example 5* (iii), the last sentence is amended by removing the language ''it is treated as a nonstatutory options in its entirety.'' and adding the language ''it is treated as a nonstatutory option in its entirety.'' in its place.

§ 1.422–5 [Corrected]

■ 5. Section 1.422–5(e), *Example 2*, the fourth sentence is amended by removing the language ''Under the rules of paragraph (b)(2) and (b)(3) of this section,'' and adding the language ''Under the rules of paragraphs (b)(2) and (b)(3) of this section,'' in its place.

■ 6. Section 1.422–5(f)(2), the second sentence is amended by removing the language ''taxpayers may rely on either the REG–122917–02 or this section.'' and adding the language ''taxpayers may rely on either REG–122917–02 or this section.'' in its place.

■ 7.Section 1.424–1 is amended by:

■ 1. Revising the sixth and seventh sentences in paragraph (a)(10), *Example 8*.

■ 2. Adding a comma after the word ''Thus'' in the second sentence of paragraph(e)(4)(viii).

The revision reads as follows:

§ 1.424–1 Definitions and special rules applicable to statutory options.

(a) * * *

(10) * * *

Example 8. * * * Based on these facts, a new option to purchase 200 shares of Y at an option price of $25 per share could be granted to E in complete substitution of E's old option. In the alternative, it would also be permissible in connection with the spin off, to grant E a new option to purchase 100 shares of Y, at an option price of $25 per share, and for E to retain an option to purchase 100 shares of X under the old option, with the option price adjusted to $25.

* * * * *

■ 8. Section 1.424–1(g)(2), the second sentence is amended by removing the language ''on either the REG–122917–02 or this section.'' and adding the language ''on either REG–122917–02 or this section.'' in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 2.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Corrected]

■ 9. Section 602.101(b) is amended by adding the entry ''1.422–1–1545–0820'' to the table in numerical order.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–26745 Filed 12–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–212]

RIN 1625–AA08

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek and Severn River, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.511 during the Eastport Yacht Club Lights Parade, a marine event to be held December 11, 2004, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

DATES: 33 CFR 100.511 will be enforced from 4:45 p.m. to 9:15 p.m. on December 11, 2004.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2513.

SUPPLEMENTARY INFORMATION: The Eastport Yacht Club will sponsor a lighted boat parade on the waters of Spa Creek and the Severn River at Annapolis, Maryland. The event will consist of approximately 75 boats traveling at slow speed along two separate parade routes in Annapolis Harbor. The participating boats will range in length from 10 to 90 feet, and each will be decorated with holiday lights. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be enforced for the duration of the event. Under the provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a

significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: November 24, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 04–26841 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–211]

RIN 1625–AA08

Special Local Regulations for Marine Events; Southern Branch of the Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.523 during the Olde Towne Holiday Music Festival Fireworks Show to be held December 11, 2004 on the Southern Branch of the Elizabeth River at Portsmouth, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and support vessels in the event area.

DATES: 33 CFR 100.523 will be enforced from 7 p.m. to 8 p.m. EDT on December 11, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Bowling, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483–8567.

SUPPLEMENTARY INFORMATION: The City of Portsmouth will sponsor the ''Olde Towne Holiday Music Festival Fireworks'' on December 11, 2004 on the Southern Branch of the Elizabeth River, Portsmouth, Virginia. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.523 will be enforced for the duration of the event. The special local regulations will be enforced from 7 p.m. to 8 p.m. e.d.t. on December 11, 2004. The pyrotechnic display will be launched from 1 barge located adjacent to Crawford Bay within the regulated area. Under the provisions of 33 CFR 100.523, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: November 24, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 04–26843 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–214]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.526 during the New Year's Eve Celebration to be held December 31, 2004 through January 1, 2005 on the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and support vessels in the event area.

DATES: 33 CFR 100.526 will be enforced from 11:45 p.m., December 31, 2004 to 12:45 a.m. e.d.t. on January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland, 21226, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The Baltimore Office of Promotion and the Arts will sponsor the ''New Year's Eve Celebration'' on December 31, 2004 to January 1, 2005 on the waters of the Inner Harbor, Patapsco River, Baltimore, Maryland. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.526 will be enforced for the duration of the event. The special local regulations will be enforced from 11:45 p.m. December 31, 2004 to 12:45 a.m. e.d.t. on January 1, 2005. The pyrotechnic display will be launched from 3 barges located adjacent to the Inner Harbor within the regulated area. Under the provisions of 33 CFR 100.526, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: November 24, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 04–26844 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 712

[OPPT–2004–0089; FRL–7366–8]

RIN 2070–AB08

Preliminary Assessment Information Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule, issued pursuant to section 8(a) of the Toxic Substances Control Act (TSCA), will require certain manufacturers (including importers) of 3 chemical substances in the chemical category ''Pyridinamines'' and 20 chemical substances in the chemical category ''Tungsten Compounds'' to submit a one-time report on general production/importation volume, end use, and exposure-related information to EPA. The Interagency Testing Committee (ITC), established under section 4(e) of TSCA to recommend chemicals and

chemical mixtures to EPA for priority testing consideration, amends the TSCA Section 4(e) *Priority Testing List* through periodic reports submitted to EPA. The ITC recently added these 2 categories containing 23 chemicals to the *Priority Testing List*.

In addition, EPA is adding as required under the Paperwork Reduction Act (PRA) the Office of Management and Budget (OMB) approved information collection requirements contained in this final rule to EPA's table of OMB control numbers in the Code of Federal Regulations (CFR).

DATES: This final rule is effective on January 6, 2005. For purposes of judicial review, this rule shall be promulgated at 1 p.m. eastern daylight/standard time on December 21, 2004. (See 40 CFR 23.5)

For submission of a Preliminary Assessment Information Reporting (PAIR) Form, see Unit III.B. of the **SUPPLEMENTARY INFORMATION**.

A request to withdraw a chemical from this rule, pursuant to 40 CFR 712.30(c), must be received on or before December 21, 2004. (See Unit IV. of the **SUPPLEMENTARY INFORMATION**.)

ADDRESSES: *Instructions*: Direct your submissions to docket identification (ID) number OPPT–2004–0089. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, 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 EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Submit your withdrawal requests and PAIR forms, identified by docket ID number OPPT–2004–0089, by one of the following methods:

- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: 8(a) Auto-ITC.
- *Hand delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: 8(a) Auto-ITC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Joe Nash, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8886; fax number: (202) 564–4765; e-mail address: *ccd.citb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in 40 CFR 712.30(e) of the regulatory text of this document. Entities potentially affected by this action may include, but are not limited to:

- Chemical manufacturers (including importers), (NAICS 325, 324110), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR parts 9 and 712 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

C. How Do I Submit CBI Information?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. Background

A. What Action is the Agency Taking?

EPA is issuing a final TSCA section 8(a) PAIR rule which requires certain manufacturers (including importers) of 3 chemical substances in the chemical category ''Pyridinamines'' and 20 chemical substances in the chemical category ''Tungsten Compounds'' added to the ITC's TSCA section 4(e) *Priority Testing List* to submit production and exposure reports. The regulatory text of this rule lists the 23 chemical substances that are being added to the PAIR rule.

B. What is the Agency's Authority for Taking this Action?

EPA promulgated the PAIR rule in 40 CFR part 712 under TSCA section 8(a) (15 U.S.C. 2607(a)). This model TSCA section 8(a) rule establishes standard reporting requirements for certain manufacturers (including importers) of the chemicals listed in the rule at 40 CFR 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the PAIR Form entitled *Manufacturer's Report-Preliminary Assessment Information* (EPA Form No. 7710–35). (See 40 CFR 712.28.) EPA uses this model TSCA section 8(a) rule to quickly gather current information on chemicals or chemical categories as referenced in TSCA section 26(c) (15 U.S.C. 2625(c)).

This model TSCA section 8(a) rule provides for the addition of TSCA section 4(e) *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC Report, EPA can, and without providing notice or an opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective 30 days after the date of publication in the **Federal Register**.

C. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity for comment pursuant to the procedures set forth in 40 CFR 712.30(c). EPA finds that there is ''good cause'' under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these amendments without prior notice and comment. EPA believes notice and an opportunity for comment on this action are unnecessary. TSCA directs the ITC to add chemicals to the *Priority Testing List* for which EPA should give priority consideration. EPA also lacks the authority to remove a chemical from the *Priority Testing List* once it has been added by the ITC. As explained earlier in this rule, pursuant to 40 CFR 712.30(c), once the ITC adds a chemical to the *Priority Testing List*, EPA in turn is obliged to add that chemical to the list of chemicals subject to PAIR reporting requirements, unless requested not to do so by the ITC. EPA promulgated this procedure in 1985 after having solicited public comment on the need for and mechanics of this procedure. (See the **Federal Register** of August 28, 1985 (50 FR 34805)). Because that rulemaking established the procedure for adding ITC chemicals to the PAIR rule, it is unnecessary to request comment on the procedure in this action. EPA believes this action does not raise any relevant issues for comment. EPA is not changing the PAIR reporting requirements or the process set forth in 40 CFR 712.30(c). Finally, 40 CFR 712.30(c) does provide EPA with the discretion to withdraw a chemical from the PAIR rule if a chemical manufacturer submits to EPA information showing why a chemical should be removed from the PAIR rule.

III. Final Rule

A. What Chemicals are to be Added ?

In this rule, EPA is adding 3 chemical substances in the chemical category ''Pyridinamines'' and 20 chemical substances in the chemical category ''Tungsten Compounds'' to the TSCA section 8(a) PAIR rule as requested by the ITC in its 53rd Report (Ref. 1).

B. Who Must Report Under this PAIR Rule?

Persons who manufactured (defined by statute to include import) the chemicals identified in the regulatory text of this document during their latest complete corporate fiscal year must submit a PAIR Form for each site at which they manufactured or imported a named substance. Exemptions from this reporting requirement are found at 40 CFR 712.25. A separate form must be completed for each substance and submitted to the Agency as specified in 40 CFR 712.28 no later than March 7, 2005. Persons who have previously and voluntarily submitted a PAIR Form to the ITC may be able to submit a copy of the original report to EPA along with an accompanying letter notifying EPA of the respondent's intent that the submission be used in lieu of a current data submission. Persons who have previously and voluntarily submitted a PAIR Form to EPA may be able to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. (See 40 CFR 712.30(a)(3)).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Copies of the PAIR Form are available from the general information contact person listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the PAIR Form are also available electronically from the Chemical Testing and Information Branch Home Page on the Internet at *http://www.epa.gov/opptintr/chemtest/pairform.pdf/*.

C. Economic Analysis

The economic analysis for the addition of the 23 chemicals to the TSCA section 8(a) PAIR rule is entitled *Economic Analysis for the Addition of 23 Chemical Abstract Service (CAS)-numbered Chemicals Requested to be added to EPA's Preliminary Assessment Information Reporting (PAIR) Rule in the 53rd Report of the TSCA Interagency Testing Committee* (Ref. 2). A report was located on only one of the 23 chemicals in EPA's 2002 Chemical Update System (CUS) utilizing the ITC-supplied CAS numbers, yielding one company producing that one chemical at one site. Because the threshold for reporting to CUS under the Inventory Update Rule through its most recent reporting cycle in 2002 was 10,000 lbs., and the threshold for PAIR reporting is 500 kilograms (kg) (1,100 lbs.), and because there was no requirement that inorganic chemicals be reported to CUS (the majority of the tungsten compounds are inorganic), EPA assumed that one manufacturer exists per chemical to account for the possibility that there may be manufacturers producing PAIR-reportable amounts that were not captured by CUS. Given the assumptions in this unit, the costs and burden associated with this rule are estimated in the economic analysis (Ref. 2) to be the following:

Reporting Costs (dollars)

23 reports estimated at $345.81 per report = $7,953.63

Total Cost = $31,162.43

Unit cost of this rule per site/report = $31,162.43

Total cost/23 total sites/reports = $1,354.89

Reporting Burden (hours)

Form familiarization: 7 hours/site x 23 sites =161 hours

Reporting: 490.71 hours

Total burden hours = 651.71 hours

Unit burden of this rule per site/report = 651.7

Total hours/23 total sites/reports = 28.3 hours

EPA Costs (dollars) and Burden (hours)

It is estimated that the annual cost to the Federal Government will be $5,072.24 (23 reports @ $220.53 each), plus 0.0581 Full Time Equivalents (FTEs). At an estimated $97,021 per FTE, the total of 0.0581 FTEs will cost EPA $5,632.35 in salaries, bringing the total costs to the Federal Government to $10,704.59 (i.e., $5,072.24 + $5,632.35).

IV. Requesting a Chemical be Withdrawn from the Rule

As specified in 40 CFR 712.30(c), EPA may remove a chemical substance, mixture, or category of chemical substances from this rule for good cause prior to January 6, 2005 if a chemical manufacturer submits to EPA information showing why a chemical should be removed from the PAIR. Any chemical manufacturer who believes that the reporting required by this rule is not warranted for a chemical listed in this rule, must submit to EPA detailed reasons for that belief. You must submit your request to EPA on or before December 21, 2004 and in accordance with the instructions provided in 40 CFR 712.30(c), which are briefly summarized here. In addition, to ensure proper receipt by EPA, you must identify docket ID number OPPT– 2004–0089 in the subject line on the first page of your submission. If the Administrator withdraws a chemical substance, mixture, or category of chemical substances from the amendment, a **Federal Register** document announcing this decision will be published no later than January 6, 2005.

V. Materials in the Docket

The official docket for this rule has been established under docket ID number OPPT–2004–0089. The official public docket is available for review as specified in **ADDRESSES**. The following is a listing of the documents that have been placed in the official docket for this rule:

1. ITC. 2004. Fifty-Third Report of the ITC. **Federal Register** (69 FR 2468, January 15, 2004) (FRL–7335–2). Available online at *http:// www.epa.gov/fedrgstr/*.

2. EPA. 2004. Economic Analysis for the Addition of 23 Chemical Abstract Service (CAS)-numbered Chemicals Requested to be added to EPA's Preliminary Assessment Information Reporting (PAIR) Rule in the 53rd Report of the TSCA Interagency Testing Committee. April 2, 2004.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

The information collection requirements contained in TSCA section 8(a) PAIR rules have already been approved by OMB under the provisions of PRA, 44 U.S.C. 3501 *et seq.*, and OMB control number 2070–0054 (EPA ICR No. 0586). The collection activities in this final rule are captured by the existing approval and do not require additional review and/or approval by OMB.

EPA estimates that the information collection activities related to PAIR reporting for all chemicals in this final rule will result in an annual public reporting burden of 28.3 hours per chemical, for a total of 651.7 hours for the 23 chemicals (Ref. 2). As defined by the PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request 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 included on the related collection instrument. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This ICR was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the APA, 5 U.S.C. 553(b)(B), to amend this table without further notice and comment.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this rule (Ref. 2), and is briefly summarized here.

For this final rule, EPA has analyzed the potential small business impacts using the size standards established under the default definition of ''small business'' established under section 601(3) of RFA, which basically uses the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which the Small Business Administration (SBA) establishes small business size standards for each industry sector (13 CFR 121.201). The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation'' (13 CFR 121.102(b)). (See section 632(a)(1) of the Small Business Act.)

The small business size standards promulgated by SBA (61 FR 3280, 3289–3291, January 31, 1996) for chemical manufacturers are based solely on the number of employees, with a base threshold of 1,000 employees for the ultimate corporate parent, under which all businesses are considered small. Of the 23 businesses assumed to be affected by this rule, it is unknown how many meet this definition of small business. To estimate the impact of the rule on a business, the preferred method is the ''sales test,'' wherein costs for any individual firm are measured as a percent of annual sales. At a maximum cost for any one firm of $1,511.78, the firm's total sales would have to be less than $160,000 for this rule to have an

impact of even 1% of sales. Thus, EPA has determined that this rule will not impose a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132 and 13175

Based on EPA's experience with past TSCA section 8(a) rules, State, local, and tribal governments have not been impacted by these rules, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rule. As a result, these rules are not subject to the requirements in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) or Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

F. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23,1997), does not apply to this rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the one-time reporting on general production/importation volume, end use, and exposure-related information to EPA by certain manufacturers (including importers) of certain chemicals requested by the ITC to be added to the PAIR rule in its 53rd Report (Ref. 1).

G. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

H. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

I. Executive Order 12898

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: December 1, 2004.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

■ 1. By amending part 9 as follows:

■ a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342,1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ b. In § 9.1, the table is amended by removing the entries under the undesignated center heading ''Chemical Information Rules'' and adding in their place the entry below to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Chemical Information Rules	
Part 712	2070–0054
* * * * *	

* * * * *

PART 712—[AMENDED]

■ 2. By amending part 712 as follows:

■ a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ b. In § 712.30, the table in paragraph (e) is amended by adding in alphabetical order the category ''Pyridinamines'' containing 3 chemicals in ascending CAS number order and the category ''Tungsten Compounds'' containing 20 chemicals in ascending CAS number order to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(e) * * *

CAS No.	Substance	Effective date	Reporting date
	* *	* * *	
Pyridinamines:			
462–08–8	3-Pyridinamine	January 6, 2005	*March 7, 2005*
504–24–5	4-Pyridinamine	*January 6, 2005*	*March 7, 2005*
504–29–0	2-Pyridinamine	*January 6, 2005*	*March 7, 2005*
	* *	* * *	
Tungsten compounds:			
1314–35–8	Tungsten oxide (WO_3)	*January 6, 2005*	March 7, 2005
7440–33–7	Tungsten	*January 6, 2005*	*March 7, 2005*
7783–03–1	Tungstate (WO_4^{2}-), dihydrogen, (T-4)-	*January 6, 2005*	*March 7, 2005*
7783–82–6	Tungsten fluoride (WF_6), (OC-6-11)-	*January 6, 2005*	*March 7, 2005*
7790–60–5	Tungstate (WO_4^{2}-), dipotassium, (T-4)-	*January 6, 2005*	*March 7, 2005*
7790–85–4	Cadmium tungsten oxide ($CdWO_4$)	*January 6, 2005*	*March 7, 2005*
10213–10–2	Tungstate (WO_4^{2}-), disodium, dihydrate, (T-4)-.	*January 6, 2005*	*March 7, 2005*
11105–11–6	Tungsten oxide (WO_3), hydrate	*January 6, 2005*	*March 7, 2005*
11120–01–7	Sodium tungsten oxide	*January 6, 2005*	*March 7, 2005*
11120–25–5	Tungstate ($W_{12}(OH)_2O_{40}^{10}$-), decaammonium.	*January 6, 2005*	*March 7, 2005*
12027–38–2	Tungstate(4-),[.mu.12-[orthosilicato(4-)-.kappa.O:.kappa.O:.kappa.O:.kappa.O':.kappa.O':.kappa.O':.kappa.O'':.kappa.O'':.kappa.O'' :.kappa.O'''':.kappa.O''' :.kappa.O''''']]tetracosa-.mu.-oxododecaoxododeca-, tetrahydrogen.	*January 6, 2005*	*March 7, 2005*
12028–48–7	Tungstate ($W_{12}(OH)_2O_{38}^{6}$-), hexaammonium.	*January 6, 2005*	*March 7, 2005*
12036–22–5	Tungsten oxide (WO_2)	*January 6, 2005*	*March 7, 2005*
12067–99–1	Tungsten hydroxide oxide phosphate	*January 6, 2005*	*March 7, 2005*
12138–09–9	Tungsten sulfide (WS_2)	*January 6, 2005*	*March 7, 2005*
12141–67–2	Tungstate ($W_{12}(OH)_2O_{38}^{6-}$), hexasodium.	*January 6, 2005*	*March 7, 2005*
13283–01–7	Tungsten chloride (WCl_6), (OC-6-11)-	*January 6, 2005*	*March 7, 2005*
13472–45–2	Tungstate (WO_4^{2}-), disodium, (T-4)-	*January 6, 2005*	*March 7, 2005*
14040–11–0	Tungsten carbonyl ($W(CO)_6$), (OC-6-11)-.	*January 6, 2005*	*March 7, 2005*
23321–70–2	Tungsten oxide (WO_3), dihydrate	*January 6, 2005*	*March 7, 2005*
	* *	* * *	

* * * * *

[FR Doc. 04–26821 Filed 12–6–04; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Bureau of Land Management

43 CFR Parts 44 and 1880

RIN 1093–AA09

Payment in Lieu of Taxes

AGENCY: Office of the Secretary; Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the Code of Federal Regulations to reflect the transfer of responsibility for operating the Payment in Lieu of Taxes (PILT) program from the Bureau of Land Management to the Department of the Interior (''DOI''), Office of the Secretary.

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

FOR FURTHER INFORMATION CONTACT: Bill Howell, OS, Office of Budget, (202) 208–5308 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Howell.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted
III. Procedural Matters

I. Background

This rule moves the existing regulations at 43 CFR 1881 to 43 CFR Part 44 to reflect the transfer of responsibility for operating the PILT program from the Bureau of Land Management to the Office of the Secretary, DOI.

Elevating PILT to the Department level streamlines the budget process, eliminates the competition for dollars at the agency level, and ensures that appropriate emphasis can be directed to PILT as necessary, with a multibureau, Departmental funding contribution. This is a benefit that would accrue to Congress, the Department, BLM, and to the counties as well.

This rule is an administrative action to reassign PILT responsibilities from one office to another. The changes in the regulations pursuant to the notice consist of moving the implementing regulations from one CFR part to another. There is no substantive change in the Department's PILT responsibilities. Therefore, DOI has determined that it has no substantive impact on the public and for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this rule may take effect upon publication.

II. Final Rule as Adopted

The Department adopts the revisions to 43 CFR that deletes subpart 1881 and inserts new Part 44 to reflect the transfer of responsibility for operating the PILT program from the Bureau of Land Management to the Department of the Interior, Office of the Secretary.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866. The Office of Management and Budget has determined that this rule: Does not have an annual economic impact of $100 million or more; will not have an adverse impact in a material way on the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; does not pose a serious inconsistency or interfere with an action taken or planned by another agency; does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; and will not have novel legal or policy implications. Therefore, we do not have to assess the potential costs and benefits of the rule under section 6(a)(3) of this order. The rule is administrative in nature, simply transferring a function from one bureau to a Secretarial office.

Regulatory Flexibility Act

This rule does not require a regulatory flexibility analysis. Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601–612), to ensure that Government regulations do not necessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule would not have significant economic impacts on small entities under the RFA (5 U.S.C. 601 *et seq.*). The rule is administrative in nature, simply transferring a function from one bureau to a Secretarial office.

Small Business Regulatory Enforcement Fairness Act

This rule is not a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule will not have a significant impact on the economy or on small businesses in particular. As discussed above, this rule would update existing regulations to incorporate statutory changes to the authorizing legislation and do not affect small businesses.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The rule is administrative in nature, simply transferring a function from one bureau to a Secretarial office. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule does not represent a government action capable of interfering with constitutionally protected property rights. Therefore, we have determined that the regulation would not cause a taking of private property. No further discussion of takings implications are required under this Executive Order.

Executive Order 13132, Federalism

This rule 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. The rule is administrative in nature, simply transferring a function from one bureau to a Secretarial office. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act (NEPA)

This rule is subject to a categorical exclusion under NEPA. The Department has determined that this action to transfer responsibility of the PILT Act is a regulation of financial, technical, and legal nature under section 101(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10. Therefore, pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the Department has found that neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13175, Consultation and Coordination With for Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this rule does not include policies that have tribal implications. The rule is administrative in nature, simply transferring a function from one bureau to a Secretarial office.

Executive Order 12988, Civil Justice Reform

The Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Author: The principal author is Bill Howell, Budget Group, assisted by John Strylowski, Office of Executive Secretary.

Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The Department will not require collection of this information until OMB has given its approval.

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

In accordance with Executive Order 13211, BLM has determined that the proposed rule will not have substantial direct effects on the energy supply, distribution, or use, including a shortfall in supply or price increase.

List of Subjects

43 CFR Part 44

Administrative practice and procedure, Financial assistance-local governments, Grant programs-natural resources, Land Management Bureau, Loan programs-natural resources, Payments in lieu of taxes, Public lands, Public lands-mineral resources.

43 CFR Part 1880

Administrative practice and procedure, Financial assistance-local governments, Grant programs-natural resources, Land Management Bureau, Loan programs-natural resources, Payments in lieu of taxes, Public lands, Public lands-mineral resources.

Dated: November 22, 2004.

J. Steven Griles,

Deputy Secretary of the Interior.

■ For the reasons set forth in the preamble, subtitle A and Chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

43 CFR Subtitle A—Office of the Secretary of the Interior

■ 1. Part 44 is added to read as follows:

PART 44—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Sec.

General Information

44.10 What is the purpose of this subpart?
44.11 What are the definitions of terms used in this subpart?
44.12 Who is eligible to receive PILT payments?

Payments to Local Governments Containing Entitlements Lands

44.20 How does the Department process payments to local governments whose jurisdictions contain entitlement lands?
44.21 How does the Department calculate payments to local governments whose jurisdictions contain entitlement lands?
44.22 Are there any special circumstances that affect the way the Department calculates PILT payments?
44.23 How does the Department certify payment computations?
44.30 How does the Department make payments for acquired lands?
44.31 How does the Department calculate payments for acquired lands?

Payments to Local Governments for Interest in Lands in the Redwood National Park or Lake Tahoe Basin

44.40 How does the Department process payments for lands in the Redwood National Park or Lake Tahoe Basin?
44.41 How does the Department calculate payments for lands in the Redwood National Park or Lake Tahoe Basin?

State and Local Governments' Responsibilities After the Department Distributes Payments

44.50 What are the local governments' responsibilities after receiving payments under this part?
44.51 Are there general procedures applicable to all PILT payments?
44.52 May a State enact legislation to reallocate or redistribute PILT payments?
44.53 What will the Department do if a State enacts distribution legislation?
44.54 What happens if a State repeals or amends distribution legislation?
44.55 Can a unit of general local government protest the results of payment computations?
44.56 How does a unit of general local government file a protest?
44.57 Can a unit of general local government appeal a rejection of a protest?

Authority: Public Law 94–565, 90 Stat. 2662, as amended, 31 U.S.C. 6901–6907.

General Information

§ 44.10 What is the purpose of this subpart?

This subpart sets forth procedures the Department of the Interior uses in disbursing Federal payments in lieu of taxes to local governments for entitlement lands within their boundaries.

§ 44.11 What are the definitions of terms used in this subpart?

Entitlement land means land owned by the United States:

(1) That is in the National Park System or the National Forest System, including wilderness areas, and national forest lands in northern Minnesota described in 16 U.S.C. 577d–577d–1;

(2) That is administered by the Secretary of the Interior through the Office of the Secretary;

(3) That is dedicated to the use of the Government for water resource development projects;

(4) On which there are semiactive or inactive installations, excluding industrial installations, that the Department of Army keeps for mobilization and reserve component training;

(5) That is a dredge disposal area under the jurisdiction of the Army Corps of Engineers;

(6) That is located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, and was acquired by the United States after December 23, 1981, to expand the Fort Carson military installation; or

(7) That is a reserve area as defined in 16 U.S.C. 715s(g)(3), which is an area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary of the Interior, through the Fish and Wildlife Service.

Local government means a unit of general local government, which can include any of the following:

(1) A county, parish, township, borough, or city, (other than in Alaska), where the city is independent of any other unit of general local government, that:

(i) Is within the class(es) of such political subdivision in a State that the Secretary of the Interior determines, in his or her discretion, to be the principal provider(s) of governmental services within the State; and

(ii) Is a unit of general local government, as determined by the Secretary of the Interior on the basis of the same principles as were used by the Secretary of Commerce on January 1, 1983, for general statistical purposes;

(2) Any area in Alaska that is within the boundaries of a census area used by the Secretary of Commerce in the decennial census, but that is not included within the boundaries of a governmental entity described under paragraph (1) of this definition; or

(3) The Governments of the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

Payments in lieu of taxes (PILT) means Federal payments disbursed to local governments to compensate for the exemption of real estate taxes on entitlement lands within their boundaries.

Section 6902 (31 U.S.C. 6902) payments means Federal payments disbursed to local governments containing entitlement lands.

Section 6904 (31 U.S.C. 6904) payments means Federal payments disbursed to local governments for acquisitions or interest in lands acquired for addition to the National Park System or National Forest Wilderness Areas.

Section 6905 (31 U.S.C. 6905) payments means Federal payments disbursed to local governments for lands in the Redwood National Park or Lake Tahoe Basin.

§ 44.12 Who is eligible to receive PILT payments?

(a) Each local government containing entitlement lands may receive a PILT payment.

(b) A local government may not receive a payment for land owned or administered by a State or local government that was exempt from real estate taxes when the land was conveyed to the United States. However, a local government may receive a PILT payment for land when:

(1) A State or local government acquires from a private party to donate to the United States within eight years of acquisition;

(2) A State acquires through an exchange with the United States if the land acquired was entitlement land; or

(3) In the State of Utah, that the United States acquires for Federal land, royalties or other assets if, at the time of acquisition, a local government was entitled to receive payments in lieu of taxes from the State of Utah for the land; provided that the payment to the local government does not exceed the payment the State would have disbursed if the land had not been acquired.

Payments to Local Governments Containing Entitlement Lands

§ 44.20 How does the Department process payments to local governments whose jurisdictions contain entitlement lands?

This section describes how the Department processes payments to local governments whose jurisdictions contain entitlement lands (section 6902 payments).

(a) The Department:

(1) Determines the eligibility of each local government, conferring when necessary with the Bureau of the Census, officials of appropriate State and local governments, and officials of the agency administering the entitlement land;

(2) Computes the amount of the payment disbursed to each local government; and

(3) Certifies the amount of the payment disbursed to each local government.

(b) The Department disburses a payment each fiscal year to each local government containing entitlement lands.

(c) The State of Alaska is required to distribute the payment it receives to home rule cities and general law cities (as such cities are defined by the State) that are located within the boundaries of the local government entitled to the payment.

§ 44.21 How does the Department calculate payments to local governments whose jurisdictions contain entitlement lands?

(a) To calculate section 6902 payments, the Department obtains the necessary data on Federal and State payments from several sources:

(1) Federal agencies provide the amount of entitlement land within the boundaries of each local government as of the last day of the fiscal year preceding the fiscal year for which the Department disburses the payment;

(2) The Governor or designated official provides the amount of money transfers (land revenue sharing payments) disbursed by the State during the previous fiscal year to eligible local governments under the payment laws listed under 31 U.S.C. 6903(a)(1) and in paragraph (d) of this section; and

(3) The Bureau of the Census provides statistics on the population of each local government.

(b) The Department consults with the affected local government and the administering agency to resolve conflicts in land records and other data sources.

(c) The Department calculates the amount of payment using:

(1) The amount of actual appropriations;

(2) The formula in 31 U.S.C. 6903(b)(1), which includes inflation adjustments; and

(3) Federal and State payments disbursed during the previous fiscal year to local governments under the land payment laws listed under 31 U.S.C. 6903(a)(1).

(d) The laws listed in 31 U.S.C. 6903(a)(1) and referred to in paragraphs (a) and (c) of this section are:

(1) The Act of June 20, 1910 (Arizona and New Mexico Enabling Acts) (ch. 310, 36 Stat 557);

(2) Section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012);

(3) The Act of May 23, 1908 (Knutson-Vandenberg Act regarding Forest Service timber sales contracts) (16 U.S.C. 500);

(4) Section 5 of the Act of June 22, 1948 (Payments to Minnesota from northern Minnesota National Forest receipts) (16 U.S.C. 577g–l);

(5) Section 401(c)(2) of the Act of June 15, 1935 (Payments to local governments from National Wildlife Refuge System receipts) (16 U.S.C. 715s(c)(2));

(6) Section 17 of the Federal Power Act (16 U.S.C. 810);

(7) Section 35 of the Act of February 25, 1920 (Mineral Leasing Act) (30 U.S.C. 191);

(8) Section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355);

(9) Section 3 of the Act of July 31, 1947 (Materials Act of 1947) (30 U.S.C. 603); and

(10) Section 10 of the Act of June 28, 1934 (Taylor Grazing Act) (43 U.S.C. 315i).

§ 44.22 Are there any special circumstances that affect the way the Department calculates PILT payments?

If a local government eligible for payments under this subpart reorganizes, the Department will:

(a) Calculate payments for the fiscal year in which the reorganization occurred as if the reorganization had not occurred; and

(b) Disburse any payment due to each new unit based on the amount of eligible acreage in that unit.

§ 44.23 How does the Department certify payment computations?

(a) The Department will certify a payment computation only after receiving a statement showing all land revenue sharing payments that each local government received from the State during the previous fiscal year. As used in this paragraph, ''land revenue sharing payments'' means payments made from revenues derived from the payment laws listed under 31 U.S.C. 6903(a)(1). The statement must:

(1) Be signed by the Governor or a designated official of the State in which the local government is located; and

(2) Be accompanied by a certification, signed by a State Auditor, an independent Certified Public Accountant, or an independent public accountant, that the statement has been audited in accordance with:

(i) Auditing standards established by the U.S. Comptroller General in Standards of Audit of Governmental Organizations, Programs, Activities and Function, (available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); and

(ii) The Audit Guide for Payments in Lieu of Taxes issued by the Department of the Interior.

(b) The Department's Office of the Inspector General will assist the Department, under the provisions of sections 4 and 6 of the Inspector General Act of 1978 (5 U.S.C. Appendix), to implement and administer the audit requirements in paragraph (a)(2) of this section.

(c) The Office of the Inspector General will:

(1) Develop appropriate audit guidelines that State auditors, independent Certified Public Accountants, or independent public accountants must use to audit the statements of the Governors or their designated officials and to certify the audits; and

(2) Furnish copies of the guides to the Governor or designated official each year. You should send questions on the use or application of this guide to the Office of Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(d) The Department may waive the requirement to certify audits if the General Accounting Office or the Office of the Inspector General verifies the information in statements the Governor or designated official furnishes or if the Department determines it is not necessary. Payments to Local Governments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (31 U.S.C. 6904).

§ 44.30 How does the Department make payments for acquired lands?

This section describes how the Department disburses payments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (section 6904 payments).

(a) The Department disburses section 6904 payments to qualified local governments only if the administering agency supplies the following information for each qualified local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information the Department may require to certify payments to each qualified local government.

(b) The Department disburses payments under this section only for a period of 5 years from the date the land was conveyed to the United States.

§ 44.31 How does the Department calculate payments for acquired lands?

The Department calculates section 6904 payments by determining 1 percent of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year before Federal acquisition. The payment to qualified local governments will be the lesser of the two.

Payments to Local Governments for Interest in Lands in the Redwood National Park or Lake Tahoe Basin

§ 44.40 How does the Department process payments for lands in the Redwood National Park or Lake Tahoe Basin?

This section describes how the Department disburses payments for lands in the Redwood National Park or Lake Tahoe Basin (section 6905 payments).

(a) The Department disburses payments to qualified local governments only if the administering agency supplies the following information for each qualified local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information the Department may require to certify payments to each qualified local government.

(b) The Department disburses payments until 5 percent of the fair market value is paid in full.

§ 44.41 How does the Department calculate payments for lands in the Redwood National Park or Lake Tahoe Basin?

(a) The Department calculates section 6905 payments by determining 1 percent of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year prior to Federal acquisition. The payment to qualified units of general local government will be the lesser of the two.

(b) The Department disburses payments annually for a period of 5 years beginning in the year immediately following the year of Federal acquisition of the land or interest.

(1) The difference, if any, between the amounts actually paid during each of the 5 years and 1 percent of the fair market value will be deferred to future years. However, a payment or any portion of a payment not paid because Congress appropriated insufficient monies will not be deferred.

(2) The Department will begin annual payment of the deferred amount (calculated the same as in paragraph (a) of this section) starting with the sixth fiscal year following Federal acquisition.

(3) The Department disburses payment of the deferred amount until the total amount deferred during the first 5 years is paid in full.

State and Local Governments' Responsibilities After the Department Distributes Payments

§ 44.50 What are the local governments' responsibilities after receiving payments under this part?

(a) The local government may use section 6902 payments for any governmental purpose.

(b) Within 90 days of receiving sections 6904 and 6905 payments, the local government must distribute the funds to the affected units of general local government and affected school districts. The affected units of general local government and school districts may use sections 6904 and 6905 payments for any governmental purpose.

(c) The local government must distribute section 6904 and 6905 payments in proportion to the tax revenues assessed and levied by the affected units of general local government and school districts in the Federal fiscal year before the Federal Government acquired the entitlement lands. The Redwoods Community College District in California is an affected school district for this purpose.

(d) Within 120 days of receiving payments, the local government must certify to the Department that it has made an appropriate distribution of funds.

§ 44.51 Are there general procedures applicable to all PILT payments?

(a) The minimum payment that the Department will disburse to any local government is $100.00 (one hundred dollars).

(b) If Congress appropriates insufficient monies to provide full payment to each local government during any fiscal year, the Department will reduce proportionally all payments in that fiscal year.

§ 44.52 May a State enact legislation to reallocate or redistribute PILT payments?

A State may enact legislation to reallocate or redistribute PILT payments. If a State enacts legislation, it must:

(a) Notify the Department if the legislation requires reallocating or redistributing payments to smaller units of general local government (see 31 U.S.C. 6907);

(b) Provide the Department a copy of the legislation within 60 days of enactment;

(c) Provide the name and address of the State government office to which the Department should send the payment;

(d) Distribute funds to its smaller units of general local government within 30 days of receiving the payment; and

(e) Not reduce the payment made to smaller units of general local government to pay the cost of State legislation which reallocates or redistributes payments.

§ 44.53 What will the Department do if a State enacts distribution legislation?

If a State enacts distribution legislation, the Department will:

(a) Notify the State that a single payment will be disbursed to the designated State government office beginning with the Federal fiscal year following the fiscal year in which the State enacted legislation; and

(b) Provide the State with information that identifies the entitlement lands data on which the Department bases the payment.

§ 44.54 What happens if a State repeals or amends distribution legislation?

(a) If a State repeals or amends distribution legislation, the State must immediately notify the Department in writing of this fact and send the Department a copy of the new law.

(b) When the Department receives a notification under paragraph (a) of this section, it must:

(1) Determine if the State's process complies with 31 U.S.C. 6907. If the Department determines that it does not, we must notify the designated State government office that the Department will disburse payment directly to the eligible local governments; and

(2) Start the payments:

(i) In the current Federal fiscal year, if the Department receives a copy of the State's amendatory legislation before July 1; or

(ii) Start the payments in the next Federal fiscal year, if the Department receives a copy of the State's amendatory legislation after July 1.

§ 44.55 Can a unit of general local government protest the results of payment computations?

Any affected local government may file a protest with the Department.

§ 44.56 How does a unit of general local government file a protest?

The protesting local government must:

(a) Submit evidence to indicate the possibility of errors in the computations

or the data on which the Department bases the computations; and

(b) File the protest by the first business day of the calendar year following the end of the fiscal year for which the Department made the payments.

§ 44.57 Can a unit of general local government appeal a rejection of a protest?

Any affected local government may appeal the Department's decision to reject a protest to the Interior Board of Land Appeals under 43 CFR part 4.

43 CFR CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 1880—[AMENDED]

■ 2. Subpart 1881 (§§ 1881.10 through 1881.57) is removed.

[FR Doc. 04–26803 Filed 12–6–04; 8:45 am]

BILLING CODE 4310–RK–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 98–42; FCC 04–263]

RF Lighting Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses a Joint Petition for Clarification (Joint Petition) filed by XM Radio Inc. and Sirius Satellite Radio Inc. (the Satellite Radio Licensees) requesting clarification of the Commission's *Order* in this proceeding. The Commission determined that there was no need to define out-of-band limits for radio frequency (RF) lights in the 2.45 GHz band. We dismissed the Joint Petition and reject the Satellite Radio Licensees' request to prohibit the operation of RF lights in the 2.45 GHz band. We further affirm our decision to terminate the proceeding without prejudice to its substantive merits.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577, e-mail: *Anh.Wride@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, ET Docket No. 98–42, FCC 04–263, adopted November 5, 2004 and released November 9, 2004. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898.

Summary of the Report and Order

1. In the *Order*, the Commission determined that there was no need to define out-of-band limits for radio frequency (RF) lights in the 2.45 GHz band. The Commission dismissed the Joint Petition and rejected the Satellite Radio Licensees' request to prohibit the operation of RF lights in the 2.45 GHz band. We further affirm our decision to terminate the proceeding without prejudice to its substantive merits.

2. On April 1, 1998, the Commission adopted a *Notice of Proposed Rule Making* (NPRM), 63 FR 20362, April 24, 1998, in this proceeding. In the *NPRM*, the Commission proposed changes to part 18 to update the conducted emission limits for RF lighting devices operating in the 2.2–2.8 MHz band. The Commission also proposed more stringent out-of-band radiated emission limits for consumer and non-consumer RF lights in the 2400–2500 MHz (2.45 GHz) bands. In addition, because the existing regulations for RF lighting devices do not specifically include any radiated emission limits for RF lights operating at frequencies above 1000 MHz, the Commission proposed radiated emission limits for such products that are identical to the limits already in place for digital devices.

3. On June 9, 1999, the Commission adopted a *First Report and Order*, 64 FR 37417, July 12, 1999, in this proceeding that adopted less stringent conducted emission limits for RF lighting devices operating in the 2.51–3.0 MHz band, but deferred action on changes to the rules for RF lighting devices operating in the 2.45 GHz band to a future date. Subsequently, Fusion informed the Commission that it is no longer pursuing development of RF lights that operate in the 2.45 GHz band.

4. On May 27, 2003, the Commission adopted an *Order*, 68 FR 37112, June 23, 2003, terminating this proceeding as it found that with the passage of time, the record of the proceeding had become outdated and, furthermore, that Fusion, the only party that expressed interest in producing RF lights in the 2.45 GHz band, had ceased operations in this area. In the *Order*, the Commission concluded that there did not appear to be a need for further Commission action in defining out-of-band limits for RF lights in the 2.45 GHz band at that time. The Commission therefore decided to terminate the proceeding without prejudice to its substantive merits and stated that should any party wish to pursue the issues in this proceeding in the future, the Commission would evaluate them in the context of a new proceeding.

5. On July 23, 2003, the Satellite Radio Licensees submitted a Joint Petition for Clarification in this proceeding, in which they seek specific clarification that RF lighting devices will not be permitted to operate in the 2.45 GHz band and that ''before the Commission considers permitting any such operations, it will either establish another rulemaking, or provide ample notice to affected parties such as the Satellite Radio Licensees.''

6. The Satellite Radio Licensees contend that in terminating the proceeding by the *Order*, the Commission has left satellite radio vulnerable to interference from RF lights that may seek to operate at the ISM miscellaneous out-of-band emission limit in the future. Finally, the Satellite Radio Licensees urge the Commission to clarify that RF lights are prohibited from operating in the 2.45 GHz band, unless and until the Commission concludes a new rulemaking in which a specific out-of-band limit is adopted for 2.45 GHz RF lights. To the extent that this relief is not given, the Satellite Radio Licensees request that the Commission provide potentially affected parties, including the Satellite Radio Licensees, an ample notice and opportunity to comment.

7. We disagree with the Satellite Radio Licensees' argument that by terminating the proceeding by the *Order*, the Commission has left satellite radio vulnerable to interference from RF lights operating in the 2.45 GHz band. There is no reason to believe that future RF lights designed by Fusion or any other party would be produced using the same unsuccessful design, the same operating frequencies or exhibit the same characteristics as evaluated in the Satellite Radio Licensees' Supplemental Comments. Furthermore, Fusion no longer develops or manufactures RF lights in the 2.45 GHz band and we are not aware that any other party is developing RF lights that would operate in this band.

8. We note that RF lights are already covered under our existing Part 18 rules and compliant equipment can be authorized according to our equipment authorization procedures. Although traditional low-frequency RF lights are treated as a distinct class in Part 18,

microwave RF lights are subject to existing out-of-band radiated emission limits applicable to microwave ovens and other miscellaneous ISM equipment operating in the 2400–2500 MHz band. Moreover, we emphasize that RF lights, like all part 18 equipment, must operate under the non-interference restriction of § 18.111(b) of our rules. Under the rules, the operator of such equipment must promptly take all necessary steps to eliminate harmful interference to any authorized radio service, even if the equipment otherwise complies with the rules. Hence we find that there is adequate recourse against potentially harmful interference to satellite radio receivers under the provisions of this section.

9. We therefore decline to provide the requested relief from the Satellite Radio Licensees to prohibit operation of all RF lights in the 2.45 GHz band, as we find that the requested prohibition is overarching and is not warranted based on the circumstances. If there is evidence that any entity will seek to operate RF lights in the 2.45 GHz band and cause harmful interference to satellite radio receivers as a consequence, and our existing limits prove inadequate, we will at that time take appropriate action.

10. Based on the foregoing, we affirm our decision to terminate the proceeding without prejudice to its substantive merits, and hereby dismiss the Joint Petition for Clarification from the Satellite Radio Licensees.

Ordering Clause

11. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(g) and 303(r), the above mentioned proceeding *Is terminated* without prejudice to its substantive merits, and the Joint Petition for Clarification filed by the Satellite Radio Licensees *Is dismissed.*

Congressional Review Act

12. The Commission will not send a copy of this *Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because we are not adopting any rules at this time. We are affirming our decision to terminate the proceeding without prejudice to its substantive merits, and hereby dismiss the Joint Petition for Clarification from the Satellite Radio Licensees.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–26829 Filed 12–6–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 234
Tuesday, December 7, 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 39

[Docket No. FAA–2004–19765; Directorate Identifier 2002–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes and Model Avro 146–RJ Series 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 certain BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. This proposed AD would require repetitive inspections to detect discrepancies of the fuselage skin and reinforcing plates along the wing to fuselage fairing access panels on the left- and right-hand sides of the airplane, and repair if necessary. This proposed AD also would provide for an optional terminating action for the repetitive inspections. This proposed AD is prompted by a report of chafing on the wing to fuselage fairing panels. We are proposing this AD to prevent chafing of the fuselage skin and reinforcing plates, which could lead to reduced structural integrity of the airplane's fuselage.

DATES: We must receive comments on this proposed AD by January 6, 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.
- By 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.

For service information identified in this proposed AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19765; the directorate identifier for this docket is 2002–NM–72–AD.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19765; Directorate Identifier 2002–NM–72–AD'' at the beginning 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 submitted 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 our docket website, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

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

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. The CAA advises that it has received a report of chafing of the fuselage skin

and reinforcing plates along the wing to fuselage fairing access panels, both left- and right-hand sides. This condition, if not corrected, could result in chafing of the fuselage skin and reinforcing plates, which could lead to reduced structural integrity of the airplane's fuselage.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.53–162, dated September 12, 2001. The inspection service bulletin describes the following procedures:

- Doing repetitive detailed inspections to detect discrepancies (*i.e.*, chafing outside the limits specified in the service bulletin, scoring, or cracking) of the fuselage skin and reinforcing plates along the wing to fuselage fairing access panels on the left- and right-hand sides of the airplane;
- Contacting the manufacturer for disposition of plate repairs; and
- Submitting an inspection report to the manufacturer.

BAE Systems (Operations) Limited has also issued Modification Service Bulletin SB.53–162–01698A, Revision 1, dated January 31, 2002. The modification service bulletin describes procedures for modifying the fuselage skin at the wing-to-fuselage access panels, doing related investigative actions, and doing corrective actions if necessary, which eliminates the need for the repetitive inspections specified in BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162. The modification involves applying protective tape along the fuselage at the access panel seal contact area and to the fuselage at the aft position. The related repetitive investigative actions involve repetitively inspecting the protective tape and sealant for damage and restoring if necessary.

The CAA mandated BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162 and issued British airworthiness directive 002–09–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162 described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletins.'' The proposed AD also would provide an optional terminating action that would end the repetitive inspection requirements.

Differences Between the Proposed AD and the Service Bulletins

Operators should note that, although the Accomplishment Instructions of the BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162 describe procedures for submitting an inspection report, this proposed AD would not require that action. We do not need this information from operators.

The BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162 specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions using a method that we or the CAA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the CAA (or its delegated agent) approve would be acceptable for compliance with this proposed AD.

Clarification of Service Bulletin Actions

Operators should note that the Accomplishment Instructions of the Modification Service Bulletin SB.53–162–01698A, Revision 1, dated January 31, 2002, describes procedures for doing related repetitive investigative actions, and doing corrective actions if necessary. The related repetitive investigative actions involve inspecting the protective tape and sealant for damage, and restoring if necessary.

Costs of Compliance

This proposed AD would affect about 65 airplanes of U.S. registry. The proposed inspection would take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $16,900, or $260 per airplane, per inspection cycle.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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):

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2004–19765; Directorate Identifier 2002–NM–72–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by January 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146-RJ series airplanes; certificated in any category; on which modification HCM01037A has been incorporated.

Unsafe Condition

(d) This AD was prompted by a report of chafing on the wing to fuselage fairing panels. We are issuing this AD to prevent chafing of the fuselage skin and reinforcing plates, which could lead to reduced structural integrity of the airplane's fuselage.

Compliance

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

Service Bulletin

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162, dated September 12, 2001.

Repetitive Detailed Inspections

(g) Prior to the accumulation of 8,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection to detect discrepancies (*i.e.*, chafing outside the limits specified in the service bulletin, scoring, or cracking) of the fuselage skin and reinforcing plates along the wing to fuselage fairing access panels on the left- and right-hand sides of the airplane, in accordance with the service bulletin. Repeat the detailed inspection thereafter at intervals not to exceed 4,000 flight cycles, until the terminating action specified in paragraph (i) of this AD has been done.

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

Corrective Action

(h) If any discrepancy is found during the detailed inspection required by paragraph (g) of this AD, before further flight, repair according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (CAA) (or its delegated agent).

Optional Terminating Action and Follow-on Inspections

(i) Modify the fuselage skin at the wing-to-fuselage access panels, do the related repetitive investigative action, and do applicable corrective actions by accomplishing all the actions in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.53–162–01698A, Revision 1, dated January 31, 2002. These actions terminate the repetitive inspections required by paragraph (g) of this AD. Repeat the related repetitive investigative action (which involves inspecting the protective tape and sealant for damage) thereafter at intervals not to exceed 4,000 flight cycles.

No Reporting

(j) Although the service bulletin referenced in this AD specifies to submit an inspection report, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(l) British airworthiness directive 002–09–2001 also addresses the subject of this AD.

Issued in Renton, Washington, on November 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26799 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19761; Directorate Identifier 2003–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) 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 certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes. This proposed AD would require modification of the Auxiliary Power Unit (APU) cooling air exhaust. This proposed AD is prompted by reports of incomplete drainage of the APU enclosure. We are proposing this AD to prevent a negative pressure condition from developing in the APU enclosure when the APU is operating on the ground, which could create a potential fire hazard if flammable liquid leakage occurs inside the APU enclosure and cannot be drained overboard.

DATES: We must receive comments on this proposed AD by January 6, 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.
- By 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.

For service information identified in this proposed AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

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

FOR FURTHER INFORMATION CONTACT: *Technical information:* James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

Plain Language information: Marcia Walters, *Marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new

AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004-NM–999-AD.'' Each DMS AD 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 proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19761; Directorate Identifier 2003–NM–167–AD'' at the beginning 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 submitted 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 our docket website, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. TCCA advises that incomplete drainage of the APU enclosure has been reported in service. Further investigation revealed that negative pressure, which may contribute to the drainage problem, could be created in the APU enclosure when the APU is operating on the ground. This condition, if not corrected, could create a potential fire hazard if flammable liquid leakage occurs inside the APU enclosure and cannot be completely drained overboard.

Relevant Service Information

Bombardier has issued Service Bulletin S.B. 601R–49–015, including Appendix A, dated November 6, 1998, which describes procedures for modification of the APU cooling air exhaust. This modification corrects the negative pressure problem and increases the volume of air entering the APU enclosure. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2002–21, dated March 21, 2002, to ensure the continued airworthiness of these airplanes in Canada.

Bombardier Service Bulletin S.B. 601R–49–015 refers to Avica Service Bulletin 10S145–49–01, dated July 15, 1998, and Canadair Kit Drawing K601R97150, Rev NC, as additional sources of service information for doing the modification. The Avica service bulletin and the Canadair Kit Drawing are included as Appendix A of the Bombardier service bulletin.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require modification of the APU cooling air exhaust. The proposed AD would require you to use the Bombardier service information described previously to perform these actions.

Differences Between the Bombardier Service Bulletin and This Proposed AD

Although the Accomplishment Instructions of the Bombardier service bulletin indicate to submit a comment sheet and a compliance sheet, this proposed AD does not require that action.

Costs of Compliance

This proposed AD would affect about 120 airplanes of U.S. registry. The proposed actions would take about 10 work hours per airplane, at an average labor rate of $65 per work hour. There would be no charge for parts that may be required to perform the actions required by this AD. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $78,000, or $650 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2004–19761; Directorate Identifier 2003–NM–167–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes, certificated in any category, as identified in Bombardier Service Bulletin S.B. 601R–49–015, including Appendix A, dated November 6, 1998.

Unsafe Condition

(d) This AD is prompted by reports of incomplete drainage of the Auxiliary Power Unit (APU) enclosure. We are issuing this AD to prevent a negative pressure condition from developing in the APU enclosure when the APU is operating on the ground, which could create a potential fire hazard if flammable fluid leakage occurs inside the APU enclosure and cannot be drained overboard.

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.

Modify APU Cooling Air Exhaust

(f) Within 2,000 flight hours after the effective date of the AD, or within 16 months after the effective date of this AD, whichever occurs first: Modify the APU cooling air exhaust by doing all of the actions in the Accomplishment Instructions of Bombardier Service Bulletin S.B. 601R–49–015, dated November 6, 1998, except that submitting a comment sheet and a compliance sheet are not required by this AD.

Note 1: Bombardier Service Bulletin S.B. 601R–49–015, dated November 6, 1998, refers to Avica Service Bulletin 10S145–49–01, dated July 15, 1998, and Canadair Kit Drawing K601R97150, Rev NC, as additional sources of service information for doing the modification. The Avica service bulletin and the Canadair Kit Drawing are included as Appendix A of the Bombardier service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install an APU enclosure having Canadair part number (P/N) 601R97150–13, or Avica P/N 15A104–101, on any airplane, unless the unit has been modified in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance

(h) The Manager, New York 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

(i) Transport Canada Civil Aviation Canadian airworthiness directive CF–2002–21, dated March 21, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on November 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26798 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19762; Directorate Identifier 2004–NM–168–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series 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 Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD would require an inspection of the spoiler servo control for certain part numbers and corrective action if necessary. This proposed AD is prompted by a report of a broken piston rod bearing of the spoiler servo control. We are proposing this AD to prevent breakage of the piston rod bearing, which could cause loss of the associated hydraulic system and spoiler extension, and could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 6, 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.
- By 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.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19762; the directorate identifier for this docket is 2004–NM–168–AD.

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

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets

electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19762; Directorate Identifier 2004–NM–168–AD'' at the beginning 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 submitted 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 our docket website, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A318, A319, A320, and A321 series airplanes fitted with GOODRICH spoiler actuators part number (P/N) 31077–050, –060, –070, –110 or –112. The DGAC advises that an incorrect manufacturing process resulted in the seal groove radii of the piston rod bearing of the spoiler servo control being smaller than the drawing specification. This condition, if not corrected, could result in reduced fatigue life of the piston rod bearing and consequent breakage, which could cause loss of the associated hydraulic system and spoiler extension, and could result in reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A320–27–1158; and Service Bulletin A320–27–1159; both including Appendices 01 and 02; both dated May 26, 2004. The service bulletins describe procedures for inspecting the spoiler servo control for part numbers 31077–050, –060, –070, –110, and –112, and corrective action if necessary. The corrective action includes replacing the spoiler servo control with a new or modified spoiler servo control.

The inspections are to be done at the following positions:

- For Model A318, A319, and A321 series airplanes: Positions 1 through 5
- For Model A320 series airplanes on which Airbus modification 26335 and Airbus Service Bulletin A320–27–1115, dated October 27, 1997; and Revision 01, dated June 22, 1999; has not been done: Positions 1, 2, and 3
- For Model A320 series airplanes on which Airbus modification 26335 or Airbus Service Bulletin A320–27–1115, dated October 27, 1997; or Revision 01, dated June 22, 1999; has been done: Positions 1 through 5

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–122, dated July 21, 2004, to ensure the continued airworthiness of these airplanes in France.

Airbus Service Bulletins A320–27–1158 and A320–27–1159, both dated May 26, 2004, refer to Goodrich Service Bulletin 31077–27–14, dated May 24, 2004, as an additional source of service information for modifying the spoiler servo control.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletins.''

Differences Between the Proposed AD and the Service Bulletins

Operators should note that Airbus Service Bulletin A320–27–1158; and Service Bulletin A320–27–1159; both dated May 26, 2004; specify to contact Goodrich if the part number of the servo control is missing. However, this proposed AD requires operators to replace the spoiler servo control with a new or modified spoiler servo control if operators are unable to determine the part number.

Although the Accomplishment Instructions of Airbus Service Bulletins A320–27–1158 and A320–27–1159 describe procedures for reporting certain information to the manufacturer, this proposed AD would not require that action.

Clarification of Inspection Type

Airbus Service Bulletins A320–27–1158 and A320–27–1159 specify to do a ''visual inspection'' to determine the part number of the spoiler servo controls. This proposed AD would require a ''general visual inspection'' for these actions. We have included the definition for a general visual inspection in a note in this proposed AD.

Differences Between the Proposed AD and French Airworthiness Directive

French airworthiness directive F–2004–122, dated July 21, 2004, has an effectivity of ''AIRBUS A318, A319,

A320 and A321 aircraft, all certified models, all serials numbers, fitted with GOODRICH spoiler actuators P/N 31077–050, –060, –070, –110 or –112.'' However, because spoiler actuators are interchangeable on Airbus Model A318, A319, A320, and A321 series airplanes, airplanes not fitted with the spoiler actuators P/N 31077–050, –060, –070, –110 or ''112 may have a spoiler actuator P/N 31077–050, –060, –070, –110 or ''112 installed in the future by operators during normal maintenance. Therefore, the applicability of this proposed AD includes all Airbus Model A318, A319, A320, and A321 series airplanes. Both the proposed AD and French airworthiness directive require an inspection for the part number of the spoiler actuator (spoiler servo control).

Clarification of Actions in Proposed AD and the Service Bulletins

Although the Accomplishment Instructions of Airbus Service Bulletin A320–27–1158 do not specify procedures for Model A318 and A319 series airplanes, those models are specified in the Reason/Description/Operational Consequences section of the service bulletin, which recommends inspecting positions 2, 3, 4, and 5 for those models. Those models are also specified in the note within the Effectivity, section 1.A., of the service bulletin. This proposed AD would require inspections for Model A318 and A319 series airplanes at positions 2, 3, 4, and 5; and corrective actions if necessary.

Although the Accomplishment Instructions of Airbus Service Bulletin A320–27–1159 do not specify procedures for Model A318 and A319 series airplanes, those models are specified in the Reason/Description/Operational Consequences section of the service bulletin, which recommends inspecting position 1 for those models. Those models are also specified in the note within the Effectivity, section 1.A., of the service bulletin. This proposed AD would require inspections for Model A318 and A319 series airplanes at position 1 and corrective actions if necessary.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	3–5	$65	$195–$325	648	$126,360–$210,600

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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):

Airbus: Docket No. FAA–2004–19762; Directorate Identifier 2004–NM–168–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by January 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A318, A319, A320, and A321 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of a broken piston rod bearing of the spoiler servo control. We are issuing this AD to prevent breakage of the piston rod bearing, which could cause loss of the associated hydraulic system and spoiler extension, and could result in reduced controllability of the airplane.

Compliance

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

Phase 1 Inspection

(f) Within 12 months after the effective date of this AD, do a general visual inspection for the part number of the spoiler servo control at the applicable locations specified in Table 1 of this AD, in accordance with Airbus Service Bulletin A320–27–1158, including Appendices 01 and 02, dated May 26, 2004.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of

inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or droplight and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.''

TABLE 1.—PHASE 1 SPOILER SERVO CONTROL INSPECTION

For Airbus model—	Inspect spoiler servo controls at—
A318 and A319 series airplanes	Positions 2, 3, 4, and 5.
A320 series airplanes	Position 2.
A321 series airplanes	Positions 2, 3, and 4.

Phase 2 Inspection

(g) Within 30 months after the effective date of this AD, do a general visual inspection for the part number of the spoiler servo control at the applicable locations specified in Table 2 of this AD, in accordance with Airbus Service Bulletin A320–27–1159, including Appendix 01 and 02, dated May 26, 2004.

TABLE 2.—PHASE 2 SPOILER SERVO CONTROL INSPECTION

For Airbus model—	Inspect spoiler servo controls at—
A318 and A319 series airplanes	Position 1.
A320 series airplanes on which Airbus modification 26335 and Airbus Service Bulletin A320–27–1115, dated October 27, 1997; and Revision 01, dated June 22, 1999; has not been done.	Positions 1 and 3.
A320 series airplanes on which Airbus modification 26335 or Airbus Service Bulletin A320–27–1115, dated October 27, 1997; or Revision 01, dated June 22, 1999; has been done.	Positions 1, 3, 4, and 5.
A321 series airplanes	Positions 1 and 5.

Corrective Action

(h) If, during any inspection specified in paragraph (f) or (g) of this AD, part number (P/N) 31077–050, –060, –070, –110, or –112 is found or if unable to determine the P/N, before further flight, replace the spoiler servo control with a new or modified spoiler servo control, in accordance with Airbus Service Bulletin A320–27–1158; or Airbus Service Bulletin A320–27–1159; both including Appendices 01 and 02; both dated May 26, 2004; as applicable.

Note 2: Airbus Service Bulletins A320–27–1158 and A320–27–1159 refer to Goodrich Service Bulletin 31077–27–14, dated May 24, 2004, as an additional source of service information for modifying the spoiler servo control.

Reporting Not Required

(i) Although Airbus Service Bulletins A320–27–1158 and A320–27–1159 specify to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(j) As of the effective date of this AD, no person may install a spoiler servo control, P/N 31077–050, –060, –070, –110, or –112, on any airplane, unless it has been modified according to Airbus Service Bulletin A320–27–1158; or Airbus Service Bulletin A320–27–1159; both including Appendices 01 and 02; both dated May 26, 2004.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(l) French airworthiness directive F–2004–122, dated July 21, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on November 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26797 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19763; Directorate Identifier 2004–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) 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 certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD would require doing repetitive inspections for fractures and cracks of the links of the aileron power control unit (PCU); replacing any fractured/cracked link; and doing applicable related investigative and corrective actions, if necessary. This proposed AD is prompted by reports indicating that the links of the aileron PCU have failed. We are proposing this AD to prevent failure of both links of the aileron PCU, which could result in reduced lateral control of the airplane.

DATES: We must receive comments on this proposed AD by January 6, 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.
- By 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.

For service information identified in this proposed AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19763; the directorate identifier for this docket is 2004–NM–187–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, suite 410, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19763; Directorate Identifier 2004–NM–187–AD'' at the beginning 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 submitted 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 our docket website, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that it has received reports indicating that the links of the aileron power control unit (PCU) have failed on several in-service airplanes. Failure of one link is considered to be a dormant failure. Failure of both links, if not corrected, could result in reduced lateral control of the airplane.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–27–130, Revision ''B,'' including Appendices A and B, dated May 11, 2004. The service bulletin describes procedures for doing repetitive detailed inspections for fractures and cracks of the links of the aileron PCU; replacing any fractured/cracked link; and doing applicable related investigative and corrective actions, if necessary. The related investigative/corrective actions include:

- Recording the torque value of the forward and aft attachment bolts for both links of the applicable aileron PCU;
- Checking for mismatch between the link and output fork of aileron PCU; and
- Doing an eddy current inspection of the lugs of the aileron PCU, and contacting the airplane manufacturer if a crack is found.

The service bulletin also describes procedures for submitting inspection findings and other information to the airplane manufacturer.

TCAA mandated the service information and issued Canadian airworthiness directive CF–2004–13, dated July 20, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and Service Bulletin.''

Differences Between Proposed AD and Service Bulletin

The service bulletin specifies that you may contact the manufacturer for disposition of any cracked aileron lug, but this proposed AD would require you to disposition and replace any cracked aileron lug using a method that we or TCCA (or its delegated agent) approve. In light of the type of replacement that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a replacement we or TCCA approve would be acceptable for compliance with this proposed AD.

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. We do not need this information from operators.

Interim Action

This is considered to be interim action until final action is identified, at

which time we may consider further rulemaking.

Costs of Compliance

This proposed AD would affect about 697 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $45,305, or $65 per airplane, per inspection cycle.

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2004–19763; Directorate Identifier 2004–NM–187–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by January 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports indicating that the links of the aileron power control unit (PCU) have failed. We are issuing this AD to prevent failure of both links of the aileron PCU, which could result in reduced lateral control of the airplane.

Compliance

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

Repetitive Inspections

(f) Before the accumulation of 2,000 total flight hours, or within 550 flight hours after the effective date of this AD, whichever occurs later, do a detailed inspection for fractures and cracks of the links of the aileron PCU, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–130, Revision ''B,'' including Appendices A and B, dated May 11, 2004. Repeat the detailed inspection thereafter at intervals not to exceed 1,000 flight hours.

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

Corrective Action

(g) If any fractured or cracked link is detected during any inspection required by paragraph (f) of this AD, before further flight, replace the fractured/cracked link and do the applicable related investigative and corrective actions by doing all the actions in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–130, Revision ''B,'' including Appendices A and B, dated May 11, 2004; except as required by paragraph (h) of this AD.

(h) If any crack is found on the aileron lugs during any related investigative action required by paragraph (g) of this AD, and the service bulletin recommends contacting Bombardier for disposition: Before further flight, disposition and replace the cracked aileron lug in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Acceptable Revisions of the Referenced Service Bulletin

(i) Actions specified in paragraphs (f) and (g) of this AD done before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–130, Revision ''A,'' including Appendices A and B, dated December 22, 2003; are acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD.

(j) Accomplishment of the initial inspection of the links of the aileron PCU, and replacement if necessary, before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–130, including Appendices A and B, dated November 13, 2003, is acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD; except as provided by paragraph (k) of this AD.

(k) Airplanes on which a fractured or cracked link of the aileron PCU was found that were not subject to an NDT inspection of the aileron lugs (*i.e.*, related investigative action required by paragraph (h) of this AD) before the effective date of this AD must do an NDT inspection of the applicable lugs in accordance with paragraph (g) of this AD at the next repetitive detailed inspection of the link of the aileron PCU required by this AD.

Reporting

(l) Submit a report of the findings (both positive and negative) of the initial inspection required by paragraph (f) of this AD and any associated fractured or cracked link to Bombardier Aerospace Inc., c/o In-Service Engineering, 3rd floor, Dept. 508, 400 Cote Vertu Road West, Dorval, QC, Canada H4S 1Y9, at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD. The report must be done in accordance with Appendices A and B of Bombardier Alert Service Bulletin A601R–27–130, Revision ''B,'' dated May 11, 20004. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report and any fractured/cracked link within 30 days after the inspection.

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

No Submission of Comment Sheets

(m) Although the service bulletin referenced in this AD specifies to submit comment and compliance sheets to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(o) Canadian airworthiness directive CF–2004–13, dated July 20, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on November 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26796 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19764; Directorate Identifier 2004–NM–02–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series 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 certain Boeing Model 777–200 and –300 series airplanes. This proposed AD would require applying an anti-static conductive coating to the fuel access and thermal anti-icing blowout doors at the location of the bonding fasteners on the leading edge of the wings, and performing a resistance test on the new coating to ensure correct ground path resistance. This proposed AD is prompted by a report that an anti-static coating was not applied correctly on doors located within a flammable fluid leakage zone. We are proposing this AD to prevent an uncontrollable fire in the leading edge of the wing, which could damage critical wing structures and cause a fuel tank explosion.

DATES: We must receive 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.
- By 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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

FOR FURTHER INFORMATION CONTACT: *Technical information:* Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6500; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19764; Directorate Identifier 2004–NM–02–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 submitted 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 that website, 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 can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

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

Discussion

We have received a report indicating that, during production, an anti-static coating was not applied correctly on fuel access and thermal anti-icing blowout doors at the location of the bonding fasteners on the leading edge of the wings on certain Boeing Model 777–200 and –300 series airplanes. The anti-static coating is necessary to help ensure an electrical bond ground path at the doors, which are located within a flammable fluid leakage zone. Without the anti-static coating, a static charge may build up and provide an ignition source for flammable vapors when the static discharges. This condition, if not corrected, could result in an uncontrollable fire in the leading edge of the wing, which could damage critical wing structures and cause a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777–57–0046, dated September 25, 2003. The service bulletin describes procedures for applying an anti-static conductive coating on the fuel access and thermal

anti-icing blowout doors, and performing a resistance test on the new coating to ensure correct ground path resistance. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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 airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed in ''Difference Between this Proposed AD and the Service Bulletin.''

Difference Between This Proposed AD and the Service Bulletin

Boeing Special Attention Service Bulletin 777–57–0046, dated September 25, 2003, does not specify any action if the resistance does not meet the limits specified in the service bulletin. The proposed AD would require that operators reapply and retest the anti-static coating if the resistance does not meet the limits specified in the service bulletin, and contact the FAA for disposition of repairs if multiple reapplications and retests do not meet the specified limits after the fifth repetition of the test.

Costs of Compliance

This proposed AD would affect about 65 airplanes worldwide and 18 airplanes of U.S. registry. The proposed actions would take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $5,850, or $325 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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):

Boeing: Docket No. FAA–2004–19764; Directorate Identifier 2004–NM–02–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by January 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Boeing Model 777–200 and –300 series airplanes, certificated in any category; as listed in Boeing Special Attention Service Bulletin 777–57–0046, dated September 25, 2003.

Unsafe Condition

(d) This AD was prompted by a report that an anti-static coating was not applied correctly on doors located within a flammable fluid leakage zone. We are issuing this AD to prevent an uncontrollable fire in the leading edge of the wing, which could damage critical wing structures and cause a fuel tank explosion.

Compliance

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

Modification and Resistance Test

(f) Within 18 months after the effective date of this AD, apply an anti-static conductive coating to the fuel access and thermal anti-icing blowout doors at the location of the bonding fasteners, and perform a resistance test on the new coating, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–57–0046, dated September 25, 2003.

(1) If the resistance measured between the door surface and a fastener located within the doors' surrounding support structure is within the limits specified in the service bulletin, no further action is required by this paragraph.

(2) If the resistance measured between the door surface and a fastener located within the doors' surrounding support structure is outside the limits specified in the service bulletin, before further flight, repeat the actions as required by paragraph (f) of this AD up to five times, as applicable. If the results of the fifth test exceed the limits specified in the service bulletin, before further flight, contact the Manager, Seattle Aircraft Certification Office (ACO), FAA, for disposition of repairs.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on November 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26795 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[Docket No. DEA–244P]

RIN 1117–AA89

Clarification of Registration Requirements for Individual Practitioners

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to amend its registration regulations to make it clear that when an individual practitioner who practices and is registered in one state seeks to practice and prescribe controlled substances in another state, he/she must obtain a separate DEA registration for the subsequent state. The current regulation was intended to apply to intrastate offices only, but has been misunderstood by some practitioners to apply to interstate offices. To avoid any further misinterpretation, DEA is proposing to modify its current regulation to indicate that it applies only to separate locations maintained within one state for which the practitioner possesses state licensure and DEA registration.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before February 7, 2005.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–244'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCD. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/CCD, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing MS word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Purpose of This Proposed Rule

There is confusion regarding whether a practitioner who practices and is registered in one state and wishes to practice and prescribe in another state must register with DEA in the second state. DEA proposes to amend its regulations to make it clear that when an individual practitioner who practices and is registered in one state seeks to practice and prescribe controlled substances in another state, he/she must obtain a separate DEA registration for the subsequent state.

Background

The Controlled Substances Act (CSA) requires that a separate registration be obtained for each location at which controlled substances are manufactured, distributed, or dispensed (21 U.S.C. 822(e)). Under this requirement, an individual practitioner must have a separate DEA registration, predicated on a separate state license, if he/she practices in offices that are located in different states and administers, dispenses directly, or prescribes controlled substances from both offices. However, DEA has provided in the regulations (21 CFR 1301.12(b)(3)) that ''an office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained,'' is not a location for which a registration must be obtained. This regulation is intended to apply only to secondary locations within the same state in which the practitioner maintains his/her DEA registration. However, because the language in Section 1301.12(b)(3) does not specify that it pertains to intrastate locations only, individual practitioners have been applying the regulation to interstate situations, which is contrary to the intent of the regulation, the CSA, and the underlying principles that apply to individual practitioner registration.

State Licensure

The issuance by DEA of an individual practitioner registration is predicated, in part, on the practitioner being authorized (*e.g.* licensed) to dispense controlled substances by the state in which he/she practices (21 U.S.C. 823(f)). Valid state authority to dispense controlled substances is a necessary, but not sufficient, condition for obtaining a DEA registration. DEA will not register a practitioner at a particular location within a state if the practitioner lacks valid state authority to dispense controlled substances in that state. DEA registration serves, in part, to reflect that the individual practitioner has been granted some level of controlled substances authority by the state. In light of the above, a DEA registration is considered to be related directly and exclusively to the license issued to the practitioner by the state in which he/she maintains the registration.

Explanation of DEA Registration Predicated on State Authority

There are problems associated with use of a single DEA registration in different states. For instance, if a practitioner licensed in the State of North Carolina and possessing a DEA registration predicated on that state license subsequently opened an office in Virginia, then any controlled substance prescriptions he/she wrote in Virginia would be invalid for the following reason.

To be valid in a particular jurisdiction, a controlled substance prescription must be written by a practitioner who possesses valid state authority in that jurisdiction and, equally important, the practitioner must possess a DEA registration predicated upon valid state authority in that jurisdiction (or be exempted from the registration requirement) (21 CFR 1306.03(a)). In the example cited above, the practitioner possesses valid state authority in North Carolina and a DEA registration based upon that state authority. Therefore, the practitioner's controlled substance prescriptions would be valid in North Carolina. Because the practitioner lacks a DEA registration based on valid state authority in Virginia, the practitioner's controlled substance prescriptions in Virginia would be invalid.

Similarly, if an optometrist licensed in the State of Virginia and possessing a DEA registration predicated on said license subsequently opened an office in North Carolina prescribing oxycodone with acetaminophen (a Schedule II controlled substance) the prescription would be invalid. This is due to the fact that the DEA registration was issued pursuant to Virginia authority while the prescription was written based on North Carolina state licensure and authority.

North Carolina and Virginia authorize different levels of prescribing authority to optometrists. In Virginia, optometrists are only permitted to prescribe analgesics in Schedules III and IIIN, while in North Carolina optometrists are authorized to prescribe Schedules II through V controlled substances. Therefore, the prescription for oxycodone with acetaminophen would also be invalid due to the fact that Virginia authority is more restrictive than North Carolina's and does not allow the prescribing of Schedule II controlled substances by optometrists.

Title 21 U.S.C. 823(f) states that the Attorney General (as delegated to DEA) shall register practitioners to dispense controlled substances if the applicant is authorized to dispense the controlled substances under the laws of the state in which the applicant practices. Title 21 U.S.C. 841(a) prohibits any person from knowingly or intentionally dispensing a controlled substance except as permitted by the CSA. As previously stated, controlled substances may not be dispensed without state authorization to do so.

Reason for Modification of Existing Regulation

To avoid any further misinterpretation, DEA is proposing to modify its current regulation found in 21 CFR 1301.12(b)(3) by adding the words ''in the same state or jurisdiction of the United States'' to the parenthetical statement. This would make clear that the regulation applies only to separate locations maintained within one state for which the practitioner possesses state licensure and DEA registration. The practitioner must maintain separate state licensure and DEA registration for separate locations in a different state.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This proposed rule merely clarifies existing regulations regarding the registration by individual practitioners conducting business in more than one state.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). This rule has been determined to be a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget. This proposed rule merely clarifies existing regulations regarding the registration by individual practitioners conducting business in more than one state.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Paperwork Reduction Act

This Notice of Proposed Rulemaking merely clarifies that DEA registration must be obtained by practitioners for each state in which a practitioner conducts business, except under certain specific circumstances. While it is possible that the amendment of the regulations could cause certain persons who were not previously registered to register with the Administration, it is not possible for DEA to determine how many persons might be affected by this circumstance. It is important to note that this rule serves merely as a clarification; the Controlled Substances Act, which establishes the requirement of registration, has not been changed, and the requirement of registration addressed by this rulemaking remains consistent. Therefore, persons who would register as a result of publication of this clarification should have been previously registered with the Administration but were not registered due to confusion regarding registration requirements. Thus, at this time, as DEA is not able to determine the impact of this rulemaking on the registrant population, DEA will make any necessary revisions to the affected information collection at the time of renewal of the collection.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

For the reasons set forth above, 21 CFR 1301 is proposed to be amended as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, 951, 952, 953, 956, 957.

2. Section 1301.12(b)(3) is proposed to be revised to read as follows:

§ 1301.12 Separate registrations for separate locations.

* * * * *

(b) * * *

(3) An office used by a practitioner (who is registered at another location in the same state or jurisdiction of the United States) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained.

* * * * *

Dated: November 30, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 04–26808 Filed 12–6–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208254–90 and REG–136481–04]

RIN 1545–AO72 and RIN 1545–BD62

Source of Compensation for Labor or Personal Service; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations that describe the proper basis for determining the source of compensation from labor or personal services performed partly within and partly without the United States.

DATES: The public hearing is being held on January 13, 2005, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by December 10, 2004.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

Mail outlines to: CC:PA:LPD:PR (REG–208254–90 and REG–136481–04), room 5203, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–208254–90 and REG–136481–04), 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–208254–90 and REG–136481–04).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing LaNita Van Dyke, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–208254–90 and REG–136481–04) that was published in the **Federal Register** on Friday, August 6, 2004 (69 FR 47816).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written or electric comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight copies) by December 10, 2004.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of agenda will be made available, free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Associate Chief Counsel, Legal Processing Division, (Procedures and Administration).

[FR Doc. 04–26838 Filed 12–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–196]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the special local regulations at 33 CFR 100.518, established for marine events held annually in the Severn River, Annapolis, Maryland by publishing the name of the events and the approximate dates and modifying the boundaries of the regulated area. The marine events included in this rule include the Safety at Sea Seminar, U.S. Naval Academy crew races and the Blue Angels air show. This proposed rule is intended to restrict vessel traffic in portions of the Severn River during the period of these marine events and is necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before February 7, 2005.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–04–196), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The regulations at 33 CFR 100.518 will be effective annually for the duration of each proposed marine event listed in paragraph (c) of Section 100.518, U.S. Naval Academy marine events. Paragraph (c) of Section 100.518 lists the proposed effective dates for the Safety at Sea Seminar on the last Saturday of March, the U.S. Naval Academy crew races on the third and fourth Saturday of April, and the third

Friday in May, and the Blue Angels air show on the last Tuesday and Wednesday in May. Notice of exact time, date and location will be published in the **Federal Register** prior to the event. The proposed northwest and southeast boundaries of the regulated area in section 100.518 would be extended approximately 1200 yards to accommodate the aerobatic maneuvering area for the air show and encompass the rowing course for Naval Academy crew races. The U.S. Naval Academy who is the sponsor for all of these events intends to hold them annually.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations at 33 CFR 100.518 by revising the heading, revising paragraph (c) to set forth more specific event dates, and adjusting the boundaries of the regulated area in paragraph (a). This proposed change is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this proposed action merely establishes the dates on which the existing regulations would be in effect and modifies the boundaries of the regulated area and would not impose any new restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would effect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Severn River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would merely establish the dates on which the existing regulations would be in effect and modify the boundaries of the regulated area and would not impose any new restrictions on vessel traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

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

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. In §100.518, revise the section heading, paragraph (a)(1) and paragraph (c), to read as follows:

§ 100.518 Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

(a)(1) *Regulated area.* The regulated area is established for the waters of the Severn River from shoreline to shoreline, bounded to the northwest by the route 50 fixed highway bridge and bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N, longitude 076°28′49″ W thence to Greenbury Point at latitude 38°58′29″ N, longitude 076°27′16″ W. All coordinates reference Datum NAD 1983.

* * * * *

(c) *Effective period.* (1) This section is effective during, and 30 minutes before each of the following annual events:

(i) Safety at Sea Seminar, held on the last Saturday in March;

(ii) Naval Academy Crew Races, held on the third and fourth Saturday in April and the third Friday in May; and

(iii) Blue Angels Air Show, held on the last Tuesday and Wednesday in May.

(2) The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners announcing the specific event dates and times.

Dated: November 24, 2004.

Ben R. Thomason, III,

Captain, U. S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 04–26842 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Seven Foreign Species of Swallowtail Butterflies as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the 12-month finding on a petition to list the following seven foreign swallowtail butterflies under the Endangered Species Act: Harris' mimic swallowtail (*Eurytides lysithous harrisianus*), the Jamaican kite swallowtail (*Eurytides marcellinus*), the Oaxacan swallowtail (*Papilio esperanza*), the Fluminese swallowtail (*Parides ascanius*), Hahnel's Amazonian swallowtail (*Parides hahneli*), the southern tailed birdwing (*Ornithoptera meridionalis*), and the Kaiser-I-Hind swallowtail (*Teinopalpus imperialis*). The best available information indicates that listing is not warranted for *Papilio esperanza* and *Ornithoptera meridionalis*. For the remaining five species, listing is warranted but precluded by higher-priority listing actions. Our rationale is discussed below. We request that you submit any new information for these species concerning status and threats whenever it becomes available. This information will help us monitor the status of these species and encourage their conservation.

DATES: The finding announced in this document was made on November 18, 2004. Although we are not pursuing further action on these species at this time, we will accept new information on these species at any time.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203; or by fax to 703–358–2276; or by e-mail to *ScientificAuthority@fws.gov.* Comments received will be available for public inspection, by appointment, Monday through Friday from 8 a.m. to 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Scientific Authority, at the above address, or by telephone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but

precluded from immediate proposal by other pending proposals of higher priority. Pursuant to section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as ''resubmitted'' petition findings.

Previous Federal Action

On January 10, 1994, the Service received a petition dated January 1, 1994, from Ms. Dee E. Warenycia to list the seven above-mentioned species of swallowtail butterflies as threatened or endangered. As the basis for her petition, Ms. Warenycia cited the IUCN (World Conservation Union) Red Data Book, *Threatened Swallowtail Butterflies of the World* (Collins and Morris 1985), in which these species had been classified as Endangered, Vulnerable, or Rare. On May 10, 1994, the Service published a 90-day finding in the **Federal Register** (59 FR 24117) that the petition had presented substantial information indicating that the requested action may be warranted. In that notice, we initiated a status review of the seven butterflies covered by the petition, as well as 20 other butterfly taxa that were potentially of similar concern, and requested the submission of data and other information for preparation of a 12-month finding. This petition finding only covers the seven butterfly species that were the subject of the original petition. The other 20 species are potential candidate species that must be further evaluated, but for which any further action is currently precluded by higher-priority listing actions.

Summary of Comments and Recommendations

In response to our request for information in response to the 90-day finding, we received 14 responses from private citizens and public officials, both from the United States and abroad. Commenters addressed all but two of the seven species by name; the Fluminese swallowtail and Harris' mimic swallowtail were not specifically mentioned. One commenter supported the listing of the Jamaican kite swallowtail; one commenter supported the listing of the Kaiser-I-Hind swallowtail; and the remaining commenters opposed the listing of all of the species or the listing of specific butterflies. Species-specific information is discussed under the relevant species, below. Three main bases for opposition to the listing of these species were: (1) The paucity of status information; (2) disagreement over the effects of over-collection; and (3) an assertion that such listings impede conservation efforts. These issues are discussed below.

1. *Paucity of status information:* Several commenters noted that information in one of the references we had used (Collins and Morris 1985) is old, outdated, or not thoroughly scientific, and that the paucity of information provides an insufficient basis for listing. According to several swallowtail butterfly experts, the best sources of worldwide information continue to be Collins and Morris (1985) and New and Collins (1991), both of which were the sole sources of information used for the 1996 IUCN species assessments (Mariano Gimenez Dixon, Program Officer, Species Survival Commission, IUCN, pers. comm. 2004). Indeed, as discussed in our August 16, 2000, **Federal Register** finding (65 FR 49958), an IUCN designation alone does not provide sufficient information to address the factors that we must consider under section 4(a)(1) the Act. An extensive literature search has revealed that few recently published treatments exist for swallowtail butterflies. Most regional works were written a decade or more ago (*e.g.*, Brown and Heineman 1972; Tyler *et al.* 1994). None of these seven species appears in the *2003 IUCN Red List of Threatened Species* (IUCN 2003) because they have not been re-assessed against the 1997 criteria (M. Dixon, pers. comm. 2004). There is also currently no IUCN Lepidoptera Specialist Group. In an attempt to obtain the most current information for this finding, the Service also solicited information from each range country and from other domestic and international experts. Pursuant to section 4(b)(1)(A), we have evaluated the best scientific and commercial data available to make the determinations in this finding.

2. *Effects of over-collection:* Several commenter disagreed that over-collection of insects has a significant adverse impact and noted that it is nearly impossible for the entirety of a species' eggs, larvae, pupae, and adults to be collected at a given time. However, experts generally agree that species with restricted distributions are more apt to be affected by over-collection than those with wider distributions. Substantive information obtained from experts and publications on this issue has been incorporated into this assessment, as appropriate.

3. *Such listings impede conservation efforts:* Some commenters mentioned that listing might call undue attention to these rare butterflies, would create unnecessary restrictions on marketing, would impede further research, would provide no substantive conservation benefit, and would hinder butterfly ranching that actually benefits propagation and encourages local measures to protect the animals and their habitats. While most of these points are not statutory factors considered in listing species, we acknowledge that any substantive information that demonstrates how these factors mitigate the status of the species is useful, and where substantive information was provided, it has been considered as part of the status review.

Nomenclature and Biology of the Species

The seven foreign butterfly species: Harris' mimic swallowtail, the Jamaican kite swallowtail, the Oaxacan swallowtail, the Fluminese swallowtail, Hahnel's Amazonian swallowtail, the southern tailed birdwing, and the Kaiser-I-Hind swallowtail, all of which are the subject of this petition, belong to the family Papilionidae (order Lepidoptera). The Papilionidae are generally known as swallowtail butterflies, or simply as swallowtails, and will herein be collectively referred to as such. Synonyms and common names are summarized in Table 1. Nomenclature follows Morris and Collins (1985).

The Lepidoptera life cycle begins with mating. Swallowtails may brood (*i.e.*, produce offspring) once, twice, or several times per year. All Lepidoptera undergo complete metamorphosis and exhibit four distinct life stages: Egg, larva (caterpillar), pupa (chrysalis), and adult. Swallowtails reputedly maintain low population numbers and experience sporadic rebounds. Food sources vary widely. Caterpillars eat plant material (such as leaves) and may be generalists, enjoying a range of plant species, or they may be obligate feeders, feeding solely on a particular species. Adults typically feed on flower nectar. Some adults do not eat at all, others obtain nutrients from carrion, and some pre-reproductive males obtain nutrients from riversides (known as ''puddling''). Swallowtails may display sexual dimorphism, wherein males are generally smaller and/or more colorful than females. Four of the petitioned species (Jamaican kite, Harris' mimic swallowtail, Fluminese swallowtail, and Southern tailed birdwing) are not sexually dimorphic; one species (Oaxacan swallowtail) displays only size dimorphism; and two species (Kaiser-I-Hind and Southern tailed birdwing) are dimorphic both in color

and size. Similarly, larvae and adults may display color polymorphism, wherein the same species exhibits different color patterns. Swallowtails may exhibit certain behaviors to increase their chance of finding a mate. ''Hilltopping,'' for instance, is a male behavior in which they seek out a high ridge or hilltop whereupon they await the arrival of females, which tend to gravitate towards these areas. Swallowtails are all strong flyers. Many species fly several kilometers a day. After mating, females often disperse to find a new location to lay eggs. Some species disperse farther, sometimes as a group. Although dispersal is sometimes referred to as migration, for butterflies this movement may not entail a return trip. Where available, information on the lifespan, population dynamics, and current population status of each species are provided in the species assessments below.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the following five factors described in section 4(a)(1): (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. These factors and their application to each of the seven species are discussed below. Each assessment begins with a species-specific status summary.

Findings on Species for Which Listing Is Not Warranted

Oaxacan Swallowtail (*Papilio esperanza* Bautelspacher, 1975)

The Oaxacan swallowtail is endemic to the remote montane cloud forest of Mexico's Juárez Mountains (Oaxaca State). Larvae feed on *Magnolia dealbata* Zucc. (common name unknown) (Felipe Ramírez Ruiz de Velasco, Director General, Secretaria de Medio Ambiente y Recursos Naturales, pers. comm. 2004). Adults prefer *Eupatorium sordidum* Less. (dirty thoroughwort) and produce two annual broods, one in the spring and one in late summer (Collins and Morris 1985). Populations are restricted to steep-sloped canyons in the Juárez Mountains (F.R.R. de Velasco, pers. comm. 2004; R. Robbins, pers. comm. 2004; Tyler *et al.* 1994). Considered a relict of modern swallowtails, this species was discovered only in 1975 and, for the first 20 years, was only known from one colony (New and Collins 1991; Tyler *et al.* 1994). New colonies were discovered in the early 1990s; the total habitat remains restricted to an area less than 100 square kilometers (Tyler *et al.* 1994). This species is listed as Vulnerable by the IUCN, due mainly to a poaching problem that existed prior to 1994 (IUCN 2003; see B., below).

A. *Present or threatened destruction, modification, or curtailment of its habitat or range:* The Juárez Mountains region is generally threatened by logging, agriculture, grazing, colonization, and potential construction of hydroelectric dams (Dávila *et al.* n.d.); however, there is no evidence that this species' specific habitat is being directly threatened (R. Robbins, pers. comm. 2004; Jorge Soberón, Director of CONABIO [the Scientific Authority of Mexico for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or CITES], pers. comm. 2004). Based on the best available information, we conclude that this species is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for commercial, recreational, scientific, or educational purposes: According to Collins and Morris (1985), only 20 specimens had been collected in the first 20 years after the species' discovery due to the fierce protection of this species by local communities. For a time, poaching became a problem because several local residents would follow the colony and remove specimens for commerce (Tyler *et al.* 1994). In the mid-1990s, several smugglers were indicted in the United States for trading in illegally collected insects, including Oaxacan swallowtails (WildlifeWebsite.com 2000). Today, Mexican experts do not consider over-collection to be a threat (F.R.R. de Velasco, pers. comm. 2004) because local communities do not allow collection or sale of the species (J. Soberón, pers. comm. 2004). There are also regulatory mechanisms in place that appear to be effectively regulating trade in this species (see D., below). Thus, this species is not threatened by overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or predation: There is no information to suggest that this species is subject to any threat from disease or predation.

D. The inadequacy of existing regulatory mechanisms: The Oaxacan swallowtail is listed as threatened, and its larval foodplant, *Magnolia dealbata,* is also listed as endangered on Mexico's List of Species at Risk (F.R.R. de Velasco, pers. comm. 2004). Mexican law, NOM (Norma Oficial Mexicana)–059–ECOL–2001, protects listed native species of flora and fauna that have been assessed in any of four threat categories (threatened, endangered, specially protected, and likely to be extinct; INE 2003). There are no officially designated protected areas or nature reserves in the Juárez Mountains (Dávila *et al.* n.d.). However, large tracts of Oaxacan swallowtail habitat are under the strict control of indigenous Zapotec communities (J. Soberón, pers. comm. 2004), and these communities are very conservation oriented (F.R.R. de Velasco, pers. comm. 2004). The Mexican Federal government oversees several sustainable resource management units in that region (de Ferranti *et al.* 2000), and this species is not one of the resources being exploited under this regulatory framework (F.R.R. de Velasco, pers. comm. 2004).

The Oaxacan swallowtail is not listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), but there is no information to suggest that such a listing is needed. Considered threatened by commercial trade in Europe (Melisch 2000), this species is now listed on Annex B of the European Union's Council Regulation (EC) No. 338/97, which regulates imports of certain species into any country in the European Community. Annex B includes all species listed in CITES Appendix II and their look-alikes, as well as species being traded at levels that are incompatible with the survival of the species, as well as species that pose a threat to native species (CITES UK 2004). Import of an Annex B-listed species must be accompanied by information that demonstrates that the import will not detrimentally affect the conservation status of the species or its habitat (Eur-Lex 2004). Based on the above information, this species is not threatened by the inadequacy of existing regulatory mechanisms.

E. Other natural or manmade factors affecting its continued existence: There are no other known threats affecting this species.

In summary, in addition to the discovery of new populations, the Oaxacan swallowtail is not subject to significant threats that cause the species

to be threatened with extinction throughout a significant portion of its range. Therefore, we have determined that listing of this species is not warranted.

Southern Tailed Birdwing (*Ornithoptera meridionalis* Rothschild 1897)

The southern tailed birdwing is native to lowland primary or secondary rainforests of Indonesia and Papua New Guinea. The larvae of this genus are known to feed solely on *Aristolochia* spp. L. (birthwort). However, the identity of the specific larval foodplant of this species remains in dispute (Parsons 1999; Dr. Wari Iamo, Department of Environment and Conservation, Papua New Guinea, pers. comm. 2004). This birdwing butterfly occupies a wide range, but populations are localized, found at altitudes between 20 and 200 meters above sea level (Collins and Morris 1985; Dr. Wari Iamo, Department of Environment and Conservation, Papua New Guinea, pers. comm. 2004). In Indonesia (Irian Jaya), there are three known localities of this species (Parsons 1999). In Papua New Guinea, there are at least seven widely distributed localities, and the species appears to be reasonably common in its habitat, especially in the spring (Parsons 1999; W. Iamo, pers. comm. 2004). It is listed by the IUCN as Endangered, apparently due to threats from habitat destruction (see A., below; IUCN 2003).

A. Present or threatened destruction, modification, or curtailment of its habitat or range: The southern tailed birdwing populations are found in two protected areas in Papua New Guinea where wildlife harvest and habitat destruction are prohibited (W. Iamo, pers. comm. 2004). The species' low-lying habitat, in the center of its range, is vulnerable to timber extraction (W. Iamo, pers. comm. 2004). However, experts believe that properly managed butterfly farming (as discussed below, under B.) promotes habitat conservation by generating income as a viable alternative to deforestation (Dr. Rosser W. Garrison and Mr. Michael Parsons, Research Associates, Los Angeles County Museum of Natural History, California, pers. comm. 1994; Dr. L. Orsak, Director, Christensen Research Institute, Papua New Guinea, pers. comm. 1994; Dr. Scott Miller, Chair, Natural Science, The State Museum of Natural and Cultural History, Hawai'i, pers. comm. 1994; Parsons 1991, 1999). The Papua New Guinea farming program requires villagers to maintain a healthy wild population on or near their land (IFTA 1985). Based on the best available information, we have determined that this species is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for commercial, recreational, scientific, or educational purposes: Papua New Guinea began farming the southern tailed birdwing and other native butterflies in 1978. According to the non-profit Insect Farming and Trade Agency (IFTA), established in consultation with an entomologist-ecologist, the pupae are ranched and adults are sold in pairs (IFTA 2004; Parsons 1999). The Papua New Guinea farming program was endorsed by the now-defunct IUCN Lepidoptera Specialist Group (IFTA 1985). Ranched specimens are often preferred over wild-caught specimens because the wings of wild specimens are often tattered from flying (Parsons 1999). No wild-collected specimens are permitted in international trade, and designated exporters are strictly controlled (W. Iamo, pers. comm. 2004; Iamo Ila, Conservator of Fauna, Department of Environment and Conservation, Papua New Guinea, pers. comm. 1994; 1997; Gaikovina R. Kula, Acting Secretary, Department of Environment and Conservation, Papua New Guinea, pers. comm. 1994). Private citizens who are not part of IFTA must obtain certification from the Department of Environment and Conservation to carry out ranching and trading in this species (W. Iamo, pers. comm. 2004).

This species has been listed in CITES Appendix II since 1979, and CITES data suggest a recent downward trend in trade volume, from 582 specimens in 2000, to 163 specimens in 2001, and 89 specimens in 2002 (J. Caldwell, pers. comm. 2004; W. Iamo, pers. comm. 2004). All of this trade has originated from Papua New Guinea, and most of it has been recorded as ranched specimens. A 2000 market study revealed that this species was threatened by commerce in Germany (Melisch 2000), where the market price was reportedly US$8700 per pair (Schütz 2000). The southern tailed birdwing is now listed on the European Commission's Annex B, which regulates imports of certain species into Europe, and requires that trade in these species is not detrimental to the survival of wild populations (see Oaxacan swallowtail, D.). While the reason for the decrease in trade volume for this species is unknown (W. Iamo, pers. comm. 2004), its listing on Annex B may account for the decrease in trade because several of the major importers are from European countries. This information suggests that this species is not threatened by overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or predation: Parasitic flies have been known to attack southern tailed birdwings in the wild (Collins and Morris 1985). However, there is no specific information to suggest that these parasites are currently threatening existing populations, and we are unaware of any other disease or predators that pose a threat to this species. Thus, we conclude that disease or predation is not a current threat to this species.

D. The inadequacy of existing regulatory mechanisms: In 1966, Papua New Guinea declared the southern tailed birdwing protected under the Fauna Protection Control Act, which requires an amendment to the legislation to allow any controlled utilization of the species. Wild collection is prohibited, and wild-collected specimens are banned from international trade (W. Iamo, pers. comm. August 2004; G.R. Kula, pers. comm.; 1994 Parsons 1991). Only properly CITES-permitted adults are allowed in international trade (IFTA 2004), and import of these specimens into Europe requires a further non-detriment finding in addition to the CITES findings made by exporting countries (see D., above). Based on the above information, this species is not currently threatened by the inadequacy of existing regulatory mechanisms.

E. Other natural or manmade factors affecting its continued existence: There is no information to suggest that this species is subject to threats other than those listed above.

In summary, in addition to the discovery of new populations, the southern tailed birdwing is not subject to significant threats that cause the species to be threatened with extinction throughout a significant portion of its range, and therefore we have determined that listing of this species is not warranted.

Findings on Species for Which Listing Is Warranted but Precluded

Harris' Mimic Swallowtail (*Eurytides lysithous harrisianus* Hübner 1821)

Harris' mimic swallowtail is native to sub-coastal woods on unflooded fringes of ''restinga'' (swamp) habitat in the Atlantic Forest of Brazil. Paraguay also has been reported as a range country (Collins and Morse 1985; Funet 2004), but there is no information on colonies there. Larvae feed on *Annona acutifolia* Sass. ex R.E. Fries (common name unknown). Juveniles are occasionally reported on *Rollinia laurifolia* Schltdl. (common name unknown). Adults feed

on species in a variety of genera from several plant families (including Annonaceae [custard-apple family], Asteraceae [daisy family], Fabaceae [legume family], Rubiaceae [madder family], and Verbenaceae [verbena family]). This subspecies is not listed in the *2003 IUCN Red List of Threatened Species* (IUCN 2003).

Previously reported in the two Brazilian states of Espirito Santo and Rio de Janeiro, this subspecies is confirmed only in the latter locality (Brown 1996). This has been interpreted as an indication that the subspecies has been extirpated from Espirito Santo (Collins and Morse 1985; Xerces 2004). However, Brown postulates that this could be due to misidentification due to mimicry (Keith S. Brown, Jr., Livre-Docent, Universidade Estadual de Campinas, Brazil, pers. comm. 2004). Swallowtails occupying similar ranges may exhibit mimicry such that unrelated species resemble each other. The specific purpose of this mimicry is unknown, but it may be a defense mechanism. Although scientifically unproven, one form of mimicry, known as Batesian mimicry, consists of a palatable species (the mimic) that resembles an unpalatable species (the model). It is theorized that a predator (such as a bird) attempting to eat the unpalatable model will avoid that and other similar-looking butterflies in the future. For such mimicry systems to be effective, it is generally believed that the mimic must maintain lower population numbers than the model.

Harris' mimic swallowtail is polymorphic, mimicking at least three species of *Parides* throughout its range. There are two Harris' mimic swallowtail morphs (color patterns): the *sebastianus-rurik* morph, which mimics *Parides zacynthus* Fabricius (common name unknown) and the subspecies *Parides nephalion* Godart (cattle heart swallowtail); and, the *ascanius* morph, which mimics the Fluminese swallowtail, also a subject of this petition finding (Collins and Morse 1985; K.S. Brown, Jr., pers. comm. 2004). The *sebastianus-rurik* morph is less common than the *ascanius* morph, the latter of which constituted about 70% of the population during a nearly decade-long mark-recapture study (Brown 1996). The *ascanius* morph generally persists farther north than the Fluminese swallowtail. Thus, it is possible that Harris' mimic swallowtail exists to the north, in Espirito Santo, where suitable habitat exists, but that it has been mistaken for the Fluminese swallowtail (Brown 1991; Otero and Brown 1984; Dr. Robert Robbins, Research Entomologist, National Museum of Natural History, Department of Entomology, Smithsonian Institution, Washington, DC pers. comm. 2004).

Brown (1996) monitored the only known colony of the species (in Rio de Janeiro) from 1984 to 1991, during which time the population size ranged from 50 to 250 individuals. Adults fly at an elevation of 1000 meters, and brood only once per year, being found almost exclusively from September to December. This colony is currently reported to be viable, vigorous, and stable (K. Brown, Jr., pers. comm. 2004). In 1997, another colony of unknown size was discovered in the Poco das Antas Biological Reserve (Rio de Janeiro), where it had not been seen in 30 years. According to Brown, it is likely that more colonies exist between these two known localities and in other places, and he further states that their flight habits ''do not favor recording by visitors * * * it is also very hard to find, see, or capture'' (K. Brown, Jr., pers. comm. 2004).

A. Present or threatened destruction, modification, or curtailment of its habitat or range: Habitat destruction prompted experts to consider this species to be either endangered (Collins and Morris 1985; Tyler *et al.* 1994) or critically endangered (Brown 1996). The mix of dense and open habitat preferred by adult Harris' mimic swallowtails is no longer the dominant vegetation type in Rio de Janeiro. With this habitat almost entirely gone, the subspecies is found only in sub-coastal areas adjacent to ''restinga'' (swamp) habitat (Otero and Brown 1984). Considered the most endangered vegetation type in the world (Conservation International 2004), restinga swampland has been converted to rice fields and drained for urban development and cattle pastures (Otero and Brown 1984; WWF 2004a). In 1985, development threatened the only known colony (Collins and Morris 1985). The State of Rio de Janeiro harbors the densest human population in Brazil, and the city suffers from air and water pollution (CIA 2004; Conservation International 2004). The Poco das Antas Reserve (site of the recently discovered colony of Harris' mimic swallowtail) is plagued by fires. Established in 1973 and presently encompassing an area of approximately 6,883 square meters (WWF 2004b), the Reserve has suffered at least six fires since 1989 (Anonymous 1997; Bryant 2002; Kyodo World Service 2000; Reuters 2002; Singapore National Zoo 2000). At least two of these fires were attributed to human causes (Anonymous 1997; Kyodo World Service 2000). Fire breaks have been constructed in the Reserve to help contain future fires, but regeneration of previously burned areas has been reportedly slow (Singapore National Zoo 2000). Thus, we conclude that this subspecies is threatened by the present or threatened destruction, modification, or curtailment of its habitat or range throughout a significant portion of its range, although thus far we are not aware of a direct impact on the two known colonies of this species.

B. Overutilization for commercial, recreational, scientific, or educational purposes: There is no documentation of overutilization of this subspecies. However, it is possible that this species is inadvertently entering trade misidentified as *Parides* spp., although there is no specific information on this.

C. Disease or predation: There is no information to suggest that this species is subject to any threat from disease or predation.

D. Inadequacy of existing regulatory mechanisms: Instituto Brasileiro do Meio Ambiente de dos Recursos Naturais Renováveis; Brazil's Environmental Ministry (IBAMA) listed this species as ''strictly protected'' in 1989. As such, collection and trade are prohibited (Brown 1996). It is unclear whether the discovery of a second colony in the Poco das Antas Biological Reserve, home of the charismatic golden lion tamarin (*Leontopithecus rosalia*), will benefit Harris' mimic swallowtail. The Reserve continues to be threatened by inadequate protection, unresolved land disputes, and illegal encroachment by landless peasants (Conservation International 2004). In 2002, criteria were established for land use and occupation within a newly established environmentally protected basin along the river where the new population of this species was found. How or whether these criteria account for invertebrates is unknown (WWF 2004b). Thus, the regulatory mechanisms in existence may be inadequate to protect this species.

E. Other natural or manmade factors affecting its continued existence: Other than the above-mentioned fires, some of which may have been natural events, there are no other factors known to affect this species' continued existence.

In summary, although additional populations may exist, there are only two confirmed localities of Harris' mimic swallowtail. This subspecies appears to be generally threatened by habitat destruction (clearing and fire) and the potential of overutilization for commercial purposes. While regulatory mechanisms are in place to control commercial trade, it is unclear whether existing regulatory mechanisms are adequately protecting the species' habitat. The combination of these factors threatens this subspecies

throughout a significant portion of its range.

Harris' mimic swallowtail is a subspecies that faces threats that are low to moderate in magnitude and non-imminent. It therefore receives a priority rank of 12.

Jamaican kite Swallowtail (*Eurytides marcellinus* Doubleday 1846)

The Jamaican kite is endemic to Jamaica. The only known larval foodplant is *Oxandra lanceolata* Baill. (West Indian lancewood) (Bailey 1994; Brown and Heineman 1972; Garraway *et al.* 1993; Xerces 2004). There is no information as to adult food preferences. Despite the presence of the larval foodplant throughout the island, and although the species probably disperses only within 3 kilometers of its breeding site, the only confirmed breeding site is Rozelle, located in the extreme southeastern Parish of St. Thomas (Bailey 1994; Brown and Heineman 1972; Garraway *et al.* 1993; R. Robbins, pers. comm. 2004; Strong and Johnson 2001; WRC 2001; Dr. T.W. Turner, President, Caribbean Surveys Ltd., Florida, pers. comm. 1994). Reputedly unpredictable and sporadic in appearance, the Jamaican kite swallowtail generally maintains low population levels, but becomes locally abundant for a week or two at its only known breeding site, where it regularly broods in the early summer and sometimes again in early fall (Collins and Morris 1985; Garraway *et al.* 1993; Smith *et al.* 1994). Episodic population explosions have been recorded, with large westerly migrations of males when population numbers are high (Brown and Heineman 1972; Collins and Morris 1985; Garraway *et al.* 1993). Large numbers were reported in western parishes in the 1940s and 1950s (Bailey 1994; Garraway *et al.* 1993). Adults have recently been sighted in the parishes of St. Andrew, St. Ann, Trelawny, and Westmoreland on the extreme western coast, and the species has reportedly visited Florida (Bailey 1994; Funet 2004; Smith *et al.* 1994; WRC 2001).

A. Present or threatened destruction, modification, or curtailment of its habitat or range: Mining operations, deforestation, and a lack of public awareness for conservation issues are problematic on the entire island (WWF 2001). The only confirmed breeding site has undergone extensive habitat destruction for agriculture and industry, prompting many experts to designate the Jamaican kite swallowtail as Vulnerable (Collins and Morris 1983; IUCN 2003; New and Collins 1991; Tyler *et al.* 1994). The larval hostplant, West Indian lancewood (native to Jamaica, Cuba, Hispaniola, and Puerto Rico), is a commercially desirable tree. Its yellow wood is used to make fishing rods, pool cues, and other products (Windsor Plywood 2004). This tree species reportedly does poorly in disturbed habitats (Collins and Morris 1985). Habitat destruction continues to be a primary threat to this species (Dr. Audette Baillie, Research Fellow, Department of Life Sciences, University of the West Indies, Jamaica, pers. comm. 2004).

B. Overutilization for commercial, recreational, scientific, or educational purposes: A survey of German markets concluded that this species is threatened by commercial trade (Melisch 2000). Schütz (2000) reported the asking price for a female Jamaican kite swallowtail as US$150. This species is neither listed under CITES nor on the European Commission's Annex B, both of which regulate international trade. The Jamaican kite swallowtail is not bred in captivity and, in particular, there is no organized captive-breeding program for this species in Jamaica (A. Baillie, pers. comm. 2004). Thus, overutilization for commercial purposes may be a threat to the Jamaican kite swallowtail.

C. Disease or predation: There is no information to suggest that this species is subject to any threat from disease or predation.

D. Inadequacy of existing regulatory mechanisms: Listed as an endemic species, Jamaica does not consider the Jamaican kite swallowtail to be threatened, and therefore, it is not protected by the Wildlife Protection Act of 1998 (NEPA 2004a); according to the National Environment and Planning Agency (NEPA), this protects only ''specified species'' (NEPA 2004b). However, all requests to collect endemic wildlife in Jamaica must be directed to NEPA for approval (A. Baillie, pers. comm. 2004). The protected area network has been plagued with staff shortages and inadequate fines for violators (WWF 2001). The John Crow Mountains, spanning several parishes where adult Jamaican kite swallowtails have been seen, was declared a protected area in 1993 (Anonymous n.d.). Cockpit Country, the terrain of which has made it veritably impenetrable to humans, became part of the Parks-in-Peril project in 2001. Cockpit Country is located in Trelawny Parish, where adult Jamaican kite swallowtails have recently been sighted. The status of the species in this area may be clarified as researchers conduct surveys for the CITES Appendix-I swallowtail (*Pterourus homerus*) occupying the same area (TNC 2004; WRC 2002). The presence of the Jamaican kite swallowtail in Rozelle and Cockpit Country has prompted NEPA to seek protected-area status for both locations within the next 5–7 years (Anonymous 2003). It is unclear how or whether the Jamaican protected-area network benefits the Jamaican kite swallowtail or protects it from the above-mentioned potential threats of habitat loss and commercial utilization.

E. Other natural or manmade factors affecting its continued existence: Jamaica lies within the Atlantic hurricane belt and is subject to severe tropical weather, such as tropical waves, tropical depressions, tropical storms, and hurricanes (Mahlung 2001). In the last 16 years, Jamaica has been devastated by a tropical storm (George 1998), a Category 3 hurricane (Gilbert 1988), and two Category 5 hurricanes (Mitch 1998; Ivan 2004). Hurricanes Gilbert and Ivan caused extensive damage throughout the island, including Rozelle, the only known breeding site for this species. In 1989, 75 percent of Rozelle Beach was eroded, and extensive beach erosion occurred again in 2004 (Anderson 1989; Lehman 1999; Go Local Jamaica 2004). These stochastic events are likely to have an adverse effect on this species' continued existence.

In summary, the Jamaican kite swallowtail has only one known breeding site. This species is threatened by habitat destruction from human activity and catastrophic natural storm events. Storms, such as hurricanes, can also directly kill these butterflies. The species is also potentially threatened by collection and inadequate protection of its habitat; this species is not specifically protected by law. The combination of these factors potentially threatens this species throughout a significant portion of its range.

The Jamaican kite swallowtail is a species that does not represent a monotypic genus. It faces threats that are high in magnitude, but non-imminent. It therefore receives a priority rank of 5.

Fluminese Swallowtail (*Parides ascanius* Cramer 1775)

The Fluminese swallowtail is endemic to Brazil. Residing in ''restinga'' (swamp) habitat in the Atlantic Forest of Brazil, adults can be found flying in scrubby to urbanized locations (K.S. Brown, Jr., pers. comm. 2004). The only known larval foodplant is the poisonous vine *Aristolochia macroura* Gomez (Dutchman's pipe), which has a wider distribution than the butterfly itself (Otero and Brown 1984). There is no information as to adult

foodplant preferences. This species has been reported from three Brazilian States: Rio de Janeiro, Espirito Santo, and Sao Paulo. Although ideal habitat exists in all three States, Rio de Janeiro harbors the only colonies confirmed in the past 50 years (Otero and Brown 1984), perhaps due to mislabeling of initial collections (K.S. Brown, Jr., pers. comm. 2004). Assessed by the IUCN as Vulnerable, the species is sparsely distributed at best, becoming seasonally common, with sightings of up to 50 individuals in one morning (IUCN 2003; Otero and Brown 1984; Tyler *et al.* 1994).

Populations are localized but colonies require a large area to maintain a viable population (Otero and Brown 1984). In a study conducted from 1984 to 1991, Brown (1996) found that a colony varied greatly (from 20 to 100 individuals) from year to year, and individuals flew distances of 1000 meters. Although it was presumed that many populations had gone extinct since 1970 and that no new colonies remained to be discovered, other large colonies have been found in Rio de Janeiro state, both far inland and within the Poco das Antas Biological Reserve (K.S. Brown, Jr., pers. comm. 2004; Collins and Morris 1985; Otero and Brown 1984). In a recent visit to Poco das Antas, Dr. Robert Robbins (pers. comm. 2004) reported that the Fluminese swallowtail was ''everywhere.'' All colonies continue to be monitored (K.S. Brown, Jr., pers. comm. 2004).

A. Present or threatened destruction, modification, or curtailment of its habitat or range: The range of this species overlaps with Harris' mimic swallowtail, and the restinga swampland habitat upon which the Fluminese swallowtail depends for breeding is threatened by urbanization, conversion for cultivation and cattle ranching, and arson (see Harris' mimic swallowtail, A., above). The Fluminese swallowtail is particularly threatened by arson in the Poco das Antas Biological Reserve, because this is the only protected area large enough to maintain a viable Fluminese swallowtail colony (Otero and Brown 1984). Thus, a significant portion of this species' range is potentially threatened with habitat destruction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes:* This butterfly is ''easy to catch,'' and although ''many people have bred the species,'' there is no formal effort to ranch the species (K.S. Brown, Jr., pers. comm. 2004). A survey of German markets reported female Fluminese swallowtails selling for US$560 (Melisch 2000; Schütz 2000), which is an indicator of the potential threat from commercial trade. This species is advertised for sale in Japan with the provision that no sales can be made of dry or live insects to the ''United States of America from Central and South America also CITES butterflies'' (*http://www.worldinsect.com/*). This species is not listed under CITES but is listed on the European Commission's Annex B, which regulates imports of certain species into Europe (see *Papilio esperanza,* B.). It is unclear how this has affected trade in this species. Based on the above information, this species is potentially threatened by overutilization for commercial purposes.

C. Disease or predation: There is no information to suggest that this species is subject to any threat from disease or predation.

D. Inadequacy of existing regulatory mechanisms: In 1973, the Fluminese swallowtail became the first insect placed on Brazil's list of animals threatened with extinction, and the species is currently considered imperiled by IBAMA, the Brazilian Environment Ministry (MMA 2004; Otero and Brown 1984). Although the species is strictly protected from commerce, fines are apparently either nonexistent or too nominal to dissuade commercial collection (K.S. Brown, Jr., pers. comm. 2004). It is also unclear what measures have been taken to reduce habitat destruction, for which the species was originally listed in 1973 (Otero and Brown 1984). The protection afforded Fluminese swallowtail populations within Poco das Antas Biological Reserve is also unknown (see Harris' mimic swallowtail, D.). Thus, the regulatory mechanisms in existence may be inadequate to protect this species.

E. Other natural or manmade factors affecting its continued existence: Other than the fires, mentioned above, some of which may have been natural events, there are no other factors known to affect this species' continued existence.

In summary, there are several known Fluminese swallowtail colonies, each requiring a large area to maintain a viable population, and only one occurs within a protected area. This species is threatened by habitat destruction and the potential inadequacy of regulatory mechanisms to protect the species' habitat, particularly in the Poco das Antas Biological Reserve, considered the only protected area large enough to maintain a viable population. This species is also potentially threatened by overutilization for commercial purposes and inadequate penalties to thwart commercial collection. The combination of these factors potentially threatens this species throughout a significant portion of its range.

The Fluminese swallowtail is a species that does not represent a monotypic genus. It faces threats that are high in magnitude but non-imminent. It therefore receives a priority rank of 5.

Hahnel's Amazonian Swallowtail (*Parides hahneli* Staudinger 1882)

Hahnel's Amazonian swallowtail is endemic to three localities in the sandy tributaries of the lower middle Amazon Basin in Brazil (Collins and Morris 1985; New and Collins 1991; Tyler *et al.* 1994). The identification of the larval hostplant is unknown, but it is believed to be either *Aristolochia lanceolato-lorato* S. Moore (common name unknown) or *A. acutifolia* Sass. ex R.E. Fries (common name unknown). This species occupies a fairly wide range, but ''the area of its range is very lightly populated'' (K.S. Brown, Jr., pers. comm. 2004). The restricted nature of its habitat was determined only in the 1990s (R. Robbins, pers. comm. 2004). Populations are characterized as very local, rare, and patchy in distribution (Collins and Morris 1985; Tyler *et al.* 1994). Until 1973, this species was known only in one location; two additional localized colonies were discovered in 1973 (Brown 1996; Collins and Morris 1985). There have been no recent discoveries of new populations (K.S. Brown, Jr., pers. comm. 2004). This species is sympatric (occupies the same range) with several butterflies, including at least two, *Methona* and *Thyrides* (common names unknown), that it reportedly mimics, and the subspecies *Parides chabrias ygdrasilla* (common name unknown)(Brown 1996). In 1996, when this species was last assessed by the IUCN, there was insufficient data to determine its status (IUCN 2003).

A. Present or threatened destruction, modification, or curtailment of its habitat or range: Citing potential threats from habitat destruction, New and Collins (1991) considered the possibility that this species was critically threatened. Because the species' ecological requirements are not well understood, habitat destruction could be a factor, but specific threats cannot be clearly identified. Therefore, we are unable to determine whether this species is or may be threatened by habitat destruction.

B. Overutilization for commercial, recreational, scientific, or educational purposes: Although the species flies high, making it harder to catch, ''local people can at times effectively reduce

populations since they know [this species'] habits'-(K.S. Brown, Jr., pers. comm. 2004). Many experts agree that species with restricted distributions or localized populations, such as Hahnel's Amazonian swallowtail, are more vulnerable to over-collection than those with a wider distribution (K.S. Brown, Jr., pers. comm. 2004; R. Robbins, pers. comm. 2004). Commercial exploitation is a potential threat to this species (Melisch 2000; New and Collins 1991; Schütz 2000; Tyler *et al.* 1994). A survey of German markets found swallowtails to be among the most popular species being sold; Hahnel's Amazonian swallowtail has sold for USD$200 per pair (Schütz 2000). The species is not listed under CITES. It is listed on the European Commission's Annex B, which regulates imports of certain species into Europe (see *Papilio esperanza,* B.), but it is unclear how this listing has affected trade in this species. As such, we believe that overutilziation for commercial purposes may constitute a threat to the survival of the species.

C. Disease or predation: There is no information to suggest that this species is subject to any threat from disease or predation.

D. Inadequacy of existing regulatory mechanisms: Hahnel's Amazonian swallowtail is listed as a species ''under study'' (Brown 1996). It is not listed on the Brazilian list of animals threatened with extinction (MMA 2004). This may be due to the species' wide range and tendency to be locally common (K.S. Brown, Jr., pers. comm. 2004).

E. Other natural or manmade factors affecting its continued existence: There is potential for foodplant competition with a sympatric butterfly, *Parides chabrias ygdrasilla* (common name unknown) (Collins and Morris 1985).

Hahnel's Amazonian swallowtail is known from only three localities and consists of highly localized populations, which makes them potentially vulnerable to over-collection.

Hahnel's Amazonian swallowtail is a species that does not represent a monotypic genus. It faces threats that are low to moderate in magnitude, and the immediacy of the threat is non-imminent. Therefore, it receives a priority rank of 11.

Kaiser-I-Hind Swallowtail (*Teinopalpus imperialis* Hope 1843)

The Kaiser-I-Hind swallowtail is native to the Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, and Vietnam. Preferring undisturbed montane deciduous forests, this fast-flying species flies near the treetops at altitudes of 1500–3050 m (Bond 1964; Igarashi 2001; Tordoff *et al.* 1999). The larval foodplant may differ across the species' range, including *Magnolia campbellii* Hook.f. and Thompson in China (Yen and Yang 2001); *Magnolia* spp. L. in Vietnam (Funet 2004); *Daphne* spp. L. in India, Nepal, and Myanmar (Funet 2004); and *Daphne nipalensis* (authority and common name unknown) in India (Robinson *et al.* 2004). Though this species was first described in 1843, its life history was not well characterized until 1986 (Igarashi and Fukuda 2000). The Kaiser-I-Hind swallowtail produces two broods per year (spring and late summer) (Igarashi 2001). Females are much larger and rarer than males (Bond 1964).

The species' range is larger today than known at the time of the original petition, with confirmed reports in Laos, Thailand, and Vietnam (FAO 2001; Igarashi 2001; Masui and Uehara 2000; Osada *et al.* 1999). The range of the Kaiser-I-Hind swallowtail overlaps with that of its close relative, the golden Kaiser-I-Hind swallowtail (*Teinopalpus aureus*) in Laos and Vietnam. The golden Kaiser-I-Hind swallowtail, which is listed in CITES Appendix II, is generally larger than the Kaiser-I-Hind swallowtail (Masui and Uehara 2000; Igarashi 2001). The IUCN lists the Kaiser-I-Hind swallowtail in the category of least concern (IUCN 2003), but it is considered ''rare'' by Collins and Morris (1985) and Tyler *et al.* (1994). Despite its widespread distribution, local populations are not abundant (Collins and Morris 1985). The actual population status in Bhutan, India, Laos, Myanmar, and Thailand is unknown, although it has been confirmed to be extant in Nepal, Thailand, and Vietnam. No butterflies are listed on the 1992 Red Data Book of Vietnam (Trai and Richardson 1999). In 1994, Chinese experts considered the species to be in ''immediate danger of extinction,'' with no verified occurrences in half a century (Professor Wang Sung, Executive Vice Chairman of the Endangered Species Scientific Commission of China, pers. comm. 1994). However, recent publications indicate that the species remains extant in China, although there is no information on population status (Pai and Wang 1998; Pai *et al.* 1996; Watanabe 1997; Yen and Yang 2001).

A. Present or threatened destruction, modification, or curtailment of its habitat or range: Despite a Chinese moratorium on logging in 1999, Kaiser-I-Hind swallowtail populations continued to be threatened by commercial and illegal logging in 2001 (Yen and Yang 2001). In Nepal, the species is threatened by limestone mining activities (E–Law 2002), and a recent report to by the Nepal Forest Ministry considers habitat destruction to be a critical threat to biodiversity, including this species (HMGN 2002). In Vietnam, the species is confirmed in three Nature Reserves, in areas where disturbance levels are low (Lien 2003; Tordoff *et al.* 1999; Trai and Richardson 1999). Habitat degradation (deforestation and land conversion) is a primary threat to this species in Thailand (FAO 2001). Thus, this species is known to be threatened by habitat destruction in some of its countries.

B. Overutilization for commercial, recreational, scientific, or educational purposes: The Kaiser-I-Hind swallowtail was listed in CITES Appendix II in 1987 and is listed in Annex B of the European Union's Council Regulation (see Oaxacan swallowtail, D.). CITES trade data, obtained from the World Conservation Monitoring Centre, indicate that only 152 Kaiser-I-Hind swallowtail specimens were traded between 1991 and 2002, and originated primarily from China (John Caldwell, WCMC, pers. comm. 2004). Nearly half of these were imported into the United States, all originating from China and declared as wild-collected. In a 3-month period (June–August 2004), a dealer in China sold 23 unmounted specimens: 4 to one buyer in Germany and the rest to buyers in the United States. The average selling price was US$107 for females and US$45 for males. This commercial activity could not be compared with CITES trade data because the 2004 CITES data will not be available until October 31, 2005. The Kaiser-I-Hind and golden Kaiser-I-Hind swallowtails resemble each other and both are commercially valuable. The species' ranges overlap in at least two, possibly three, range countries, so there is a potential for both species to be collected due to their resemblance to each other.

There are unconfirmed reports that this species is being captive-bred in China (Yen and Yang 2001), where it is considered to be more valuable than the southern tailed birdwing (Watanabe 1997). In Nepal, collectors would commonly lie in wait for the butterflies in mountaintop encampments (New and Collins 1991). According to the Nepal Forestry Ministry, the high commercial value of endangered species on the local and international market may result in local extinctions of many of Nepal's most endangered plants and animals, including this species (HMGN 2002). Unsustainable collection (for consumption or souvenirs) is a primary threat to this species in Thailand (FAO 2001). Thus, overutilization for commercial purposes threatens this

species throughout a significant portion of its range.

C. Disease or predation: There is no information to suggest that this species is subject to any threat from disease or predation.

D. Inadequacy of existing regulatory mechanisms: The Kaiser-I-Hind swallowtail is not protected under the Wildlife Conservation law of Taiwan (Yen and Yang 2001). In Nepal, where it is listed as threatened, the species is protected by the National Parks and Wildlife Conservation Act of 1973 (HMGN 2002). Protective legislation in India and Nepal has previously been considered ineffective (New and Collins 1991). In Thailand, the Kaiser-I-Hind swallowtail is listed under the 1992 Wildlife Reservation and Protection Act of 1992, which makes it illegal to collect (whether wild or dead) or to have the species in one's possession (FAO 2001). Despite regulation in international trade by CITES and on Annex B in Europe, we believe that this species is threatened by a lack of specific regulatory mechanisms for the species itself as well as its habitat throughout a significant portion of its range.

E. Other natural or manmade factors affecting its continued existence: A review of the available information did not indicate that this species was threatened by other factors.

In summary, the Kaiser-I-Hind swallowtail is a wide-ranging species that is experiencing varying degrees of threat throughout its range. There is potential for habitat destruction in at least four range countries, and collection for commercial purposes is reported throughout its range. However, regulatory mechanisms may not be adequately protecting the species from these threats. The combination of these factors potentially threatens this species throughout a significant portion of its range.

The Kaiser-I-Hind swallowtail does not represent a monotypic genus. It faces threats that are low to moderate in magnitude and imminent. It therefore receives a priority rank of 8.

Summary of Findings

The Service has carefully assessed the best scientific and commercial information available regarding the present and future threats facing the seven foreign butterfly species in this petition. Based on our review, we find that two species, the Oaxacan swallowtail and southern tailed birdwing, do not warrant listing under the Act because, as summarized above for each of these species, new populations have been discovered and neither species is subject to significant threats that cause the species to be threatened with extinction throughout a significant portion of its range. Further, both are strictly protected within their respective ranges. Thus, this determination of not warranted for these two butterfly species constitutes the agency's final action on these species at this time. However, we request that you submit any new information for these species concerning status and threats whenever it becomes available. This information will help us monitor the status of these species and encourage their conservation.

We also find, as discussed above, that the remaining five species, Harris' mimic swallowtail, the Jamacian kite swallowtail, the Fluminese swallowtail, Hahnel's Amazonian swallowtail, and the Kaiser-I-Hind swallowtail, warrant listing as threatened. However, the publication of a proposed rule to list these species remains precluded by other higher-priority listing actions. Section 4(b)(3)(B)(iii) of the Act indicates that the Service may make warranted-but-precluded findings with regard to cases in which (1) an immediate proposed rule is precluded by higher-priority proposals to list species as endangered or threatened, and (2) expeditious progress is being made on other listing measures. Expeditious progress in listing endangered and threatened species is being made, and our progress on listing species previously found to be warranted but precluded is reported annually in the **Federal Register**. Our most recent annual notice on these 12-month ''resubmitted'' petition findings on foreign species was published on May 21, 2004 (69 FR 29354). We published a complete description of our listing priority system on September 21, 1983 (48 FR 43098). The listing priority number for each of the five butterfly species found to be warranted but precluded is presented in Table 1. Other foreign species, comprising a large number of birds covered by petitions received in 1980 and 1991, have listing priority numbers that are equal to or higher than those of at least some of the butterflies.

As required by Section 4(b)(3)(C)(i) of the Act, the Service will reassess the warranted-but-precluded finding when we publish our annual notice on resubmitted petition findings for foreign species. The Service seeks data and comments from the public on this petition finding. We will continue to monitor the status of these species as new information becomes available. Our review of any new information received will determine if a change in status is warranted, including the need to list any species on an emergency basis.

References Cited

A complete list of all references cited in this petition finding is available on request from the Division of Scientific Authority (*see* **ADDRESSES** section).

Author

The primary author of this document is Dr. Patricia De Angelis, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

TABLE 1.—PETITION FINDING FOR SEVEN FOREIGN SPECIES OF SWALLOWTAIL BUTTERFLIES (FAMILY: PAPILIONIDAE)

[R=listing not warranted/removed; C=listing warranted but precluded]

Status		Scientific name	Synonyms	Common name	Historic range
Category	Priority				
C	12	*Eurytides lysithous harrisianus.*	*Graphium lysithous harrisianus; Mimoides lysithous harrisianus.*	Harris' mimic swallowtail	Brazil, Paraguay (?).
C	5	*Eurytides marcellinus*	*Graphium marcellinus; Neographium marcellinus; Protographium marcellinus (nom. inv.); Protesilaus marcellinus.*	Jamaican kite swallowtail Blue swallowtail.	Jamaica.

TABLE 1.—PETITION FINDING FOR SEVEN FOREIGN SPECIES OF SWALLOWTAIL BUTTERFLIES (FAMILY: PAPILIONIDAE)—Continued

[R=listing not warranted/removed; C=listing warranted but precluded]

Status		Scientific name	Synonyms	Common name	Historic range
Category	Priority				
R	n/a	*Papilio esperanza*	*Pterourus esperanza Heraclides esperanza.*	Oaxacan swallowtail, La llamadora.	Mexico.
C	5	*Parides ascanius*	n/a	Fluminese swallowtail, Ascanius swallowtail.	Brazil.
C	11	*Parides hahneli*	n/a	Hahnel's Amazonian swallowtail.	Brazil.
R	n/a	*Ornithoptera meridionalis*	*Troides meridionalis; Schoenbergia meridionalis.*	Southern tailed birdwing	Indonesia, Papua New Guinea.
C	8	*Teinopalpus imperialis*	n/a	Kaiser-I-Hind swallowtail, Emperor of India.	Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, Vietnam.

Dated: November 18, 2004.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041117321–4321–01; I.D. 110904D]

RIN 0648–AS37

Fisheries of the Exclusive Economic Zone Off Alaska; Aleutian Islands Subarea Directed Pollock Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 82 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 82, if approved, would establish a framework for management of the Aleutian Islands subarea (AI) directed pollock fishery. This action is necessary to implement provisions of the Consolidated Appropriations Act of 2004 that require the AI directed pollock fishery to be allocated to the Aleut Corporation for the purpose of economic development of Adak, Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, Consolidated Appropriations Act of 2004, and other applicable laws.

DATES: Written comments must be received by January 21, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907–586–7557.
- E-mail: *BSA82–0648–AS37@noaa.gov*. Include in the subject line the following document identifier: AI pollock proposed rule. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the proposed rule, the 2000 FMP level biological opinion, and the 2001 biological opinion and its June 2003 supplement for the Steller sea lion protection measures may be obtained from the addresses stated above or from the Alaska Region NMFS website at *www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 82 for review by the Secretary of Commerce, and a Notice of Availability of the amendment was published in the **Federal Register** on November 16, 2004 (69 FR 67107), with comments on the amendment invited through January 18, 2005. Comments may address the FMP amendment, the proposed rule, or both, but must be received by January 18, 2005, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP Amendment.

Background

The Consolidated Appropriations Act of 2004 (Public Law (Pub. L.) 108–199) was signed into law on January 23, 2004. Section 803 of this law allocates the AI directed pollock fishery to the Aleut Corporation for economic development of Adak, Alaska. The statute permits the Aleut Corporation to authorize one or more agents for activities necessary for conducting the

AI directed pollock fishery. Throughout this preamble, the term ''Aleut Corporation'' will mean the Aleut Corporation or its authorized agent(s) for purposes of describing activities required for managing the AI directed pollock fishery.

Public Law 108–199 requires the Aleut Corporation's selection of participants in the AI directed pollock fishery and limits participation to American Fisheries Act (AFA) (Pub. L. 105–277, Title II of Division C) qualified entities and vessels 60 feet (18.3 m) or less in length overall (LOA) with certain endorsements. Section 803(b) of Pub. L. 108–199 restricts the annual harvest of pollock in the AI directed pollock fishery by vessels 60 feet (18.3 m) LOA or less to less than 25 percent of the annual allocation until 2009, and to less than 50 percent of the annual allocation prior to 2013. These vessels must receive 50 percent of the annual directed pollock fishery allocation starting in 2013 and beyond. A FMP amendment and associated regulatory amendments are needed to implement these and other measures necessary to manage this fishery pursuant to provisions specified in Pub. L. 108–199.

The Council adopted Amendment 82 in June 2004 and clarified a portion of its June action in October 2004. If approved by the Secretary of Commerce, Amendment 82 would revise the FMP to establish the management framework for the AI directed pollock fishery. This proposed rule would implement the following management provisions for the AI directed pollock fishery:

1. Restrictions on the harvest specifications for the AI directed pollock fishery, including: limitations on the size of the annual AI pollock total allowable catch (TAC), limits on the A season harvest of TAC, allocation requirement for vessels 60 feet (18.3 m) LOA or less, and reallocation provisions for unharvested amounts of the AI pollock allocations;

2. Provisions for fishery monitoring, including: the Aleut Corporation's selection and NMFS's approval of vessels and processors participating in the AI directed pollock fishery, restrictions on having pollock from the AI and either the Bering Sea subarea (BS) or the Gulf of Alaska on a vessel at one time, observer and scale requirements, catch monitoring control plans for shoreside and stationary floating processors, and Aleut Corporation's and participants' responsibility for ensuring the harvest does not exceed the AI directed pollock fishery allocation;

3. Reporting requirements; and

4. A new AI Chinook salmon prohibited species catch limit that, when reached, would close the existing Chinook salmon savings areas in the AI.

Prior to Pub. L. 108–199, the AI directed pollock fishery was managed pursuant to the AFA. The AFA allocated the AI directed pollock fishery to specific harvesters and processors named in the AFA and specified in regulations at 50 CFR part 679. Public Law 108–199 supersedes portions of the AFA and allocates all the AI directed pollock fishery to the Aleut Corporation. The implementation of Pub. L. 108–199 requires the amendment of AFA provisions in the FMP and in the regulations at 50 CFR part 679 to provide for the allocation of the AI directed pollock fishery to the Aleut Corporation and for the management of this fishery.

The allocation of pollock to the AFA directed pollock fisheries under section 206(b) of the AFA now only pertains to the BS pollock TAC given that Pub. L. 108–199 fully allocates the AI directed pollock fishery to the Aleut Corporation. Thus, AFA restrictions associated with the directed pollock fishery, including excessive harvesting and processing shares under section 210(e) of the AFA, now apply only to the AFA allocations of BS pollock.

Similarly, AFA groundfish sideboard provisions under section 211 of the AFA would not apply to AFA entities while those entities are participating in the AI directed pollock fishery. Groundfish species taken incidental to the AI directed pollock fishery would be deducted from the relevant TACs, and fisheries for those species would be managed by NMFS accordingly. Pending the nature and scope of incidental catch in the AI directed pollock fishery, the Council could consider separate groundfish sideboard provisions for this fishery in the future.

Proposed Regulatory Amendments

The following describes the proposed amendments to the regulations, by section, that would be required to implement the management provisions for the AI directed pollock fishery pursuant to Amendment 82 and Pub. L. 108–199.

§ 679.1 Authority

The BSAI pollock fisheries are managed under the provisions of the AFA. Certain provisions of the AFA applicable to the AI directed pollock fishery are superseded by Pub. L. 108–199. Because the BSAI pollock fisheries include the AI directed pollock fishery, this proposed rule would revise § 679.1(k) to include the AI directed pollock fishery in the paragraph title and to include Pub. L. 108–199 in the list of statutes applicable to the BSAI pollock fisheries.

§ 679.2 Definitions

Several definitions would be revised and four definitions would be added by this proposed rule for the AI directed pollock fishery.

The ''Aleut Corporation'' is identified in Pub. L. 108–199 as a business incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). A definition of the Aleut Corporation would be added by this proposed rule to clarify the identity of the corporation that would receive the AI directed pollock fishery allocation.

A definition of the ''AI directed pollock fishery'' would be added to mean the directed fishery for pollock allocated to the Aleut Corporation. This term does not include directed fishing for pollock under the Western Alaska Community Development Quota (CDQ) Program that may occur in the AI.

A vessel or processor selected by the Aleut Corporation and approved by NMFS to harvest or process pollock in the AI directed pollock fishery during a fishing year (January 1 through December 31) would be defined as an ''Aleut Corporation entity.'' Section 679.2 would be revised to add a definition for ''Aleut Corporation entity'' to facilitate its reference in regulations.

The proposed rule would add a definition for a ''designated contact for the Aleut Corporation.'' This individual would be designated by the Aleut Corporation as the contact person for management of the AI directed pollock fishery, including, but not limited to, reporting of the selection of Aleut Corporation entities set forth in § 679.4(m) of the proposed rule and fulfilling the proposed recordkeeping and reporting requirements for the fishery set forth under § 679.5.

The definitions in § 679.2 that refer to the AFA pollock fishery would be revised to remove references to the AI directed pollock fishery. Public Law 108–199 allocates AI directed pollock fishery to the Aleut Corporation, and no longer to AFA cooperatives.

Under the proposed rule and Pub. L. 108–199, an Aleut Corporation entity must be selected by the Aleut Corporation and subsequently approved by NMFS before it could lawfully participate in the AI directed pollock fishery. Because AFA qualification alone would no longer allow participation in the AI directed pollock fishery, several AFA definitions would be revised by changing the terms ''BSAI

pollock'' to ''BS pollock'' and ''BSAI directed pollock'' to ''BS directed pollock.'' The definitions that would be revised are ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab processing facility,'' ''AFA entity,'' ''AFA inshore processor,'' ''AFA mothership,'' ''designated primary processor,'' ''fishery cooperative or cooperatives,'' ''listed AFA catcher/processor,'' and ''unlisted AFA catcher/processor.'' Removing references to the AI in these AFA definitions would clarify that meeting AFA qualifications does not also qualify a harvester or processor for participating in the AI directed pollock fishery.

The definition for ''license limitation groundfish'' in § 679.2 would be revised to add an exception for pollock harvested in the AI directed pollock fishery by vessels 60 feet (18.3 m) LOA or less. Public Law 108–199 states that vessels 60 feet (18.3 m) LOA or less that have a valid fishery endorsement may be eligible to participate in the AI directed pollock fishery. The fishery endorsement is issued by the U. S. Coast Guard on the vessel's U.S. Coast Guard documentation for participation in a U. S. fishery. Vessels 60 feet (18.3 m) LOA or less would not need to demonstrate AI pollock harvest history and qualify for a license limitation permit (LLP) pursuant to § 679.4(k). This exception in the license limitation groundfish definition would reduce the licensing burden for participants in the AI directed pollock fishery, would allow vessels 60 feet (18.3 m) LOA or less to enter the fishery without previous pollock fishing history or the necessity for owners to have an LLP that names that vessel, and would encourage economic development of Adak, Alaska, by facilitating the building of a fleet of vessels 60 feet (18.3 m) LOA or less.

§ 679.4 Permits

Section 679.4 describes the permitting requirements for participation in the groundfish fisheries. Public Law 108–199 requires harvesting and processing participants in the AI directed pollock fishery to be approved by the Aleut Corporation. Public Law 108–199 specifies that vessels eligible to harvest pollock in the AI directed pollock fishery either must be AFA qualified or 60 feet (18.3 m) LOA or less. In June 2004, the Council recommended that all catcher/processors and motherships, regardless of size, also be AFA qualified in order to participate in this fishery. Shoreside and stationary floating processors would not need to be AFA qualified to participate in the AI directed pollock fishery. The proposed rule would establish criteria for the Aleut Corporation's selection and NMFS' approval of participants in this fishery beyond a participant's qualification under the AFA.

This proposed rule would revise § 679.4(l) to clarify that AFA permitting requirements would apply exclusively to the BS pollock fishery, to vessels greater than 60 feet (18.3 m) LOA in the AI directed pollock fishery, and to all catcher/processors and motherships in the AI directed pollock fishery. Paragraphs that reference BSAI pollock harvest history would remain unchanged by this rule because the basis for establishing history for AFA participation was not changed by Pub. L. 108–199.

Revisions would be made to paragraphs (l)(1)(i) for applicability to the BSAI directed pollock fishery, (l)(5)(iii) for the single geographic location requirement for inshore processors, (l)(6)(ii)(B) for the delivery of BSAI pollock to designated cooperative processors, (l)(6)(ii)(C)(*2*) for cooperative contract information regarding BSAI pollock delivery, and (l)(6)(ii)(D)(*2*) for landing requirements for pollock harvested in the BSAI directed pollock fishery. The revision to paragraph (l)(6)(ii)(D)(*1*) for the LLP requirement would remove the reference to the AI cooperative allocation and would make the requirement applicable to vessels greater than 60 feet (18.3 m) LOA harvesting pollock in the AI directed pollock fishery. Vessels 60 feet (18.3 m) LOA or less would not be required to have AFA or LLP permits. Paragraphs (l)(6)(ii)(D)(*2*)(*i*) and (*ii*) also would be revised to limit the landing requirements for qualified catcher vessels to pollock taken in the BS only.

Public Law 108–199 does not require vessels 60 feet (18.3 m) LOA or less to comply with other Federal fisheries permitting requirements that may not be easily met and which could restrict the vessels' participation. However, Federal fisheries permits (FFPs) pursuant to § 679.4(b) would be required for all AI directed pollock fishery vessels to ensure Steller sea lion protection measures requiring vessel monitoring systems (§ 679.28) apply to vessels fishing in the AI directed pollock fishery. The FFP requirement applies to catcher vessels, catcher/processors, and motherships. The FFP requirement should not restrict participation in the AI directed pollock fishery considering the minimal requirements for obtaining the permit, and the FFPs are provided free of charge. No regulatory revisions are needed to implement the pollock fishery endorsement and FFP requirements for the AI directed pollock fishery participants.

A new paragraph (m) would be added to § 679.4 to establish the annual process for NMFS' approval of participants in the AI directed pollock fishery. The participants selected by the Aleut Corporation for the AI directed pollock fishery must be approved by NMFS annually under criteria established under Pub. L. 108–199 and in this proposed rule. NMFS' approval must be received by the Aleut Corporation before the participant would be authorized to fish in the AI directed pollock fishery. The proposed rule would require the Aleut Corporation to provide NMFS the identity of selected harvesters and/or processors at least 14 days before the participant is scheduled to begin harvesting or processing pollock in the AI directed pollock fishery. NMFS would review each participant selected by the Aleut Corporation relative to approval criteria established in regulations. Upon approval, NMFS would provide the Aleut Corporation a letter showing NMFS' approval of each participant and the date harvesting or processing by the participants in the AI directed pollock fishery may commence.

The Aleut Corporation would be required to provide a copy of NMFS' approval letter to each participant in the AI directed pollock fishery before harvesting or processing by that participant commences during the fishing year. Vessels participating in the fishery would be required to carry a copy of NMFS' approval letter on the vessel at all times while participating in the fishery. Processors would be required to provide documentation of approval during NMFS inspections. This process would allow for approval of participants before the fishery commences and would assist enforcement personnel to rapidly establish such approval during a boarding or inspection for compliance monitoring or enforcement purposes.

Participants may be added to the approval list at any time during the fishing year upon selection by the Aleut Corporation following the procedure set forth above 14 days before harvesting or processing would commence. Once a participant is approved by NMFS for harvesting or processing pollock taken in the AI directed pollock fishery during the fishing year, the participant would remain approved by NMFS for the duration of the fishing year, as long as the Federal fishing permit and any applicable endorsement remains current. Subsequent disapproval for participation in the AI directed pollock fishery by the Aleut Corporation, for

whatever reason, would be managed by the Aleut Corporation through private contractual agreements with the participant.

Paragraph (m) also would include the procedures for appeal of NMFS' disapproval of the Aleut Corporation's selection of a participant for the AI directed pollock fishery. The Regional Administrator would notify the Aleut Corporation and the participant of NMFS' disapproval of the participant. The reason for the disapproval would be provided and the disapproved participant would have 30 days to provide additional evidence. After 30 days, the Regional Administrator would issue an initial administrative determination (IAD) regarding the selection and reasons for the decision. A disapproved participant would be able to appeal the IAD under the appeals procedure at § 679.43 and would be permitted to participate in the AI directed pollock fishery while the IAD is under appeal. This revision would provide due process in the event of a dispute with NMFS' disapproval.

§ 679.5 Recordkeeping and Reporting

This proposed action would add a new paragraph (q) to the recordkeeping and reporting regulations at § 679.5 to add requirements for the AI directed pollock fishery. The Aleut Corporation would be required to submit a weekly catch report to NMFS for all pollock caught by all vessels fishing on its behalf. The information required would include: the catcher vessel Alaska Department of Fish and Game (ADF&G) identification number; FFP or Federal processor permit number; delivery date; the amount of pollock received in pounds plus the weight of at-sea pollock discards; and the ADF&G fish ticket number. The proposed rule also would require the Aleut Corporation to designate a contact for communications regarding reporting and recordkeeping. The designation of a contact and the information required in the report would ensure timely and complete harvest information from the Aleut Corporation is received to facilitate oversight of the AI directed pollock fishery.

The Council recommended that the Aleut Corporation be required to submit both an annual report and a one-time report about the use of its AI pollock allocation. The annual report would include: (1) information describing the use of the revenues generated from the AI directed pollock fishery by the Aleut Corporation for economic development in Adak, and (2) information about catch similar to that required to be provided by the AFA cooperatives under § 679.61(f). The Council requested that the Aleut Corporation submit a draft of the annual report to the Council by December 1 and a final report by February 1. The Council also requested a one-time report to be provided prior to the June 2006 Council meeting with information on how the revenue from the fishery was spent, harvest success, Chinook salmon bycatch, development of the small vessel fleet, and pollock processing capacity. The Council would consider this information in these reports to determine if the AI directed pollock fishery allocation should be adjusted.

Management of the AI directed pollock fishery would require revisions to logbooks and forms to ensure accurate data collection. The two catcher vessel daily fishing logbooks, two catcher/processor daily cumulative production logbooks (DCPLs), mothership DCPL, and shoreside processor DCPL would be revised by adding ''AIP'' to the management block of the logbooks to identify the Aleutian Islands directed pollock fishery in the reports. The two weekly production reports (WPRs), two check-in/check out reports, buying station report, and daily production report would be revised by adding ''AIP'' to the management block of the forms. The software for the shoreside processor electronic logbook report would be revised by adding ''AIP'' to the management options onscreen.

§ 679.7 Prohibitions

The prohibitions specific to the AFA in § 679.7(k) would be revised by this proposed rule to apply only to the BS directed pollock fishery. Although many of the prohibitions in this paragraph continue to apply to the AI directed pollock fishery, several no longer apply under Pub. L. 108–199. In paragraphs (k)(3)(i) and (k)(4)(i), inshore processors and catcher vessels are prohibited from processing and harvesting BSAI pollock, respectively, without an AFA permit. Public Law 108–199 and Amendment 82 would allow catcher vessels 60 feet (18.3 m) LOA or less to harvest pollock in the AI directed pollock fishery and would allow shoreside and stationary floating processors without AFA permits to process pollock taken in the AI directed pollock fishery. All catcher/processors, motherships, and catcher vessels larger than 60 feet (18.3 m) LOA must be AFA qualified vessels to participate in the AI directed pollock fishery. Paragraphs (k)(3)(i) and (k)(4)(i) would be revised to exclude AI pollock from the prohibition on harvesting pollock without an AFA permit. These revisions would require each inshore processor and catcher vessel in the BS directed pollock fishery and each catcher vessel greater than 60 feet (18.3 m) LOA in the AI directed pollock fishery to have an AFA permit.

Paragraphs (k)(3)(iii) and (iv) limit the amount of BSAI pollock to be processed by inshore processors and limit the number of geographic locations at which BSAI pollock could be processed in a year. These limitations apply to the AFA pollock fishery, but are not required in the AI directed pollock fishery by either Pub. L. 108–199 or Amendment 82. Consequently, this proposed rule would remove references to the AI pollock fishery from each of these paragraphs.

Paragraphs (k)(5), (k)(6), and (k)(7) prohibit inshore AFA fishery cooperatives from exceeding their annual allocations of BSAI pollock and prohibit AFA-qualified vessels and processors from harvesting or processing an excessive share of BSAI pollock. Because all of the AI directed pollock fishery is allocated to the Aleut Corporation, the prohibitions in these paragraphs are no longer appropriate for the AI directed pollock fishery. This proposed rule would revise these paragraphs to remove references to the AI directed pollock fishery and would ensure that these prohibitions continue to apply only to the AFA fisheries.

New paragraph (l) would add prohibitions specific to the AI directed pollock fishery. Harvesting and processing of pollock taken in the AI directed pollock fishery would be prohibited without selection by the Aleut Corporation and NMFS' approval, as specified under § 679.4(m). NMFS would post a list of NMFS approved participants at *www.fakr.noaa.gov* that could be reviewed by the participant before harvesting or processing activities. This prohibition would ensure that only harvesters and processors selected by the Aleut Corporation and approved by NMFS could participate in the AI directed pollock fishery.

Paragraph (l) also would prohibit catcher vessels from having onboard at the same time pollock that was harvested from the AI and from either the BS or the GOA. A catcher vessel would be required to offload all pollock that was from the BS or the GOA before fishing in the AI directed pollock fishery and to offload all pollock taken in the AI directed pollock fishery before fishing in the BS or GOA. This prohibition would facilitate enforcement and the accurate accounting of pollock taken in the AI.

Because all catcher/processors and motherships participating in the AI

directed pollock fishery would be required to be AFA qualified, catcher/processors and motherships would be prohibited from processing in the AI directed pollock fishery without complying with the AFA catch weighing and observer sampling requirements under paragraphs (k)(2)(iii) and (k)(2)(iv). This revision would ensure the quality of information collected regarding pollock processing.

Paragraph (l) also would prohibit harvesters from delivering pollock harvested in the AI directed pollock fishery to shoreside or stationary floating processors unless the processor has a catch monitoring control plan satisfying the requirements of § 679.28(g) or to a processing vessel that is not AFA qualified and that is not selected by the Aleut Corporation and approved by NMFS for processing pollock harvested in the AI directed pollock fishery.

To manage the harvest of the Aleut Corporation pollock allocation, paragraph (l) would impose prohibitions on the Aleut Corporation and its entities similar to prohibitions for AFA inshore cooperatives. The proposed rule would prohibit harvest in excess of the harvest specifications for the AI directed pollock fishery by participants and by the Aleut Corporation. This would ensure that both the participants and the Aleut Corporation would be responsible to maintain harvest amounts within the AI directed pollock fishery annual, seasonal, and vessel allocations established in the harvest specifications.

§ 679.20 General Limitations

Section 679.20(a)(5) establishes the provisions for the pollock harvest specifications in the BS, AI, Bogoslof District, and the GOA. The proposed rule would add a new paragraph (iii) for the provisions for the AI directed pollock fishery and to separate AI pollock from the BS pollock harvest specifications.

In June 2004, the Council recommended a method of funding the annual allocation for the AI directed pollock fishery in consideration of the optimum yield (OY), the CDQ pollock directed fishing allowance pursuant to the AFA and § 679.31(a), and the combined TACs for the BSAI groundfish fisheries. The Council's recommended development of annual recommendations for the Bering Sea (BS) and AI TACs within the 2 million mt OY cap. The Council also recommended that the CDQ directed pollock fishery allowance not be reduced by the establishment of an AI pollock TAC. The proposed FMP text and proposed rule would implement these policy decisions.

Section 206(a) of the AFA requires that ''10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands management area be allocated as a directed fishing allowance'' to the CDQ program. Public Law 108–199 does not prohibit a CDQ pollock directed fishing allowance in the AI. In October 2004, the Council clarified its intent that the CDQ directed fishing allowance should be deducted from the AI annual pollock TAC to create the initial pollock TAC in the same manner as the Bering Sea pollock allocations. The AI directed pollock fishery for the Aleut Corporation would be allocated from the initial pollock TAC after subtraction of the incidental catch amount. The Council did not recommend a change to the existing regulatory provisions that establish separate CDQ directed fishing allowances in the AI and the Bering Sea subareas. Thus, 10 percent of the TAC specified annually for each subarea would be allocated to the CDQ pollock directed fishing allowance, and the Aleut Corporation and AFA directed pollock fishery allocations would be reduced by corresponding amounts.

This approach maintains Council intent to not reduce the BSAI CDQ directed fishing allowance as a result of the Aleut Corporation allocation. The Aleut Corporation allocation would equal the AI pollock TAC minus the 10 percent CDQ pollock directed fishing allowance and minus the incidental catch allowance (ICA).

In consideration of the harvesting and processing capacity for the AI directed pollock fishery, economic development needs for Adak, Alaska, and impacts on other BSAI groundfish fisheries, the Council recommended limits on the amount of annual harvest in the AI directed pollock fishery. The proposed rule would establish these limits in a new paragraph § 679.20(a)(5)(iii). The annual AI pollock TAC would equal 19,000 mt when the AI pollock ABC is equal to or more than 19,000 mt. When the AI pollock ABC is less than 19,000 mt, the annual AI pollock TAC would be no more than the ABC. The Council determined that the 19,000 mt limit minus the CDQ directed pollock fishing allowance and the ICA would provide an adequate amount of pollock to the Aleut Corporation for economic development while not excessively impacting the other BSAI groundfish fisheries, as combined annual TACs may not exceed the 2 million mt OY cap.

The proposed rule includes a reallocation provision for unharvested AI pollock. The proposed rule would revise § 679.20(a)(5) to authorize the Regional Administrator to determine the amount of the AI directed pollock fishery allocation or CDQ directed fishing allowance that is not likely to be harvested and to reallocate the anticipated unused amounts to the BS directed pollock fishery or the BS CDQ pollock directed fishing allowance, respectively, as soon as practicable. The amount of reallocation would be limited by the BS pollock ABC and must be consistent with determinations resulting from any associated consultations conducted under the Endangered Species Act (ESA). Based on the Council's funding policy, this would ensure that a portion of the BS pollock fishery recommended TAC that was applied to the AI recommended TAC may be returned to the BS pollock fishery if it is not expected to be harvested in the AI.

The Steller sea lion protection measures require harvest of pollock to be within the annual TAC amounts to ensure harvest is appropriate to the amount of available pollock biomass and other considerations. Because of the current condition of the BS pollock stock and the 2 million mt OY maximum in the BSAI, the BS pollock TAC is set well below the BS pollock ABC. The maximum amount of reallocation that could occur from the AI subarea to the BS subarea is no more than 19,000 mt minus the ICA. The 19,000 mt TAC limit is approximately 1.3 percent of the 2005 proposed BS pollock TAC (1,474,450 mt). The proposed acceptable biological catch (ABC) for pollock in the BS subarea is 2,363,000 mt. The 19,000 mt limit is 2 percent of the difference between the BS pollock TAC and ABC. Even with a reallocation of 19,000 mt from the AI subarea, the amount of pollock available for harvest in the BS (1,493,450 mt) would be well below the ABC.

Based on the 19,000 mt annual TAC limit for AI pollock and on the current biomass size of the BS pollock stock, any reallocation of unharvested AI pollock TAC is not likely to result in a harvest in the BS that is excessive in relation to available pollock biomass. As long as the gap between the BS pollock ABC and the BS pollock TAC is wide, the reallocation of unharvested pollock from the AI to the BS is not likely to adversely affect Steller sea lions or their critical habitat. If the biomass of the BS pollock stock declines substantially in the future or if the gap between ABC and TAC is substantially reduced, reallocation of unharvested AI pollock may need to be restricted to protect Steller sea lions and their critical

habitat. The condition of the BS stock and the amount of AI pollock reallocation would need to be considered at that time to determine the likely effect on Steller sea lions and their critical habitat. No reallocation would occur if the action was likely to adversely affect Steller sea lions or their critical habitat.

The seasonal apportionment of pollock harvest in the AI directed pollock fishery would be revised by this proposed rule. Pollock is an important prey species for the endangered western distinct population segment of Steller sea lions. The protection measures for Steller sea lions include temporal dispersion of pollock harvest. To temporally disperse harvest of prey species, the Steller sea lion protection measures require apportioning 40 percent of the BSAI pollock TAC to the A season and 60 percent to the B season. The regulations currently state that the seasonal apportionment applies to the BSAI pollock fishery. The proposed seasonal apportionment of AI directed pollock fishery would be established in a different manner than the seasonal apportionment of BS pollock. The proposed rule would remove references to AI pollock seasonal apportionment in §§ 679.20(a)(5)(i)(B) and (a)(5)(ii) and would add a new paragraph (iii) to describe the method of seasonal apportionment for the AI directed pollock fishery.

The Council considered the Steller sea lion protection measures in recommending the seasonal apportionment of the AI directed pollock fishery. The proposed rule would limit the A season apportionment to no more than the lesser of the annual initial TAC plus any CDQ fishery or 40 percent of the annual ABC. The total harvest of pollock in the A season from the directed fishery (AI directed pollock fishery and any CDQ fishery) and ICA would not exceed 40 percent of the ABC. This method of limiting seasonal harvest based on ABC is a departure from the use of TAC for the basis of seasonal apportionments. Because the annual TAC is capped at 19,000 mt when the ABC is greater than 19,000 mt, the Council recommended providing for the annual initial TAC to be taken fully in the A season as long as the annual initial TAC plus any CDQ fishery does not exceed 40 percent of the ABC. This would allow the participants to maximize the revenue potential from the fishery by harvesting the more valuable products which are available early in the year and would keep the A season harvest within the intended 40 percent seasonal limits of the Steller sea lion protection measures.

The B season apportionment to the AI directed pollock fishery would be the remainder of the annual initial TAC minus the A season apportionment, and minus the annual ICA. Unharvested A season pollock initial TAC may be reapportioned by the Regional Administrator to the B season, if it is determined that the B season apportionment and reallocation are likely to be harvested. Otherwise, the Regional Administrator may reallocate unharvested AI pollock initial TAC to the BS pollock fishery as long as the BS pollock ABC is not exceeded, as described above.

The CDQ fishery is not part of the Aleut Corporation's directed pollock fishery in the AI. Any harvest of the CDQ pollock directed fishing allowance in the AI would continue to be conducted with the same seasonal apportionments as currently specified for the AI and BS subareas and CDQ components under § 679.20(a)(5)(i)(B). The proposed rule would reorganize these provisions under § 679.20(a)(5)(i)(B) and continue to apportion 40 percent of the CDQ directed fishing allowance in the AI to the A season and 60 percent to the B season. The CDQ pollock directed fishing allowances specified for the AI and the BS subareas would be determined during the harvest specifications process.

Section 679.20(a)(5)(ii) currently requires that the allocation of pollock in both the AI and the Bogoslof District is to be done in the same manner as the AFA allocations in the BS subarea. Because Pub. L. 108–199 allocated the non-CDQ directed pollock fishery in the AI to the Aleut Corporation, this proposed rule would revise paragraph (a)(5)(ii) to apply to the Bogoslof District only. The establishment of an ICA when the directed pollock fishery in the AI is closed would be addressed in a new paragraph (iii) where harvest specifications and seasonal allocations would be specified.

Paragraph (a)(5)(iii) also would specify the further allocation of the Aleut Corporation's allocation among vessels approved to participate in the AI directed pollock fishery. Public Law 108–199 allows the allocation of a portion of the AI directed pollock fishery to vessels 60 feet (18.3 m) LOA or less in increasing amounts through 2013. In 2004 through 2008, up to 25 percent of the allocation may be provided to vessels 60 feet (18.3 m) LOA or less. In 2009 through 2012, up to 50 percent of the allocation may be provided to vessels 60 feet (18.3 m) LOA or less. For 2013 and beyond, 50 percent of the allocation must be provided to vessels 60 feet (18.3 m) LOA or less. The first two allocation periods would establish a cap on how much of the allocation may go to small vessels. For 2013 and beyond, the amount to go to the small vessels would be 50 percent of the allocation specified during the harvest specifications process.

§ 679.21 Prohibited Species Bycatch Management

The Council recommended a separate Chinook salmon prohibited species catch limit in the AI directed pollock fishery. Currently § 679.21(e)(1)(vii) establishes the BSAI Chinook salmon at 29,000 fish. This limit applies to all Chinook salmon taken when directed fishing for pollock, including CDQ pollock fisheries in the BSAI. When this limit is reached in the BSAI pollock trawl fishery, the Chinook salmon savings areas are closed according to a schedule specified in § 679.21(e)(7)(viii). The two Chinook salmon savings areas are shown in Figure 8 to 50 CFR part 679. One of these areas is in the AI (area 1), and the other area is in the BS (area 2). Area 2 is considered an important area for pollock harvest in the BS. The pollock fishery in the BS subarea has had annual incidental catches of Chinook salmon well over 29,000 fish in 2002 and 2003 and likely will exceed the 29,000 limit in 2004, resulting in the closure of areas 1 and 2.

To reduce the potential impact of Chinook salmon bycatch taken in the AI directed pollock fishery on the BS pollock fishery, the Council recommended a separate AI Chinook salmon prohibited species catch (PSC) limit of 700 fish. The AI directed pollock fishery has been closed since 1999, and little recent information exists on Chinook salmon bycatch in the AI pollock trawl fishery. The 700 fish limit is based on the highest rate of Chinook salmon bycatch observed in the AI pollock fishery between 1991 and 1998 and a 19,000 mt AI pollock TAC. If the amount of Chinook salmon bycatch in the AI subarea were to exceed the 700 fish limit, the proposed rule would require the closure of the AI portion of the Chinook salmon savings areas only (area 1 on Figure 8 to 50 CFR part 679). The proposed rule would revise § 679.21(e)(1)(vii) by removing the AI pollock reference for the 29,000 Chinook salmon PSC limit. A new paragraph (e)(1)(ix) would be added to establish the 700 Chinook salmon PSC limit for the AI directed pollock fishery.

Further, the proposed rule revisions to § 679.21(e)(7)(viii) would provide that reaching the BS pollock trawl Chinook salmon PSC limit of 29,000 would close

the Chinook salmon savings areas close both in the AI and in the BS. The Chinook salmon savings area in the AI is not expected to be an important location for pollock harvest, so closing this area based on obtaining the BS PSC limit for Chinook salmon would not be an excessive burden to the AI directed pollock fishery and would provide additional protection to Chinook salmon. The incidence of Chinook salmon bycatch would be reviewed during the harvest specifications process to determine if the limit in this proposed rule is appropriate based on recent catch information.

§ 679.23 Seasons

Section 679.23(e)(2) would be revised to include the AI directed pollock fishery in the list of fisheries to which seasonal apportionments apply. The Steller sea lion protection measures require the pollock harvest in the BSAI to be managed in two seasons to ensure temporal dispersion of harvest. This proposed action would establish the A season as 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10 and the B season as 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

§ 679.28 Equipment and Operational Requirements

The Council recommended that pollock deliveries to a shoreside or stationary floating processor be prohibited unless the processor has a catch monitoring control plan (CMCP). The CMCP explains how a processor will meet the catch monitoring and control standards detailed in § 679.28(g)(7). This proposed action would revise § 679.28(g)(2) to include the AI directed pollock fishery shoreside processors and stationary floating processors with the processors required to have a CMCP. The CMCP would ensure that pollock processed for the Aleut Corporation would be accurately monitored and reported to ensure effective management of the fishery. This proposed rule also would correct a typographical error in paragraph (g)(3) which references the CMCP standards by revising the reference in the paragraph from (g)(6), which applies to changing a CMCP, to (g)(7) which applies to the standards.

§ 679.50 Groundfish Observer Program

The Council recommended that catcher vessels less than 60 feet (18.3 m) LOA be required to accept a NMFS staff observer if one is designated by NMFS to observe on the vessel. An observer collects fishery information that can be used to manage harvest activities for a fishery. NMFS staff observers would be provided without charge to the vessel owner to collect this information. Current regulations do not require observers on catcher vessels less than 60 feet (18.3 m) LOA in the AI directed pollock fishery. Revised paragraph (e)(1) would require the owner of a vessel less than 60 feet (18.3 m) LOA in the AI directed pollock fishery to accept a NMFS staff observer and to comply with the safety requirements for carrying an observer at § 679.50(g)(1)(ii). Information gathered by the NMFS staff observers may be used in considering future observer requirements for vessels less than 60 feet (18.3 m) LOA in the AI directed pollock fishery.

Catcher vessels 60 feet (18.3 m) to less than 125 feet (38.1 m) LOA in the AI directed pollock fishery are required by § 679.50(c)(1)(v) to have 30 percent observer coverage during a calendar quarter and for at least one complete fishing trip targeting pollock, as defined under paragraph (c)(2)(i). Proposed revisions to paragraph (c)(2)(i) would ensure the AI directed pollock fishery observer coverage is considered separately from BS or GOA pollock fishery observer coverage requirements. Catcher vessels in this size class participating in the AI directed pollock fishery would have at least one of their trips fully observed, ensuring NMFS receives sufficient information for monitoring activities in the AI directed pollock fishery by catcher vessels in this size class.

Revisions to paragraph (c)(5) also would add catcher/processor and mothership observer requirements for the AI directed pollock fishery equivalent to AFA requirements. The Council recommended that all catcher/processors and motherships participating in the AI directed pollock fishery be required to meet the AFA monitoring requirements, including vessels less than 60 ft. (18.3 m) LOA. This requirement would ensure accurate information is available on which to base management decisions for the AI directed pollock fishery. The reference to observer workload restrictions also would be corrected from paragraph (c)(5)(iii) to paragraph (c)(5)(ii).

Subpart F American Fisheries Act Management Measures

The title to Subpart F would be revised to read ''American Fisheries Act and Aleutian Islands Directed Pollock Fishery Management Measures.'' Because a number of AFA provisions also apply to the AI directed pollock fishery, sections of this subpart would be revised to include the management measures for the AI directed pollock fishery.

§ 679.60 AFA Management Measures

The authority in the section would be revised to include Pub. L. 108–199 in the list of statutes applicable to the BSAI pollock fisheries.

§ 679.61 Formation and Operation of Fishery Cooperatives

This section describes the formation and operation of fishery cooperatives for the purposes of the AFA pollock fishery. Proposed revisions to §§ 679.61(b), (d)(3) and (g) would remove references to the AI directed pollock fishery. Public Law 108–199 removes the AI directed pollock fishery from the AFA program. Paragraph (b) now states that fishery cooperatives formed for the purpose of cooperatively managing directed fishing in the BSAI directed pollock fishery must comply with § 679.61. Fishery cooperatives no longer participate in the AI directed pollock fishery. Paragraph (d)(3), now states that inshore cooperatives that are applying for an allocation of BSAI pollock must file their contracts by the December 1 deadline. Inshore cooperatives would no longer be able to apply for an AI pollock allocation pursuant to the proposed rule. Paragraph (g) now prohibits cooperative members from participating in the BSAI directed pollock fishery if any landing taxes for the cooperative are overdue. Because the cooperatives are no longer able to participate in the AI directed pollock fishery without the Aleut Corporation's selection and NMFS' approval, the prohibition on fishing in the AI directed pollock fishery is outside the scope of purpose for the formation of the cooperative and would be inappropriate. The reference to landing taxes in paragraph (g) would be corrected from paragraph (d)(1)(v) to paragraph (e)(1)(v).

§ 679.62 Inshore Sector Cooperative Allocation Program

Section 679.62 (a) now specifies that inshore cooperatives will receive a portion of the AI directed pollock fishery allocation if the AI is open to directed pollock fishing. Because Pub. L. 108–199 provides for all of the AI directed pollock fishery to be allocated to the Aleut Corporation, this proposed rule would remove the reference to the AI directed pollock fishery allocation to inshore cooperatives in the introductory paragraph to (a) and in paragraphs (a)(2) and (a)(3).

Paragraphs (b)(2) and (b)(3) now refer to the harvest accrual against inshore cooperative quotas and the reporting of

inshore cooperative harvest, including the AI directed pollock fishery. Because the AI directed pollock fishery is allocated to the Aleut Corporation, the proposed rule would clarify the description of the inshore cooperative allocation and reporting requirements by removing references to the AI directed pollock fishery. The revision also would remove the additional text '' by a member vessel'' in paragraph (b)(2)(i) to provide more concise text for this requirement.

§ 679.63 Catch Weighing Requirements for Vessels and Processors

Section 679.63(c) now requires groundfish landed by an AFA catcher vessel in the BSAI pollock fishery at a shoreside processor to be weighed and observed. In June 2004, the Council recommended that the shoreside and stationary floating processors receiving pollock from the AI directed pollock fishery be required to have a CMCP. The AFA weighing and observer requirements for inshore processors were not extended to the AI directed pollock fishery because the CMCP would provide the quality and quantity of information needed. The proposed rule would revise paragraph (c) to remove references to the AI pollock fishery.

§ 679.64 Harvesting Sideboard Limits in Other Fisheries

The introductory text to paragraphs (a) and (b) would be revised to clarify that the intent of the sideboards is to protect against adverse effects from fishery cooperative in the BS directed pollock fishery. Paragraphs (a)(1)(i) and (b)(3) would be revised to exempt AI pollock from AFA groundfish sideboard provisions. The citation in paragraphs (a)(2)(ii) would be corrected from (a)(1)(ii)(A) to (a)(2)(i). Paragraph (a)(4) would be revised to correct the citation ''(a)(1)(i) through (a)(1)(iii)'' to ''(a)(1)(ii) through (a)(3).'' The citation in paragraph (a)(4)(ii) also would be corrected from (a)(1)(iv) to (a)(4)(i).

§ 679.65 Crab Processing Sideboard Limits

Because the crab processing sideboard limits are applicable to AFA mothership and inshore processors that receive pollock from the BS directed pollock fishery, paragraphs (a) and (b) would be revised to specify the BS directed pollock fishery.

Classification

At this time, NMFS has not determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

Description and estimate of the number of small entities to which the rule applies: Amendment 82 potentially affects the following classes of entities: (1) the Aleut Corporation, (2) fishing operations harvesting pollock in the AI with the permission of the Aleut Corporation, (3) processors processing AI pollock with permission of the Aleut Corporation, (4) AFA pollock vessels that may be affected by the Council's policy on funding the AI allocation or which may be involved in fishing the AI allocation under the terms of the Pub. L. 108–199, and (e) CDQ groups.

Section 803(a) of Pub. L. 108–199 requires that effective January 1, 2004, and thereafter, the directed fishery for pollock in the AI subarea of the BSAI shall be allocated to the Aleut Corporation. Except with the permission of the Aleut Corporation or its authorized agent, the fishing or processing of any part of such allocation shall be prohibited by Section 307 of the Magnuson-Stevens Fishery Conservation and Management Act.

For the purposes of the Regulatory Flexibility Act (RFA), the Aleut Corporation is best characterized as a holding company. A holding company is a company that usually confines its activities to owning stock in and supervising management of other companies. A holding company usually owns a controlling interest in the companies whose stock it holds. The Aleut Corporation carries out most of its significant activities through a variety of other companies whose stock it holds. These include the Aleut Enterprise Corporation, the Adak Reuse Corporation, SMI International Corporation, Tekstar, Inc., Akima Corporation, Aleut Real Estate L..L.C., and the Alaska Trust Company.

As a holding company, the Aleut Corporation is not a small entity under the SBA criteria. Aleut Corporation revenues ranged from about $72 million in 2001 to about $49 million in 2003. SBA small entity criteria at 13 CFR 121.201 provide a small entity threshold for ''Offices of Other Holding Companies'' of $6 million.

The vessels used to harvest the Aleut Corporation's pollock allocation are expected to ''co-op'' with the Aleut Corporation because the latter is responsible for dispersing the component shares of the annual AI pollock allocation to individual fishing operations. All those vessels allocated a working share of the Aleut Corporation's directed pollock fishery are ''affiliates'' of the larger group and are not small entities for RFA purposes. As discussed in Appendix A.2 of the RIR (see **ADDRESSES**), small entities affiliated with large entities are considered large entities for the purpose of an SBA analysis. This means that entities which contract with the Aleut Corporation to harvest or process its allocation of AI pollock are large entities within the meaning of the RFA. Thus, the vessels 60 feet (18.3 m) LOA or less, the AFA vessels, and the processors that fish and process this allocation on behalf of the Aleut Corporation must be considered ''affiliates,'' and are not small entities within the meaning of the RFA.

The decisions related to allocation size, monitoring, harvest limits for vessels less than 60 feet (18.3 m) LOA, recordkeeping and reporting, and Chinook salmon bycatch limits and area closures are only expected to directly regulate entities which would harvest or process the Aleut Corporation allocation of AI pollock. Because, as noted above, these entities are affiliated with the Aleut Corporation, they are all considered large within the meaning of the RFA.

Amendment 82 would establish a policy under which the AI pollock allocation is ''funded'' in order that it be contained under the 2 million mt total BSAI groundfish OY. This action would not actually reapportion the various pollock allocations to fund AI pollock. It simply would establish the process by which subsequent action in the harvest specifications process would apportion the 2 million ton OY. If the sum of the TACs in the BSAI were less than the 2 million mt OY, the funding of the AI pollock allocation would take place, to the maximum extent possible, from the difference between the sum of the TACs and the OY. In this situation, the funding would not come at the expense of other fleet segments. Alternatively, if the sum of the TACs were equal to the 2 million mt OY, the funding would come from the BSAI pollock TAC. CDQ reserves would be taken from each TAC established from the AI and BS subarea

pollock fisheries, and therefore, would not contribute to the funding of the AI pollock TAC. The entire funding would come from a reduced TAC accruing to the AFA pollock fishing fleet in the BS.

The AI pollock proposed action establishes the process which would be followed by the Council and NMFS when setting the species/fishery TACs, at which time all attributable impacts to small entities will be assessed, as required by RFA. The potential direct effects on small entities attributable to funding the AI pollock allocation would be evaluated during the harvest specifications process, an action which always includes an initial regulatory flexibility analysis. This is appropriate because it is not until the annual specifications are proposed that any impacts may actually be identified (i.e., OY allocated to TACs).

To illustrate the point, note that in any year the AI directed pollock fishery allocation may be set at zero, or any number above zero up to the TAC limit proposed under this action. If it is zero, no TAC would be reallocated from other fisheries, and clearly no significant effects on a substantial number of small entities would occur. If the AI directed pollock fishery allocation is very small (i.e., 100 mt), ''no significant adverse impacts'' would occur. This logic extends continuously until some, as yet undefined, point at which an amount of AI directed allocation is large enough to create a ''significant adverse impact'' (unless the funding source is BS pollock, wherein no small entities exist). However, it is the specification of all the annual TACs (AI pollock and its funding sources), and not the mechanism for specification, which will result in those impacts, and which may require an analysis which would identify the likely number, distribution, and attributes of the entities impacted.

Moreover, the allocation is funded from either an unallocated portion of the OY or from the allocation by a reduction in the TAC available for harvest by the AFA pollock fleet in the BS. The vessels in the AFA pollock fleet are either affiliated with processors or fishing cooperatives. In all instances, the affiliated entities have gross revenues exceeding the $3.5 million threshold separating small and large entities. Thus, the proposed action would only affect large entities.

Six CDQ groups harvest pollock in the BSAI. CDQ groups represent Western Alaska communities and are given allocations of the annual pollock TAC to use for the purpose of fisheries related economic development to benefit these communities. Under the terms of the AFA, these entities are entitled to 10 percent of the pollock TAC in the BSAI. The CDQ groups are private, non-profit, entities, and are small entities within the meaning of the RFA. In June 2004, the Council explicitly excused the CDQ groups from contributing to the funding of the Aleut Corporation allocation. In October 2004, the Council clarified its intent that the Aleut Corporation, as one of the users of the BSAI pollock, was expected to contribute 10 percent of its AI allocation to the CDQ groups.

Consistent with the Council's intent, the current regulations governing the allocation of pollock to CDQ groups would not be revised under this action. Under current regulations, the CDQ groups receive 10 percent of any TAC specified in the AI and must fish their allocation there unless the Regional Administrator reallocates the unused portion to the BS CDQ pollock directed fishing allowance. The CDQ groups would have been required to fish their AI pollock directed fishing allowance in the AI if the Council had chosen, as it could have, to establish a directed fishery in the AI in 2003 and 2004. This would be the case if Section 803 had not been included in Pub. L. 108–199 and the Council had chosen to create a pollock TAC in the AI in 2005 or in a future year. CDQ groups will receive a part of their CDQ allocation in the AI and their BS CDQ allocation will be reduced by a corresponding amount. The potential advantages and disadvantages of this to the CDQ groups were described in the RIR (Section 7.7) (see **ADDRESSES**).

The CDQ groups will not be directly regulated by the Amendment 82 or by the changes in the regulations associated with it. The CDQ groups may be affected by the Council's decisions relating to TACs. These impacts will be described in the IRFA that is prepared each year to accompany the annual harvest specifications.

Because this proposed rule has no significant economic impacts on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements and estimated reporting burdens have been submitted to OMB for approval: list of participating harvesters and processors in the AI pollock fishery, 16 hours; appeals of NMFS' disapproval as participating harvester or processor, 8 hours, and AI directed pollock fishery catch reporting, 4 hours.

This proposed rule contains collection-of-information requirements subject to the PRA and which has been approved by OMB. Public reporting burden for these requirements are listed by OMB control number.

OMB control No. 0648–0206

Federal fisheries permit application, 21 minutes; Federal processor permit application, 21 minutes.

OMB control No. 0648–0213

Weekly production reports, 17 minutes; check-in/check-out report, shoreside processor, 8 minutes; check-in/check-out report, mothership or catcher/processor, 7 minutes; daily production report, 11 minutes; buying station report, 23 minutes; catcher vessel trawl gear daily fishing logbook (DFL), 18 minutes; catcher vessel longline or pot gear DFL, 28 minutes; shoreside processor daily cumulative production logbook (DCPL), 31 minutes; mothership DCPL, 31 minutes; catcher/processor longline and pot gear DCPL, 41 minutes; and catcher/processor trawl gear DCPL, 30 minutes.

OMB control No. 0648–0330

Inshore processor catch monitoring and control plan, 40 hours.

OMB control No. 0648–0334

LLP permit, 1 hour.

OMB control No. 0648–0393

AFA inshore processor permit application, 2 hours; AFA catcher vessel permit application, 2 hours; AFA mothership, 2 hours; and AFA catcher/processor permit application, 0 hours.

OMB control No. 0648–0401

Catcher vessel cooperative pollock catch report, 5 minutes; shoreside processor electronic logbook report, 35 minutes.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Public comment is sought regarding: whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments

on these or any other aspects of the collection-of-information to NMFS Alaska Region (see **ADDRESSES**), and e-mail to *David__Rostker@omb.eop.gov*, or fax to 202- 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB Control Number.

Informal consultation under the ESA was concluded for Amendment 82 on October 22, 2004. As a result of the informal consultation, the Regional Administrator determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or their critical habitat. Pollock is an important prey species for the endangered and threatened Steller sea lion populations. The Steller sea lion protection measures evaluated in the 2000 and 2001 Biological Opinions (see **ADDRESSES**) were considered in the development of the management provisions of Amendment 82. The protection measures for Steller sea lions include spatial and temporal dispersion of pollock harvest. The pollock fishing closure areas in the AI would remain unchanged under Amendment 82 to ensure spatial dispersion of fishing effort. To temporally disperse harvest of prey species, the Steller sea lion protection measures apportion 40 percent of pollock harvest in the BSAI to the A season and 60 percent to the B season. Amendment 82 would continue to temporally disperse pollock harvest with no more than 40 percent of the ABC permitted to be harvested in the A season. The total harvest of pollock in the Bering Sea subarea, including any reallocation of unharvested AI pollock, also would remain well below the ABC so that overall harvest would be in proportion to biomass and less likely to compete with Steller sea lions for prey. Both of these harvest provisions satisfy the intent of the Steller sea lion protection measures.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 1, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; Pub. L.106–554, Sec. 209; and Pub. L. 108–199, Sec. 803.

2. In § 679.1, paragraph (k) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(k) *American Fisheries Act and AI directed pollock fishery measures.* Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act, the American Fisheries Act (AFA), and Pub. L. 108–199 to govern commercial fishing for BSAI pollock according to the requirements of the AFA and Pub. L. 108–199. This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. In § 679.2, the definitions for ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab processing facility,'' ''AFA entity,'' ''AFA inshore processor,'' ''AFA mothership,'' ''designated primary processor,'' ''fishery cooperatives or cooperatives,'' ''license limitation groundfish,'' ''listed AFA catcher/processor,'' and ''unlisted AFA catcher/processor,'' are revised, and the definitions for ''AI directed pollock fishery,'' ''Aleut Corporation,'' ''Aleut Corporation entity,'' and ''designated contact for the Aleut Corporation'' are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

AFA catcher/processor means a catcher/processor permitted to harvest BS pollock under § 679.4(l)(2).

AFA catcher vessel means a catcher vessel permitted to harvest BS pollock under § 679.4(l)(3).

AFA crab processing facility means a processing plant, catcher/ processor, mothership, floating processor or any other operation that processes any FMP species of BSAI crab, and that is affiliated with an AFA entity that processes pollock harvested by a catcher vessel cooperative operating in the inshore or mothership sectors of the BS pollock fishery.

AFA entity means a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BS directed pollock fishery.

AFA inshore processor means a shoreside processor or stationary floating processor permitted to process BS pollock under § 679.4(l)(5).

AFA mothership means a mothership permitted to process BS pollock under § 679.4(l)(5).

* * * * *

AI directed pollock fishery means directed fishing for pollock in the AI under the allocation to the Aleut Corporation authorized at § 679.20(a)(5)(iii).

* * * * *

Aleut Corporation means the Aleut Corporation incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

Aleut Corporation entity means a harvester or processor selected by the Aleut Corporation and approved by NMFS to harvest or process pollock in the AI directed pollock fishery.

* * * * *

Designated contact for the Aleut Corporation means an individual who is designated by the Aleut Corporation for the purpose of communication with NMFS regarding the identity of selected AI directed pollock fishery participants and weekly reports required by § 679.5.

* * * * *

Designated primary processor means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its BS pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

* * * * *

Fishery cooperative or cooperatives means any entity cooperatively managing directed fishing for BS pollock and formed under section 1 of the Fisherman's Collective Marketing Act of 1934 (15 U.S.C. 521). In and of itself, a cooperative is not an AFA entity subject to excessive harvest share limitations, unless a single person, corporation or other business entity controls the cooperative and the cooperative has the power to control the fishing activity of its member vessels.

* * * * *

License limitation groundfish means target species and the ''other species'' category, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140§ W. longitude, sablefish managed under the IFQ

program, and pollock allocated to the Aleutian Islands directed pollock fishery and harvested by vessels 60 feet (18.3 m) LOA or less, are not considered license limitation groundfish.

* * * * *

Listed AFA catcher/processor means an AFA catcher/processor permitted to harvest BS pollock under § 679.4(l)(2)(i).

* * * * *

Unlisted AFA catcher/processor means an AFA catcher/processor permitted to harvest BS pollock under § 679.4(l)(2)(ii).

* * * * *

4. In § 679.4, paragraphs (l)(1)(i), (l)(5)(iii), (l)(6)(ii)(B), (l)(6)(ii)(C)(*2*), (l)(6)(ii)(D)(*1*)(*ii*), (l)(6)(ii)(D)(*2*)(*i*) and (l)(6)(ii)(D)(*2*)(*ii*) are revised and paragraph (m) is added to read as follows:

§ 679.4 Permits.

* * * * *

(l) * * *

(1) * * *

(i) *Applicability.* In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BS and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BS must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. In addition, the owner of any vessel that is a member of a pollock cooperative in the BS must also have a valid AFA permit for every vessel that is a member of the cooperative, regardless of whether or not the vessel actually engages in directed fishing for pollock in the BS. Finally, an AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

* * * * *

(5) * * *

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BS directed pollock fishery only in a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed pollock harvested from the BS subarea directed pollock fishery during a fishing year.

(B) *Stationary floating processors.* A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed pollock harvested in the BS subarea directed pollock fishery during a fishing year.

* * * * *

(6) * * *

(ii) * * *

(B) *Designated cooperative processor.* The name and physical location of an AFA inshore processor that is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BS pollock catch;

(C) * * *

(*2*) The cooperative contract requires that the cooperative deliver at least 90 percent of its BS pollock catch to its designated AFA processor; and

* * * * *

(D) * * *

(*1*) * * *

(*ii*) *LLP permit.* The vessel must be named on a valid LLP permit authorizing the vessel to engage in trawling for pollock in the Bering Sea subarea. If the vessel is more than 60 feet (18.3 m) LOA, the vessel must be named on a valid LLP permit to engage in trawling for pollock in the AI; and

* * * * *

(*2*) * * *

(*i*) *Active vessels.* The vessel delivered more pollock harvested in the BS inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; or

(*ii*) *Inactive vessels.* The vessel delivered more pollock harvested in the BS inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the last year in which the vessel delivered BS pollock harvested in the BS directed pollock fishery to an AFA inshore processor.

* * * * *

(m) *Participation in the AI Directed Pollock Fishery*—(1) *Applicability.* Harvesting pollock in the AI directed pollock fishery and processing pollock taken in the AI directed pollock fishery is authorized only for those harvesters and processors that are selected by the Aleut Corporation and approved by the Regional Administrator to harvest pollock in the AI directed pollock fishery or to process pollock taken in the AI directed pollock fishery.

(2) *Annual Selection of participants by the Aleut Corporation.* Each year and at least 14 days before harvesting pollock in the AI directed pollock fishery or processing pollock harvested in the AI directed pollock fishery, a participant must be selected by the Aleut Corporation and the following information for each participant must be submitted by the designated contact to the Regional Administrator:

(i) Vessel or processor name;

(ii) Federal fisheries permits number issued under § 679.4(b) or Federal processor permit issued under § 679.4(f);

(iii) an approved catch monitoring control plan for shoreside and stationary floating processors, as required by 679.28(g)(2); and

(iv) the fishing year which participation approval is requested.

(3) *Participant Approval.* (i) Participants must have:

(A) a valid Federal fisheries permit or Federal processing permit, pursuant to paragraphs (b) and (f) of this section, respectively;

(B) a valid fishery endorsement on the vessel's U.S. Coast Guard documentation for the vessel's participation in the U. S. fishery; and

(C) a valid AFA permit under § 679.4(l)(2) for all catcher/processors, (l)(3) for all catcher vessels greater than 60 ft (18.3 m) LOA, or (l)(4) for all motherships.

(ii) Each participant selected by the Aleut Corporation and that meets the conditions under paragraph (m)(3)(i) of this section will be approved by the Regional Administrator for participation in the AI directed pollock fishery.

(iii) The Regional Administrator will provide to the designated contact for the Aleut Corporation the identity of each approved participant and the date upon which participation in the AI directed pollock fishery may commence. The Aleut Corporation shall forward to the approved participants a copy of NMFS's approval letter before harvesting or processing occurs.

(iv) A copy of NMFS' approval letter for participating in the AI directed pollock fishery during the fishing year must be on site at the shoreside processor or stationary floating processor, or on board the vessel at all times and must be presented for inspection upon the request of any authorized officer.

(4) *Participant Disapproval*—(i) *Notification.* The Regional Administrator shall disapprove any participant that does not meet the conditions under paragraph (m)(3)(i) of

this section. The Regional Administrator will notify in writing the Aleut Corporation and the selected participant of the disapproval. The selected participant will have 30 days in which to submit proof of meeting the requirements to participate in the AI directed pollock fishery.

(ii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the selected participant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the selected participant fails to support the participant's claims and is insufficient to rebut the presumption that the disapproval for participation in the AI directed pollock fishery is correct or if the additional information or evidence is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the information required, including the evidence submitted in support of the information. The IAD also will indicate which claims cannot be approved based on the available information or evidence. A participant who receives an IAD may appeal under the appeals procedures set out at § 679.43. A participant who avails himself or herself of the opportunity to appeal an IAD will receive an interim approval from NMFS authorizing participation in the AI directed pollock fishery. An interim approval based on claims contrary to the final determination will expire upon final agency determination.

5. In § 679.5, paragraphs (a)(7)(xv)(F), (h)(1)(i), (h)(1)(ii)(I), and (q) are added to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(7) * * *

(xv) * * *

If harvest made under ... program	Indicate yes and record the ...	Reference
* * * * *		
(F) AIP	n/a	Subpart F to part 679

* * * * *

(h) * * *

(1) * * *

(i) *Check-in report (BEGIN message).* Except as indicated in paragraph (h)(1)(iii) of this section, the operator or manager must submit a check-in report according to the following table:

Submit a separate BEGIN message for ...	If you are a ...	Within this time limit
(A) Each reporting area of groundfish harvest, except 300, 400, 550, or 690	(*1*) C/P using trawl gear	Before gear deployment
	(*2*) C/P using longline or pot gear	Before gear deployment. May be checked in to more than one area simultaneously.
	(*3*) MS, SS, SFP	Before receiving groundfish. May be checked in to more than one area simultaneously.
	(*4*) MS	Must check-in to reporting area(s) where groundfish were harvested.
(B) COBLZ or RKCSA	(*1*) C/P using trawl gear	Prior to fishing. Submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.
	(*2*) MS, SS, SFP	Before receiving groundfish harvested with trawl gear, submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.
(C) Gear Type	(*1*) C/P	If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.
	(*2*) MS, SS, SFP	If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.
(D) CDQ	(*1*) C/P	Prior to groundfish CDQ fishing under each CDQ program.
	(*2*) MS, SS, SFP	Prior to receiving groundfish CDQ. If receiving groundfish under more than one CDQ number, use a separate check-in for each number.
(E) Exempted or Research Fishery	(*1*) C/P	If in an exempted or research fishery, prior to fishing submit a separate check-in for each type.
	(*2*) MS, SS, SFP	If receiving groundfish from an exempted or research fishery, prior to receiving submit a separate check-in for each type.
(F) Processor Type	C/P, MS	If a catcher/processor and functioning simultaneously as a mothership in the same reporting area, before functioning as either processor type.
(G) Change of fishing year	C/P, MS, SS, SFP	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1.
(H) AIP	(*1*) C/P	Prior to AI pollock fishing.

Submit a separate BEGIN message for ...	If you are a ...	Within this time limit
	(*2*) MS, SS, SFP	Before receiving AI pollock

(ii) * * *

Submit a separate CEASE message for . . .	If you are a ...	Within this time limit
* * * * *		
(I) AIP	(*1*) C/P	Within 24 hours after completion of gear retrieval for AI pollock.
	(*2*) SS, SFP	Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or SFP ceases to receive or process AI pollock for the fishing year.
	(*3*) MS	Within 24 hours after receipt of AIP pollock has ceased.

* * * * *

(q) *AI directed pollock fishery catch reports*—(1) *Applicability.* The Aleut Corporation shall provide NMFS the identity of its designated contact for the Aleut Corporation. The Aleut Corporation shall submit to the Regional Administrator a pollock catch report containing information required by paragraph (q)(3) of this section.

(2) *Time limits and submittal.* (i) The Aleut Corporation must submit its AI directed pollock fishery catch reports by one of the following methods:

(A) An electronic data file in a format approved by NMFS; or

(B) By Fax.

(ii) The AI directed pollock fishery catch reports must be received by the Regional Administrator by 1200 hours, A.l.t. on Tuesday following the end of the applicable weekly reporting period, as defined at § 679.2.

(3) *Information required.* The AI directed pollock fishery catch report must contain the following information:

(i) Catcher vessel ADF&G number;

(ii) Federal fisheries or Federal processor permit number;

(iii) Delivery date;

(iv) Pollock harvested:

(A) For shoreside and stationary floating processors and motherships: amount of pollock (in lb for shoreside and stationary floating processors and in mt for motherships) delivered, including the weight of at-sea pollock discards; and

(B) For catcher/processors, the amount of pollock (in mt) harvested and processed, including the weight of at-sea pollock discards; and

(v) ADF&G fish ticket number.

6. In § 679.7, paragraphs (k)(3)(i), (k)(3)(iii), (k)(3)(iv), (k)(4)(i), (k)(5), (k)(6), and (k)(7) are revised, and paragraph (l) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) * * *

(3) * * *

(i) *Permit requirement.* Use a shoreside processor or stationary floating processor to process pollock harvested in a non-CDQ directed fishery for pollock in the BS without a valid AFA inshore processor permit at the facility or on board vessel.

* * * * *

(iii) *Restricted AFA inshore processors.* Use an AFA inshore processor holding a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BS directed pollock fishery in any one calendar year.

(iv) *Single geographic location requirement.* Use an AFA inshore processor to process pollock harvested in the BS directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BS pollock harvested in the BS directed pollock fishery during a fishing year.

(B) *Stationary floating processors.* A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BS pollock harvested in the BS directed pollock fishery during a fishing year.

* * * * *

(4) * * *

(i) *Permit requirement.* Use a catcher vessel to engage in directed fishing for non-CDQ BS pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that includes an endorsement for the sector of the BS pollock fishery in which the vessel is participating.

* * * * *

(5) *AFA inshore fishery cooperatives*—(i) *Overages by vessel.* Use an AFA catcher vessel listed on an AFA inshore cooperative fishing permit, or under contract to a fishery cooperative under § 679.62(c), to harvest non-CDQ BS pollock in excess of the fishery cooperative's annual allocation of pollock specified under § 679.62.

(ii) *Overages by fishery cooperative.* An inshore pollock fishery cooperative is prohibited from exceeding its annual allocation of BS pollock TAC.

(6) *Excessive harvesting shares.* It is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BS pollock that exceeds the 17.5–percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*6*). The owners and operators of the individual vessels comprising the AFA entity that harvests BS pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares.* It is unlawful for an AFA entity to process an amount of BS pollock that exceeds the 30–percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*7*). The owners and operators of the individual processors comprising the AFA entity that processes BS pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

* * * * *

(l) *Prohibitions specific to the AI directed pollock fishery*—(1) *Catcher/Processors.* (i) Use a catcher/processor vessel to harvest pollock in the AI directed pollock fishery or process pollock harvested in the AI directed pollock fishery without a copy of NMFS' approval letter pursuant to § 679.4(m).

(ii) Process any pollock harvested in the AI directed pollock fishery without complying with catch weighing and observer sampling station requirements set forth at paragraphs (k)(1)(vi) and (k)(1)(vii) of this section, respectively.

(iii) Use a catcher/processor to harvest pollock in the AI directed pollock fishery or process pollock harvested in the AI directed pollock fishery without

a valid AFA catcher/processor permit on board the vessel.

(2) *Motherships.* (i) Use a mothership to process pollock harvested in the AI directed pollock fishery without a copy of NMFS' approval letter pursuant to § 679.4(m).

(ii) Process any pollock harvested in the AI directed pollock fishery without complying with catch weighing and observer sampling station requirements set forth at paragraphs (k)(2)(iii) and (k)(2)(iv) of this section, respectively.

(iii) Use a mothership to process pollock harvested in the AI directed pollock fishery without a valid AFA mothership permit on board the vessel.

(3) *Shoreside and stationary floating processors.* (i) Use a shoreside processor or stationary floating processor to process pollock harvested in the in AI directed pollock fishery without a copy of NMFS' approval letter pursuant to § 679.4(m).

(ii) Process any pollock harvested in the AI directed pollock fishery without complying with catch weighing requirements set forth at paragraph (k)(3)(v) of this section.

(iii) Take deliveries of pollock harvested in the AI directed pollock fishery or process pollock harvested in the AI pollock fishery without following an approved CMCP as described in § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(4) *Catcher vessels.* (i) Use a catcher vessel to harvest pollock in the AI directed pollock fishery without a copy of NMFS' approval letter pursuant to § 679.4(m).

(ii) Have on board at any one time pollock harvested in the AI directed pollock fishery and pollock harvested from either the Bering Sea subarea or the Gulf of Alaska.

(iii) Use a catcher vessel to deliver pollock harvested in the AI directed pollock fishery:

(A) To a shoreside or stationary floating processor that does not have an approved CMCP pursuant to § 679.28(g) and is not approved by NMFS to process pollock harvested in the AI directed pollock fishery, or

(B) To a catcher/processor or mothership that is not approved by NMFS to process pollock harvested in the AI directed pollock fishery.

(vi) Use a catcher vessel greater than 60 ft (18.3 m) LOA to harvest pollock in the AI directed pollock fishery unless the vessel has a valid AFA catcher vessel permit on board.

(5) *AI directed pollock fishery overages*—(i) *Overages by vessel.* Use a catcher vessel selected by the Aleut Corporation and approved by NMFS to participate in the AI directed pollock fishery under § 679.4(m) to harvest pollock in the AI directed pollock fishery in excess of the Aleut Corporation's annual or seasonal allocations of pollock or in excess of the vessel allocation specified under § 679.20(a)(5)(iii).

(ii) *Overages by the Aleut Corporation.* The Aleut Corporation is prohibited from exceeding its annual and seasonal allocations of AI pollock TAC or from exceeding the allocation to vessels, as specified in § 679.20(a)(5)(iii).

7. In § 679.20, paragraph (a)(5)(iii) is redesignated as paragraph (a)(5)(iv), paragraphs (a)(5)(i)(B)(*1*), (a)(5)(ii), newly redesignated paragraph (a)(5)(iv)(B) introductory text, and paragraph (a)(6)(i) are revised, and paragraph (a)(5)(iii) is added to read as follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(i) * * *

(B) *BSAI seasonal allowances for AFA and CDQ*—(*1*) *Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BS subarea pollock directed fishing allowances allocated to each component under sections 206(a) and 206(b) of the AFA and the CDQ allowance in the BSAI will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows: A season, 40 percent; and B season, 60 percent.

* * * * *

(ii) *Bogoslof District.* If the Bogoslof District is open to directed fishing for pollock by regulation, then the pollock TAC for this district will be allocated according to the same procedure established for the Bering Sea subarea at paragraph (a)(5)(i) of this section. If the Bogoslof District is closed to directed fishing for pollock by regulation, then the entire TAC for this district will be allocated as an incidental catch allowance.

(iii) *AI.* (A) If a directed fishery for pollock in the AI is not specified under paragraph (c) of this section, then the entire TAC for this subarea will be allocated as an incidental catch allowance.

(B) If the AI is open to directed fishing for pollock under paragraph (c) of this section, then the pollock TAC for this subarea will be specified, allocated, seasonally apportioned, and reallocated as follows:

(*1*) *AI annual TAC limitations.* When the AI pollock ABC is less than 19,000 mt, the annual TAC will be no greater than the ABC. When the AI pollock ABC equals or exceeds 19,000 mt, the annual TAC will be equal to 19,000 mt.

(*2*) *Allocations*—(i) *CDQ Directed fishing allowance.* 10 percent of the annual TAC will be allocated to the CDQ pollock reserve established under § 679.31(a)(2).

(*ii*) *Incidental catch allowance.* The Regional Administrator will determine the amount of the pollock incidental catch necessary to support an incidental catch allowance in the AI during the fishing year. This amount of pollock will be deducted from the annual TAC.

(*iii*) *Directed Pollock Fishery.* The amount of the TAC remaining after subtraction of the CDQ directed fishing allowance and the incidental catch allowance will be allocated to the Aleut Corporation as a directed pollock fishery allocation.

(*3*) *Seasonal apportionment.* The seasonal harvest of pollock in the AI directed pollock fishery shall be:

(*i*) *A season.* No greater than the lesser of the annual initial TAC plus any A season CDQ pollock directed fishery allowance or 40 percent of the AI pollock ABC. The total A season apportionment, including the AI directed pollock fishery allocation, the CDQ pollock directed fishery seasonal allowance, and the incidental catch amount, shall not exceed 40 percent of the ABC.

(*ii*) *B season.* The B season apportionment of the AI directed pollock fishery shall equal the annual initial TAC minus the A season directed pollock fishery apportionment under paragraph (a)(5)(iii)(B)(*3*)(*i*) of this section and minus the incidental catch amount under this paragraph.

(*iii*) *Inseason adjustments.* During any fishing year, the Regional Administrator may add any under harvest of the A season directed pollock fishery apportionment to the B season directed pollock fishery apportionment by publication in the **Federal Register** if the Regional Administrator determines that the harvest capacity in the B season is sufficient to harvest the adjusted B season apportionment.

(*4*) *Reallocation of the annual AI directed pollock fishery and AI CDQ allocations.* As soon as practicable, if the Regional Administrator determines that vessels participating in either the AI directed pollock fishery or the AI CDQ directed pollock fishery likely will not harvest the entire AI directed pollock fishery or CDQ pollock directed fishing allowance, the Regional Administrator may reallocate some or

all of the projected unused directed pollock fishery allocation to the Bering Sea subarea directed pollock fishery or AI CDQ pollock directed fishing allowance to the Bering Sea subarea CDQ pollock directed fishing allowance by publication in the **Federal Register**.

(*5*) *Allocations to small vessels.* The annual allocation for vessels 60 feet (18.3 m) LOA or less participating in the AI directed pollock fishery will be:

(*i*) No more than 25 percent of the AI directed pollock fishery allocation through 2008;

(*ii*) No more than 50 percent of the AI directed pollock fishery allocation from 2009 through 2012; and

(*iii*) 50 percent of the AI directed pollock fishery allocation in 2013 and beyond.

(iv) * * *

(B) *GOA Western and Central Regulatory Areas seasonal apportionments.* Each apportionment established under paragraph (a)(5)(iv)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons specified in § 679.23(d)(2) as follows: * * *

(6) * * *

(i) The apportionment of pollock in all GOA regulatory areas for each seasonal allowance described in paragraph (a)(5)(iv) of this section will be allocated entirely to vessels harvesting pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

* * * * *

8. In § 679.21, paragraphs (e)(1)(vii) and (e)(7)(viii) are revised and paragraph (e)(1)(ix) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(vii) *Chinook salmon.* The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect when the Regional Administrator determines that the PSC limit of 29,000 Chinook salmon caught while harvesting pollock in the BS between January 1 and December 31 is attained.

* * * * *

(ix) *AI Chinook salmon.* The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect when the Regional Administrator determines that the AI PSC limit of 700 Chinook salmon caught while harvesting pollock in the AI between January 1 and December 31 is attained.

* * * * *

(7) * * *

(viii) *Chinook salmon.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon by vessels using trawl gear while directed fishing for pollock in the BSAI will reach the annual limits, as identified in paragraphs (e)(1)(vii) and (e)(1)(ix) of this section, NMFS, by notification in the **Federal Register** will close the Chinook Salmon Savings Areas, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear as follows:

(A) For the BS Chinook salmon PSC limit under paragraph (e)(1)(vii) of this section, area 1 and area 2 in Figure 8 to this part will be closed on the following dates:

(*1*) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of BS Chinook salmon will be attained before April 15.

(*2*) From September 1 through December 31, if the Regional Administrator determines that the annual limit of BS Chinook salmon will be attained after April 15.

(B) For the AI Chinook salmon limit under paragraph (e)(1)(ix) of this section, area 1 in Figure 8 to this part will be closed on the following dates:

(*1*) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(*2*) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

* * * * *

9. In § 679.23, paragraph (e)(2) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(2) *Directed fishing for pollock in the Bering Sea subarea by inshore, offshore catcher/processor, and mothership components, in the AI directed pollock fishery, and pollock CDQ fisheries.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea subarea, directed fishing for pollock in the AI directed pollock fishery, or directed fishing for CDQ pollock in the BSAI is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(ii) *B season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

* * * * *

10. In § 679.28, paragraph (g)(2) and the first sentence of paragraph (g)(3) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(g) * * *

(2) *Who is required to prepare and submit a CMCP for approval?* The owner and manager of an AFA inshore processor or the owner and manager of a shoreside or stationary floating processor processing pollock harvested in the AI directed pollock fishery are required to prepare and submit a CMCP which must be approved by NMFS prior to the receipt of pollock harvested in the BSAI directed pollock fishery.

(3) *How is a CMCP approved by NMFS?* NMFS will approve a CMCP if it meets all the requirements specified in paragraph (g)(7) of this section. * * *

* * * * *

11. In § 679.50, paragraphs (c)(2)(i), (c)(5) paragraph heading, and (e)(1) are revised and paragraph (c)(5)(i)(C) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(2) * * *

(i) *Pollock fishery.* In a retained catch of pollock that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2) and in a retained catch of pollock harvested in the AI directed pollock fishery.

* * * * *

(5) *AFA and AI directed pollock fishery catcher/processors and motherships* -- * * *

(i) * * *

(C) *AI directed pollock fishery catcher/processors and motherships.* A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must have on board at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of

groundfish. More than two observers are required if the observer workload restriction at paragraph (c)(5)(ii) of this section would otherwise preclude sampling as required under § 679.63(a)(1).

* * * * *

(e) * * *

(1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraphs (c) or (d) of this section or under § 679.7(f)(4) or a catcher vessel less than 60 ft (18.3 m) LOA that is participating in the AI directed pollock fishery must use, upon written notification by the Regional Administrator, NMFS' staff or an individual authorized by NMFS to satisfy observer coverage requirements as specified in paragraphs (c) and (d) of this section or for other conservation and management purpose.

* * * * *

12. In Subpart F, the subpart heading is revised to read as follows:

Subpart F—American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures

13. Section 679.60 is revised to read as follows:

§ 679.60 Authority and related regulations.

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Public Law 105–277, 112 Stat. 2681 (1998)] and the Consolidated Appropriations Act of 2004 (Public Law 108–199, Sec. 803). Additional regulations in this part that implement specific provisions of the AFA and Public Law 108–199, Sec. 803 are set out at §§ 679.2 Definitions, 679.4 Permits, 679.5 Recordkeeping and reporting, 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements for Catch Weight Measurement, 679.31 CDQ reserves, and 679.50 Groundfish observer program.

Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 50 CFR part 356.

14. In § 679.61, paragraphs (b), (d)(3), and (g) are revised to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

* * * * *

(b) *Who must comply this section?* Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BS subarea pollock must comply with the provisions of this section. The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section.

* * * * *

(d) * * *

(3) *What is the deadline for filing?* The contract or renewal letter and supporting materials must be received by NMFS and by the Council at least 30 days prior to the start of any fishing activity conducted under the terms of the contract. In addition, an inshore cooperative that is also applying for an allocation of BS subarea pollock under § 679.62 must file its contract, any amendments hereto, and supporting materials no later than December 1 of the year prior to the year in which fishing under the contract will occur.

* * * * *

(g) *Landing tax payment deadline.* You must pay any landing tax owed to the State of Alaska under section 210(f) of the AFA and paragraph (e)(1)(v) of this section before April 1 of the following year, or the last day of the month following the date of publication of statewide average prices by the Alaska State Department of Revenue, whichever is later. All members of the cooperative are prohibited from harvesting pollock in the BS subarea directed pollock fishery after the payment deadline if any member vessel has failed to pay all required landing taxes from any landings made outside the State of Alaska by the landing deadline. Members of the cooperative may resume directed fishing for pollock once all overdue landing taxes are paid.

15. In § 679.62, the introductory text in paragraph (a), and paragraphs (a)(2), (a)(3), (b)(2)(i), (b)(2)(ii), and (b)(3) are revised to read as follows:

§ 679.62 Inshore sector cooperative allocation program.

(a) *How will inshore sector cooperative allocations be made?* An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual BS subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

* * * * *

(2) *Conversion of individual vessel catch histories to annual cooperative quota share percentages.* Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for the BS subarea that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for the BS subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share percentage to TAC allocations.* Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of pollock that is equal to the cooperative's quota share percentage multiplied by the annual inshore BS subarea pollock allocation. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(b) * * *

(2) * * *

(i) *Member vessels.* All pollock caught by a member vessel while engaged in directed fishing for pollock in the BS subarea unless the vessel is under contract to another cooperative and the pollock is assigned to another cooperative.

(ii) *Contract vessels.* All pollock contracted for harvest and caught by a vessel under contract to the cooperative under paragraph (c) of this section while the vessel was engaged in directed fishing for pollock in the BS subarea.

(3) *How must cooperative harvests be reported to NMFS?* Each inshore pollock cooperative must report its BS subarea pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

* * * * *

16. In § 679.63, paragraph (c) is revised to read as follows:

§ 679.63 Catch weighing requirements for vessels and processors.

* * * * *

(c) *What are the requirements for AFA inshore processors?* (1) *Catch weighing.* All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BS subarea must be sorted and weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) *Observer coverage and prior notification.* The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BS subarea pollock by an AFA catcher vessel at least 1 hour prior to offloading. The plant manager must ensure that an observer monitors each delivery of BS subarea pollock from an AFA catcher vessel and is on site the entire time the delivery is being weighed or sorted.

17. In § 679.64, introductory paragraph of (a), paragraphs (a)(1)(i), (a)(2)(ii), (a)(4), introductory paragraph of (b), and introductory paragraph of (b)(3) are revised to read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) *Harvesting sideboards for listed AFA catcher/processors.* The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

(1) * * *

(i) Except for Aleutian Islands pollock, the Regional Administrator will establish annual AFA catcher/processor harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI as follows:

* * * * *

(2) * * *

(ii) If the amount of Pacific ocean perch calculated under paragraph (a)(2)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs of AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for Aleutian Islands Pacific ocean perch by AFA catcher processors and establish the sideboard amount equal to the amount of Aleutian Islands Pacific ocean perch caught by AFA catcher processors incidental to directed fishing for other groundfish species.

* * * * *

(4) * * *

(i) Except as provided for in paragraphs (a)(1)(ii) through (a)(3) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and section 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) If the amount of a species calculated under paragraph (a)(4)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher processors incidental to directed fishing for other groundfish species.

* * * * *

(b) The Regional Administrator will restrict the ability of AFA catcher vessels to engage in directed fishing for other groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

* * * * *

(3) Except for Aleutian Islands pollock, the Regional Administrator will establish annual AFA catcher vessel harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI as follows:

* * * * *

18. In § 679.65, paragraphs (a) and (b) are revised to read as follows:

§ 679.65 Crab processing sideboard limits.

(a) *What is the purpose of crab processing limits?* The purpose of crab processing sideboard limits is to protect processors not eligible to participate in the BS subarea directed pollock fishery from adverse effects as a result of the AFA and the formation of fishery cooperatives in the BS subarea directed pollock fishery.

(b) *To whom do the crab processing sideboard limits apply?* The crab processing sideboard limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BS directed pollock fishery by a fishery cooperative established under § . 679.61 or § 679.62.

* * * * *

[FR Doc. 04–26835 Filed 12–6–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–4333–01; I.D. 112204C]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2005 and 2006 Harvest Specifications for Groundfish

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

ACTION: 2005 and 2006 proposed harvest specifications for groundfish; apportionment of reserves; request for comments.

SUMMARY: NMFS proposes 2005 and 2006 harvest specifications, reserves and apportionments, and Pacific halibut prohibited species catch (PSC) limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2005 and 2006 fishing years. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 6, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to *2005AKgroundfish.tacspecs@noaa.gov* and include in the subject line of the e-mail comments the document identifier: 2005 Proposed Specifications (E-mail comments, with or without attachments, are limited to 5 megabytes);
- FAX to 907–586–7557; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action and the 2001 Biological Opinion (BiOp) on the Steller sea lion

protection measures are available from NMFS at the address above or from the Alaska Region website *www.fakr.noaa.gov*. Copies of the final 2003 Stock Assessment and Fishery Evaluation (SAFE) reports, dated November 2003, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK, 99510 or from its website at *www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Amendments 48/48 to the FMP and to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area were unanimously recommended by the Council in October 2003 and approved by NMFS on October 12, 2004. The final rule implementing Amendments 48/48 was published November 8, 2004, (69 FR 64683). Amendments 48/48 revise the administrative process used to establish annual specifications for the groundfish fisheries of the GOA and the Bering Sea and Aleutian Islands (BSAI). The goals of Amendments 48/48 in revising the specifications process are to (1) manage fisheries based on the best scientific information available, (2) provide for adequate prior public review and comment on Council recommendations, (3) provide for additional opportunity for Secretarial review, (4) minimize unnecessary public confusion and disruption to fisheries, and (5) promote administrative efficiency.

Based on the approval of Amendments 48/48, the Council recommended 2005 and 2006 proposed specifications for GOA groundfish. These proposed specifications are based on the 2003 SAFE report. In November 2004, the 2004 SAFE report will be used to develop the final 2005 and 2006 groundfish acceptable biological catch amounts (ABC). When possible, this proposed rule will identify any proposal that may be anticipated to change in the final specifications. The 2006 specifications will be updated in early 2006 when final specifications for 2006 and new specifications for 2007 are implemented.

In October 2004, the Council also recommended a biennial harvest specifications process for certain long-lived species and for species for which little new management information is available on other than a biennial basis. Based on current survey schedules, the GOA species for which biennial harvest specifications process would be used are deep water flatfish, rex sole, shallow water flatfish, flathead sole, arrowtooth flounder, slope rockfish, northern rockfish, Pacific ocean perch, shortraker/rougheye rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, skates, and Atka mackerel. Stock assessment surveys are conducted biennially in the GOA for these species. Because new information is updated every two years and harvest amounts are fairly stable from year to year, the harvest specifications process for these species would be conducted every 2 years. If new management information becomes available for any of those species on a more frequent basis, an annual harvest specifications process could still be used. Amendment 48 to the GOA FMP would allow harvest specifications to be established for up to 2 fishing years, and the administrative process to establish these biennial harvest specifications would be done every other year, concurrent with the annual harvest specifications process used for other species.

Allowing for up to two years of specifications during the specifications process would recognize the time period of projections that must be used for establishing harvest specifications that would allow for rulemaking in the following year and would provide the Council and NMFS the flexibility to conduct either an annual or biennial specifications process in response to potential changes in the frequency of stock assessment surveys or other data or administrative issues. Based on current survey schedules and available information, pollock, trawl sablefish, Pacific cod, and ''other species'' category fisheries in the GOA will be managed using an annual harvest specification process. However, this process will provide specifications for two years. The second year's specifications will be replaced by the new harvest specifications through rulemaking based on the annual harvest specification process. Any proposed changes from using either an annual process or a biennial process for a particular target species will be analyzed during the harvest specification process.

The Council recommended that specifications for the hook-and-line gear and pot gear sablefish individual fishing quota (IFQ) fisheries be limited to 1 year to ensure that those fisheries are conducted concurrent with the halibut IFQ fishery. Having the sablefish IFQ fisheries concurrent with the halibut IFQ fishery would reduce the potential for discards of halibut and sablefish in these fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year until the final specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery would be managed using specifications for up to a 2-year period, similar to GOA pollock, Pacific cod and the ''other species'' category.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut PSC amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1 through 13 of this document satisfy these requirements. For 2005, the sum of the proposed TAC amounts is 264,265 mt. For 2006, the sum of the proposed TAC amounts is 253,867 mt. Under § 679.20(c)(3), NMFS will publish the final 2005 and 2006 specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2004 meeting, and (3) considering new information presented in the EA and the final 2004 SAFE report prepared for the 2005 and 2006 fisheries.

Section 679.20(c)(2)(i) provides that one-fourth of each proposed TAC and apportionment (not including the reserves and the first seasonal allowances of pollock and Pacific cod), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowances of pollock and Pacific cod will become effective 0001 hours, Alaska local time (A.l.t.) January 1, 2005, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the **Federal Register**. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date. This would result in disruption to the

fishing industry. The 2005 interim harvest specifications will be published by NMFS in the **Federal Register** prior to January 1, 2005.

Proposed Steller Sea Lion Protection Measures Revisions

In June 2004, the Council unanimously recommended revisions to the Steller sea lion protection measures in the GOA to alleviate some of the economic burden on coastal communities while maintaining protection for Steller sea lions and their critical habitat. These revisions would adjust pollock and Pacific cod fishing closures near four Steller sea lion haulouts and would revise seasonal management of pollock harvest. NMFS concluded in an Endangered Species Act, section 7, informal consultation dated August 26, 2004, that fishing under the proposed revisions is not likely to adversely affect Steller sea lions beyond those effects already considered in the 2001 Biological Opinion on the Steller sea lion protection measures and its June 19, 2003 supplement. NMFS published a proposed rule on September 21, 2004 (69 FR 56384) to implement these revisions, inviting comments through October 21, 2004. If adopted, NMFS anticipates that a final rule would be published before the beginning of the 2005 fishing year. The revised pollock harvest management measures would affect the annual specifications by extending the A and C season dates for pollock and provide clarification as to how the Regional Administrator, Alaska Region, NMFS, (Regional Administrator) would rollover unharvested amounts of pollock between seasons.

If adopted, the proposed rule would extend the pollock A season dates from January 20 through February 25 to January 20 through March 10 and extend the pollock C season dates from August 25 through September 15 to August 25 through October 1 in the Western and Central Regulatory Areas of the GOA. The proposed action also would change regulatory provisions for the rollover of a statistical area's unharvested pollock apportionment into the subsequent season. The rollover amount would be limited to 20 percent of the seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas.

Proposed ABC and TAC Specifications

The proposed ABC and TAC for each species or species group are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The Council and its Scientific and Statistical Committee (SSC) reviewed current biological and harvest information about the condition of groundfish stocks in the GOA in October 2004. Because of time constraints, the Advisory Panel (AP) did not make any recommendations to the Council regarding the proposed harvest specifications at its October meeting. Most of the information available to the SSC and to the Council was initially compiled by the Council's GOA Plan Team and was presented in the final 2003 SAFE report for the GOA groundfish fisheries, dated November 2003 (see **ADDRESSES**). The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters and summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The 2003 SAFE report will be updated to include new information collected during 2004. Revised stock assessments made available by the Plan Team in November 2004 and included in the final 2004 SAFE report, will be available in December 2004. The final harvest specifications may be adjusted from the proposed harvest specifications based on the 2004 SAFE report.

Based on the recommendations from the SSC for overfishing levels (OFLs) and ABCs, the Council recommended the OFLs and ABCs for stocks in tiers 1 through 3, except for pollock, be based on biomass projections as set forth in the 2003 SAFE report and on estimates of groundfish harvests through the 2004 and 2005 fishing years. The Council recommended that OFL and ABC levels for those stocks in tiers 4 through 6, for which projections cannot be made, remain unchanged from 2004 levels for 2005 and 2006.

The SSC adopted the OFL and ABC recommendations from the Plan Team for all groundfish species. In the 2003 SAFE report, the 2005 and 2006 ABC projections are 72,100 mt and 70,642 mt, respectively, for the combined Western, Central, and West Yakutat (W/C/WYK) GOA stock of pollock. The Plan Team did not endorse the ABC projections because the NMFS 2004 winter Shelikof survey estimates indicate that the biomass level is lower than projected and because it represents an increase from the 2004 ABC. The Plan Team recommended that the 2004 ABC of 64,740 mt for the W/C/WYK pollock stock be rolled over in the proposed specifications for 2005 and 2006 given the apparently similar 2003 and 2004 survey results from the NMFS' winter surveys in the GOA. The SSC concurred with the pollock assessment recommendation that OFL and ABC levels be unchanged from 2004 levels until a formal stock assessment can be completed in November 2004.

As in 2004, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas include commercial fishery and survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data is evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District.

The SSC and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS' summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the 2005 and 2006 TACs be adjusted downward from the ABCs by amounts equal to the 2005 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for the state managed fisheries in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below. As in 2004, NMFS proposes for 2005 and 2006 to establish an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs less the recent average A season incidental catch of Pacific cod in each management area before June 10 (see § 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that total harvest in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue

to be taken from the B season TAC. This action meets the intent of the Steller Sea Lion Protection Measures by achieving temporal dispersion of the Pacific cod removals and by reducing the likelihood of harvest exceeding 60 percent of the annual TAC in the A season (January 1 through June 10).

For 2005 and 2006, the Council recommends and NMFS proposes the ABCs listed in Tables 1 and 2. These amounts reflect harvest amounts that are less than the specified overfishing amounts. The sum of the ABCs for all assessed groundfish is 514,864 mt for 2005 and 515,240 mt for 2006, which is higher than the 2004 ABC of 507,092 mt (69 FR 26320, May 12, 2004).

Specification and Apportionment of TAC Amounts

The Council recommended TACs for 2005 and 2006 that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker and rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council recommended TACs that are less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is divided into four equal seasonal apportionments. Twenty-five percent of the annual TAC in the Western and Central Regulatory Areas of the GOA is apportioned to the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1) in Statistical Areas 610, 620, and 630 of the GOA (see § 679.23(d)(2)(i) through (iv) and § 679.20(a)(5)(iii)(B)). As discussed above, revised seasonal dates for the A and C season pollock fisheries would be effective with the implementation of the final rule for revising Steller sea lion protection measures (69 FR 56384, September 21, 2004).

The 2005 and 2006 Pacific cod TACs are affected by the State's developing fishery for Pacific cod in State waters in the Central and Western GOA, as well as in Prince William Sound (PWS). The SSC and Council recommended that the sum of all State and Federal water Pacific cod removals not exceed the ABC. Accordingly, the Council recommended that in 2005 the Pacific cod TAC be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA. Therefore, respective TACs are reduced from ABCs as follows: (1) Eastern GOA, 412 mt; (2) Central GOA, 8,141 mt; and (3) Western GOA, 5,301 mt. For 2006, the Council recommended that the Pacific cod TAC be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA. Therefore, the respective TACs are, therefore, reduced from ABCs as follows: (1) Eastern GOA, 338 mt; (2) Central GOA, 6,683 mt; and (3) Western GOA, 4,352 mt. These amounts reflect the sum of the State's 2005 GHLs in these areas, which are 10 percent, 24.25 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively.

NMFS also is establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot or jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot or jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (see §§ 679.23(d)(3) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the amount for the ''other species'' category is calculated as 5 percent of the combined TAC amounts for target species. The 2005 GOA-wide ''other species'' TAC is 12,584 mt and the 2006 TAC is 12,089 mt, which is 5 percent of the sum of the combined TAC amounts (251,681 mt for 2005 and 241,778 mt for 2006) for the assessed target species. The sum of the TACs for all GOA groundfish is 264,265 mt for 2005 and 253,867 mt for 2006, which is within the OY range specified by the FMP. The sum of the 2005 TACs and the sum of the 2006 TACs are lower than the 2004 TAC sum of 271,776 mt.

NMFS finds that the Council's recommendations for proposed OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The proposed 2005 and 2006 ABCs, TACs, and OFLs are shown in Tables 1 and 2.

TABLE 1—PROPOSED 2005 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.

(Values are rounded to the nearest metric ton)

Totals	Species	Area[1]	ABC	TAC	Overfishing level
	Pollock[2]	Shumagin (610)	22,930	22,930	
		Chirikof (620)	26,490	26,490	
		Kodiak (630)	14,040	14,040	
		WYK (640)	1,280	1,280	
Subtotal		W/C/WYK	64,740	64,740	91,060
		SEO (650)	6,520	6,520	8,690
Total			71,260	71,260	99,750
	Pacific cod[3]	W	21,204	15,903	

TABLE 1—PROPOSED 2005 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

(Values are rounded to the nearest metric ton)

Totals	Species	Area[1]	ABC	TAC	Overfishing level
		C	33,573	25,432	
		E	4,123	3,711	
Total			58,900	45,046	78,400
	Flatfish[4] (deep-water)	W	310	310	
		C	2,970	2,970	
		WYK	1,880	1,880	
		SEO	910	910	
Total			6,070	6,070	8,010
	Rex sole	W	1,680	1,680	
		C	7,340	7,340	
		WYK	1,340	1,340	
		SEO	2,290	2,290	
Total			12,650	12,650	16,480
	Flathead sole	W	11,694	2,000	
		C	30,024	5,000	
		WYK	2,992	2,992	
		SEO	390	390	
Total			45,100	10,382	56,500
	Flatfish[5] (shallow-water)	W	21,580	4,500	
		C	27,250	13,000	
		WYK	2,030	2,030	
		SEO	1,210	1,210	
Total			52,070	20,740	63,840
	Arrowtooth flounder	W	26,249	8,000	
		C	168,953	25,000	
		WYK	11,787	2,500	
		SEO	9,911	2,500	
Total			216,900	38,000	253,900
	Sablefish[6]	W	2,411	2,411	
		C	5,892	5,892	
		WYK	2,036	2,036	
		SEO	3,053	3,053	
Subtotal		E	5,089	5,089	
Total			13,392	13,392	19,008

TABLE 1—PROPOSED 2005 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

(Values are rounded to the nearest metric ton)

Totals	Species	Area[1]	ABC	TAC	Overfishing level
	Pacific ocean perch[7]	W	2,489	2,489	2,964
		C	8,253	8,253	9,828
		WYK	802	802	
		SEO	1,556	1,556	
Subtotal		E		2,358	2,808
Total			13,100	13,100	15,600
	Shortraker/rougheye[8]	W	254	254	
		C	656	656	
		E	408	408	
Total			1,318	1,318	2,510
	Other rockfish[9,10]	W	40	40	
		C	300	300	
		WYK	130	130	
		SEO	3,430	200	
Total			3,900	670	5,150
	Northern rockfish[10,11,15]	W	730	730	
		C	3,870	3,870	
		E	N/A	N/A	
Total			4,600	4,600	5,400
	Pelagic shelf rockfish[12]	W	370	370	
		C	3,010	3,010	
		WYK	210	210	
		SEO	880	880	
Total			4,470	4,470	5,570
	Thornyhead rockfish	W	410	410	
		C	1,010	1,010	
		E	520	520	
Total			1,940	1,940	2,590
	Big/longnose[13] skates	C	4,435	3,284	
	Other skates[14]	GW	3,709	3,709	
Total			8,144	6,993	10,859
	Demersal shelf rockfish[16]	SEO	450	450	690

TABLE 1—PROPOSED 2005 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

(Values are rounded to the nearest metric ton)

Totals	Species	Area[1]	ABC	TAC	Overfishing level
	Atka mackerel	GW	600	600	6,200
	Other species[17]	GW	N/A	12,584	N/A
TOTAL[18]			514,864	264,265	650,457

1. Regulatory areas and districts are defined at § 679.2.
2. Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the Aseason, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass at 25 percent, 56 percent, and 19 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 25 percent, 66 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 5. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
3.The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Tables 6 and 7.
4. ''Deep water flatfish'' means Dover sole, Greenland turbot, and deepsea sole.
5. ''Shallow water flatfish'' means flatfish not including ''deep water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.
6. Sablefish is allocated to trawl and hook-and-line gears (Tables 3 and 4).
7. ''Pacific ocean perch'' means *Sebastes alutus*.
8. ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).
9. ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the SEO District means Slope rockfish.
10. ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous*.
11. ''Northern rockfish'' means *Sebastes polyspinis*.
12. ''Pelagic shelf rockfish'' means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
13. Big skate means *Raja binoculata* and longnose skate means *Raja rhina*.
14. Other skates means big and long nose skates in the E and W GOA and *Bathyraja* spp. Gulfwide.
15. N/A means not applicable.
16. ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
17. ''Other species'' means sculpins, sharks, squid, and octopus. There is no OFL or ABC for ''other species'', the TAC for ''other species'' equals 5 percent of the TACs for assessed target species.
18. The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

TABLE 2—PROPOSED 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.

(Values are rounded to the nearest metric ton)

Total	Species	Area[1]	ABC	TAC	Overfishing level
	Pollock[2]	Shumagin (610)	22,930	22,930	
		Chirikof (620)	26,490	26,490	
		Kodiak (630)	14,040	14,040	
		WYK (640)	1,280	1,280	
Subtotal		W/C/WYK	64,740	64,740	91,060
		SEO (650)	6,520	6,520	8,690
Total			71,260	71,260	99,750
	Pacific cod[3]	W	17,406	13,054	
		C	27,560	20,877	
		E	3,384	3,046	
Total			48,350	36,977	63,950
	Flatfish[4] (deep-water)	W	310	310	

TABLE 2—PROPOSED 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

(Values are rounded to the nearest metric ton)

Total	Species	Area[1]	ABC	TAC	Overfishing level
		C	2,970	2,970	
		WYK	1,880	1,880	
		SEO	910	910	
Total			6,070	6,070	8,010
	Rex sole	W	1,680	1,680	
		C	7,340	7,340	
		WYK	1,340	1,340	
		SEO	2,290	2,290	
Total			12,650	12,650	16,480
	Flathead sole	W	11,111	2,000	
		C	28,527	5,000	
		WYK	2,842	2,842	
		SEO	370	370	
Total			42,850	10,212	53,850
	Flatfish[5] (shallow-water)	W	21,580	4,500	
		C	27,250	13,000	
		WYK	2,030	2,030	
		SEO	1,210	1,210	
Total			52,070	20,740	63,840
	Arrowtooth flounder	W	27,924	8,000	
		C	179,734	25,000	
		WYK	12,539	2,500	
		SEO	10,543	2,500	
Total			230,740	38,000	270,050
	Sablefish[6]	W	2,237	2,237	
		C	5,468	5,468	
		WYK	1,889	1,889	
		SEO	2,834	2,834	
Subtotal		E	4,723	4,723	
Total			12,428	12,428	17,633
	Pacific ocean perch[7]	W	2,419	2,419	2,872
		C	8,020	8,020	9,526
		WYK	779	779	
		SEO	1,512	1,512	

TABLE 2—PROPOSED 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

(Values are rounded to the nearest metric ton)

Total	Species	Area[1]	ABC	TAC	Overfishing level
Subtotal		E		2,291	2,722
Total			12,730	12,730	15,120
	Shortraker/rougheye[8]	W	254	254	
		C	656	656	
		E	408	408	
Total			1,318	1,318	2,510
	Other rockfish[9,10]	W	40	40	
		C	300	300	
		WYK	130	130	
		SEO	3,430	200	
Total			3,900	670	5,150
	Northern rockfish[10,11,15]	W	678	678	
		C	3,592	3,592	
		E	N/A	N/A	
Total			4,270	4,270	5,070
	Pelagic shelf rockfish[12]	W	370	370	
		C	3,010	3,010	
		WYK	210	210	
		SEO	880	880	
Total			4,470	4,470	5,570
	Thornyhead rockfish	W	410	410	
		C	1,010	1,010	
		E	520	520	
Total			1,940	1,940	2,590
	Big/longnose[13] skates	C	4,435	3,284	
	Other skates[14]	GW	3,709	3,709	
Total			8,144	6,993	10,859
	Demersal shelf rockfish[16]	SEO	450	450	690
	Atka mackerel	GW	600	600	6,200
	Other species[17]	GW	N/A	12,089	N/A
TOTAL[18]			514,240	253,867	647,272

1. Regulatory areas and districts are defined at § 679.2.

2. Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass at 25 percent, 56 percent, and 19 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 25 percent, 66 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 5. In the WestYakutat and SEO Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

3. The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Tables 6 and 7.

4. ''Deep water flatfish'' means Dover sole, Greenland turbot, and deepsea sole.

5. ''Shallow water flatfish'' means flatfish not including ''deep water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

6. Sablefish is allocated to trawl and hook-and-line gears (Tables 3 and 4).

7. ''Pacific ocean perch'' means *Sebastes alutus*.

8. ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

9. ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the SEO District means Slope rockfish.

10. ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S.goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous*.

11. ''Northern rockfish'' means *Sebastes polyspinis*.

12. ''Pelagic shelf rockfish'' means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

13. Big skate means *Raja binoculata* and longnose skate means *Raja rhina*.

14. Other skates means big and long nose skates in the E and W GOA and *Bathyraja* spp. Gulfwide.

15. N/A means not applicable.

16. ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

17. ''Other species'' means sculpins, sharks, squid, and octopus. There is no OFL or ABC for ''other species'', the TAC for ''other species'' equals 5 percent of the TACs for assessed target species.

18. The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

Proposed Apportionment of Reserves

Regulations at § 679.20(b)(2) require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category be set aside in reserves for possible apportionment at a later date. In 2004, NMFS reapportioned all of the reserves in the final harvest specifications. For 2005 and 2006, NMFS proposes apportionment of all of the reserve for pollock, Pacific cod, flatfish, and ''other species.'' Specifications of TAC shown in Tables 1 and 2 reflect apportionment of reserve amounts for these species and species groups.

Proposed Apportionments of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (see § 679.20(a)(1)). In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS concurs that 5 percent of the combined Eastern GOA sablefish TAC be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. The Council recommended that only trawl sablefish TAC be established biennially. This recommendation results in an allocation of 254 mt to trawl gear and 1,782 mt to hook-and-line gear in the WYK District, of 3,053 mt to hook-and-line gear in the SEO District in 2005, and of 236 mt to trawl gear in the WYK District in 2006. Tables 3 and 4 shows the allocations of the proposed 2005 and 2006 sablefish TACs between hook-and-line and trawl gear.

TABLE 3—PROPOSED 2005 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR.

(Values are rounded to the nearest metric ton)

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	2,411	1,929	482
Central	5,892	4,714	1,178
West Yakutat	2,036	1,782	254
Southeast Outside	3,053	3,053	0
Total	13,392	11,478	1,914

TABLE 4—PROPOSED 2006 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO TRAWL GEAR.

(Values are rounded to the nearest metric ton)

Area/District	TAC	Hook-and-line apportionment[1]	Trawl apportionment
Western	2,237	n/a	447

TABLE 4—PROPOSED 2006 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO TRAWL GEAR.—Continued

(Values are rounded to the nearest metric ton)

Area/District	TAC	Hook-and-line apportionment[1]	Trawl apportionment
Central	5,468	n/a	1,094
West Yakutat	1,889	n/a	236
Southeast Outside	2,834	n/a	0
Total	12,428	n/a	1,777

[1]The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to 1 year to ensure that those fisheries are conducted concurrent with the halibut IFQ fishery.

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(iii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through February 25, March 10 through May 31, August 25 through September 15, and October 1 through November 1, respectively. As discussed previously, if the proposed revision of Steller sea lion protection measures (69 FR 56384, September 21, 2004) is approved, the A season dates would be changed to January 20 through March 10 and the C season dates would be changed to August 25 through October 1.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among statistical areas 610, 620, and 630 in proportion to the distribution of pollock biomass as determined by a composite of NMFS winter surveys and in the C and D seasons in proportion to the distribution of pollock biomass as determined by the four most recent NMFS summer surveys. As in 2004, the Council recommended that during the A season, the winter and summer distribution of pollock be averaged in the Central Regulatory Area to better reflect the distribution of pollock and the performance of the fishery in the area during the A season for the 2005 and 2006 fishing years. Within any fishing year, the underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(iii)(B)). For 2005 and 2006, 30 percent of the proposed annual TAC for the Central and Western Regulatory Areas is 19,308 mt. As discussed previously, approval of the proposed revision to Steller sea lion protection measures would alter the way NMFS handles rollovers. The rollover amount would be limited to 20 percent of the seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas. Because the harvest of pollock is apportioned among four seasons, the 20 percent seasonal apportionment rollover limit would be equivalent annually to the 30–percent annual rollover limit currently in the regulations. The WYK and SEO District pollock TACs of 1,280 mt and 6,520 mt, respectively, are not allocated seasonally.

Section 679.20(a)(6)(i) requires that 100 percent of the pollock TAC in all regulatory areas and of all seasonal allowances be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The proposed seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Table 5.

TABLE 5—PROPOSED 2005 AND 2006 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC.

(Values are rounded to the nearest metric ton)

Season	Biomass Distribution			
	Shumagin (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total
A	3,747 (23.63%)	9,027 (56.9%)	3,091 (19.48%)	15,865 (100%)
B	3,748 (23.63%)	10,704 (67.47%)	1,413 (8.91%)	15,865 (100%)
C	7,717 (48.64%)	3,380 (21.3%)	4,768 (30.06%)	15,865 (100%)
D	7,718 (48.64%)	3,379 (21.33%)	4,768 (30.06%)	15,865 (100%)
Annual Total	22,930	26,490	14,040	63,460

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31. For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1, (§ 679.23(d)(3)). After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components as provided in § 679.20(a)(6)(ii). Between the A and the B seasons, directed fishing for Pacific cod is closed, and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under § 679.20(e) and (f). For purposes of clarification, NMFS points out that the dates for the A season and the B season Pacific cod fisheries differ from those of the A, B, C, and D seasons for the pollock fisheries. In accordance with § 679.20(a)(11)(ii), any overage or underage of Pacific cod allowance from the A season may be subtracted from or added to the subsequent B season allowance.

Section 679.20(a)(6)(ii) requires that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the proposed 2005 and 2006 Pacific cod TACs are shown in Tables 6 and 7, respectively.

TABLE 6—PROPOSED 2005 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS.

(Values are rounded to the nearest metric ton)

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Western	15,903	14,313	1,590
A season (60%)		9,542	8,588	954
B season (40%)		6,361	5,726	635
	Central	25,432	22,889	2,543
A season (60%)		15,259	13,733	1,526
B season (40%)		10,173	9,156	1,017
	Eastern	3,711	3,340	371
Total		45,046	40,542	4,504

TABLE 7—PROPOSED 2006 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS.

(Values are rounded to the nearest metric ton)

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Western	13,054	11,749	1,305
A season (60%)		7,832	7,049	783
B season (40%)		5,222	4,700	522
	Central	20,877	18,789	2,088
A season (60%)		12,526	11,273	1,253
B season (40%)		8,351	7,516	835
	Eastern	3,046	2,741	305
Total		36,977	33,279	3,698

Proposed Halibut PSC Limits

In accordance with regulations at § 679.21(d), annual halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In October 2004, the Council recommended that NMFS maintain the 2004 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the SEO District and the remainder to the remaining hook-and-line fisheries for the 2005 and 2006 groundfish fisheries. Historically, the DSR fishery, defined at § 679.21(d)(4)(iii)(A), has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts, given most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) and thus are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short soak times for the gear and duration of the DSR fishery. Also, the DSR fishery

occurs in the winter when less overlap occurs in the distribution of DSR and halibut.

Section 679.21(d)(4) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 2005 and 2006. The Council recommended these exemptions because (1) the pot gear fisheries experience low halibut bycatch mortality (4 mt in 2001, 2 mt in 2002, 14 mt in 2003, and 23 mt through October 9, 2004); (2) the Individual Fishing Quota (IFQ) program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ; and (3) halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. Halibut mortality is assumed to be very low, given the small amount of groundfish harvested by jig gear (336 mt in 2001, 277 mt in 2002, and 294 mt in 2003), and survival rates of any halibut incidentally caught by jig gear and released are assumed to be high.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final 2004 groundfish and PSC specifications (69 FR 9261, February 27, 2004) summarized the Council and NMFS findings with respect to each of the FMP considerations set forth here. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2004. The proposed Pacific halibut PSC limits and apportionments for 2005 and 2006 are presented in Table 8. Section 679.21, paragraphs (d)(5)(iii) and (d)(5)(iv) specify that any underages or overages in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2005 and 2006 fishing years.

TABLE 8—PROPOSED 2005 AND 2006 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. THE HOOK-AND-LINE SABLEFISH FISHERY IS EXEMPT FROM HALIBUT PSC LIMITS.

(Values are in metric tons)

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Date	Amount
January 20 - April 1	550 (27.5%)	January 1 - June 10	250 (86%)	January 1 - December 31	10 (100%)
April 1 - July 1	400 (20%)	June 10 - September 1	5 (2%)		
July 1 - September 1	600 (30%)	September 1 - December 31	35 (12%)		
September 1 - October 1	150 (7.5%)				
October 1 - December 31	300 (15%)				
Total:	2,000 (100%)		290 (100%)		10 (100%)

Section 679.21(d)(3)(ii) authorizes apportionments of the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and (2) a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (see § 679.21(d)(3)(iii)). The proposed 2005 and 2006 apportionment for these two fishery complexes is presented in Table 9.

TABLE 9—PROPOSED 2005 AND 2006 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX.

(Values are in metric tons)

Season	Shallow-water	Deep-water	Total
January 20 - April 1	450	100	550
April 1 - July 1	100	300	400
July 1 - September 1	200	400	600
September 1 - October 1	150	Any remainder	150
Subtotal January 20 - October 1	900	800	1,700
October 1 - December 31	- - - - - -		300
Total	- - -	- - -	2,000

No apportionment between shallow-water and deep-water fishery complexes during the 5th season (October 1 - December 31).

Based on public comment and information contained in the final 2004 SAFE report, which will be available in December 2004, the Council may recommend, or NMFS may make, changes in the seasonal, gear-type, or fishing-complex apportionments of halibut PSC limits for the final 2005 and 2006 harvest specifications. NMFS will consider the following types of information in setting final halibut PSC limits.

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2004. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 9, 2004, is 2,271 mt, 295 mt, and 23 mt, respectively, for a total halibut mortality of 2,589 mt.

Halibut bycatch restrictions constrained trawl gear fisheries seasonally during the 2004 fishing year. Trawling closed during the fourth season for the shallow-water complex on September 10 (69 FR 55783, September 16, 2004, 2003); trawling closed during the first season for the deep-water fishery complex on March 19 (69 FR 12980, March 19, 2004), during the second season on April 26 (69 FR 23450, April 29, 2004), during the third and fourth seasons on July 25 (69 FR 44973, July 28, 2004), and during the fifth season for all trawling for the remainder of the year on October 1 (69 FR 57655, September 27, 2004). The use of hook-and-line for groundfish, other than DSR and sablefish, closed during the third season for the remainder of the year on October 2 (69 FR 59835, October 6, 2004).

The amount of groundfish that trawl gear might have harvested if halibut catch limitations had not restricted the season in 2004 is unknown.

Expected Changes in Groundfish Stocks

Proposed 2005 and 2006 ABCs for arrowtooth flounder are higher than those established for 2004. The Council adopted lower 2005 and 2006 ABCs for Pacific cod, flathead sole, sablefish, northern rockfish, and Pacific ocean perch. For the remaining targets the Council recommended that ABC levels remain unchanged from 2004. More information on these changes is included in the final SAFE report (November 2003) and in the Council and SSC October 2004 meeting minutes.

Expected Changes in Groundfish Catch

The total TAC amounts for the GOA are 264,265 mt for 2005, and 253,867 mt for 2006, a decrease of about 3 percent in 2005 and about 7 percent in 2006 from the 2004 TAC total of 271,776 mt. Those fisheries for which the 2005 and 2006 TACs are lower than those in 2004 are Pacific cod (decreased to 45,046 mt in 2005 and 36,977 mt in 2006 from 48,003 mt in 2004), flathead sole (decreased to 10,382 mt in 2005 and 10,212 mt in 2006 from 10,880 mt in 2004), sablefish (decreased to 13,392 mt in 2005 and 12,428 mt in 2006 from 16,550 mt in 2004), northern rockfish (decreased to 4,600 mt in 2005 and 4,270 mt in 2006 from 4,870 mt in 2004), Pacific ocean perch (decreased to 13,100 mt in 2005 and 12,730 mt in 2006 from 13,340 mt in 2004), and ''other species'' (decreased to 12,584 mt in 2005 and 12,089 mt in 2006 from 12,942 mt in 2004).

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the International Pacific Halibut Commission (IPHC) in December 2003. The halibut resource is considered to be healthy, with total catch near record levels. The current exploitable halibut biomass in Alaska for 2004 was estimated to be 215,912 mt.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–2003) in the commercial halibut fisheries in Alaska have averaged 34,100 mt, round weight. This catch in Alaska is 26 percent higher than long-term potential yield for the entire halibut stock, which reflects the good condition of the Pacific halibut resource. In January 2004, the IPHC recommended commercial catch limits totaling 37,029 mt (round weight equivalents) for Alaska in 2004. Through December 31, 2003, commercial hook-and line harvests of halibut in Alaska totaled 37,723 mt (round weight equivalents).

The December 2003 assessment of the halibut stock contains a number of major changes including the adoption of length-specific in place of age-specific selectivities, separate accounting of females and males, allowance for the bias and variance of age readings, and, for the first time, analytical rather than survey-based estimates of abundance in Areas 3B, 4A, and 4B. Estimates of average recruitment (1974–2004) in Areas 2C and 3A are higher than those last year by 20 to 50 percent, but estimates of exploitable biomass in those areas are lower because they are computed with an updated set of length-specific commercial selectivities that accurately represent the lower size at age and the presence of a large number of small males. While the trajectory of the halibut stock biomass is downward, the biomass is still above the long-term average level and is expected to remain above this level for the next several years.

The 2004 catch limits are based on the Commission's existing Constant Exploitation Yield harvest policy. Over the coming year, IPHC staff will continue to investigate a new harvest policy, the Conditional Constant Catch (CCC) policy, which may result in greater stability in the yield from the fishery and insulate the process of setting catch limits from technological changes in the assessment.

Additional information on the Pacific halibut stock assessment and the CCC harvest policy may be found in the IPHC's 2003 Pacific halibut stock assessment (December 2003), available from the IPHC and on its website at *www.iphc.washington.edu*. The IPHC will consider the 2004 Pacific halibut assessment for 2005 at its January 2005 annual meeting when it sets the 2005 commercial halibut fishery quotas.

Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2005 and 2006 groundfish fisheries are expected to use the entire proposed annual halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational and subsistence catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks. Methods available for reducing halibut bycatch include (1) publication of individual vessel bycatch rates on the NMFS Alaska Region website at *www.fakr.noaa.gov*; (2) modifications to gear, (3) changes in groundfish fishing seasons, (4) individual transferable quota programs, and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

In § 679.2, the definition of Authorized fishing gear, paragraph 12, specifies requirements for biodegradable

panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define ''Pelagic trawl gear'' in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see ''Authorized fishing gear,'' paragraph 11) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby lowering overall halibut bycatch mortality in the groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

The Council recommends and NMFS concurs that the recommended halibut discard mortality rates (DMRs) developed by the staff of the IPHC for the 2004 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2005 and 2006 GOA groundfish fisheries. The IPHC recommended the use of long-term average DMRs for the 2004–2006 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR deviates substantially (up or down) from the long-term average. Most of the IPHC's analysis assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1993 and 2002. DMRs were lacking for some fisheries; in those instances rates from the most recent years were used. For the ''other species'' and skate fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The DMRs proposed for 2005 and 2006 are unchanged from those used in 2004 in the GOA. The DMRs for hook-and-line targeted fisheries range from 8 to 13 percent. The DMRs for trawl targeted fisheries range from 57 to 75 percent. The DMRs for all pot targeted fisheries are 17 percent. The proposed DMRs for 2005 and 2006 are listed in Table 10. The justification for these DMRs is discussed in Appendix B to the final SAFE report dated November 2003.

TABLE 10—PROPOSED 2005 AND 2006 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA.

(Listed values are percent of halibut bycatch assumed to be dead.)

Gear	Target	Mortality Rate
Hook-and-line	Other species	13
	Skates	13
	Pacific cod	13
	Rockfish	8
Trawl	Arrowtooth flounder	69
	Atka mackerel	60
	Deep-water flatfish	57
	Flathead sole	62
	Nonpelagic pollock	59
	Other species	61
	Skates	61
	Pacific cod	61
	Pelagic pollock	75
	Rex sole	62
	Rockfish	67
	Sablefish	62
	Shallow-water flatfish	68
Pot	Other species	17
	Skates	17
	Pacific cod	17

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Limitations

Regulations at § 679.64 established groundfish harvesting and processing sideboard limitations on AFA catcher/processors and catcher vessels in the GOA. These sideboard limitations are necessary to protect the interests of fishermen and processors who have not directly benefited from the AFA from fishermen and processors who have received exclusive harvesting and processing privileges under the AFA. Under the AFA regulations at § 679.4 (l)(2)(i), listed AFA catcher/processors are prohibited from fishing for any species of fish (see § 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (see § 679.7(k)(1)(iv)). The Council recommended that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. The AFA regulations exempt AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997 (see § 679.64(b)(2)(ii)).

For non-exempt AFA catcher vessels in the GOA, sideboards limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The AFA regulations base the groundfish sideboard limitations in the GOA on the retained catch by non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.64(b)(3)(iii)). These amounts are listed in Table 11 for 2005 and in Table 12 for 2006. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the sideboard limits in Tables 11 and 12.

TABLE 11—PROPOSED 2005 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2005 TAC	2005 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20 - February 25			
	Shumagin (610)	0.6112	3,747	2,290
	Chirikof (620)	0.1427	9,027	1,288
	Kodiak (630)	0.2438	3,091	754
	B Season (W/C areas only)			
	March 10 - May 31			
	Shumagin (610)	0.6112	3,748	2,291
	Chirikof (620)	0.1427	10,704	1,527
	Kodiak (630)	0.2438	1,413	344
	C Season (W/C areas only)			
	August 25 - September 15			
	Shumagin (610)	0.6112	7,717	4,717
	Chirikof (620)	0.1427	3,380	482
	Kodiak (630)	0.2438	4,768	1,162
	D Season (W/C areas only)			
	October 1 - November 1			
	Shumagin (610)	0.6112	7,717	3,362
	Chirikof (620)	0.1427	3,379	383
	Kodiak (630)	0.2438	4,768	1,162
	Annual			
	WYK (640)	0.3499	1,280	448
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.1423	8,588	1,222
	W offshore	0.1026	954	98
	C inshore	0.0722	13,733	992
	C offshore	0.0721	1,526	110
	B Season[2]			
	September 1 - December 31			
	W inshore	0.1423	5,726	815
	W offshore	0.1026	636	65
	C inshore	0.0722	9,156	661
	C offshore	0.0721	1,071	77
	Annual			
	E inshore	0.0079	3,340	26
	E offshore	0.0078	371	3
Flatfish deep-water	W	0.0000	310	0
	C	0.0670	2,970	199
	E	0.0171	2,790	48
Rex sole	W	0.0010	1,680	2
	C	0.0402	7,340	295
	E	0.0153	3,630	56
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	3,382	16
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773

TABLE 11—PROPOSED 2005 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2005 TAC	2005 non-exempt AFA catcher vessel sideboard
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	482	0
	C trawl gear	0.0720	1,178	85
	E trawl gear	0.0488	254	12
Pacific ocean perch	W	0.0623	2,489	155
	C	0.0866	8,253	715
	E	0.0466	2,358	110
Shortraker/Rougheye	W	0.0000	254	0
	C	0.0237	656	16
	E	0.0124	408	5
Other rockfish	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish	W	0.0003	730	0
	C	0.0336	3,870	130
Pelagic shelf rockfish	W	0.0001	370	0
	C	0.0000	3,010	0
	E	0.0067	1,090	7
Thornyhead rockfish	W	0.0308	410	13
	C	0.0308	1,010	31
	E	0.0308	520	16
Big and Longnose skates	C	0.0090	3,284	30
Other skates	GW	0.0090	3,709	33
Demersal shelf rockfish	SEO	0.0020	450	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	12,584	113

1 The Pacific cod A season for trawl gear does not open until January 20.
2 The Pacific cod B season for trawl gear closes November 1.

TABLE 12—PROPOSED 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20 - February 25			
	Shumagin (610)	0.6112	3,747	2,290
	Chirikof (620)	0.1427	9,027	1,288
	Kodiak (630)	0.2438	3,091	754
	B Season (W/C areas only)			
	March 10 - May 31			
	Shumagin (610)	0.6112	3,748	2,291
	Chirikof (620)	0.1427	10,704	1,527

TABLE 12—PROPOSED 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
	Kodiak (630)	0.2438	1,413	344
	C Season (W/C areas only)			
	August 25 - September 15			
	Shumagin (610)	0.6112	7,717	4,717
	Chirikof (620)	0.1427	3,380	482
	Kodiak (630)	0.2438	4,768	1,162
	D Season (W/C areas only)			
	October 1 - November 1			
	Shumagin (610)	0.6112	7,717	3,362
	Chirikof (620)	0.1427	3,379	383
	Kodiak (630)	0.2438	4,768	1,162
	Annual			
	WYK (640)	0.3499	1,280	448
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.1423	7,292	1,038
	W offshore	0.1026	810	83
	C inshore	0.0722	11,273	814
	C offshore	0.0721	1,253	90
	B Season[2]			
	September 1 - December 31			
	W inshore	0.1423	4,457	634
	W offshore	0.1026	495	51
	C inshore	0.0722	7,516	543
	C offshore	0.0721	835	60
	Annual			
	E inshore	0.0079	2,741	22
	E offshore	0.0078	305	2
Flatfish deep-water	W	0.0000	310	0
	C	0.0670	2,970	199
	E	0.0171	2,790	48
Rex sole	W	0.0010	1,680	2
	C	0.0402	7,340	295
	E	0.0153	3,630	56
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	3,212	15
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	447	0
	C trawl gear	0.0720	1,094	79
	E trawl gear	0.0488	236	12
Pacific ocean perch	W	0.0623	2,419	151
	C	0.0866	8,020	695
	E	0.0466	2,291	107

TABLE 12—PROPOSED 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

(Values are in metric tons)

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Shortraker/Rougheye	W	0.0000	254	0
	C	0.0237	656	16
	E	0.0124	408	5
Other rockfish	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish	W	0.0003	678	0
	C	0.0336	3,592	121
Pelagic shelf rockfish	W	0.0001	370	0
	C	0.0000	3,010	0
	E	0.0067	1,090	7
Thornyhead rockfish	W	0.0308	410	13
	C	0.0308	1,010	31
	E	0.0308	520	16
Big and Longnose skates	C	0.0090	3,284	30
Other skates	GW	0.0090	3,709	33
Demersal shelf rockfish	SEO	0.0020	450	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	12,089	109

[1]The Pacific cod A season for trawl gear does not open until January 20.
[2]The Pacific cod B season for trawl gear closes November 1.

PSC sideboard limitations for non-exempt AFA catcher vessels in the GOA are based on the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (see § 679.64(b)(4)). These amounts are shown in Table 13.

TABLE 13—PROPOSED 2005 AND 2006 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA.

(Values are in metric tons)

PSC species	Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2005 and 2006 PSC limit	2005 and 2006 non-exempt AFA catcher vessel PSC limit
Halibut (mortality in mt)	Trawl 1st seasonal allowance January 20 - April 1	shallow water targets	0.340	450	153
		deep water targets	0.070	100	7
	Trawl 2nd seasonal allowance April 1 - July 1	shallow water targets	0.340	100	34
		deep water targets	0.070	300	21
	Trawl 3rd seasonal allowance July 1 - September 1	shallow water targets	0.340	200	68
		deep water targets	0.070	400	28

TABLE 13—PROPOSED 2005 AND 2006 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA.—Continued

(Values are in metric tons)

PSC species	Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2005 and 2006 PSC limit	2005 and 2006 non-exempt AFA catcher vessel PSC limit
	Trawl 4th seasonal allowance September 1 - October 1	shallow water targets	0.340	150	51
		deep water targets	0.070	0	0
	Trawl 5th seasonal allowance October 1 - December 31	all targets	0.205	300	61

Classification

NMFS has determined that the proposed specifications are consistent with the FMP and preliminarily determined that the proposed specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

An IRFA was prepared to evaluate the impacts of the 2005 and 2006 proposed harvest specifications on directly regulated small entities. This IRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA). A copy of the IRFA is available from NMFS (see **ADDRESSES**). The reason for the action, a statement of the objective of the action, and the legal basis are discussed in the preamble and are not repeated here.

The 2005 and 2006 harvest specifications establish harvest limits for the groundfish species and species groups in the GOA. This action is necessary to allow fishing in 2005 and 2006. About 807 small catcher vessels and 23 small catcher/processors may be directly regulated by these specifications.

The IRFA examined the impacts of the preferred alternative on small entities within fisheries defined by the harvest of species groups whose TACs might be affected by the specifications. The IRFA identified adverse impacts on small fishing operations harvesting sablefish, Pacific cod, northern rockfish, and Pacific ocean perch in the GOA.

The largest adverse impacts were imposed on vessel harvesting sablefish and Pacific cod in the GOA. The sablefish impacts would affect 443 small catcher vessels and catcher-processors, with average gross revenues of $291,000, and decrease their gross revenues by a maximum of 10 percent. The Pacific cod impacts would affect 464 catcher vessels and catcher-processors, with average gross revenues of $273,000, and decrease their gross revenues by a maximum of 8 percent. Smaller impacts would be felt in other sectors. In the GOA, 31 northern rockfish catcher vessels and catcher-processors, with average gross revenues of $823,000, would have gross revenue reductions of a maximum of 2.4 percent, while 41 Pacific ocean perch catcher vessels and catcher-processors, with average gross revenues of $735,000, would have gross revenue reductions of a maximum of 2 percent.

Please refer to the IRFA for a fuller explanation of impacts on small entities. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

This analysis examined four alternatives to the preferred alternative. These included alternatives that set TACs to produce fishing rates equal to $maxF_{ABC}$, ½ $maxF_{ABC}$, the recent 5 year average F, and zero. Only one of these alternatives, setting TACs to produce fishing rates of $maxF_{ABC}$, would potentially have a smaller adverse impact on small entities than the preferred alternative. This alternative is associated with larger gross revenues for the GOA fisheries. Many of the vessels identified above would share in these gross revenues. However, the $maxF_{ABC}$ is to a fishing rate which may, and often does, exceed biologically recommended ABCs. For the pollock, deep-water, flatfish, rex sole, sablefish, Pacific Ocean perch, shortraker and rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel fisheries described above, the preferred alternative, which produces fishing rates less than $maxF_{ABC}$, sets TACs equal to projected annual ABCs. In addition, the preferred alternative TACs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth founder, and other rockfish, when combined with the State of Alaska guideline harvest levels for these fisheries, also equals the ABC. The increases in TACs related to producing fishing rates of $maxF_{ABC}$ would not be consistent with biologically prudent fishery management because they do not fall within scientifically determined ABC.

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105 277, Title II of Division C; Pub L. 106 31, Sec. 3027; and Pub L. 106 554, Sec. 209.

Dated: December 1, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–26832 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 234

Tuesday, December 7, 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

Submission for OMB Review; Comment Request

December 1, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Cold Storage.

OMB Control Number: 0535–0001.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production. The monthly Cold Storage Survey provides information on national supplies of food commodities in refrigerated storage facilities and is used as part of the country's preparedness in case of a national emergency. The data will be collected under the authority of 7 U.S.C. 2204. This statute specifies ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists.''

Need and Use of the Information: USDA agencies such as the World Agricultural Outlook Board, Economic Research Service, and Agricultural Marketing Service use the information from the Cold Storage Report in setting and administering government commodity programs and in supply and demand analysis. Included in the report are 100 food items and stock figures that are used by food processors, food brokers, and farmers in making production, marketing and pricing decisions. The timing and frequency of the surveys have evolved to meet the needs of producers, facilities, agribusinesses, and government agencies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3,920.

Frequency of Responses: Reporting: monthly; annually; biennially.

Total Burden Hours: 6,341.

National Agricultural Statistics Service

Title: Field Crops Production.

OMB Control Number: 0535–0002.

Summary of Collection: One of the National Agricultural Statistics Services' (NASS) primary functions is to prepare and issue current State and national estimates of crop and livestock production. The general authority for collecting this information is granted under U.S. Code Title 7, Section 2204. NASS will conduct field crop surveys to monitor agricultural developments across the country that may impact on the nation's food supply and to ensure that there are sufficient samples to provide accurate indications for NASS published estimates.

Need and Use of the Information: NASS will collect information through the use of mail, telephone, and personnel interviews surveys. The Secretary of Agriculture uses estimates of crop production to administer farm program legislation and to make decisions relative to the export-import programs. Collecting this information less frequently would eliminate the data needed to keep the Department abreast of changes at the State and national level.

Description of Respondents: Farms; business or other for-profits.

Number of Respondents: 605,951.

Frequency of Responses: Reporting: weekly, monthly, quarterly, annually.

Total Burden Hours: 122,145.

National Agricultural Statistics Service

Title: Fruits, Nut, and Specialty Crops.

OMB Control Number: 0535–0039.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to cover all agricultural cash receipts. The authority to collect these data is granted under U.S. Code Title 7, Section 2204. Information is collected on a voluntary basis from growers, processors, and handlers through surveys.

Need and Use of the Information: Data reported on fruit, nut, and Hawaii tropical crops are used by NASS to estimate acreage, yield, production, utilization, and crop value in states with significant commercial production. These estimates are essential to farmers, processors, and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected supplies of crop under federal and state market orders as well as competitive fruits and nuts.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 70,086.

Frequency of Responses: Reporting: on occasion; annually; quarterly; semi-annually; monthly.

Total Burden Hours: 10,117.

National Agriculture Statistics Service

Title: Childhood Injury and Adult Occupational Survey.

OMB Control Number: 0535–0235.

Summary of Collection: Primary function of the National Agricultural Statistics Services (NASS) is to prepare and issue state and national estimates of crop and livestock production under the authority of 7 U.S.C. 2204. NASS will conduct a national childhood agricultural injury survey and an adult occupational farm injury survey focusing on minority farm operators. The study will provide estimates of annual childhood and adult nonfatal injury incidence rates, annual injury frequencies, and descriptive injury information for children under the age of 20 living, working or visiting farm operations.

Need and Use of the Information: Data from this survey will provide a source of consistent information that the National Institute for Occupational Safety and Health (NIOSH) can use to target funds appropriated by Congress for the prevention of childhood agricultural injuries and adult occupational injuries. No source of data on childhood injuries or adult occupational farm injuries exists that covers all aspects of the agricultural production sector. If this information is not collected, NIOSH's ability to track and evaluate the impact of its injury prevention efforts will decrease.

Description of Respondents: Farms.

Number of Respondents: 50,500.

Frequency of Responses: Reporting: other.

Total Burden Hours: 12,111.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–26782 Filed 12–6–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Homeowner Risk Reduction Behaviors Concerning Wildfire Risks

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new, one-time information collection, Homeowner Risk Reduction Behaviors Concerning Wildfire Risks. The information will be collected from homeowner groups, such as homeowners associations, that have been affected by wildfires.

The information collected will focus on homeowners who live in the wildland-urban interface and that were affected by the Hayman fire in Colorado, the B&B Complex fire in Oregon, and the Old and Cedar fires in California. The information provided by this study will allow Forest Service land managers to better understand which risk reduction behaviors homeowners choose to undertake, as well as ones they choose not to undertake, and factors that influence these choices. This information will assist the Forest Service in their risk communication efforts with ''at risk'' communities and individuals.

DATES: Comments must be received in writing on or before February 7, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Brian Kent, Project Leader, Rocky Mountain Research Station, Forest Service, USDA, 2150 Centre Avenue, Building A, Fort Collins, CO 80526.

Comments also may be submitted via facsimile to (970)295–5959 or by e-mail to: *bkent@fs.fed.us*.

The public may inspect comments received at Rocky Mountain Research Station, Forest Service, USDA, 2150 Centre Avenue, Building A, Fort Collins, Colorado, during normal business hours. Visitors are encouraged to call ahead to (970) 295–5955 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Brian Kent, Rocky Mountain Research Station, at (970) 295–5955. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Homeowner Risk Reduction Behaviors Concerning Wildfire Risks.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: The threat of wildfire to residents located in areas next to forested public lands has increased significantly during the last decade. As homeowners migrate to areas that are at increasing risk from wildfire they face important decisions regarding how much risk to accept from various sources. An important component of making decisions regarding risk is to understand the behaviors that are effective at reducing the risk and the information sources that are considered reliable for risk reduction information. To gain a better insight into homeowners' perceptions of wildfire risk, behaviors that reduce wildfire risk, and most effective methods of communicating the risk of wildfire, it is important to collect information directly from the homeowners that are at risk. The results of the collection will provide important information for public land managers and private homeowners that will improve the understanding of the issues and options between both groups.

Homeowners, located in the wildland-urban interface in areas that were affected by wildfires, will be asked to return surveys. The homeowners will be members of organized homeowners associations and their participation is voluntary. The survey will be mailed to homeowners by Integrated Resource Solutions in Boulder, Colorado, operating under a Research Joint Venture with the Forest Service Rocky Mountain Research Station in Fort Collins, Colorado.

The type of information collected will include: (1) Risk perceptions regarding wildfire, (2) risk reduction behaviors associated with wildfire, (3) sources of information regarding wildfires and wildfire risk reduction, and (4) socio-economic information.

The data collected will be analyzed by Forest Service researchers at the Rocky Mountain Research Station and the following cooperators: Drs. Ingrid and Wade Martin of California State University of Long Beach, Long Beach, California, and Dr. Holly Bender of Integrated Resource Solutions, Boulder, Colorado. The results will be made available to Forest Service land managers, the respondents and other interested parties.

This information will enhance the ability of Forest Service land managers on National Forests to communicate and understand the public and their preferences regarding the management of wildfire risk. Without this type of information, Forest Service land managers and the public will continue to interact on the issues of wildfire risk without a broad-based understanding of the factors that lessen wildfire risk, factors that are important to homeowners.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Homeowners located in the wildland-urban interface in the western United States.

Estimated Annual Number of Respondents: 1500.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 29, 2004.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 04–26836 Filed 12–6–04; 8:45 am]

BILLING CODE 3410–11–P

ANTITRUST MODERNIZATION COMMISSION

Public Meeting

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public meeting.

SUMMARY: The Antitrust Modernization Commission will hold a public meeting on January 13, 2005. The purpose of the meeting is for the Antitrust Modernization Commission to determine issues for further Commission study, pursuant to its statutory mandate.

DATES: January 13, 2005, 10 a.m. until adjourned. Interested members of the public may attend. Registration is not required.

ADDRESSES: Federal Trade Commission, Conference Center Rooms A & B, 601 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233–0701; e-mail: *info@amc.gov*. Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Antitrust Modernization Commission to select issues for further Commission study, pursuant to its statutory mandate. Materials relating to the meeting will be made available on the Commission's Web site (*http://www.amc.gov*) in advance of the meeting.

The AMC has called this meeting pursuant to its authorizing statute and the Federal Advisory Committee Act. Antitrust Modernization Commission Act of 2002, Pub. L. No. 107–273, § 11058(f), 116 Stat. 1758, 1857; Federal Advisory Committee Act, 5 U.S.C. App., § 10(a)(2); 41 CFR 102–3.150 (2003).

Dated: December 1, 2004.

By direction of Deborah A. Garza, Chair of the Antitrust Modernization Commission.

Approved by Designated Federal Officer.

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. 04–26786 Filed 12–6–04; 8:45 am]

BILLING CODE 6820–YM–P

CIVIL RIGHTS COMMISSION

Agenda and Notice of Public Meeting of the State Advisory Committee Chairpersons in the Western Region

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the State Advisory Committee Chairpersons in the Western Region (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas and Washington) will convene at 1 p.m. (PST) and adjourn at 2 p.m., Friday, December 10, 2004. The purpose of the conference call is to discuss regional civil rights issues and update information. This conference call is available to the public through the following call-in number: 1–800–473–7795, access code number 31697230. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, December 9, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, November 23, 2004.

Aonghas St. Hiliare,

Acting Chief Managing Officer.

[FR Doc. 04–26765 Filed 12–6–04; 8:45 am]

BILLING CODE 6335–01–P

CIVIL RIGHTS COMMISSION

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 10, 2004, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS: The previously scheduled Commission meeting for December 10, 2004 is canceled.

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

General Counsel.

[FR Doc. 04–27001 Filed 12–3–04; 3:59 p.m]

BILLING CODE 6335–0–M

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Pollution Abatement Costs and Expenditures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 7, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20233 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Julius Smith Jr., Census Bureau, Room 2135, Building 4, Washington, DC 20233–6900, (301) 763–4683 (or via the Internet at *julius.smith.jr@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau, with support from the Environmental Protection Agency, plans to reinstate the Survey of Pollution Abatement Costs and Expenditures (PACE), MA–200 for 2005. In addition to the survey, the Census Bureau also plans to conduct a screener and a pilot.

The screener will be administered in an attempt to identify plants, for both the pilot and the survey, that have pollution abatement activities. Once these plants have been identified, the pilot will then be administered to a small sample. These selected plants will be asked to complete and comment on the proposed 2005 survey form. The information gained from the screener and pilot will be used in finalizing the survey instrument and sample design.

The screener will contain a small number of questions (approximately 3–5), in the form of check boxes, to determine if pollution abatement activities are conducted and if so, a range of those costs. The pilot and the survey will collect data on capital expenditures for pollution abatement activities and operating costs. These data will be collected by categories (treatment, prevention, disposal and recycling) and media (air, water and solid waste). It will also collect some data on depreciation and cost offsets. The pilot will also include some qualitative questions to validate the estimates collected.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms for the screener, pilot and survey. Companies will be asked to respond to each within 30 days of the initial mailing.

III. Data

OMB Number: 0607–0176.

Form Number: MA–200S, MA–200P and MA–200.

Type of Review: Regular.

Affected Public: Manufacturing, mining and electric utility establishments.

Estimated Number of Respondents: The screener—40,000 facilities; the pilot—2,000 facilities; and the survey—20,000 facilities.

Estimated Time Per Response: The screener—.25 hours; the pilot—5 hours; and the survey—5 hours.

Estimated Total Burden: 120,000 hours. The screener—10,000; the pilot—10,000; and the survey—100,000.

Estimated Total Cost: $ 1,500,000.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Section 182,224 and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–26779 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Shipper's Export Declaration (SED)/Automated Export System (AES) Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce a paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 7, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jerome Greenwell, Chief, Regulations, Outreach and Education Branch, U.S. Census Bureau, Room 3125, Federal Building 3, Washington, DC 20233–6700, (301) 763–2255, by fax (301) 457–2645.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Shipper's Export Declaration (SED), Commerce Form 7525–V, and the electronic equivalent, the Automated Export System (AES), are instruments used for collecting export trade information. The data collected from these sources are compiled by the U.S. Census Bureau (Census Bureau) and functions as the basis for the official U.S. export trade statistics. These statistics are used to determine the balance of international trade, and are also designated for use as a principal economic indicator. Title 13, United States Code (U.S.C.), chapter 9, section 301 authorizes the Census Bureau to collect, compile and publish export trade data. Title 15, Code of Federal Regulations, part 30 contains the regulatory provisions for preparing and filing the SED or the AES record. These data are used in the development of U.S. Government policies that affect the economy. These data also enable U.S. businesses to develop practical export marketing strategies as well as provide a means for the assessment of the impact of exports on the domestic economy. The data collected from the SED and the AES record are also used for export control purposes under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users.

On November 29, 1999, the President signed into law the Consolidated Appropriations Act of 1999, which authorized the Secretary of Commerce to require mandatory electronic filing of items on the Commerce Control List

(CCL) and the U.S. Munitions List (USML). The requirement to implement this process went into effect October 18, 2003. On July 29, 2003, the President signed Executive Order 13312, which executed prohibitions to Public Law 108–19, the Clean Diamond Trade Act thereby authorizing the mandatory electronic filing of rough diamonds. Implementation for this process went into effect October 20, 2003. On September 30, 2002, the President signed into law the Foreign Relations Authorization Act, Public Law 107–228. This law authorizes the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Homeland Security, to publish regulations in the **Federal Register** detailing that upon the effective date of these regulations, all persons who are required to file export information under Title 13, U.S.C., chapter 9, file such information through the AES and there will no longer be provisions made for manual filing thereafter. On October 22, 2003, The Census Bureau published an Advanced Notice of Proposed Rulemaking in the **Federal Register** (68 FR 60301) announcing the Census Bureau's intent to propose the rule mandating electronic filing through the AES of all information on export shipments that require the filing of a SED and allowed the public to comment on this subject.

II. Method of Collection

A paper SED or electronic AES record is required, with certain exceptions, for all export shipments valued more than $2,500 from the United States, including Foreign Trade Zones located therein, Puerto Rico, and the U.S. Virgin Islands to foreign countries; for exports between the United States and Puerto Rico; and for exports to the U.S. Virgin Islands from the United States or Puerto Rico. The AES record information is also required for the export of rough diamonds and all exports requiring a license from the Bureau of Industry and Security, a license or license exception from the Department of State, or other government agency, regardless of value, unless exempted from the requirement for filing AES information by the licensing government agency. The SED/AES program is unique among Census Bureau statistical collections since it is not sent to respondents to solicit responses as is the case with surveys. Filing export information via the SED or AES is a mandatory process under Title 13, Chapter 9, U.S.C. The Census Bureau has seen a progressive growth in the number of electronic filers, with a comparable decrease in the number of the paper SED filers. For example, the requirements to file export information through the AES for all USML and CCL shipments has resulted in the elimination of more than 360,000 paper SEDs annually. Exporters can access the AES via the Census Bureau's free Internet-based system, AESDirect, or they can integrate the AES into their company's computer network and file directly with the U.S. Customs and Border Protection (CBP). Exporters may also download the SED, Commerce Form 7525–V, from the Internet and print it on the required ''buff'' colored paper.

For exports to Canada, a Memorandum of Understanding (MOU) signed by the CBP and statistical agencies in the United States and Canada enables the United States to substitute Canadian import statistics for U.S. export statistics. Similarly, in accordance with the MOU, Canada substitutes U.S. import statistics for Canadian exports to the United States. This exchange of data eliminates the requirement for U.S. exporters to file any information with the U.S. Government for exports of nonlicensed shipments to Canada, thus resulting in the elimination of over eight million paper SEDs annually. Export shipments to Canada that require a license must be filed through the AES. Also, export shipments from the United States through Canada destined to a country other than Canada require a SED or AES record.

U.S. principal parties in interest (USPPI) or authorized agents file individual paper SEDs with exporting carriers at the time export shipments leave the United States. For the AES, USPPIs or authorized agents file export data electronically with the Census Bureau or the CBP. Carriers submit paper SED documents to CBP officials when the carrier departs from the United States and the CBP then transmits the export information to the Census Bureau for statistical processing.

The AES enables the Government to significantly improve the quality, timeliness, and coverage of export statistics. Since July 1995, the Census Bureau and the CBP have utilized the AES to improve the reporting of export trade information, customer service, compliance with and enforcement of export laws, and provide paperless reports of export information. The AES also enables the U.S. Government to increase its ability to prevent the export of certain items by unauthorized parties, to unauthorized destinations and end users through electronic filing.

III. Data

OMB Number: 0607–0152.

Commerce Form Number: 7525–V, Automated Export System (AES) submissions.

Type of Review: Regular submission.

Affected Public: Exporters, Forwarding agents, Export Carriers.

Estimated Number of Respondents: 223,213.

Estimated Time Per Response: 11.0 minutes for 7525–V, 3.0 minutes for AES Submissions.

Estimated Total Annual Burden Hours: 814,140 (SEDs 198,000) (AES 616,140).

Estimated Total Annual Cost: $13,156,502.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Chapter 9; Public Law 107–228 Foreign Relations Authorization Act.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–26780 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

The American Community Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paper work and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on

proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 7, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lawrence McGinn, U.S. Census Bureau, American Community Survey Office, Washington, DC 20233. Phone: (301) 763–8050.

SUPPLEMENTARY INFORMATION:

I. Abstract

Given the rapid demographic changes experienced in recent years and the strong expectation that such changes will continue and accelerate, the once-a-decade data collection approach of a decennial census is no longer acceptable. To meet the needs and expectations of the country, the Census Bureau developed the American Community Survey. This survey will collect long-form data every month and provide tabulations of these data on a yearly basis. In the past, the long-form data were collected only at the time of each decennial census. The American Community Survey will allow the Census Bureau to remove the long form from the 2010 Census, thus reducing operational risks, improving accuracy, and providing more relevant data. After years of development and testing, the American Community Survey is ready for full implementation in FY 2005.

The American Community Survey will provide more timely information for critical economic planning by governments and the private sector. In the current information-based economy, federal, state, tribal, and local decision makers, as well as private business and nongovernmental organizations, need current, reliable, and comparable socioeconomic data to chart the future. The American Community Survey will provide up-to-date profiles of American communities every year beginning in 2006, providing policymakers, planners, and service providers in the public and private sectors with information every year—not just every ten years.

The American Community Survey must begin full implementation in 2005 to provide comparable data at the census tract level by summer of 2010.

The American Community Survey demonstration period began in 1996 in four sites. In 1999, the number of sites was increased to 31 comparison sites. The comparison with Census 2000 was designed to collect several kinds of information necessary to understand the differences between data from the 1999–2001 American Community Survey and data from the 2000 long form. The purpose of the comparison sites was to give a good tract-by-tract comparison between the 1999–2001 American Community Survey cumulated estimates and the Census 2000 long-form estimates and to use these comparisons to identify both the causes of differences and diagnostic variables that tend to predict a certain kind of difference.

In 2000–2004, the Census Bureau conducted supplementary surveys using the American Community Survey methodology. Each of these surveys had a sample of approximately 800,000 residential addresses per year. These surveys were conducted to study the operational feasibility of collecting long-form type data using a different methodology from the decennial census and demonstrate the reliability and stability of state and large area estimates over time.

For 2005–2008, the Census Bureau plans to conduct the American Community Survey in every part of the United States and also in Puerto Rico. In 2005, the Census Bureau will begin full implementation of the American Community Survey by increasing the sample to a total of approximately 250,000 residential addresses per month in the 50 states and the District of Columbia and approximately 3,000 residential addresses per month in Puerto Rico. Data will be collected by mail and Census Bureau staff will follow up with households that do not respond using computer-assisted telephone interviewing (CATI) and computer-assisted personal interviewing (CAPI).

In addition to selecting a sample of residential addresses, the Census Bureau plans to select a sample of group quarters (GQs) and conduct the American Community Survey with a sample of persons within the GQs starting in January 2006. The Census Bureau will also conduct a reinterview operation with a small sample of households and persons in GQs to monitor the quality of data collected during the CAPI.

II. Method of Collection

The Census Bureau will mail questionnaires to households selected for the American Community Survey. For households that do not return a questionnaire, Census Bureau staff will attempt to conduct interviews via CATI. We will also conduct CAPI interviews for a subsample of nonrespondents.

For most types of GQs, Census Bureau field representatives (FRs) will conduct the interviews in person or, if necessary, leave questionnaires and ask respondents to complete.

Information from GQ contacts will be collected via FR interview.

The Census Bureau staff will provide Telephone Questionnaire Assistance (TQA) and if the respondent indicates a desire to answer by telephone, the TQA interviewer conducts the interview.

III. Data

OMB Number: 0607–0810.

Form Number(s): ACS–1, ACS–1 (SP), ACS–1PR, ACS–1PR (SP), ACS–1(GQ), ACS–1(GQ) PR, ACS–3(GQ), ACS–4(GQ), ACS–4(GQ) (SP), ACS–4(GQ) PR, ACS–4(GQ) PR (SP), ACS–290, ACS–290(SP), ACS–290PR, and ACS–290PR (SP).

Type of Review: Regular.

Affected Public: Individuals and households.

Estimated Number of Respondents: During the period of July 2005 through June 2008, we plan to contact the following number of respondents: 9,108,000 residential addresses; 537,500 persons in GQs; and 51,000 contacts in GQs. In addition, 106,000 residential addresses and 14,800 persons in GQs for reinterview will be contacted.

Estimated Time Per Response: Estimates are 38 minutes per residential address, 15 minutes per person in GQs, 25 minutes per contact in GQs, and 10 minutes per residential address and per person in GQs in the reinterview sample.

Estimated Total Annual Burden Hours: The estimate is an annual average of 1,981,386 burden hours.

Estimated Total Annual Cost: Except for their time, there is no cost to respondents.

Respondent Obligation: Mandatory.

Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collections techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the OMB approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–26781 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Government Finance Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 7, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Poyta, Chief, Public Finance Analysis Branch–A, Governments Division, U.S. Bureau of the Census, Washington, DC 20233–6800, (301) 763–1580.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the forms necessary to conduct the public finance program which consists of an annual collection of information and a quinquennial collection in the census years ending in ''2'' and ''7''. During the upcoming three years, we intend to conduct the 2005 and 2006 Annual Survey of Government Finance, and the 2007 Census of Government Finance.

The Annual Survey of State and Local Government Finance collects data on state government finances and estimates of local government revenue, expenditure, debt, and assets, nationally and within state areas. Data are collected for all agencies, departments, and institutions of the fifty state governments and for a sample of all local governments (counties, municipalities, townships, and special districts). Data for school districts are collected under a separate survey. In the census year, equivalent data are collected from all local governments.

This survey is a mail canvass survey with an initial mailing and one follow-up mailing. Telephone follow-up is used to contact non-respondents and, as necessary, to correct apparent errors and incorrect responses. These forms and procedures are similar to those used in previous finance surveys. We are currently in the process of redesigning the finance forms, such that items included in the previous F–21, F–22, and F–28 will now all be included within a new overall F–28 form.

Results of this survey are used by the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts. Other Federal agencies that make frequent use of these data include the U.S. Federal Reserve Board, the Congressional Research Service, the General Accounting Office, and the Department of Justice. Other users include state and local government executives and legislators, policy makers, economists, researchers, and the general public.

II. Method of Collection

Canvass methodology primarily consists of a mail out/mail back questionnaire. Responses will be screened manually, then put into an electronic format. Other methods used to collect data and maximize response include collecting local government data from central state sources, compiling from submitted financial audits, comprehensive financial reports, and public Internet outputs. Also, the finance forms can be completed on the Internet.

III. Data

OMB Number: 0607–0585.

Form Number: F–5, F–5A, F–11, F–12, F–13, F–25, F–28, F–29, F–32, F–42.

Type of Review: Regular.

Affected Public: State and local governments.

Estimated Number of Respondents: 9,753 (annual survey), 45,961 (Census).

Estimated Time Per Response: 2.903 (Annual); 2.37 (Census).

Estimated Total Annual Burden Hours: 28,310.5 (Annual); 108,840.5 (Census).

Estimated Total Annual Cost: Cost to respondents is estimated to be $535,918 (Annual); 2,060,351 (Census).

(**Note—**Based upon the average hourly pay for full-time employment for the financial administration function within the 2002 census of local government employment.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, sections 161 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–26783 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Outside Assessment of DOC Compliance Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction

Act of 1995, Pub. L.104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 7, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via e-mail at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Pamela Woods, Trade Compliance Center, Room 3043, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230; Phone Number: (202) 482–1191.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2003, the Department of Commerce's (DOC's) International Trade Administration (ITA) conducted a bureau-wide Customer Satisfaction Survey covering all ITA program units, related to the citizen-centered objectives of the President's Management Agenda. The results were used to set a baseline for performance metric reporting and tracking and to better understand the customer base it serves. ITA's Market Access and Compliance (MAC) program survey report identified gaps between a high level of customer awareness yet low customer use of fair trade and market access services. Findings also indicated that a substantial customer base is unaware of the specific services that the DOC Compliance Program offers.

In response to the survey findings, MAC is undertaking a customer service analysis to find out in more specific terms and greater detail, what MAC's Trade Compliance Center's (TCC's) customers expectations are. This will enable the TCC to answer: ''What Do Customers Want from the DOC's Compliance Program?'' Information about the TCC can be found on its website at *http://www.export.gov/tcc.*

The purpose of this outside assessment is to obtain customer and potential customer views regarding the DOC Compliance Program to determine:

- If the TCC offers the right set of services to assist U.S. exporters to overcome foreign trade barriers.
- If MAC is aware of exporter needs.
- If the right MAC programs are in place to meet identified needs.
- If MAC services are properly promoted to maximize efficiency and effectiveness.

An enhanced customer satisfaction program or other service improvements might result from this data collection initiative.

II. Method of Collection

The Department of Commerce's (DOC) International Trade Administration (ITA) is making great strides in monitoring ITA's customer satisfaction and advancing a strategic approach to delivering value to its customers. The Trade Agreements Compliance unit has contracted with Charney Research to issue a questionnaire and host focus group interviews to gather strategic feedback from core and target TCC customers. These surveys will assess reactions to MAC's publicly available tools, informational outreach efforts, customer service regarding compliance casework, and new initiatives for exporters.

Contractor will conduct two online focus groups with a total of about two dozen exporting businesses, first, to obtain ''open ended'' qualitative information on foreign trade barrier assistance needs, outreach demands or opportunities, and market access/compliance values from exporting customer base with program/service contact experiences. Subsequently, mass questionnaires yielding at least 250 survey responses will seek to collect ''closed end'' quantitative data about customer base identify among the exporting public, best means to deliver promotional campaigns to the private sector, ways to raise user awareness and interactive engagement, reactions to tools available, and perceptions of TCC program and services offered. Narrative experiences derived from focus group participants will be incorporated into survey questions to validate results and benchmark decision points for government officials.

III. Data

OMB Number: 0625–XXXX.

Form Number: ITA–XXX.

Type of Review: Regular Submission.

Affected Public: U.S. Exporters and their Business Representatives, categorized as either active customers, prospective customers, or untapped customers.

Estimated Number of Respondents: 274.

Estimated Time Per Response: 2 hours for focus group participants and 15 minutes for survey respondents.

Estimated Total Annual Burden Hours: 110.5.

Estimated Total Annual Costs: $7,300.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection 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 forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E4–3500 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–846

Brake Rotors from the People's Republic of China: Initiation of Twelfth New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce received two requests on October 28, 2004, to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''). In accordance with 19 CFR 351.214(d), we are initiating a new shipper review for the companies that requested such a review: Dixion Brake System (Longkou) Ltd. (''Dixion'') and Laizhou Wally Automobile Co., Ltd. (''Wally''), each of which is a producer and exporter of brake rotors from the PRC.

EFFECTIVE DATE: December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Tom Killiam, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3797 or (202) 482–5222, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests on October 28, 2004, from Dixion and Wally in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the PRC, which has an April anniversary month.

Dixion and Wally each identified itself as the producer of the brake rotors it exports. As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), each of the exporters identified above has certified that it did not export brake rotors to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which did export brake rotors during the period of investigation (''POI'') (*see* each company's October 28, 2004, submission). Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv)(A), Dixion and Wally each provided the date of the first sale to an unaffiliated customer in the United States. Dixion and Wally each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States and the volume and date of entry of that shipment.

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 (''the Act''), as amended, and 19 CFR 351.214(b), and based on our analysis of the information and documentation provided with the new shipper review requests, as well as our analysis of proprietary import data from U.S. Customs and Border Protection (''CBP''), we find that Dixion and Wally have each met the requirements for the Department to initiate a new shipper review (for more details, *see* New Shipper Initiation Checklists for Dixion and Wally). Therefore, we are initiating a new shipper review for Dixion and Wally.

In cases involving non–market economies, it is the Department's normal practice to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities (*see Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China*, 68 FR 57875 (October 7, 2003)). Accordingly, we will issue a questionnaire to Dixion and Wally (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that each company is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review with respect to that company will proceed. If, on the other hand, the respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

In accordance with 19 CFR 351.214(g)(1)(i)(B), the period of review (''POR'') for a new shipper review, initiated in the month following the semi–annual anniversary month, will be the six–month period immediately proceeding the semi–annual anniversary month. Therefore, the POR for this new shipper review is:

Antidumping duty new shipper review	Period to be reviewed
PRC: Brake Rotors, A–570–846:.	
Dixion Brake System (Longkou) Ltd.	04/01/04–09/30/04
Laizhou Wally Automobile Co., Ltd.	04/01/04–09/30/04

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Dixion and Wally. This action is in accordance with section 751(a)(2)(B)(iii) of the Act, as amended, and 19 CFR 351.214(e). Because Dixion and Wally has each certified that it both produces and exports the subject merchandise, the sale of which was the basis for its new shipper review request, we will apply the bonding privilege only to entries of subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: November 24, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3478 Filed 12–6–04; 8:45 am]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping duty changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b), Metal One Corporation (Metal One), filed a request for a changed circumstances review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. In response to this request, the Department of Commerce is initiating a changed circumstances review on certain corrosion-resistant carbon steel flat products from Japan with respect to diffusion annealed nickel-plate.

EFFECTIVE DATE: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: George McMahon, Christopher Hargett, or James Terpstra, AD\CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; telephone (202) 482–1167, (202) 482–4161, or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department of Commerce (the Department) published an antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (August 19, 1993). On October 13, 2004, Metal One requested that the Department revoke the antidumping duty order on diffusion annealed nickel-plate featuring totally unalloyed nickel plated coating measuring less than or equal to 8 microns, with both sides of the sheet having a coating of at least 0.2 microns through the initiation of a changed circumstances review.

According to Metal One, revocation with respect to diffusion annealed nickel-plate is warranted because there is minimal alteration to the specifications of the products with respect to the decision by the Department in July 2002 with the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

In response to Metal One's request, the Department is initiating a changed circumstances review with respect to the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan.

Scope of the Order

The products subject to this order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers:

7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')— for example, products which have been beveled or rounded at the edges.

Excluded from the scope of the order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from the scope of the order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (August 19, 1993).

Also excluded from the scope of this order are imports of certain corrosion-resistant carbon steel flat products meeting the following specifications: widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 66848 (December 22, 1997).

Also excluded from the scope of this order are imports of subject merchandise meeting all of the following criteria: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14861 (March 29, 1999).

Also excluded from the scope of this order are: (1) Carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (2) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than

1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 57032 (October 22, 1999).

Also excluded from the scope of the order are imports of doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 65 FR 53983 (September 6, 2000).

Also excluded from the scope of the order are imports of carbon steel flat products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 8778 (February 2, 2001).

Also excluded from the scope of the order are carbon steel flat products meeting the following specifications: (1) Carbon steel flat products measuring 0.975 millimeters in thickness and 8.8 millimeters in width consisting of carbon steel coil (SAE 1012) clad with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9%–11% tin, 9%–11% lead, maximum 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 13%–17% carbon, 13%–17% aromatic polyester, with a balance (approx. 66%–74%) of polytetrafluorethylene (PTFE); and (2) carbon steel flat products measuring 1.02 millimeters in thickness and 10.7 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9%–11% tin, 9%–11% lead, less than 0.35% iron, and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45%–55% lead, 3%–5% molybdenum disulfide, with a balance (approx. 40%–52%) of polytetrafluorethylene (PTFE). *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 15075 (March 15, 2001)

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum. Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 20967 (April 26, 2001).

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 7356 (February 19, 2002).

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004'' (0.10mm) to 0.030'' (0.762mm) and conforming to the following chemical specifications (%): C <= 0.08; Mn <= 0.45; P <= 0.02; S <= 0.02; Al <= 0.15; and Si <= 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/-0.2; Lankford value = <== 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy;

having a coating thickness: top side: nickel-graphite, tin-nickel layer <== 1.0 micrometers; tin layer only <== 0.05 micrometers, nickel-graphite layer only <= 0.2 micrometers, and bottom side: nickel layer <== 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer <== 1.0 micrometers; nickel-graphite layer <== 0.5 micrometers; bottom side: nickel layer <== 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer <== 1.0 micrometers; bottom side: nickel layer <== 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer <== 1.0 micrometers; nickel-phosphorous layer <== 0.1 micrometers; bottom side : nickel layer <== 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer <== 1.0 micrometers; tin layer only <== 0.05 micrometers; bottom side: nickel layer <== 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer <== 1 micrometer; tin layer alone <== 0.05 micrometers; bottom side: nickel layer <== 1.0 micrometer. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 47768 (July 22, 2002).

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 57208 (September 9, 2002).

Also excluded from this order are products meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as ''ASE Iron Flash'' and either: (A) having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened

pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 68 FR 19970 (April 23, 2003).

Merchandise Subject to This Review

Metal One defines certain diffusion annealed nickel-plate as meeting the following specifications:

Short description	Diffusion annealed, non-alloy nickel-plated steel sheet ("cold rolled battery grade sheet" or "CRBG") with an unalloyed nickel plated coating.
Thickness of nickel-plated coating.	0–8 microns with both sides having a coating of at least 0.2 microns.
Thickness of CRBG	0.035 mm to 0.762 mm.
Chemical Specifications:	
Carbon (C)	≤0.03
Manganese (Mn)	≤0.60
Phosphorus (P)	≤0.04
Sulfur (S)	≤0.04
Aluminum (Al)	≤0.15
Silicon (Si)	≤0.10
Mechanical Specifications:	
Tensile strength	≤70 KSI Maximum
Yield	22–55 KSI
Elongation	18% Minimum
Hardness	85–150 Vickers
Grain Type	Equiaxed or Pancake
Grain Size (ASTM)	7–12
Delta r value	±0.3
Lankford value	≥0.7

Initiation of Changed Circumstances Review

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

Section 351.222(g) of the Department's regulations provides that the Department may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation. Section 351.222(g)(2) of the Department's regulations require the Secretary to conduct a changed circumstance review under section 351.216 of the Department's regulations if at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation may exist.

Citing the Department's July 22, 2002, final results of changed circumstances review, Metal One states that producers of the domestic like product to which the part of the order to be revoked pertains previously have expressed a lack of interest in the application of the order to virtually identical products. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 47768 (July 22, 2002). In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant review, therefore, the Department is initiating this changed circumstances review. Given Metal One's assertion, we will consider whether there is interest in continuing the order with respect to the product identified by this review on the part of the U.S. industry.

Public Comment

Interested parties may submit comments which the Department will take into account in the preliminary results of this review. The due date for filing any such comments is no later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(i). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with section 751(b)(4)(B) of the Act and 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated. We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(I)(1) of the Act and section 351.216 of the Department's regulations.

Dated: November 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3527 Filed 12–6–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The period of review for this administrative review is November 1, 2002, through October 31, 2003.

Three companies named in the initiation of this review made no exports or sales of the subject merchandise during the period of review and, consequently, we are rescinding the review for these companies. In addition, we are rescinding our review of a fourth company because the petitioners withdrew their request for a review of that company. We are also rescinding our review of a fifth company because its sale to the United States is not eligible for review. Therefore, this review covers twelve manufacturers/exporters of the subject merchandise.

We preliminarily determine that nine of these companies have made sales in the United States at prices below normal value. Further, we preliminarily determine that the remaining three companies are not entitled to separate rates and have assigned them the rate for the PRC–wide entity.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument.

EFFECTIVE DATE: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Coleen Schoch or Brian Ledgerwood, China/NME Unit, Office of AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4551 or (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 62279. On December 24, 2003, we published the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (68 FR 74550), in which we initiated the 2002–2003 administrative review of the antidumping duty order on fresh garlic from the PRC.

On July 15, 2004, we extended the deadline for the issuance of the preliminary results of the administrative review by 120 days, until November 29, 2004 (69 FR 42418). We are conducting this review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Separate Rates

The Department has treated the PRC as a non–market-economy (NME) country in all past antidumping investigations (see, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)) and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

For the reasons discussed in the section below entitled ''The PRC–Wide Rate and Use of Facts Otherwise Available,'' we have determined that Jinxiang Hongyu Freezing and Storing Co., Ltd. (Hongyu), Linyi Sanshan Import and Export Trading Co., Ltd. (Linyi Sanshan), and Tancheng County Dexing Foods Co., Ltd. (Dexing Foods) do not qualify for a separate rate and are instead part of the PRC entity.

Jinxiang Dong Yun Freezing Storage Co., Ltd. (Dong Yun), Fook Huat Tong Kee Pte., Ltd. (FHTK), Huaiyang Hongda Dehydrated Vegetable Company (Hongda), Jinan Yipin Corporation, Ltd. (Jinan Yipin), Linshu Dading Private Agricultural Products Co., Ltd. (Linshu Dading), Sunny Import & Export Limited (Sunny), Taian Ziyang Food Co., Ltd (Ziyang), Jining Trans–High Trading Co., Ltd. (Trans–High), and Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), all provided the requested

separate–rate information in their responses to our original and supplemental questionnaires. Accordingly, consistent with &, 61 FR 56570 (April 30, 1996), we performed separate–rates analyses to determine whether each producer/exporter is independent from government control.

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies.

With the exception of Hongyu, Lingi Sanshan, and Dexing Foods, each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the ''Foreign Trade Law of the People's Republic of China'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations.'' The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, *e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination.

2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

FHTK and Harmoni reported that they are wholly owned by foreign entities; Sunny and Ziyang reported that they are limited–liability companies owned by private investors. Hongda, Dong Yun, Jinan Yipin, Linshu Dading, and Trans–High reported that they are limited–liability companies. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. The questionnaire responses of FHTK, Hongda, Jinan Yipin, Trans–High, Dong Yun, Linshu Dading, Sunny, Ziyang, and Harmoni do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Consequently, we preliminarily determine that FHTK, Hongda, Jinan Yipin, Trans–High, Dong Yun, Linshu Dading, Sunny, Ziyang, and Harmoni have met the criteria for the application of a separate rate.

Partial Rescission of Administrative Review

In response to our December 30, 2003, letter requesting quantity and value information, three companies responded that they had made no exports of the subject merchandise during the period of review (POR). These companies were Clipper Manufacturing Ltd. (Clipper), Shandong Heze International Trade and Developing Co. (Shandong Heze), and Shanghai Ever Rich Trade Company (Ever Rich). These individual responses are discussed in and attached to the *Questionnaire Response Memorandum to Laurie Parkhill*, dated November 29, 2004 (*Questionnaire Response Memo*). Each of the companies responded that they were not producers or exporters of the subject merchandise during the POR. We examined CBP data to confirm that none of them was listed as a manufacturer or exporter of the subject merchandise on entries during the POR. In addition, there is no information on the record to indicate that these companies had sales or exports of subject merchandise during the POR. As a result, we find that Clipper, Shandong Heze, and Ever Rich made no entries, exports, or sales of the subject merchandise during the POR that are subject to the administrative review. Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding our review with respect to these three companies.

On January 13, 2004, the petitioners withdrew their request for an administrative review of Xiangcheng Yisheng Foodstuffs Co. (Yisheng). Therefore, we are rescinding our review of Yisheng for this POR, pursuant to 19 CFR 351.213(d)(1).

We are also rescinding our review of H&T Trading Company (H&T). H&T requested a new shipper review and administrative review at the same time. In the course of our initial examination of the new shipper request, we discovered that H&T was a Hong Kong–based exporter that purchased the subject merchandise from a Chinese supplier, Jining Jinshan. Additional information demonstrated that Jining Jinshan had knowledge H&T would export the subject merchandise it purchased to the United States. Pursuant to section 772(a) of the Act, the first party in the chain of distribution with knowledge of its U.S. destination is the appropriate party to review. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Intent to Rescind Administrative Review in Part*, 68 FR 4758, 4759 (January 30, 2003). Because of this knowledge and the fact that the sale between Jining Jinshan and H&T was the first non–intra-NME sale in the chain of distribution, the transaction between Jining Jinshan and H&T is the appropriate basis for determining the export price. Therefore, review of H&T is not appropriate and the Department is now rescinding its initiation of the review of H&T. Further, the Department did not receive a request for an administrative review of Jining Jinshan prior to or during the anniversary month of the publication of the antidumping duty order. See 19 CFR 351.214(d). See *Memorandum from Mark Ross to Laurie Parkhill Regarding Intent to Rescind the Administrative Review with Respect to H&T Trading Company* (January 29, 2004).

The PRC–Wide Rate and Use of Facts Otherwise Available

All respondents were given the opportunity to respond to the Department's questionnaire. As explained above, we received questionnaire responses from FHTK, Hongda, Jinan Yipin, Trans–High, Dong Yun, Linshu Dading, Sunny, Ziyang,

and Harmoni and we have calculated a separate rate for each of these companies. The PRC–wide rate applies to all entries of subject merchandise except for entries from companies that have received their own rate based on the final results of a prior segment of this proceeding (*e.g.*, Jinan Yipin). As discussed below, we have decided to treat Hongyu, Linyi Sanshan, and Dexing Foods as part of the PRC–wide entity.

Hongyu, Linyi Sanshan, and Dexing Foods did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, or (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, under section 782(c) of the Act, a respondent has the responsibility not only to notify the Department if it is unable to provide requested information but also to provide a ''full explanation and suggested alternative forms.'' Because Hongyu, Linyi Sanshan, and Dexing Foods did not respond to the questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, the use of total facts available is appropriate. See, *e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/ Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103–316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less–than-fair–value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

On December 30, 2003, the Department issued its antidumping duty questionnaire to Hongyu, Linyi Sanshan, and Dexing Foods. We confirmed that the questionnaires we sent to Hongyu and Linyi Sanshan were delivered and accepted on January 6, 2004. We also confirmed that a representative of Dexing Foods picked up its questionnaire from the main Commerce building. See *Questionnaire Response Memo*. Because they did not provide responses to the Department's questionnaire, the Department is unable to determine whether Hongyu, Linyi Sanshan, and Dexing Foods are eligible for a separate rate. Thus, Hongyu, Linyi Sanshan, and Dexing Foods have not rebutted the presumption of government control and are presumed to be part of the PRC entity.

The PRC entity (including Hongyu, Linyi Sanshan, and Dexing Foods) failed to cooperate to the best of its ability in this administrative review, thus making the use of an adverse inference appropriate. Therefore, in accordance with the Department's practice, as adverse facts available, we have preliminarily assigned to the PRC entity the rate of 376.67 percent.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To corroborate information, the Department examines whether it is both reliable and relevant. Throughout the history of this proceeding, the highest rate ever determined is 376.67 percent; it is currently the PRC–wide rate and was calculated based on information contained in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated, to the extent practicable, for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' See *TRBs*, 61 FR at 57392. See also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate we are using for this review is the rate currently applicable to Hongyu, Linyi Sanshan, Dexing Foods, and all exporters subject to the PRC–wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise exported by Hongyu, Linyi Sanshan, and Dexing Foods we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Export Price

For FHTK, Hongda, Trans–High, Dong Yun, Linshu Dading, Sunny, and Ziyang we based the U.S. price on export price (EP), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior

to importation and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For FHTK, we made no adjustments to the gross unit price.

For Hongda, we deducted foreign inland freight, international freight, and marine insurance from the gross unit price, in accordance with section 772(c) of the Act.

For Trans–High, we deducted foreign inland freight and foreign brokerage and handling expenses from the gross unit price, in accordance with section 772(c) of the Act.

For Dong Yun, we deducted foreign inland freight from production facility to port of exit, brokerage and handling expenses, international freight, and marine insurance expenses.

For Linshu Dading, we deducted foreign inland freight, foreign brokerage and handling expenses, international ocean freight, marine insurance, U.S. brokerage and handling, U.S. import duties, and U.S. inland freight expenses from the gross unit price, in accordance with section 772(c) of the Act.

For Sunny, we made deductions, where appropriate, of foreign inland freight, foreign brokerage and handling, international ocean freight, U.S. brokerage and handling, import duties, U.S. warehousing expenses, demurrage charges, and U.S. inland freight expenses from the gross unit price, in accordance with section 772(c) of the Act.

For Ziyang, we deducted foreign inland freight and foreign brokerage and handling expenses from the gross unit price, in accordance with section 772(c) of the Act.

As all foreign inland freight, foreign warehousing, foreign brokerage and handling, and marine insurance expenses (where applicable) were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (see ''Factors of Production'' section below for further discussion). Where applicable, we used the reported expense for international freight because the respondents used market–economy freight carriers and paid in a market–economy currency. See ''Memorandum to the File'' regarding the factors valuation for the preliminary results of the administrative review (November 29, 2004) (*FOP Memorandum*).

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated the CEP for Jinan Yipin and Harmoni because the sales were made by their U.S. affiliates to unaffiliated U.S. customers. We based CEP on packed, delivered, or ex–warehouse prices to the first unaffiliated purchaser in the United States.

For Jinan Yipin, we made adjustments to the gross unit price for foreign inland freight from processing facility to port of exit, international ocean freight, U.S. inland freight from port to customer, other U.S. transportation expenses, U.S. brokerage and handling expenses, U.S. warehousing expenses, and U.S. import duties.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses, credit expenses, billing adjustments, inventory carrying costs and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

For Harmoni, we made deductions, where appropriate, from the gross unit price to account for movement expenses, foreign inland freight from plant to distribution warehouse, foreign brokerage and handling, international ocean freight, and U.S. brokerage and handling expenses.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including credit expenses, commissions, inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Because some movement expenses were provided by NME companies, we valued those charges based on surrogate values in India. See *FOP Memorandum*.

For a more detailed explanation of the company–specific adjustments that we made in the calculation of the dumping margins for these preliminary results, see the company–specific preliminary results analysis memoranda, dated November 29, 2004, on file in the Central Records Unit (CRU), Room B–099.

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Factor Valuations'' section below.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum to Laurie Parkhill from Ron Lorentzen* regarding the request for a list of surrogate countries (June 18, 2004). In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We have used India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. We have obtained and relied upon publicly available information. See *Memorandum to Laurie Parkhill Re: Selection of Surrogate Country* (November 29, 2004).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review and a new shipper review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

2. Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate normal value using each of the factors of production (FOPs) that a respondent consumes in the production of a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the factors of production is

outweighed by the resources, time, and effort such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. See, *e.g., Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China*, 59 FR 66895–01 (December 28, 1994).

Also, there are circumstances in which valuing the FOPs used to yield an intermediate product would lead to an inaccurate result because the Department would not be able to account for a significant element of cost adequately in the overall factors buildup. In this situation, the Department would also value the intermediate input directly. For example, in a recent case, the Department determined that, if it were to value the respondent's factors used in extracting iron ore, an input to wire rod, it would not account sufficiently for the associated capital costs, given that the surrogate company it used for valuing overhead did not have mining operation. See *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002), and *Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001).

In other cases, after careful consideration of the record, the Department has determined that valuing the intermediate input for the production of subject merchandise will lead to a more accurate result than valuing the individual FOPs. See *Certain Frozen Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value* 68 FR 498, 449 (January 31, 2003), and *Certain Frozen Fillets from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 68 FR 37116 (June 16, 2003).

In this review, we determine that it is appropriate to apply a modified FOP methodology with respect to certain respondents. We conducted a full analysis of the information put on the record by the interested parties and conducted independent research into standard garlic–growing procedures in the PRC. See *Memorandum from Steve Williams to the File Re: Research on Chinese Production and Costs* (November 29, 2004) (*Research Memo*). Based on the information discussed in this memo, as well as all the information currently on the record, the divergent usage rates provided by certain respondents do not appear to be realistic or credible.

More specifically, the Department has determined that the FOPs pertaining to the usage of pesticides, herbicides, and/or seed by certain respondents were extremely questionable and, in some instances, not credible. Two internet–published articles regarding garlic production in the PRC, *Garlic Production Technology Regulations*, produced by the Kuming Tong Safe Science and Technology Company, and *Environmentally Safe Garlic Production Technology Regulations*, produced by Hebei Standards, provided objective ranges for the common commercial usage of these particular factors. See *Research Memo* at Attachments 1 and 2. In addition, the Department observed major discrepancies among the FOPs reported by different respondents. The Department also found large differences in the water–usage factors reported by certain respondents located in the same area, but it could not find reliable third–party data with which to compare the factors. It is the Department's position that, if FOPs reported to the Department appear highly improbable and lack credibility, it has an obligation to address the resultant inadequacy in its calculations.

In light of the above, the Department finds that the FOP methodology is insufficient to provide an accurate result for certain respondents, based on the unreliability of their reported FOP usage rates. In order to calculate a more accurate margin for these companies, the Department has chosen to apply the intermediate–product FOP methodology to those respondents with questionable FOPs. The respondents affected are Trans–High, Ziyang, Dong Yun, FHTK, and Hongda. For a complete explanation of the Department's analysis, see *Memorandum from Edward Yang to Barbara E. Tillman Re: Modification of Factors–of-Production Methodology* (November 29, 2004).

The Department is re-opening the record of this segment to the interested parties for 21 days after the publication of these preliminary results in order to obtain additional independent third–party information regarding the disparate usage rates which these five respondents have provided. The Department will fully consider any additional information before completing the final results of this administrative review.

With respect to the remaining respondents, we find that the standard FOP analysis remains appropriate. See *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 3 (concerning the application of a modified analysis only to certain respondents, as appropriate).

3. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a FOP methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. Except as discussed above, we used FOPs reported by the respondents for materials, energy, labor, and packing. We valued all the input factors using publicly available, published information, as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

4. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on FOPs reported by the respondents for the POR. To calculate normal value, we multiplied the reported per–unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shortest reported distance from the domestic supplier to the factory and Indian surrogate values. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). We converted prices reported in Indian rupees (Rs) to US dollars (USDs) using the average exchange rate obtained from the official Import Administration Web site (*http://ia.ita.doc.gov/exchange/india.txt*). For a detailed description of all the surrogate values we used, see the FOP Memorandum.

For those Indian rupee values not contemporaneous with the POR, we

adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*. Surrogate–value data or sources to obtain such data were obtained from the petitioners, the respondents, and the Department's research.

Except as specified below, we valued raw material inputs using the weighted–average unit import values derived from the *World Trade Atlas*, provided by the Global Trade Information Services, Inc. The source of these values contemporaneous with the POR, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. We valued garlic seed based on pricing data from the *NHRDF News Letter*, published by India's National Horticultural Research and Development Foundation. We valued diesel fuel based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued electricity based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (First Quarter, 2003). We valued water using the water tariff rate reported on the Municipal Corporation of Greater Mumbai's Web site. See *http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm.*

The respondents reported packing inputs consisting of plastic nets/mesh bags, paper cartons, plastic packing bands, tape, wood used for producing pallets, nails used for producing pallets, plastic jars, plastic jar lids, nitrogen gas, antiseptic, metal clips, bubble wrap, labels, glue, and cardboard. All of these inputs were valued using import data from the *World Trade Atlas* that covered the POR.

For labor, consistent with 19 CFR 351.408(c)(3), we used the most recent PRC regression–based wage rate that appears on the website for Import Administration (*http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm*). The source of the wage–rate data for the Import Administration's Web site is the International Labor Organization's *Yearbook of Labour Statistics 2002* (Geneva, 2002), chapter 5B: Wages in Manufacturing.

For land, we used the value published in the Punjab State Development Report. We valued cold storage using the surrogate electricity value if the cold–storage facility was located at the production facility. If the respondent's cold storage was located off–site, we used a value based on a rate from ''Local traders to import generator fitted containers,'' an article from Dawn Wire Service (May 19, 1995).

The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that sprouts are a by–product of garlic and deducted an offset amount from normal value. As a surrogate value for the sale of sprouts in the PRC, we used an average of Indian wholesale prices for green onions published by the Azadpur Agricultural Produce Marketing Committee in its February 17, 2003, March 21, 2003, April 25, 2003, and May 30, 2003, *Azadpur Agricultural Produce Marketing Committee Bulletins*.

We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the POR. We valued foreign brokerage and handling charges based on a value calculated for the LTFV investigation of certain hot–rolled carbon steel flat products from India. For ocean freight, we used the value provided by Linshu Dading from Maersk Sealand (*www.maersksealand.com*) in its November 1, 2002, through April 30, 2003, new shipper review and this administrative review for the movement of containers from the PRC to the east and west coasts of the United States. We used these quotes to calculate a surrogate freight rate for each coast. For marine insurance, we relied on rate quotes from RJG Consultants (*www.rjgconsultants.com*) dating from the POR for the movement of refrigerated containers from the PRC to the east and west coasts of the United States.

As discussed in the *FOP Memorandum*, the respondents and the petitioners submitted the publicly available financial information of six companies. We concluded that the financial information of Parry Agro Industries Limited (''Parry Agro''), a tea producer in India, was most representative of the financial experiences of the respondent companies for which we applied the FOP methodology because it produced and processed a product that was not highly processed or preserved prior to its sale. Thus, to value factory overhead, and selling, general and administrative expenses we used rates based on data taken from the 2003/2004 financial statements of Parry Agro. Parry Agro's 2002/2003 and 2003/2004 financial statements did not report a profit. Thus, for purposes of these preliminary results we are applying the profit ratio that was reported on its 2001/2002 financial statements. We also concluded that the financial information of Mahabaleshwar Honey Producers Co–Operative Society Ltd. (''MHPC''), a non–integrated Indian honey processor, was most representative of the financial experiences of the respondents for which we applied the intermediate–product FOP methodology because it is the only company on record which we know with certainty processes an intermediate product. Thus, to value factory overhead, selling, general, and administrative expenses, and profit, we used rates based on data taken from the 2003–2004 financial statements of MHPC. See the *FOP Memorandum* for a more complete discussion of the Department's analysis.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period November 1, 2002, through October 31, 2003:

FRESH GARLIC FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/Exporter	Weighted–average percentage margin
Jinan Yipin Corporation, Ltd.*36.75*.	
Jinxiang Dong Yun Freezing Storage Co., Ltd.	101.51
Fook Huat Tong Kee Pte., Ltd.	90.27
Huaiyang Hongda Dehydrated Vegetable Company	33.52
Linshu Dading Private Agricultural Products Co., Ltd.	58.26
Sunny Import & Export Limited	27.24
Taian Ziyang Food Co., Ltd.	61.43
Jining Trans–High Trading Co., Ltd.	26.18
Zhengzhou Harmoni Spice Co., Ltd.	41.28
PRC–wide rate*	376.67

*Includes Jinxiang Hongyu Freezing and Storing Co., Ltd., Linyi Sanshan Import and Export Trading Co., Ltd., and Tancheng County Dexing Foods Co., Ltd.

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after new factual information is submitted for the record. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public

hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of the preliminary results of this review in the **Federal Register**. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Extension of Time for the Final Results of Administrative Review

The issues in these preliminary results of review present a number of complex factual and legal questions pertaining to the Department's methods of calculating the antidumping duties in this case. Therefore, it is not practicable to complete the review within the time limits mandated by section 751(a)(3)(A) of the Act. Consequently, we are extending the time limit for the completion of the final results of this review, including our analysis of issues raised in any case or rebuttal briefs, until May 30, 2005. See section 751(a)(3) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review. With respect to CEP sales for which entered values were reported, for these preliminary results we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each applicable importer. For duty–assessment rates calculated on this basis, we will direct the CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the applicable importer's/customer's entries during the review period.

With respect to sales for which entered values were not reported, for these preliminary results, we divided the total dumping margins for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. For assessment amounts calculated on this basis, we will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise in each of that importer's/customer's entries during the review period.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by the respondents, the cash–deposit rate will be that established in the final results of review; (2) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 376.67 percent; (3) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(3) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3477 Filed 12–6–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Certain Hot–Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by United States Steel Corporation, a domestic interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (hot–rolled steel) from Romania. The period of review (POR) is November 1, 2002, through October 31, 2003.

We preliminarily find that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on the subject merchandise that was exported by Ispat Sidex S.A. (Ispat Sidex) and its subsidiary, Sidex Trading S.R.L. (Sidex Trading), and entered during the POR.

EFFECTIVE DATE: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published an antidumping duty order on hot–rolled steel from Romania. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Romania*, 66 FR 59566 (November 29, 2001) (*Amended Determination and Order*). On November 3, 2003, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 62279 (November 3, 2003). On November 28, 2003, in accordance with 19 CFR 351.213(b)(1), the petitioner requested a review of Ispat Sidex, a

producer/exporter of hot–rolled steel from Romania.

On December 24, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on hot–rolled steel from Romania covering the period November 1, 2002, through October 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 74550 (December 24, 2003). On July 12, 2004, the Department published a notice extending the deadline for the issuance of the preliminary results by 120 days until no later than November 29, 2004. *See Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 41785 (July 12, 2004). We are conducting this review under Section 751(a) of the Tariff Act of 1930, as amended (the Act).

The petitioner requested an administrative review of Ispat Sidex. Sidex Trading is Ispat Sidex's subsidiary trading company. Ispat Sidex and Sidex Trading submitted a consolidated response for this review. We consider Sidex Trading to be part of Ispat Sidex and are thus treating these two companies as a single entity. See Memorandum to File: Treatment of Ispat Sidex S.A. and its subsidiary, Sidex Trading S.R.L., as a single entity (November 29, 2004).

Romania's designation as a non–market-economy (NME) country remained in effect until January 1, 2003.[1] Since the first two months of the POR fell before Romania's graduation to market–economy status and the last ten months of this POR came after its graduation, in its antidumping questionnaire to Ispat Sidex, dated January 26, 2004, the Department determined that it would treat Romania as an NME country from November 1, 2002, through December 31, 2002, and a market–economy (ME) country from January 1, 2003, through October 31, 2003. Ispat Sidex stated in its February 23, 2004, response to the Department's ME Section A questionnaire that it made no sales of subject merchandise during the 10–month ME period. In a separate February 23, 2004, submission, Ispat Sidex provided documentation to support its claim that it sold no subject merchandise during the ME portion of the POR. The Department corroborated this claim using exporter–specific CBP import data. *See* Decision Memorandum to Gary Taverman (March 9, 2004) available in the Department's Central Records Unit, room B099, of the main Commerce building (CRU). Therefore, in the section of this notice entitled *Preliminary Results of the Review*, we have calculated a weighted–average dumping margin reflecting the margin we calculated for the NME portion of the POR because we found no sales of subject merchandise during the ME portion of the POR. This weighted–average figure thus represents the margin of dumping for the entire POR.

Scope of the Order

The products covered by the order are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included within the scope are vacuum degassed, fully stabilized steels (commonly referred to as interstitial–free (IF) steels), high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the order unless otherwise excluded. The following products, by way of example, are outside or are specifically excluded from the scope:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506). Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is classified in the HTSUS at the following subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60,

[1] *In Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market-economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003. See Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania-Non-Market Economy Status Review (March 10, 2003).

7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. As stated above, since Romania was classified as an NME country until January 1, 2003, we are treating Romania as an NME country for the first two months of the POR, from November 1, 2002, through December 31, 2002.

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Under this test, exporters in NME countries are entitled to separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes the following: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589.

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to exports by Ispat Sidex and Sidex Trading.

With respect to *de jure* control, Ispat Sidex is part of the LNM Group, a private joint–stock company organized under the Romanian Commercial Companies Law No. 31/1990, as amended. Ispat Sidex was privatized on November 16, 2001, when LNM Holdings N.V. finalized its purchase of the majority share capital of Ispat Sidex. During the POR, Ispat Sidex was publicly traded on the Romanian stock exchange. Ispat Sidex has provided the Department with a list of its major stockholders that, in addition to LNM Holdings N.V., includes Moldova Financial Investments Company and several individual shareholders with holdings of less than one percent of Ispat Sidex's total shares. Sidex Trading is a limited–liability trading company organized under the Romanian Commercial Companies Law, Law No. 31/1990, as amended.

Ispat Sidex has placed on the record documents to demonstrate the absence of *de jure* control including its list of shareholders, business license (''Certificat de Inregistrare''), and translations of relevant Romanian commercial laws, including the Romanian Commercial Companies Law, Law No. 31/1990, the Trade Registry Law, Law No. 26/1990, and various government ordinances related to the company's privatization and tax status. We analyzed these laws and found that they establish the absence of *de jure* control during the POR. These Romanian laws provide Ispat Sidex with the right to establish business organizations for the purpose of conducting any lawful commercial activity, including the export of subject merchandise, provided that the company registers with the government. The activities of Ispat Sidex are limited only by its own articles of incorporation and by–laws, which establish the scope of Ispat Sidex's business activities. Ispat Sidex's by–laws allow the company to engage in a broad range of activities related to the sale of hot–rolled steel, including exporting. There are no business or export licenses required or granted by the government, and the company's business license does not indicate the existence of any special entitlements. See pages A–NME–8 to A–NME–9 of Ispat Sidex's February 23, 2004, submission.

With respect to *de facto* control, according to its questionnaire response, the management of Ispat Sidex controls Ispat Sidex, making all decisions concerning budget, sales and pricing subject to review by the company's ''council of administration'' (Ispat Sidex's board of directors). Sidex Trading is a subsidiary of Ispat Sidex and is controlled by its president who is appointed by the Ispat Sidex council of administration. Ispat Sidex has indicated that neither it nor Sidex Trading has any relationship with national, provincial, or local governments, including ministries or offices of those governments. Ispat Sidex reported the following: 1) It sets prices for merchandise sold to the United States based on negotiations with customers and these prices are not subject to review by any government organization; 2) it does not coordinate with other exporters or producers to set the price or determine to which market companies sell subject merchandise; 3) the export sales manager of Sidex Trading and Ispat Sidex's export manager have the authority to make export sales; 4) during its two–year term the Ispat Sidex council of administration approves the hiring of key officials, approves the disposition of assets over a certain level, and proposes the general budget; 5) the general assembly of shareholders elects the general director of Ispat Sidex, who in turn appoints the executive directors from the ranks of Ispat Sidex employees; 6) Ispat Sidex's executive directors have broad management responsibilities which include the approval and execution of contracts, payments to

suppliers, and other normal business operations; 7) Ispat Sidex and Sidex Trading control how their export revenues are used without restrictions from outside the companies; 8) Ispat Sidex and Sidex Trading hold the bank accounts in which their export revenues are deposited in their respective names; 9) Ispat Sidex's council of administration and Sidex Trading's president have access to their respective export revenue accounts; 10) Ispat Sidex and Sidex Trading calculate their profits in accordance with international accounting standards and do not report export profits separately in their respective accounting records; 11) the Ispat Sidex general assembly of shareholders meets annually to review the previous year's results and vote on the following year's budget; 12) Ispat Sidex and Sidex Trading can deposit their foreign currency earnings from sales of subject merchandise freely in their respective accounts and there are no requirements that the two companies sell any of their foreign currency earnings to the Romanian government.

Therefore, based on the information provided, we preliminarily determine that there was an absence of *de facto* government control over the export functions of Ispat Sidex and Sidex Trading.

Export Price

Because Ispat Sidex sold the subject merchandise through its subsidiary, Sidex Trading, to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the price to unaffiliated purchasers. From this price, we deducted amounts for foreign inland freight and foreign brokerage and handling, pursuant to section 772(c)(2)(A) of the Act. We valued these deductions using surrogate values. We selected Egypt as the primary surrogate country for the reasons explained in the ''Normal Value'' section of this notice. For the deductions of foreign inland freight and foreign brokerage and handling, we used Egyptian surrogate values because these services were provided by Romanian companies and paid in Romanian lei. For certain U.S. sales for which it was appropriate, we also deducted international freight, U.S. brokerage and handling and U.S. customs duties pursuant to section 772(c)(2)(A) of the Act.

Normal Value

As discussed above, the Department is treating Romania as an NME country for the period November 1, 2002, through December 31, 2002. Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using a factors–of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home–market prices, third–country prices, or constructed value, we calculated NV based on a factors–of-production methodology in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country factors–of-production prices to determine NV, section 773(c)(4) of the Act requires that we use values from a market–economy (surrogate) country that is at a level of economic development comparable to that of Romania and is a significant producer of comparable merchandise. We have determined that the Philippines, Ecuador, Egypt, Algeria, El Salvador, and the Dominican Republic are market–economy countries at a comparable level of economic development to that of Romania. *See* March 10, 2004, memorandum from Ron Lorentzen to Gary Taverman which is available in the CRU. In addition, we have found that Egypt is a significant producer of comparable merchandise, i.e., hot–rolled steel. *See* Memorandum to File from Paul Stolz, dated November 29, 2004, which is on file in the CRU. We have chosen Egypt as the primary surrogate country. Pursuant to 19 CFR 351.408(c)(2), we selected, where possible, publicly available values from Egypt which were average non–export values, representative of a range of prices within the POR or most contemporaneous with the POR, product–specific, and tax–exclusive. Where we did not have reliable Egyptian values we used values for inputs from the Philippines, which also produces comparable products to the subject merchandise. Because some of the data were not contemporaneous with the POR, we adjusted the data to the POR using the wholesale price index (WPI) published by the International Monetary Fund. Also, where we have relied upon import values, we have excluded imports from South Korea, Thailand, and Indonesia. The Department has found that these countries maintain broadly available, non–industry-specific export subsidies and that the existence of these subsidies provides sufficient reason to believe or suspect that export prices from these countries are distorted. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 69 FR 61790 (October 21, 2004) as discussed in accompanying Issues and Decision Memorandum at Comment 5. Our practice of excluding subsidized prices has been upheld in *China National Machinery Import and Export Corporation v. United States and the Timken Company*, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd*, 104 Fed. Appx. 183 (Fed. Cir. 2004).

Material Inputs and Surrogate Values

To the extent non–aberrational and contemporaneous data were available, we valued material inputs and packing material using imports statistics from the Egyptian import statistical data for 2002 from the Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS), the Egyptian government's official statistical agency. For certain material inputs and packing material, we used import data for 2002 from *UN Commodity Trade Statistics for 2002* (U.N. Comtrade) or the *World Trade Atlas* (WTA). Where a material input was purchased in a market–economy currency from a market–economy supplier, we valued all of the input at the actual purchase price in accordance with 19 CFR 351.408(c)(1). Consistent with *Certain Cut–to-Length Carbon Steel Plate From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part*, 69 FR 54108 (September 7, 2004), to value limestone we used Filipino import statistics for 2001 from the WTA. For a complete analysis of surrogate values, see the November 29, 2004, memorandum, Factors of Production Valuation for Preliminary Results (Valuation Memorandum), available in the CRU.

To value electricity we used the 2001 electricity rates for Egypt reported on the website of the International Trade Administration under ''Trade Information Center.'' *See www.web.ita.doc.gov/ticwebsite/neweb.nsf/*. We based the value of natural gas on publically available Egyptian pricing data from an article dated July 18, 2002, published at *http://www.rigzone.com/news/article.asp?a_id=3846*. These data reflect market prices for natural gas in Egypt and were used in our most recent final results for seamless steel pipe from

Romania. *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Administrative Review*, 68 FR 54418 (September 17, 2003), and corresponding Issues and Decisions Memorandum at Comment 2. We adjusted the value for natural gas for inflation. For injected coal powder, we used Egyptian import data from CAPMAS for 2002.

For labor, we used the Romanian regression–based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003. *See* www.ia.ita.doc.gov/wages/index.html. Because of the variability of wage rates in countries with similar per–capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression–based wage rate. The source of these wage–rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2002*, International Labour Office (Geneva: 2002), Chapter 5B: Wages in Manufacturing.

We valued by–products using Egyptian import data for 2002 from CAPMAS and import data from U.N. Comtrade.

We based our calculation of depreciation, selling, general and administrative (SG&A) expenses, and profit from the financial statements of Alexandria National Iron and Steel Works Company (AISC), an Egyptian producer of products identical to the subject merchandise. We were unable to calculate a specific non–depreciation overhead based on the AISC financial statements because the statements did not itemize expenses associated with non–depreciation overhead. Therefore, to estimate AISC's amount of non–depreciation overhead expense, we have calculated a company–specific non–depreciation overhead rate (non–depreciation overhead amounts/cost of sales) from the financial statements of Ispat Annaba SPA, an Algerian producer of products identical to the subject merchandise. We selected the non–depreciation overhead rate from the Algerian company because it was the best available information on the record for the preliminary results. We will consider alternative surrogate non–depreciation overhead rates for the final results of this review.

For these preliminary results, we multiplied AISC's total cost of goods sold by the non–depreciation overhead rate from Ispat Annaba (5.02 percent) to derive a value for AISC's non–depreciation overhead. We added the derived AISC non–depreciation overhead value to AISC's reported depreciation expense to obtain a value for total factory overhead. We subtracted this factory overhead amount from AISC's cost of goods sold to obtain a value for total material, labor, and energy expenses, and then we divided the total factory overhead by total material, labor, and energy expenses to calculate the factory overhead ratio we used in our calculation of normal value.

To value truck freight rates, we used a 1999 rate (adjusted for inflation) provided by a trucking company located in Egypt. For rail transportation, we used rail rates in Egypt, information also used in *Titanium Sponge from the Republic of Kazakhstan: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 66169 (November 24, 1999), which we obtained from a 1999 letter from the Egyptian International House. We adjusted these rail rates for inflation. For barge transportation, we valued barge rates using an average of Egyptian rates from an Egyptian freight forwarder for steel coil and coal in bulk from Alexandria to Hulwan, Egypt, as adjusted for inflation.

For brokerage and handling, we used a 1999 rate (adjusted for inflation) provided by a trucking and shipping company located in Alexandria, Egypt.

For additional analysis regarding the surrogate values we have applied, *see* the Valuation Memorandum available in the CRU.

Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period November 1, 2002, through October 31, 2003:

Exporter/manufacturer	Weighted–average margin percentage
Ispat Sidex	33.47

Within five days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Parties are also requested to submit such arguments, and public versions thereof, with an electronic version on a diskette.

Duty Absorption

On January 23, 2004, United States Steel Corporation requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides that, if requested, the Department will determine during an administrative review initiated two or four years after the publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer. In this case, Ispat Sidex sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act. Because this review was initiated two years after the publication of the antidumping duty order, we will make a duty–absorption determination in this segment of the proceeding. Accordingly, we have requested that Ispat Sidex provide information on duty absorption by December 6, 2004. Based on Ispat Sidex's response, we will make a preliminary determination on duty absorption and provide parties with an opportunity to comment prior to the completion of the final results of this review.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review. Ispat Sidex reported all of its sales during the POR as export–price sales. Ispat Sidex provided entered values for only a portion of these reported sales.

With respect to export–price sales for which entered values were reported, for these preliminary results we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each applicable importer. See 19 CFR 351.212(b). For duty–assessment rates calculated on this basis, we will direct the CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the applicable importer's/customer's entries during the review period.

With respect to export–price sales for which entered values were not reported, for these preliminary results we divided the total dumping margins for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. For assessment amounts calculated on this basis, we will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise in each of that importer's/customer's entries during the review period.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results for all shipments of hot–rolled steel from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for Ispat Sidex, which has a separate rate, the cash deposit rate will be the company–specific rate established in the final results of review; (2) for all other Romanian exporters, the cash deposit rate will be the Romania–wide rate, 88.62 percent, from the *Amended Determination and Order*; (3) for non–Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3526 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China; Extension of Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its final results in the sunset review of the antidumping duty order on petroleum wax candles from the People's Republic of China. Based on adequate responses from the domestic interested parties and an inadequate response from respondent interested parties, the Department is conducting an expedited sunset review to determine whether revocation of the antidumping order would lead to the continuation or recurrence of dumping. As a result of this extension, the Department intends to issue final results of this expedited sunset review on or about December 10, 2004.

EFFECTIVE DATES: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

Extension of Final Results: In accordance with section 751(c)(5)(B), the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated. As set forth in 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended (''the Act''), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order, as is the case in this proceeding. Therefore, the Department has determined, pursuant to section 751(c)(5)(C)(v) of the Act, that the second sunset review of the antidumping duty order on petroleum wax candles from the People's Republic of China is extraordinarily complicated and requires additional time to complete its analysis. The Department's final results of review in this case were scheduled for November 30, 2004. The Department will extend the deadline in this proceeding and, as a result, intends to issue the final results on or about December 10, 2004 in accordance with section 751(c)(5)(B).

Dated: November 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3479 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Notice of NAFTA Binational Panel's Final Decision, Amended Final Results of Full Sunset Review and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 19, 2004, the NAFTA Secretariat published in the **Federal Register** a notice of completion of panel review of the final remand redetermination made by the U.S. Department of Commerce concerning the full sunset review of the antidumping duty order on pure magnesium from Canada. *See North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Completion of Panel Review*, 69 FR 67703 (November 19, 2004). As there is now a final and conclusive decision in this case, we are amending the final results of the full sunset review and revoking the antidumping duty order on pure magnesium from Canada.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this order. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Background

On August 2, 1999, the Department of Commerce (''the Department'') initiated

a sunset review of the antidumping duty order on pure magnesium from Canada pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Five-Year (''Sunset'') Reviews*, 64 FR 41915 (August 2, 1999). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department conducted a full sunset review. As a result of this review, on July 5, 2000, the Department, pursuant to sections 751(c) and 752 of the Act, determined that revocation of the antidumping duty order on pure magnesium from Canada is likely to lead to continuation or recurrence of dumping. *See Pure Magnesium From Canada; Final Results of Full Sunset Review*, 65 FR 41436 (July 5, 2000). Subsequent to the Department's *Final Results*, respondents filed a complaint before the NAFTA Panel challenging these results. On October 23, 2002, Norsk Hydro Canada, Inc. (''NHCI'') requested that the Department continue the suspension of liquidation for subject entries made on or after the effective date of the sunset review, pursuant to 516A(g)(5)(C) of the Act. The Department granted this request on January 28, 2003, and suspended liquidation effective August 1, 2000. *See* Letter from John Brinkmann to Gregory S. McCue (January 28, 2003).

On March 27, 2002, the NAFTA Panel issued an Order and Opinion. *See Pure Magnesium from Canada*, Secretariat File No. USA–CDA–00–1904–06, (''*First Remand Order*''). In the *First Remand Order*, the Panel instructed the Department to reconsider (1) the claim that ''good cause'' existed to consider ''other price, cost market, or economic factors'' in determining the likelihood that dumping would continue or recur; and (2) its decision to report the investigation rate as the margin of dumping likely to prevail if the order were revoked. *Id.* at 34. The Department responded to the *First Remand Order* on May 28, 2002, when the Department released final results of determination pursuant to NAFTA Panel remand of the sunset review of the antidumping duty order on pure magnesium from Canada (''*First Remand''*).

On October 15, 2002, the NAFTA Panel issued its second remand redetermination in the Canadian magnesium antidumping order sunset case, remanding to the Department its redetermination in the *First Remand. See Decision of the Panel Concerning the Remand Determination by the Department of Commerce, Pure Magnesium From Canada*, File USA–CDA–00–1904–07 (Oct. 15, 2002), at 3, (''*Second Remand Order*''). In the *Second Remand Order*, the Panel ordered the Department: (1) To consider other factors, such as the exchange rate, market share, below cost sales, and zero margins, in its determination of likelihood of dumping; (2) to reconsider the normal preference for reporting the investigation rate; and (3) to determine whether it was an appropriate case in which to supplement the record. *Second Remand Order* at 11–12. The Panel concluded that the parties had waived the right to raise the issue, for which they wanted to supplement the record, because the issue had not been raised before; nevertheless, the Panel instructed the Department to obtain the views of the parties and make a determination on reopening the record for this additional information.

Id. at 10–12. On January 28, 2003, the Department filed its second redetermination on remand with the NAFTA Secretariat (''*Second Remand*''). The Department decided that the other factors set forth by the parties were insufficient to warrant a negative likelihood determination, and it also determined it properly reported the investigation rate. *Second Remand* at 7–14, 15–16. The Department obtained the views of the parties and decided, based on 19 CFR 351.218(d)(4), not to reopen the record. *Id.* at 6.

On April 28, 2003, the NAFTA Panel remanded an affirmative determination by the Department with instructions to revoke the antidumping order on pure magnesium from Canada. *Pure Magnesium from Canada*, Decision of the Panel Concerning the Results of the Second Redetermination by the Department of Commerce, USA–CDA–00–1904–06 (April 28, 2003) (''*Third Panel Order*''). In its third decision, the Panel, disregarding its previous conclusion that the issue had been waived, rejected the Department's application of the deadline in 19 CFR 351.218(d)(4), even though the Panel did not find that the Department acted inconsistently with the rule. *Third Panel Order*, at 5. The Panel reviewed the Department's likelihood determination at length, evaluating the Department's factual conclusions in light of six findings of fact extrapolated by the Panel. *Third Panel Order* at 12–20. Based on its own factual findings and the non-record evidence that one company, NHCI, had switched its production focus from pure to alloy magnesium, the Panel concluded dumping would not recur if the order were revoked.

Id. at 20–21.

The Panel subsequently amended its order to require the Department to take action not inconsistent with its decision within 15 days. Order of the Panel (June 24, 2003). The Department issued notice that the panel decisions were not in harmony with the Department's original determination and continued suspension of liquidation of the subject merchandise, pending any ECC proceedings. *Pure Magnesium from Canada: NAFTA Panel Decision*, 68 FR 42004 (July 16, 2003). The Panel entered a Notice of Final Panel Action on August 25, 2003.

On September 24, 2003, pursuant to Article 1904.13 and Annex 1904.13 of the NAFTA, and Rules 37 through 39 of the Rules of Procedure for Article 1904 Extraordinary Challenge Committees (''ECC''), the Government of the United States timely requested formation of an ECC to review issues raised by the Panel's decisions. On October 5, 2004, the ECC found that the Panel manifestly exceeded its powers by failing to apply the correct standard of review and that such action materially affected the Panel's decision; however, it also found that the Panel's action did not threaten the integrity of the binational panel review process, and affirmed the Panel's decision. *Pure Magnesium from Canada*, Decision and Order of the Extraordinary Challenge Committee, No. ECC–2003–1904–01USA (October 5, 2004) at 11.

On November 19, 2004, the NAFTA Secretariat published in the **Federal Register** its Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration. *See North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Completion of Panel Review*, 69 FR 67703 (November 19, 2004). Therefore, because there is a final Panel decision in this case, the Department is amending the final sunset review and revoking the antidumping duty order on pure magnesium from Canada.

Effective Date of Revocation

The Department is revoking the antidumping duty order on pure magnesium from Canada effective August 1, 2000, the effective date of the original full sunset review, pursuant to 516A(g)(5)(C).

Pursuant to sections 751(d)(3) and 751(d)(2) of the Act, and 19 CFR 351.222(i)(2)(ii), the Department will instruct Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after August 1, 2000

and liquidate without regard to antidumping duties.

This notice also serves as the only 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 of the Department's regulations. Timely notification of 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3528 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Stainless Steel Bar From Germany: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from Germany. The period of review is March 1, 2003, through February 29, 2004. This review covers imports of stainless steel bar from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made at less than normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to liquidate entries of stainless steel bar from BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH in accordance with the final results of review.

We invite interested parties to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1276.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department of Commerce (''the Department'') published an antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany,* 67 FR 10382 (March 7, 2002). On October 10, 2003, the Department published an amended antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Antidumping Duty Orders: Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom,* 68 FR 58660 (October 10, 2003). On June 14, 2004, the Department published the final results of the first administrative review of the antidumping duty order on stainless steel bar from Germany. *See Notice of Final Results of Administrative Review: Stainless Steel Bar from Germany,* 69 FR 32982 (June 14, 2004) (''*SSBar First Review*'').

On March 1, 2004, the Department published its *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 69 FR 9584 (March 1, 2004). On March 30, in accordance with 19 CFR 351.213(b), the Department received a timely request for review from BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively ''BGH''), four affiliated German producers of the subject merchandise. On March 31, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., and Electralloy Corp. requested the Department conduct an administrative review of BGH.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on April 28, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 69 FR 23170 (April 28, 2004). The period of review (''POR'') is March 1, 2003, through February 29, 2004.

An antidumping duty questionnaire was sent to BGH on May 18, 2004. We received timely responses from BGH on June 24 and July 2, 2004. We issued a supplemental questionnaire to BGH on September 14, 2004. We received a response from BGH on October 12, 2004.

On June 7, 2004, BGH requested that it be relieved from the requirement to report affiliated party resales because sales of the foreign like product to affiliated parties during the POR constituted less than five percent of total sales of the foreign like product. On June 16, 2004, we granted BGH's request in accordance with 19 CFR 351.403(d). *See* Memorandum to Susan Kuhbach, ''Reporting of BGH's Home Market Sales by an Affiliated Party,'' dated June 16, 2004, which is in the Department's Central Records Unit, located in Room B–099 of the main Department building (''CRU'').

Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Fair Value Comparisons

To determine whether sales of stainless steel bar by BGH to the United States were made at less than normal value (''NV''), we compared the export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (''the Act''), we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product, where there were sales made in the ordinary course of trade, as discussed in the ''Normal Value'' section of this notice.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by BGH covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared BGH's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. (For further details, *see* the ''Normal Value'' section of this notice.)

We compared U.S. sales to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to the POR until two months after the POR. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, consistent with the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany,* 67 FR 3159 (January 23, 2002) and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany,* 67 FR 10382 (March 7, 2002) (collectively ''*LTFV Final*''), we matched foreign like products based on the physical characteristics reported by BGH in the following order: general type of finish; grade; remelting process; type of final finishing operation; shape; and size.

Export Price

We calculated EP in accordance with section 772(a) of the Act because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States and because constructed export price methodology was not otherwise warranted. We based EP on the packed ex-works or delivered price to unaffiliated purchasers in the United States. We identified the correct starting price by accounting for billing adjustments and early payment discounts. We also made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included foreign inland freight, international freight, U.S. other transportation expense, marine insurance, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared BGH's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with 19 CFR 351.404(b)(2) of the Department's regulations. Because BGH's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

B. Affiliated-Party Transactions and Arm's-Length Test

The Department's practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. BGH made sales in the home market to affiliated and unaffiliated customers. To test whether the sales to affiliates were made at arm's-length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production

Because we disregarded sales below the cost of production (''COP'') in the last completed review for BGH (*see SSBar First Review*), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we requested that BGH respond to section D, the cost of production/constructed value section of the questionnaire.

We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of BGH's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (''G&A''), interest expenses, and home market packing costs. We relied on the COP information provided by BGH, except in the following instances.

BGH calculated its G&A expense ratio by dividing the total company-wide G&A expenses, which included BGH's operating companies' and parent companies' G&A expenses, by the total company-wide cost of manufacture (''COM''), which included BGH's operating companies' COM and its parent companies' COM using its parent companies' cost of goods sold. Consistent with the *LTFV Final* and *SSBar First Review,* we recalculated BGH's G&A ratio by excluding its parent companies' cost of goods sold from the calculation of the G&A expense ratio.

We also recalculated BGH's interest expense ratio by including all of BGH's consolidated exchange gains and losses on foreign currency in the calculation of the interest expense ratio. *See Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review,* 68 FR 47543 (August 11, 2003) and accompanying Issues and Decision Memorandum at Comment 19.

For further explanation about these adjustments, *see* Memorandum from

Case Analyst to File, ''Preliminary Results Calculation Memorandum for BGH Group, Inc.,'' dated December 1, 2004, located in the Department's CRU.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. The prices were exclusive of any applicable movement charges, billing adjustments, commissions, discounts, rebates, interest revenue and indirect selling expenses. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of the respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that in such instances the below cost sales represent ''substantial quantities'' within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales are made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of the comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1).

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[3] we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data make it practical, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

BGH reported 4 channels of distribution in the home market. Channels 1 and 2 were made-to-order sales to distributors and end-users, respectively. Channels 3 and 4 were sales from inventory to distributors and end-users, respectively. We examined the selling functions reported by BGH for each of these channels and found that made-to-order sales in channels 1 and 2 were similar with respect to sales process, freight services, inventory maintenance, and warranty service. We also found that because channel 3 sales were made from inventory, they differed from channel 1 and 2 made-to-order sales with respect to inventory services, but that they were otherwise similar to channels 1 and 2 with respect to sales process, freight services, and warranty service. While inventory maintenance function for channel 3 sales was distinguishable from channels 1 and 2, this selling function difference was not significant in that sales reported in channel 3 were made in large lot sizes similar to those in channels 1 and 2, indicating that inventory handling on these sales was minimal. As such, we find that this selling function difference alone was not sufficient to distinguish channel 3 sales from channels 1 and 2. Therefore, we found that channels of distribution 1, 2 and 3 were sufficiently similar to constitute a distinct level of trade (LOTH 1).

BGH included in distribution channel 4 any sale with a length of under 3 meters or having ''other revenue'' reported on the invoice. BGH considered these channel 4 sales to be a separate LOT because of service center selling functions provided for bar sold through this channel. ''Other revenue'' is a separate charge appearing on the invoice for special services performed by the inventory warehouse, such as cutting, grinding, special finishing and additional testing. Because BGH claims that ''other revenue'' is sometimes not listed separately on the invoice when service center functions have been performed, but instead is included as part of the selling price, BGH used length of the bars sold as an alternate indicator of when service center functions were performed. Specifically, BGH claims that because the minimum production length for rolled or forged bars is 3 meters, any sale from inventory having a length of less than 3 meters, whether or not ''other revenue'' is included on the invoice, must undergo sawing in the company's warehouse/service center. We agree with BGH that the ''other revenue'' charged on certain sales is indicative of service center functions and that these sales are distinct from LOTH 1 with respect to sales process and inventory maintenance, and as such constitute a separate level of trade, LOTH 2. However, we disagree with BGH that any sale with a reported length of less than 3 meters, and for which no ''other revenue'' has been reported separately on the invoice, has been subject to service center functions. First, while BGH may, as claimed, have standard production lengths of greater than 3 meters in length, BGH has not supported this position on the record.

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: Sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on Constructed Value (''CV''), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

Second, BGH's methodology for identifying sales of less than 3 meters does not reflect the length of each bar sold. In order to obtain bar length, BGH applied a formula to the total weight of all bars for each sales transaction and used this total length to establish whether a sale was above or below 3 meters in length. Therefore, if one sale was comprised of 5 bars of 2 meters each, the reported length would be 10 meters. While this methodology may understate the actual length of each bar sold, we find it to be an imprecise methodology for establishing bar length. Third, using the home market sales database provided by BGH, we compared sales transactions on specific invoices and found instances where, for transactions on the same invoice of the same bar above and below 3 meters, the same invoice price was charged, indicating that ''other revenue'' had not been added to the invoice price for bars less than 3 meters. Therefore, for distribution channel 4 sales with no ''other revenue'' separately reported on the invoice, we preliminarily determine that these sales are similar to LOTH 1 sales with respect to sales process, freight service and warranty service.

BGH reported EP sales through two channels of distribution, made-to-order sales to distributors (channel 1) and warehouse inventory sales to distributors (channel 3). We examined the chain of distribution and the selling activities associated with sales through these channels and found them to be similar with respect to sales process, freight services, and warranty service. Therefore, we determine that the two EP channels of distribution constitute a single LOT (LOTU 1).

The EP LOT differed considerably from LOTH 2 with respect to sales process and warehousing/inventory maintenance. However, the EP LOT is similar to LOTH 1 with respect to sales process, freight services, warehouse/inventory maintenance and warranty service. Consequently, we matched the EP sales to sales at the same LOT in the home market (LOTH 1). Where no matches at the same LOT were possible, we matched to sales in LOTH 2 and we made a LOT adjustment. *See* section 773(a)(7)(A) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the ex-works or delivered price to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We identified the correct starting price by accounting for billing adjustments, early payment discounts, other discounts, and rebates. In accordance with section 773(a)(6)(B)(ii) of the Act, we made deductions for inland freight and inland insurance. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or on U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, where appropriate, we made adjustments for differences in circumstances of sale (''COS'') in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 by deducting direct selling expenses incurred on comparison market sales (credit expenses less interest revenue), and adding U.S. direct selling expenses (credit expenses and commissions). Where payment dates were unreported, we recalculated the credit expenses using the last date of new information received in place of actual date of payment. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, where appropriate, we made an adjustment for differences in LOT under section 773(a)(7)(A) of the Act and 19 CFR 351.412(b)–(e).

Preliminary Results of the Review

We preliminarily find that the following dumping margin exists for the period March 1, 2003, through February 29, 2004.

Manufacturer/exporter	Margin
BGH	0.01 *de minimis*

Assessment Rates

Upon completion of this administrative review, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer (or customer)-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries. To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the entered value of the sales to that importer (or customer). Where an importer (customer)-specific *ad valorem* rate is greater than *de minimis* and the entered value is available, we apply the assessment rate to the entered value of the importer's/customer's entries during the POR. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the entered value is not available, we calculated a per unit assessment rate by aggregating the dumping margins calculated for U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposit Rates

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of stainless steel bar from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the *LTFV Final* investigation, the cash deposit will continue to be the most recent rate

published in the final determination for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this 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 review, the cash deposit rate will be 16.96 percent, the ''all others'' rate established in the *LTFV Final.*

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be 37 days after the publication of this notice, or the first business day thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3529 Filed 12–6–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 3, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on hot-rolled flat-rolled carbon-quality steel (''hot-rolled steel'') from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (Sunset) Reviews,* 69 FR 24118 (May 3, 2004). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited (120-day) sunset review. As a result of this review, the Department finds that revocation of the CVD order would likely lead to continuation or recurrence of subsidies at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATES: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department initiated a sunset review of the CVD order on hot-rolled steel from Brazil pursuant to section 751(c) of the Act. *See* Initiation of Five-Year (Sunset) Reviews, 69 FR 24118 (May 3, 2004). The Department received notices of intent to participate and substantive responses from Nucor Corp. (''Nucor''); Ispat Inland, Inc., and its division Ispat Inland Flat Products (''Ispat Inland''); International Steel Group, Inc. (''International Steel Group''); Gallatin Steel Co. (''Gallatin Steel''); IPSCO Steel Inc. (''IPSCO''); Steel Dynamics, Inc. (''Steel Dynamics''); and United States Steel Corp. (''United States Steel'') (collectively, ''domestic interested parties'') within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations. See* Notice of Gallatin Steel, IPSCO and Steel Dynamics, May 13, 2004; Notice of Nucor, May 6, 2004; Notice of United States Steel, May 18, 2004; Notice of International Steel Group, May 18, 2004; Notice of Ispat Inland, May 14, 2004. All domestic interested parties claimed interested-party status, under section 771(9)(C) of the Act, as U.S. producers of the domestic like product. See Domestic Response of the Domestic Interested Parties (June 2, 2004). Ispat Inland, Gallatin Steel, IPSCO, Steel Dynamics and United States Steel were petitioners in the investigation and have been involved in this proceeding since its inception. *Id.* at 3. According to the domestic interested parties in this review, International Steel Group formed in 2002 and is the successor to the original petitioners that no longer exist: LTV Steel Company, Bethlehem Steel Corporation, and Weirton Steel Corporation. *Id.*

As a result of the lack of respondent participation in this sunset review, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Scope of Review

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.30–0.50%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063-0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000—88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16% Mo 0.21% Max	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.30–0.50%	0.25% Max	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14% V(wt.) 0.10% Max	1.30–1.80% Cb 0.08% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max Nb 0.005% Min	1.40% Max Ca Treated	0.025% Max Al 0.01–0.07%	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses ≤0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this agreement is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under this order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated November 29, 2004, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of countervailable subsidies, the net subsidy likely to prevail were the order revoked, and the nature of the subsidy. 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 the Central Records Unit, room B–099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''December 2004.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the CVD order on hot-rolled steel from Brazil would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Producers/Exporters	Net countervailable subsidy (percent)
Usinas Siderugicas de Minas Gerais and Companhia Siderugica Paulista (''USIMINAS/ COSIPA'')	9.67
Companhia Siderugica Nacional (''CSN'')	6.35
All Others	7.81

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 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3480 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 30, 2004, the U.S. Department of Commerce published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2002 through December 31, 2002. Based on information received since the preliminary results and our analysis of the comments received, we have revised the net subsidy rates for Pasta Zara S.p.A./Pasta Zara 2 S.p.A. and Pastificio Corticella S.p.A./Pastificio Combattenti S.p.A. Therefore, the final results differ from the preliminary results. The final net subsidy rates for the reviewed companies are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller Harig or Andrew Smith, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116 and (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On July 24, 1996, the U.S. Department of Commerce (''the Department'') published a countervailing duty order on certain pasta (''pasta'' or ''subject merchandise'') from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996).

In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: Pastificio Fratelli Pagani

S.p.A. (''Pagani''), Pastificio Corticella S.p.A./Pastificio Combattenti S.p.A. (collectively, ''Corticella/Combattenti''), Pasta Zara S.p.A./Pasta Zara 2 S.p.A. (''Pasta Zara 2'')[1] (collectively ''Pasta Zara/Pasta Zara 2''), Pasta Lensi S.r.l. (''Lensi''),[2] and Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A..

Based on withdrawal of the request for review, we rescinded this administrative review for Pastificio Antonio Pallante S.r.l. (*See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review*, 69 FR 45676 (July 30, 2004) (''*Preliminary Results*'').)

Since the publication of the *Preliminary Results*, case briefs were submitted on August 30, 2004 by Pasta Zara/Pasta Zara 2 and Corticella/Combattenti. The Department did not conduct a hearing in this review because none was requested.

Scope of the Review

Imports covered by this review are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See Memorandum from Eric B. Greynolds to Melissa G. Skinner*, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building.

The merchandise subject to review is currently classifiable under items 1901.90.9095 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See Memorandum from Edward Easton to Richard Moreland*, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See Letter from Susan H. Kuhbach to Barbara P. Sidari*, dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti–circumvention investigation of Barilla S.r.L. (''Barilla''), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997. *See Initiation of Anti–Circumvention Inquiry on Antidumping Duty Order on Certain Pasta From Italy*, 62 FR 65673 (December 15, 1997). On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), circumvention of the antidumping order on pasta from Italy was occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently were repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti–Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Period of Review

The period for which we are measuring subsidies, or POR, is January 1, 2002 through December 31, 2002.

Analysis of Comments Received

All issues raised by the interested parties to this administrative review in the case briefs are addressed in the November 29, 2004 ''Issues and Decision Memorandum'' from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues

[1] During the first part of the period of review (calendar year 2002) (''POR''), Pasta Zara 2 was named Societa per Azioni Pasta Giulia S.p.A; on September 9, 2002, the company changed its name to Pasta Zara 2.

[2] Lensi is the successor-in-interest to IAPC Italia S.r.l. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy*, 68 FR 41553 (July 14, 2003).

raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Italy.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes to the Preliminary Results

Based on our analysis of the comments submitted in the case briefs, we have made changes in our calculation of the net subsidy rates for Pasta Zara/Pasta Zara 2 and Corticella/Combattenti. These changes are discussed in the relevant section of the *Decision Memorandum*.

Final Results of Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer/exporter covered by this administrative review. For the period January 1, 2002 through December 31, 2002, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below:

Producer/Exporter	Net Subsidy Rate
Pastificio Fratelli Pagani S.p.A.	0.06 percent (de minimis)
Pastificio Corticella S.p.A./Pastificio Combattenti S.p.A.	0.09 percent (de minimis)
Pasta Zara S.p.A./Pasta Zara 2 S.p.A./Societa per Azioni Pasta Giulia S.p.A	0.30 percent (de minimis)
Pasta Lensi S.r.l.	0.00 percent (de minimis)
Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A.	0.16 percent (de minimis)

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

Because the countervailing duty rates for all of the above–noted companies are less than 0.5 percent and, consequently, *de minimis*, we will instruct U.S. Customs and Border Protection (''Customs'') to liquidate entries during the period January 1, 2002 through December 31, 2002 without regard to countervailing duties in accordance with 19 CFR 351.106(c)(1). The Department will issue appropriate instructions directly to Customs within 15 days of publication of these final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), the Department has directed Customs to assess countervailing duties on all entries between January 1, 2002 and December 31, 2002 at the rates in effect at the time of entry.

The Department will also instruct Customs to collect cash deposits of estimated countervailing duties for the above–noted companies at the above–noted rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non–reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company–specific or all–others rate applicable to the company. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Corticella/Combattenti and *Sgravi* Benefits

Comment 2: Benefit for Pasta Zara/Pasta Zara 2's First Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) (''FRIE'') Loan

Comment 3: Benefit for Pasta Zara 2's Second Law 908/55 FRIE Loan

[FR Doc. E4–3476 Filed 12–6–04; 8:45 am]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Panel Decision

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision.

SUMMARY: On December 1, 2004, the binational panel issued its decision in the review of the final results of the affirmative countervailing duty re-determination on remand made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–03) affirmed in part and remanded in part the re-determination of the Department of Commerce. The Department will return the determination on remand no later than January 24, 2005. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national

courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision: On December 1, 2004, the Binational Panel remanded the Department of Commerce's final countervailing duty determination on remand. The following issues were remanded to the Department:

(1) The Department is directed to reinstate the C$3.46 profit figure in computing the log-seller profit in Alberta.

(2) The Department is directed to include in the Quebec benchmarks the volume of logs for which the Syndicate data does not indicate prices, or to explain why it should not do so, or why it cannot do so.

(3) The Department is directed to adjust the Quebec benchmarks by deducting log-seller profit from both the import and Syndicate prices.

(4) The Department is directed to consider the conversion factor to be used to convert Syndicate prices in Quebec to cubic meters where the data is reported in other forms.

(5) The Department is directed to include Balsam Fir and Larch in the Ontario SPF benchmark.

(6) The Department is directed to correct the clerical error in the import statistics for Ontario which grossly inflated the benchmark.

(7) The Department is directed to examine the issue of log-seller profit in Ontario. If the Department determines that it is appropriate to use a surrogate profit figure from some other province, it is directed to explain its choice.

(8) The Department is directed to redetermine the net benefit for Ontario.

(9) The Department is directed to recalculate the British Columbia benchmark taking into account actual market conditions in that province. In so doing, the Department must perform separate benefit calculations for the Coast and for the Interior using data available for each region.

(10) The Department is directed to apply recalculated profit figures for Alberta and Quebec in calculating British Columbia stumpage benefits.

(11) The Department is directed to eliminate the import data in the surrogate benchmarks for Saskatchewan and Manitoba.

(12) If the Department's benchmark calculations result in a higher benefit for Quebec or Ontario, the Department is directed to exclude additional sales that might erroneously be attributed to Bois Omega.

The Investigating Authority is directed to complete its remand determination by January 24, 2005.

Dated: December 2, 2004.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E4–3512 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2004–P–050]

Changes to Patent Fees Under the Consolidated Appropriations Act, 2005

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: If enacted in its present form, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), will revise patent fees in general, including maintenance fees, and will provide for a search fee and examination fee that are separate from the filing fee, during fiscal years 2005 and 2006. This notice provides advance notice to the public of the changes to patent fees in the Consolidated Appropriations Act. In particular, with respect to maintenance fees, this notice advises the public to remain vigilant as to the effective date of the Consolidated Appropriations Act and to consider paying maintenance fees early or taking other appropriate steps to ensure that their patents remain in force.

FOR FURTHER INFORMATION CONTACT: The Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7701 or by electronic mail message over the Internet at *PatentPractice@USPTO.gov*.

SUPPLEMENTARY INFORMATION: H.R. 4818, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act) would, upon enactment, revise certain patent application and maintenance fees; provide separate fees for a basic filing fee, a search fee, and an examination fee; and require an additional fee for any patent application whose specification and drawings exceed 100 sheets of paper (application size fee).

The new patent fees become effective on the date the President signs the Consolidated Appropriations Act. The fees will remain in effect during the remainder of fiscal year 2005 and during fiscal year 2006. The USPTO expects the Consolidated Appropriations Act to be signed by the President in December.

The patent maintenance fee changes apply to any maintenance fee payment made on or after the date of enactment of the Consolidated Appropriations Act, regardless of the filing or issue date of the patent for which the fee is submitted. The revised maintenance fees take effect on the date the Consolidated Appropriations Act is signed by the President. For example, if the President signs the Consolidated Appropriations Act at noon on December 8, 2004, any maintenance fee paid at any time on December 8, 2004, or thereafter, would be subject to the revised maintenance fee amounts set forth in the Consolidated Appropriations Act, regardless of whether the President signs the Consolidated Appropriations Act before or after the payment is made. For this reason, persons paying the second and third maintenance fees may want to consider: (1) Authorizing payment of any deficiency from a deposit account; or (2) paying the maintenance fee with sufficient time remaining in the payment window to allow for a timely payment of any fee deficiency due to the enactment of the Consolidated Appropriations Act. This is especially important if paying via the USPTO's Internet Web site since there may be some delay in updating maintenance fee information on the USPTO's Office of Finance On-Line Shopping Web page and maintenance fees must be timely paid in the appropriate amount to avoid expiration of a patent.

The new basic filing fee (or national fee), search fee, examination fee, and application size fee will apply to national patent applications filed on or after the date of enactment of the Consolidated Appropriations Act and to international patent applications in which the basic national fee is paid on or after the date of enactment. The filing fee (or national fee), search fee, and examination fee are due on filing. If the filing fee (or national fee) is paid on filing, but the search fee and/or examination fee is missing, the USPTO will issue a notice requiring that any missing search fee and examination fee (but no surcharge until further notice) be paid within a specified period of time in order to avoid abandonment. Thus, if at least the full basic filing fee in effect on the date of enactment of the Consolidated Appropriations Act is paid

on or after the date of enactment of the Consolidated Appropriations Act, the USPTO will issue a notice requiring any balance of the search fee and the examination fee (but no surcharge).

Since the changes to the patent fees take effect on the date the Consolidated Appropriations Act is signed by the President, there will be applications filed on or after the effective date that may not include the revised fees set forth in the Consolidated Appropriations Act. For example, if the President signs the Consolidated Appropriations Act at noon on December 8, 2004, any application filed (before or after noon) on December 8, 2004, or thereafter, would be subject to the basic filing fee, search fee, examination fee and the revised patent application fees set forth in the Consolidated Appropriations Act.

The remaining patent application fee changes, including the excess claims fees, extension of time fees, and appeal fees, apply to any fee payment made on or after the date of enactment of the Consolidated Appropriations Act, regardless of the filing date of the application for which the fee is submitted.

The USPTO will post additional information on its Internet Web site (*http://www.uspto.gov*) as soon as possible after enactment of the Consolidated Appropriations Act. USPTO customers should monitor the USPTO's Internet Web site frequently for current patent fee information.

Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required.

Dated: December 2, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–26853 Filed 12–3–04; 9:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

December 2, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of other synthetic filament fabric (Category 620).

SUMMARY: The Committee has received a request from the National Council of Textile Organizations, the National Textile Association, the American Manufacturing Trade Action Coalition, and UNITE HERE! (Requestors) asking the Committee to limit imports from China of other synthetic filament fabric in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On November 8, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and apparel safeguard action on imports from China of other synthetic filament fabric (Category 620) on the ground that an anticipated increase in imports of other synthetic filament fabric after January 1, 2005, threatens to disrupt the U.S. market for other synthetic filament fabric. For a list of the products included in Category 620, see ''Textile Correlation'' at **http://otexa.ita.doc/corr.htm**. The request is available at **http://otexa.ita.doc.gov/Safeguard_intro.htm**. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for other synthetic filament fabric and, if so, the role of Chinese-origin other synthetic filament fabric in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on January 1, 2005: (1) Whether imports of other synthetic filament fabric from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin other synthetic filament fabric to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of other synthetic filament fabric, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin other synthetic filament fabric that is presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) The level and the extent of any recent change in

inventories of other synthetic filament fabric in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of other synthetic filament fabric, and whether actual or anticipated imports of Chinese-origin other synthetic filament fabric are likely to affect the development and production efforts of the U.S. other synthetic fabric industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of other synthetic filament fabric as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than January 6, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin other synthetic filament fabric threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3530 Filed 12–6–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent and U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the U.S. Patent Applications and U.S. Patent for non-exclusive, exclusive, or partially exclusive licensing listed under **SUPPLEMENTARY INFORMATION**. The invention listed has been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Intellectual Property attorney, U.S. Army Research, Development, and Engineering Command, Attn: AMSRD–CC (Bldg. E4435), Aberdeen Proving Ground, MD 21010–5424, phone: (410) 436–1158: fax: 410–436–2534 or e-mail: *U.John.Biffoni@us.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Title:* ''Collapsing and Telescoping Baffles for Stirred Vessels.''

Description: The present invention relates to the field of baffles for use in stirred vessels, such as reaction calorimeters. Specifically, the invention is a set of removable baffles, forming a system which need not be manufactured with the vessel itself. Due to its construction, the baffle system of this invention is removable and replaceable.

Patent Number: 6,769,800.

Issue Date: August 3, 2004.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–26804 Filed 12–6–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: November 30, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study of Single Sex Schools.

Frequency: One time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,280.

Burden Hours: 1,088.

Abstract: The purpose of the Study of Single Sex Schools is to describe what is currently known about the characteristics and effects of single sex schooling on student achievement and other outcomes, especially for at-risk students. Data collection includes surveys of teachers and principals at all existing single sex schools (n=18), and site visit interviews and observations at a sample of 6 single sex schools and six matched comparison schools (coeducational).

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2617. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–3475 Filed 12–6–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Tuesday, December 14, 2004, 10 a.m.–12 Noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005. (Metro Stop: Metro Center.)

AGENDA: The Commission will receive updates and reports on the following: Title II Requirements Payments; Budget Update; EAC's 2005 HAVA Implementation Action Plan; Other Programmatic Updates and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Gracia M. Hillman,

Vice-Chair, U.S. Election Assistance Commission.

[FR Doc. 04–26947 Filed 12–3–04; 12:37 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–169–004]

Alliance Pipeline L.P.; Notice of Application

December 1, 2004.

On November 23, 2004, Alliance Pipeline L.P. (Alliance), pursuant to section 3 of the Natural Gas Act (NGA), and Subparts B and C of Part 153 of the Federal Energy Regulatory Commission's (Commission) regulations under the NGA filed an application to amend its Presidential Permit (Permit) to reflect the actual peak day capacity of the authorized border-crossing facilities between the United States and Canada. The current Permit, issued on June 13, 2002, 99 FERC 61,313 (2002), indicates a peak capacity of 1.8 Billion cubic feet per day (Bcfd). The proposed amendment would have the Permit reflect actual operating experience and results of recent engineering analyses not currently reflected in the Permit, all as more fully set forth in the application, which is on file with the Commission, and open for public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Alliance requests that the Commission amend the Presidential Permit to reflect the actual peak day capacity, a flow which could occur in very limited circumstances, of 1.875 Bcfd, inclusive of fuel, for the authorized border-crossing facilities. No new rates or rate schedules are proposed. The facilities will continue to provide improved access to supplies of natural gas and improve the dependability of international energy trade. No changes are proposed to the currently authorized facilities.

Questions regarding the application may be directed to: Dennis Prince, Vice President, Transportation Services and Business Development, Alliance Pipeline L.P., 6385 Old Shady Oak Road, Eden Prairie, Minnesota 55344–3252 or call (952) 983–1000; and, William A. Williams and James P. White at Fulbright & Jaworski L.L.P., Market Square, 801 Pennsylvania Avenue, NW., Washington, DC 20004–2604 or call (202) 662–0200.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to

the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: December 21, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3503 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–123]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 30, 2004.

Take notice that on November 24, 2004, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to an existing tariff sheet implementing a negotiated rate agreement between ANR and the Apache Corporation.

ANR requests that the Commission accept and approve the subject tariff sheet to be effective December 1, 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 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 in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3496 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–134]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 1, 2004.

Take notice that on November 22, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and TPS Dell, L.L.C. CEGT states that it has entered into an amended firm service agreement to provide service to this Shipper to be effective January 1, 2005.

CEGT states it also tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 879, to be effective January 1, 2005.

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 in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3502 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–161–033]

Columbia Gas Transmission Corporation; Notice of Refund Report

November 30, 2004.

Take notice that on November 19, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing its report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia's Docket No. RP91–161 settlement period.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 December 7, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3492 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–29–000, CP05–30–000, CP05–31–000]

Freebird Gas Storage, LLC.; Notice of Application

November 29, 2004.

On November 18, 2004, Freebird Gas Storage LLC (Freebird) filed an application pursuant to section 7(c) of the Natural Gas Act and Parts 284 and 157 of the regulations of the Federal Energy Regulatory Commission (Commission) requesting: (1) A certificate of public convenience and necessity authorizing Freebird to acquire, own and operate the existing East Detroit Storage Facility in Lamar County, Alabama, and to construct, own and operate expanded facilities that will accommodate the injection, storage, and withdrawal of natural gas for redelivery in interstate commerce; (2) a 284 blanket certificate to provided open-access firm and interruptible storage services on be half of others in interstate commerce, with pre-granted abandonment of such services; (3) a 157 blanket certificate to construct, acquire, operate, rearrange and abandon certain facilities; (4) authorization to provide proposed services at market-based rates; and (5) approval of the *pro forma* FERC Gas Tariff contained in Exhibit of the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Jay Burack, MultiFuels LP, 6363 Woodway, Suite 415, Houston, TX 77057, phone (832) 251–8750, or G. Mark Cook Baker Botts L.L.P., The Warner, 1299 Pennsylvania Ave., NW., Washington, DC 20004–2400, phone (202) 639–7700.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3482 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–88–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change To FERC Gas Tariff

November 30, 2004.

Take notice that on November 23, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on December 23, 2004:

First Revised Sheet No. 0
First Revised Sheet No. 2
First Revised Sheet No. 10A
First Revised Sheet No. 33A
Sixth Revised Sheet No. 51
Third Revised Sheet No. 61
Fourth Revised Sheet No. 63
First Revised Sheet No. 65B
Third Revised Sheet No. 141
Fourth Revised Sheet No. 145
Third Revised Sheet No. 149
Fifth Revised Sheet No. 153
Second Revised Sheet No. 156
Fourth Revised Sheet No. 159
Fifth Revised Sheet No. 164
Fourth Revised Sheet No. 171
Fourth Revised Sheet No. 172
Third Revised Sheet No. 175
Sixth Revised Sheet No. 181
Seventh Revised Sheet No. 185
Third Revised Sheet No. 190

Second Revised Sheet No. 191
Third Revised Sheet No. 192
Second Revised Sheet No. 193

Iroquois states that on a periodic basis it reviews the provisions in its tariff for consistency and sentence syntax. Iroquois explains that during a recent review, it identified grammatical and non substantive corrective changes or ''housekeeping'' issues. Iroquois asserts that the majority of these changes reflect recent internal staff restructuring.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

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 in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E4–3491 Filed 12–6–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

November 30, 2004.

Take notice that on November 19, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Substitute Original Sheet No. 6F, to be effective on October 8, 2004.

Iroquois states that the filing is being made to comply with the Commission's order issued November 5, 2004 (109 ¶FERC 61,150) and reflects the period of service under two negotiated rate agreements with Consolidated Edison Company of New York, Inc. (Consolidated Edison). Iroquois requests a waiver of the 30-day notice requirement to permit the tariff sheet to take effect on October 8, 2004, the date the negotiated rate agreements with Consolidated Edison took effect.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas
Secretary.
[FR Doc. E4–3495 Filed 12–6–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–39–001]

ISO New England, Inc.; Notice of Filing

November 30, 2004.

Take notice that on November 19, 2004, ISO New England, Inc. (ISO–New England) filed an application pursuant to section 204 of the Federal Power Act. The application requests that the Commission amend the authorization to issue senior notes previously granted on July 15, 2004, in Docket No. ES04–39–000, to permit ISO–New England to use proceeds from the borrowings for general public utility purposes, including the fund working capital.

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 all the parties to the 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 December 10, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3484 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–85–000]

North Baja Pipeline, LLC; Notice of Limited Case-Specific Waiver

November 30, 2004.

Take notice that on November 19, 2004, North Baja Pipeline, LLC, (NBP) and MGI Supply Ltd., (MGI) tendered for filing a joint petition for a limited case specific waiver and a request for expedited consideration of the competitive bidding procedures of NBP's capacity release tariff in order to allow an assignment of MGI's firm capacity rights following the outcome of a Request For Proposal (RFP) procedure to be conducted by the Mexican Comision Federal de Electricidad (CFE).

In particular, NBP and MGI are requesting an expedited grant of a limited case-specific waiver of the competitive bidding requirement contained in section 284.8 of the Commission's regulations. NBP and MGI request that the waiver be granted in advance of an RFP procedure to be conducted by the CFE, in order to allow MGI to assign all or a portion of its long-term firm negotiated rate capacity to suppliers who successfully bid to supply LNG to certain CFE generation plants.

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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 7, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3490 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–17–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 30, 2004.

Take notice that on November 19, 2004, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Third Revised Sheet No. 403, with an effective date of November 7, 2004.

Northern states that it is filing the above-referenced tariff sheet in compliance with the Commission's order related to certain components of Northern's pro forma service agreements.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3488 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–48–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 30, 2004.

Take notice that on November 24, 2004, Northern Natural Gas Company (Northern) in compliance with the Commission's November 19, 2004, Letter Order in the above referenced docket, tendered for filing an explanation of why it did not propose a permanent tariff change related to its October 29, 2004, request for a waiver

of its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3489 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–109–021]

Southern Star Central Gas Pipeline, Inc.; Notice of Refund Report

November 30, 2004.

Take notice that on November 18, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing, pursuant to Article III, Paragraph D of the Stipulation and Agreement dated January 31, 2001 in Docket No. RP93–109–017, its refund report of environmental proceeds received from third-party insurers.

Southern Star states that it is filing its report of third-party insurance proceeds received during the twelve months ended September 30, 2004. Southern Star further states that because it received no environmental proceeds during this twelve-month period, there will be no refunds made this year.

Southern Star states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 email 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 December 7, 2004

Magalie R. Salas,

Secretary.

[FR Doc. E4–3493 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–020]

Southern Star Central Gas Pipeline, Inc.; Notice of Refund Report

November 30, 2004.

Take notice that, on November 18, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing its interruptible excess refund report for the twelve-month period ending September 2004.

Southern Star states that copies of the filing were served on all jurisdictional customers and interested state commissions, as well as, all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 December 7, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3494 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–012]

Texas Eastern Transmission, LP; Notice of Compliance Filing

November 30, 2004.

Take notice that on November 18, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing a compliance filing pursuant to a Commission's order issued on November 3, 2004, in Docket Nos. RP99–480–010 and RP99–480–011, *Texas Eastern Transmission, LP,* 109 FERC ¶ 61,145 (2004).

Texas Eastern states that, in accordance with Paragraph 6 of the November 3, 2004 Order, Texas Eastern is revising section 1.35A of the General Terms and Conditions of its FERC Gas Tariff to permit Texas Eastern, on a not unduly discriminatory basis, to mutually agree with a shipper to a contractual ROFR in circumstances in which a regulatory ROFR does not automatically apply. Texas Eastern proposes to modify its tariff to provide for a contractual right of first refusal.

Texas Eastern states that copies of the filing were served upon all affected customers of Texas Eastern and interested state commissions, as well as upon all parties on the Commission's official service lists in these proceedings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3481 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–008]

Viking Gas Transmission Company; Notice of Compliance Filing

November 30, 2004.

Take notice that on November 18, 2004, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2005:

Eleventh Revised Sheet No. 5
Ninth Revised Sheet No. 5A
Eleventh Revised Sheet No. 5B
Eighth Revised Sheet No. 5C
Ninth Revised Sheet No. 5D

Viking explains that the filing pertains to a settlement approved by a Commission Letter Order issued on October 23, 2002. 101 FERC ¶ 61,170 (2002).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3486 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–223–000, CP04–293–000, and CP04–358–000]

KeySpan LNG, L.P., Algonquin Gas Transmission, L.L.C.; Notice Of Availability Of The Draft Environmental Impact Statement For The Proposed Keyspan LNG Facility Upgrade Project

November 30, 2004.

The staff of the Federal Energy Regulatory Commission (Commission) has prepared a draft Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) facility upgrade and natural gas pipeline facilities proposed by KeySpan LNG, L.P., (KeySpan LNG) and Algonquin Gas Transmission, L.L.C., (Algonquin) in the above-referenced dockets (collectively referred to as the KeySpan LNG Facility Upgrade Project).

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that if the project is constructed and operated in accordance with appropriate mitigating measures as recommended, and if the facility can be brought into compliance with current federal safety regulations, approval of the proposed project would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives, and requests comments on them.

The proposed facility upgrade would convert the existing KeySpan LNG storage facility to an LNG terminal capable of receiving marine deliveries, increase the facility's existing

vaporization capacity from 150 million cubic feet per day (MMcfd) to 525 MMcfd, augment the supply of LNG to fill the region's LNG storage facilities to meet peak day needs, and provide 375 MMcfd of new, firm, reliable baseload supply of natural gas to Rhode Island and the New England region. In order to provide LNG import and pipeline transportation services, KeySpan LNG requests Commission authorization to upgrade its existing LNG facility and abandon certain facilities that would be replaced by the upgrade; and Algonquin requests Commission authorization to construct, own, and operate natural gas pipeline facilities. The draft EIS evaluates whether the existing peak shaving facility converted into a marine import terminal would comply with the current federal safety standards.

The draft EIS addresses the potential environmental effects of the construction and operation of the following LNG and natural gas pipeline facilities:

- A ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of 71,500 to 145,000 cubic meters (m^3);
- Two 16-inch-diameter liquid unloading arms and a 24-inch-diameter liquid unloading line from the arms to the LNG storage tank;
- Two vapor return blowers, a 12-inch-diameter vapor arm, and an 8-inch-diameter vapor return line;
- Four boil-off-gas compressors and a boil-off gas condenser;
- A two-stage LNG pumping system;
- An indirect fired vaporizer system with a capacity of 375 MMcfd;
- Operations control buildings;
- Ancillary utilities and LNG facilities;
- A 1.44-mile-long 24-inch-diameter natural gas pipeline;
- A receipt point meter station and 30-inch-diameter pig launcher; and
- A 24-inch-diameter tap valve and 30-inch-diameter pig receiver at the point where the new pipeline would tie into Algonquin's existing G–12 Lateral pipeline system.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP04–223–000, *et al.*;
- Label one copy of your comments for the attention of Gas Branch 1, PJ–11.1; and
- Mail your comments so that they will be received in Washington, DC on or before January 24, 2005.

Please note that the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.''

In addition to or in lieu of sending written comments, we invite you to attend the public comment meetings we will conduct in the project area. We will announce in a future notice the location and time of the local public meetings to receive comments on the draft EIS. These meetings will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426; (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3497 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–5–000]

Questar Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Southern System Expansion Project

November 30, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the

natural gas pipeline facilities proposed by Questar Pipeline Company (Questar) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed natural gas pipeline and appurtenant facilities including:

1. Installation of about 18.7 miles of new 24-inch-diameter pipeline in Carbon County, Utah, including pig launchers and receivers, block valves, control headers, cathodic protection systems, and associated crossover piping and valves to interconnect the new pipeline into existing pipelines, as well as;

• Construction of the Fausett Junction Facilities consisting of a 20-inch-diameter pig launcher/receiver, one 24-inch-diameter pig receiver, and two control headers;

• Construction of the Prettyman Tap Facilities consisting of a tap and valve on Questar's proposed pipeline and associated piping to tie into Questar Gas Company's FL 86 Pipeline;

• Construction of one 24-inch-diameter pig launcher, one 24-inch-diameter pig receiver, and one 24-inch-diameter block valve for the new pipeline; and a new filter separator to be constructed on the end of the existing slug catcher located within the existing Price Yard facility;

• Construction of the new 24-inch-diameter Hayes Wash Block Valve for the new pipeline;

• Construction of the Soldier Creek Facilities, consisting of one 24-inch-diameter pig launcher and one 24-inch-diameter block valve for the new pipeline, and one 20-inch-diameter pig launcher and one new 20-inch-diameter pig receiver for Questar's existing ML 40; and

• Cathodic protection facilities for the new pipeline.

2. Installation of the new 6,200 horsepower (hp) Thistle Creek Compressor Station in Utah County, Utah;

3. Installation of the new 9,400 hp Blind Canyon Compressor Station, in Duchesne County, Utah, including a slug catcher, pipeline liquid storage tanks, pig launcher and receiver, and tie-in valves;

4. Modifications to Questar's existing Oak Spring Compressor Station in Carbon County, Utah, consisting of restaging centrifugal compressor units and the addition of a gas cooler, filter/separator, valves, and yard and station piping;

5. Modifications to Questar's existing Greasewood Compressor Station in Rio Blanco County, Colorado, consisting of the installation of two parallel, approximately 750-foot-long segments of new buried piping;

6. Retesting of about 23.5 miles of Questar's existing ML 40 Pipeline between the proposed Blind Canyon Compressor Station and Questar's existing Whitmore Park block valve to increase the MAOP of this segment by approximately 60 psig to approximately 860 psig

The purpose of the proposed facilities would be to expand Questar's southern pipeline system in order to transport an additional 102,000 decatherms (dths) per day of natural gas on a firm basis from the Uinta/Piceance Basin to gas-consuming markets, including power producers, located primarily along the Wasatch Front.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to cooperating agencies, state agencies, a public interest group and a local newspaper.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas Branch 3, PJ11.3.

• Reference Docket No. CP05–5–000; and

• Mail your comments so that they will be received in Washington, DC on or before December 27, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3483 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–8–000]

Starks Gas Storage, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Starks Gas Storage Project and Request for Comments on Environmental Issues

December 1, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Starks Gas Storage Project involving construction and operation of facilities by Starks Gas Storage L.L.C. (Starks) in Calcasieu and Beauregard Parishes, Louisiana.[1] These facilities would consist of converting two existing salt dome caverns to a natural gas storage; one new compressor station; about 35.6 miles or 16-inch and 30-inch-diameter of gas pipeline; about 1.9 miles of 10-inch-diameter brine pipeline; and two salt water disposal (SWD) injection wells (brine disposal). The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Starks provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

[1] Stark's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission(s regulations.

Summary of the Proposed Project

Starks proposes to convert two existing salt dome caverns and associated brine wells ''Starks No. 1'' (PPG–10) and ''Starks No. 2'' (PPG–9) to a natural gas storage facility in Calcasieu Parish, Louisiana. The project would initially utilize Starks No. 1 cavern to store about 13.3 billion cubic feet (Bcf) of natural gas comprised of approximately 8.8 Bcf of working gas and about 4.5 Bcf of cushion gas. The facilities would be designed to allow cycling of the entire storage volume 5 to 6 times per year with injections and withdrawals of approximately 400 million cubic feet per day (MMcfd). Starks No. 2 cavern, to be available about 18 months later, would add 10.4 Bcf of working gas and about 5.3 Bcf of cushion gas. The overall project injection and withdrawal rates would double. The total storage volume of Starks No. 2 cavern would be about 15.6 Bcf. In Docket No. CP05–8–000, Starks proposes the following facilities in Calcasieu Parish, Louisiana unless otherwise specified:

- Convert two existing salt dome caverns and associated brine wells ''Starks No. 1'' (PPG–10) and ''Starks No. 2'' (PPG–9) to a natural gas storage;
- Construct two salt water injection wells (brine disposal);
- Construct one 33,000 horsepower compressor station (Starks Compressor Station);
- Construct Segment 1a—0.68 mile of 16-inch-diameter gas pipeline and a collocated 10-inch diameter brine disposal pipeline from the Starks Compressor Station milepost (MP) west (w) 0.00 to the Starks No. 1 storage cavern to MP w 0.68; and a valve station at MP w 0.27;
- Construct Segment 1b—0.47 mile of a 16 inch-diameter gas pipeline from the Starks Compressor Station (MP 0.0) to the Starks No. 2 storage cavern (MP w 0.47);
- Segment 1c—construct 0.20 mile of 10-inch-diameter brine disposal pipeline from the valve station at MP w 0.27 to the Starks No. 2 storage cavern collocated with Segment 1b from MP w 0.27 to MP w 0.47;
- Construct Segment 2a—construct 1.2 miles of 30-inch-diameter gas pipeline collocated with a 10-inch-diamter brine disposal pipeline from the Starks Compressor Station MP east (e) 0.00 to the SWD injection wells from to MP e 1.21;
- Construct Segment 2b—0.59 mile continuation of the 30-inch-diameter gas pipeline from the SWD injection wells (MP e 1.21) to the Tennessee Gas Pipeline Company (Tennessee) interconnect meter station (MP e 1.80);
- Construct Segment 3a—28.0 miles of 30-inch-diameter gas pipeline from the Tennessee interconnect meter station (MP e 1.80) in Calcasieu Parish, to the Transcontinental Gas Pipe Line Corporation (Transco) interconnect meter station (MP e 29.80) in Beauregard Parish, Louisiana; and
- Construct Segment 3b—3.97 miles of 30-inch-diameter gas pipeline from the Transco pipeline interconnect meter station (MP e 29.80) to the Texas Eastern Transmission, LP pipeline interconnect meter station (MP e 33.77) in Beauregard Parish, Louisiana.

The location of the project facilities is shown in Appendix 1.[2]

Nonjurisdictional Facilities

No non-jurisdictional facilities that will be built as a result of the proposed project.

Land Requirements for Construction

Construction of the proposed pipeline and related facilities would require about 219.6 acres of land. Following construction, about 129.9 acres would be maintained as new pipeline right-of-way, roads, or aboveground facility sites. The remaining 89.7 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.
- Water resources, fisheries, and wetlands.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Starks. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered or threatened species, the Red-cockaded Woodpecker and the American chaff-seed, may occur in the proposed project area.
- A total of about 49.8 acres of known wetlands would be affected by construction and about 30.2 acres of wetlands would be affected by operation of the project. The compressor station would permanently affect about 0.4 acre of wetland and the SWD brine injection wells would permanently affect 0.7 acre of wetlands during operation.
- One domestic drinking water supply well and one public drinking water supply well have been identified within 150 feet of the pipeline route;
- Eighteen waterbodies would be crossed by the pipeline facilities; twelve waterbodies would be crossed by using the horizontal directional drilling method and six waterbodies would be crossed by using the wet ditch method.
- Cultural resources may be affected in the project area.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Nos. CP05–8–000.
- Mail your comments so that they will be received in Washington, DC on or before January 3, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

The Commission staff will conduct a field trip of storage caverns, portions of the pipeline, and related facilities on December 14 through December 16, 2004. Anyone interested in participating in the field trip may attend, but they must provide their own transportation. The staff will start the field trip on December 13, 2004 at approximately 2:00 p.m (CST); and continue Tuesday, December 14, through Wednesday, December 15, 2004, as necessary, at approximately 7:30 a.m. Staff will meet each day in the parking lot of the following hotel: Best Western Executive Hotel, 1200 Pintail, Sulphur, LA 70665, Telephone: (337) 625–9000.

Becoming an Intervenor

In addition to involvement in the EA/EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3511 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 1, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12530–000.

c. *Date filed:* August 26, 2004.

d. *Applicant:* Green Power Development, LLC.

e. *Name of Project:* Allison Lake Project.

f. *Location:* On the Allison Lake and Creek, in Valdez Region, Alaska. No federal facilities or land would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David Ausman, Green Power Development, LLC, 1503 West 33rd Avenue, Anchorage, AL 99503, (907) 258–2419.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12530–000) on any comments, protest, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) A natural lake having a surface area of 243 acres with a storage capacity of 13,400 acre-feet and a normal water surface elevation of 1,345 feet mean sea level, (2) a proposed intake structure, (3) a proposed 10,000-foot-long, 4-foot-diameter steel pipe lined tunnel, (4) a proposed powerhouse containing one generating unit having an installed capacity of 4,950 kilowatts, (5) a proposed 2.5-mile-long transmission line; and (6) appurtenant facilities. The project would have an annual generation of 20.4 megawatt-hours that would be sold to a local utility. The proposed project would operate in a run-of-river mode.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3506 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 1, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12531–000.

c. *Date filed:* August 30, 2004.

d. *Applicant:* City of Stoughton, WI.

e. *Name of Project:* Stoughton Water Power Project.

f. *Location:* On the Yahara River, in Dane County, Wisconsin. No Federal facilities or land would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Karl D. Manthe, City of Stoughton, WI, 515 South Fourth Street, Stoughton, WI 53589, (608) 873–6303, EXT 622.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12531–000) on any comments, protest, or motions filed.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) An existing 200-foot-long, 9-foot-high concrete dam, (2) an existing impoundment having a surface area of 11 acres with storage capacity of 80 acre-feet and a normal water surface elevation of 841.5 feet mean sea level, (3) a proposed intake structure, (4) two proposed 30-foot-long, 5.5-foot-diameter steel penstocks, (5) a proposed powerhouse containing two generating units having an installed capacity of 192 kilowatts, (6) a proposed 350-foot-long transmission line; and (7) appurtenant facilities. The project would have an annual generation of 450 megawatt-hours that would be sold to a local utility

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3507 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 1, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12532–000.

c. *Date Filed:* September 1, 2004.

d. *Applicant:* Pine Creek Mine, LLC.

e. *Name of Project:* Pine Creek Mine Project.

f. *Location:* On the Morgan and Pine Creeks, in Inyo County, California. Part of the project would be located on U.S. Forest Service Land in the Inyo National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Lynn Goodfellow, Pine Creek Mine, LLC, 9050 Pine Creek Road, Bishop, CA 93514, (760) 387–2076.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12532–000) on any comments, protest, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) A proposed diversion structure at approximate elevation 9,000 feet on Pine Creek; (2) a proposed diversion structure at elevation 8,400 feet, at the entrance to the Brownstone Mine, to capture water discharging from the Mine; (3) a proposed 2,500-foot-long, 3-foot-diameter steel penstock; (4) a proposed powerhouse containing a 4-megawatt generating unit; (5) a proposed tailrace discharging water into Morgan Creek at elevation 7,840 feet, (6) a proposed 200-foot-long transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 5.6 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3508 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 1, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12533–000.

c. *Date Filed:* September 1, 2004.

d. *Applicant:* Christopher James Pihl.

e. *Name of Project:* May Creek Project.

f. *Location:* On the May Creek and Lake Isabel, in Snohomish County, Washington. No federal facilities or land would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Christopher James Pihl, 18310NE 136th Street, Woodinville, WA 98072, (206) 369–8277.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12533–000) on any comments, protest, or motions filed.

k. Description of Project: The proposed project would consist of : (1) A natural lake having a surface area of 200 acres with a storage capacity of 2,000 acre-feet and a normal water surface elevation of 2,000 feet msl, (2) a proposed intake structure, (3) a proposed 9,078-foot-long, 40-inch-diameter steel pipe, (4) a proposed powerhouse containing one generating unit having an installed capacity of 12 MW, (5) a proposed 5,468-foot-long 69 kV transmission line; and (6) appurtenant facilities. The project would have an annual generation of 3.1 GWh that would be sold to a local utility. The proposed project would operate in a run-of-river mode.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit

would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3509 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM04–7–000]

Market Based Rates for Public Utilities; Supplemental Notice of Agenda for Technical Conference

December 1, 2004.

The attachment to this supplemental notice provides additional information concerning the December 7, 2004, technical conference to discuss issues associated with transmission market power and barriers to entry. (*See* November 12, 2004, Notice of Technical Conference.) The conference will begin at 9:30 a.m. (e.s.t.) and will conclude at approximately 5 p.m. and will be convened in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. Members of the Commission will attend the conference. All interested persons are invited to attend. Microphones will be available to enable those in the audience to participate in the discussion.

The topic of the conference will be issues associated with transmission or vertical market power, and barriers to entry in electric markets, which are two of the four prongs the Commission currently uses to determine whether to grant market-based rate authority. The conference will address whether the Commission's *pro forma* open access transmission tariff adequately mitigates transmission market power, other proposals to identify and mitigate transmission market power, as well as whether and, if so, to what extent there are other barriers to entry that the Commission should consider.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For more information about the conference, please contact Kelly Perl at 202–502–6421 or *kelly.perl@ferc.gov.*

Magalie R. Salas,

Secretary.

Technical Conference on Transmission Market Power and Barriers to Entry, December 7, 2004, 9:30 a.m.–5 p.m.

The purpose of this conference will be to discuss the second and third prongs of the Commission's assessment of an applicant's request for market-based rate authority: transmission market power and barriers to entry. Panelists will each be asked to address issues among the following in an overview prepared statement. The panelists' statements will be followed by questions and general discussion:

Transmission Market Power and Transmission Barriers to Entry Questions

1. How should transmission market power be defined? Should it be defined as merely the ownership of generation and transmission in the same relevant market?
2. Can transmission market power be used to foreclose competition or raise prices? If so, how?
3. How does transmission market power impact customer interests? For example, are prices significantly higher than they would have been without transmission market power? Is access to cheaper sources of supply limited? Is flexibility to respond to changing market conditions impaired?
4. How does transmission market power impact power supplier interests? For example, is power plants' energy production constrained by the exercise or suspected exercise of transmission market power?
5. What challenges do owners of uncommitted capacity face in securing long term power contracts or selling power on a short term basis?
6. How does the existence of long term and evergreen firm transmission contracts affect power supplier entry?
7. How important a factor is transmission congestion in the production, scheduling and consumption of power? To what degree can transmission congestion be attributed to physical transmission constraints and what degree to the exercise of transmission market power? How can the Commission distinguish between these two?
8. How can the Commission differentiate between the exercise of transmission market power from legitimate reliability-driven denials of access?
9. Do instances exist where transmission unavailability has led to the abandonment of plans to either build or expand generating capacity or to contract with a merchant supplier?
10. Does the Commission's *pro forma* open access transmission tariff adequately mitigate transmission market power? If not, specify whether there are ways the tariff could be modified or better enforced to achieve this goal.
11. Is it possible to eliminate or mitigate transmission market power apart from structural remedies? If so, how, and are there ways do to it apart from the OATT?

12. Can analytical tools to assess transmission market power be developed to screen out behavior motivated by legitimate business interests and direct the Commission's attention to areas where transmission market power is more likely to be exercised?

13. Does the existence of significant transmission constraints constitute a barrier to entry that should be considered in authorizing market-based rates for a transmission provider?

Non-Transmission Barriers to Entry Questions

1. Can the lack of competition in fuel or other inputs constrain entry in the generation business? If so, how?

2. Can monopolization or attempted monopolization of future generating sites be a significant barrier to entry in generation? If so, how, and what can be done to remedy this problem?

3. Have financial constraints, such as access to capital or creditworthiness issues, been a serious barrier to entry in generation, or any other aspect of the electric power business?

4. Are there other barriers to entry the Commission should consider in granting market based rates? If so, how should the Commission test for the extent of harm to customers of competitors associated with such barriers?

5. Does the lack of an adequate competitive solicitation program by a utility that has monopsony power constitute a barrier to entry?

[FR Doc. E4–3510 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–360–000]

Martimes and Northeast Pipeline, LLC; Notice of Informal Settlement Conference

November 30, 2004.

Take notice that an informal settlement conference will be convened in this proceeding at 9:30 a.m. (e.s.t.) on Friday, December 3, 2004, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 502–8649 or Moira B. Notargiacomo at (202) 502–8083.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3487 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Ferc Staff Attendance at Various MISO-Related Meetings

December 1, 2004.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the following meetings involving the Midwest Independent Transmission System Operator, Inc. (MISO), noted below:

Organization of MISO States Annual Meeting—December 9, 2004, 10:30 a.m.–3 p.m. (e.s.t.). Lakeside Conference Center (directly across from MISO's headquarters), 630 West Carmel Drive, Carmel, IN 46032.

MISO Advisory Committee Meetings (Wednesdays, 10 a.m.–4 p.m.) and MISO Board of Directors Meetings (Thursdays, 8:30 a.m.–9:45 p.m.):

January 19–20, 2005;
February 16–17, 2005;
March 16–17, 2005;
April 20–21, 2005;
May 18–19, 2005;
June 15–16, 2005;
July 20–21, 2005;
August 17–18, 2005;
September 14–15, 2005;
October 19–20, 2005;
November 16–17, 2005;
December 7–8, 2005.

Advisory Committee meetings are held at: Lakeside Conference Center (directly across from MISO's headquarters), 630 West Carmel Drive, Carmel, IN 46032.

The Board of Directors meetings are held at: 701 City Center Drive (MISO Headquarters), Carmel, IN 46032.

The discussions may address matters at issue in the following proceedings:

Docket No. ER04–691 and EL04–104, Midwest Independent Transmission System Operator, Inc., *et al.*;

Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*;

Docket No. RT01–87–000, *et al.*, Midwest Independent Transmission System Operator, Inc.;

Docket No. ER03–323, *et al.*, Midwest Independent Transmission System Operator, Inc.;

Docket No. ER03–1118, Midwest Independent Transmission System Operator, Inc.;

Docket No. ER04–375, Midwest Independent Transmission System Operator, Inc., *et al.*;

Docket Nos. EL04–43 and EL04–46, Tenaska Power Services Co. and Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3504 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Meetings of Southwest Power Pool Board of Directors and Members Committee and Meeting of Southwest Power Pool Regional State Committee

December 1, 2004.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool (SPP) Board of Directors and Members Committee noted below, and the meeting of the SPP Regional State Committee noted below. The staff's attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee Meeting—January 24, 2005, 1 p.m .–5 p.m. (c.s.t.)
Sam's Town Casino Hotel and Convention Center, 315 Clyde Fant Parkway, Shreveport, LA 71101, (318) 429–6859.

SPP Board of Directors and Members Committee Meeting—December 14, 2004, 10:30 a.m.–3 p.m. (c.s.t)
DFW Airport Hyatt, Dallas, Texas, (972) 453–1234.

SPP Board of Directors and Members Committee Meeting—January 25, 2005, 9 a.m.–3 p.m.
Sam's Town Casino Hotel and Convention Center, 315 Clyde Fant Parkway, Shreveport, LA 71101, (318) 429–6859.

The discussions may address matters at issue in the following proceedings:

Docket Nos. RT04–1–000 and ER04–48–000, *Southwest Power Pool, Inc.*

Docket No. ER04–833–000, *Southwest Power Pool, Inc.*

Docket No. ER04–1096–000, *Southwest Power Pool, Inc.*
Docket No. EL05–16–000, *Aquila Merchant Services, Inc.* v. *Southwest Power Pool, Inc.*
Docket No. ER05–109–000, *Southwest Power Pool, Inc.*
Docket No. ER05–156–000, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Tony Ingram, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–8938 or *tony.ingram@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–3505 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Preliminary Permits

November 30, 2004.

Symbiotics, LLC (Project No. 11978–002); Symbiotics, LLC (Project No. 12037–001); Prosser Creek Hydro, LLC (Project No. 12191–001); McCloud Hydro, LLC (Project No. 12195–001); Gillham Hydro, LLC (Project No. 12226–002); Nimrod Hydro, LLC (Project No. 12237–001); San Jacinto Hydro, LLC (Project No. 12242–001); Spavinaw Hydro, LLC (Project No. 12243–001); Great Salt Plains, LLC (Project No. 12263–001); Wappapello Hydro, LLC (Project No. 12268–001); GV Montgomery Hydro, LLC (Project No. 12277–001); KR 6 Hydro, LLC (Project No. 12278–001); Wilkins Hydro, LLC (Project No. 12281–001); Huntington Hydro, LLC (Project No. 12294–001); Rough River Hydro, LLC (Project No. 12364–002); Coralville Hydro, LLC (Project No. 12417–001)

Take notice that the permittees for the subject projects have requested to surrender their preliminary permits. Investigations and feasibility studies have shown that the projects would not be economically feasible.

Project No.	Project name	Stream	State	Expiration date
11978–002	Vega Dam	Plateau Creek	CO	August 31, 2006.
12037–001	Swift Dam	Birch Creek	MT	April 30, 2005.
12191–001	Prosser Creek Dam	Prosser Creek	CA	May 31, 2006.
12195–001	McCloud Dam	McCloud River	CA	October 31, 2006.
12226–002	Gillham Dam	Cossatot River	AR	September 30, 2005.
12237–001	Nimrod Dam	Fourche La Fave River	AR	October 31, 2005.
12242–001	San Jacinto Dam	San Jacinto River	TX	March 31, 2006.
12243–001	Spavinaw Dam	Spavinaw Creek	OK	January 31, 2006.
12263–001	Great Salt Plains Dam	Arkansas River	AR	January 31, 2006.
12268–001	Wappapello Dam	St. Francis River	MO	April 30, 2006.
12277–001	G.V. Montgomery Dam	Tombigbee River	MS	January 31, 2006.
12278–001	Kentucky River L&D #6	Kentucky River	KY	October 31, 2005.
12281–001	Wilkins L&D	Tombigbee River	MS	January 31, 2006.
12294–001	J. Edwards Roush Lake Dam	Wabash River	IN	October 31, 2006.
12364–002	Rough River Dam	Rough River	KY	August 31, 2006.
12417–001	Coralville Dam	Iowa River	IA	July 31, 2006.

The permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3485 Filed 12–6–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2004–0019; FRL–7845–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Detroit Children's Health Study: Health Effects of Environmental Exposures Among Children Living in the Detroit, Michigan Area, EPA ICR Number 2167.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2004–0019, to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Auby, Environmental Protection Agency, Office of Information Collection, Office of Environmental Information, 1200 Pennsylvania Ave., NW., Mail Code 28221T, Washington, DC 20460; telephone number: (202) 566–1672; fax number: (202) 566–1753; e-mail address: *auby.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number ORD–2004–0019, which is available for public viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open

from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Research and Development 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 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 within 60 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.*

Affected entities: Entities potentially affected by this action are school officials, parents and children in the Detroit and Dearborn Public Schools.

Title: Detroit Children's Health Study: Health Effects of Environmental Exposures among Children Living in the Detroit, Michigan Area.

Abstract: 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. The proposed study will be conducted by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, U.S. EPA. The purpose of this study is to examine the respiratory health effects in school-age children of mobile and point source air pollutants. Further knowledge regarding the respiratory health effects of airborne particulate matter is required to reduce scientific uncertainties in the development of an Air Quality Criteria for Particulate Matter under the Clean Air Act (42 U.S.C. 7403(d)). The National Academy of Science's Committee on Research Priorities for Airborne Particulate Matter has identified several issues of scientific uncertainty in health effects of airborne particulate matter exposures, including the role of particle size and the role of particulate matter constituents and co-pollutants. The Detroit Children's Health Study will contribute to our understanding of whether long-term, early-life exposures to mobile source emissions, particularly diesel exhaust particles, play a key role in the initiation of allergic asthma in schoolchildren.

A similar NHEERL research project, the El Paso Children's Health Study, was conducted among nearly 9,000 schoolchildren with a collaboration on exposure assessment with scientists from EPA's National Exposure Research Laboratory (NERL). The border cities of Detroit, Michigan and El Paso, Texas share common characteristics such as major diesel truck routes and vehicle idling at international borders, but the two areas have great climatic differences. The ORD Multi-Year Plan for Particulate Matter includes the Detroit Children's Health Study as an integral component of ORD's research on the adverse health effects of long-term air pollutant exposures in susceptible populations.

The parents of children enrolled in fourth and fifth grades of selected Detroit and Dearborn Public Schools will receive a twenty-page respiratory health questionnaire along with a written request for permission for their children to participate in a pulmonary function examination at their school. Participation in the study is entirely voluntary. The respiratory health questionnaire conforms to the ATS/DLD standard respiratory symptom questionnaire and consists of questions specific to the child such as general demographic information, childhood respiratory illness and history of asthma, and current respiratory health conditions. There also are questions regarding household characteristics and family history of smoking, asthma, and respiratory illnesses. One parent from each family will be asked to complete the questionnaire, seal the completed form in the provided envelope, and send the envelope back to the teacher with the child.

Ambient air pollutants will be measured at twenty-five elementary schools in the Detroit metropolitan area. These twenty-five schools were selected to represent areas close to and far away from Detroit roadways and the international border crossings as well as those areas in between. Once explicit permission has been received from both the parent and the child, the children from the selected schools will attempt to perform a routine pulmonary function examination and an exhaled nitric oxide (NO) exam. The pulmonary function exam consists of blowing three to eight times into a tube connected to a spirometer. During the pulmonary function examination, a field technician will record each child's height and weight, and coach the child to perform the breathing tests. A new, sterile, disposable mouthpiece will be used for each child in each test. The pulmonary function examination will be conducted according to guidelines developed by the American Thoracic Society and will be conducted in the child's elementary school during normal school hours with an school nurse on site during the examinations. The exhaled nitric oxide exam consists of exhaling into a bag made of clear polyvinyl film, fitting the child's nostrils with a stopper attached to an NO sampling line, and measuring the NO emitted through the nostrils and from the mouth. Neither exam is any more stressful than blowing out the candles on a birthday cake.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The public reporting and recordkeeping burden for this collection of information is

estimated to average 33 minutes per response or to range from 0.4–1.5 hours per respondent annually. This survey will not be repeated. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. ORD–2004–0019, which is available for public viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Research and Development Docket is (202) 566–2426. 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. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. ORD–2004–0019 and OMB control number (20XX–XXXX) [insert the appropriate OMB #] in any correspondence.

Type of respondent	Respondent activities	Estimated number of respondents	Burden hours	Frequency	Total burden hours	Total burden cost
Adult	Complete Questionnaire	15,000	0.40	1	6000	[a] $88,320
Child	Perform Pulmonary Function Exam.	3,500	0.50	1	1750	[b] 9,013
Child	Perform Exhaled NO Exam.	2,000	0.25	1	500	2,575
Total		20,500			8250	99,908

[a] $14.72/hour.
[b] $5.15/hour (minimum wage).

There are no direct respondent costs for this data collection.

No Annual Record Keeping Burden: 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.

Dated: November 30, 2004.

John Creason,

Acting Director, Human Studies Division.

[FR Doc. 04–26816 Filed 12–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2004–0005; FRL–7843–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Superfund Site Evaluation and Hazard Ranking System (Renewal), EPA ICR Number 1488.06, OMB Control Number 2050–0095.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that 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 January 6, 2005.

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2004–0005, to (1) EPA online using EDOCKET (our preferred method), by email to, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 5202T, 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: Angelo Carasea, OSRTI, Office of Solid Waste and Emergency Response, Mail Code 5204G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–8828; fax number: (202) 603–9104; email address: *carasea.angelo@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 June 21, 2004 (69 FR 34346), 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. SFUND–2004–0005, 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 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 *www.epa.gov/edocket*.

Title: Superfund Site Evaluation and Hazard Ranking System (Renewal).

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

Under this ICR, the States or Tribal authorities will apply the HRS by identifying and classifying those releases that warrant further investigation. The information collected under this ICR is required to help determine whether an individual site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

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

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 166.1 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: States, Indian Tribes, and U.S. territories performing Superfund site evaluation activities.

Estimated Number of Respondents: 607.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 150,285.

Estimated Total Annual Cost: $13,580,375, includes $0 annualized capital expenditure, $0 O&M costs, and $13,580,375 Respondent Labor Costs, though costs are fully reimbursed by the Agency.

Changes in the Estimates: There is a decrease of 80,248 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to adjustments to the estimates because fewer site assessment activities are conducted nationally.

Dated: November 29, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–26818 Filed 12–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[E–DOCKET ID No. ORD–2004–0003; FRL–7845–9]

Draft Proposed Sampling Program To Determine Extent of World Trade Center Impacts to the Indoor Environment

AGENCY: Environmental Protection Agency.

ACTION: Notice of second extension of public comment period for Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment.

SUMMARY: On October 21, 2004, EPA published a **Federal Register** notice (69 FR 61838) announcing the availability of the External Review Draft entitled, Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment (EPA/600/R–04/169A), and the beginning of a 30-day public comment period. On November 19, 2004, EPA published a **Federal Register** notice (69 FR 67735) extending the public comment period until January 3, 2005, as requested by members of the Lower Manhattan community and labor organizations who said a 45-day extension was needed for them to formulate their comments. Subsequently a new request for an additional extension was received from members

of the Lower Manhattan community and labor organizations; therefore, EPA is now extending the public comment period until January 18, 2005. EPA will consider the public comment submissions in revising the document.

DATES: The public comment period will end on January 18, 2005. Technical comments should be in writing and must be postmarked by January 18, 2005.

ADDRESSES: The External Review Draft, Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment, is available via the Internet on the Web page of the World Trade Center (WTC) Expert Technical Review Panel, *http://www.epa.gov/wtc/panel/*. Comments may be submitted electronically, by mail, by facsimile or by hand delivery/courier. Please follow the detailed instructions as provided in the Supplementary Information section below.

FOR FURTHER INFORMATION CONTACT: For further information on the draft sampling proposal, please contact Matthew Lorber at (202) 564–3243 or *lorber.matthew@epa.gov*. For further information regarding the WTC Expert Technical Review Panel, please contact Lisa Matthews at (202) 564–6669 or *matthews.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

1. *How to Submit Information to E-Docket:* EPA has established an official public docket for information pertaining to this action, Docket ID No. ORD–2004–0003. The official public docket is the collection of materials, excluding Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the official public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to view those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. As indicated above, information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket; the same information will not be available for public viewing in EPA Dockets. Copyrighted material also will not be placed in EPA Dockets but will be referenced there and available as printed material in the official public docket.

Persons submitting information should note that EPA's policy makes the information available as received and at no charge for public viewing in EPA Dockets. This policy applies to information submitted electronically or in paper, except where restricted by copyright, CBI or statute.

Unless restricted as above, information submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA Dockets. Physical objects will be photographed, where practical, and the photograph will be placed in EPA Dockets along with a brief description written by the docket staff.

You may submit information electronically, by mail, by facsimile or by hand delivery/ courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please adhere to the specified submitting period. Information received or submitted past the close date will be marked ''late'' and will only be considered if time permits.

If you submit information electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other details for contacting you. Also include these contact details on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the person submitting the information and allows EPA to contact you in case the Agency cannot read what you submit due to technical difficulties or needs to clarify issues raised by what you submit. If EPA cannot read what you submit due to technical difficulties and cannot contact you for clarification, this situation may delay or prevent the Agency's consideration of the information.

To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. ORD–2004–0003. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address or other contact details unless you provide it with the information you submit.

Information may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. ORD–2004–0003. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and is made available in EPA's electronic public docket.

You may submit information on a disk or CD ROM that you mail to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

If you provide information in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Dated: December 2, 2004.

William H. Farland,

Acting Deputy Assistant Administrator for Science, EPA Office of Research and Development.

[FR Doc. 04–26815 Filed 12–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7845–7]

Notice of Proposed NPDES General Permit for Discharges From Concentrated Animal Feeding Operations (CAFOs) in New Mexico, Oklahoma, and on Indian Lands in New Mexico and Oklahoma (NMG010000 and OKG010000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permit.

SUMMARY: EPA Region 6 is proposing to reissue NPDES General Permit No. NMG010000 and OKG010000 for discharges from CAFOs in New Mexico, Oklahoma, and on Indian lands in New

Mexico and Oklahoma. This permit was originally issued in the **Federal Register** at 58 FR 7610 with an effective date of March 10, 1993, and an expiration date of March 10, 1998. The applicable requirements from that 1993 permit are continued in the current proposal to reissue. The current proposal also adds additional requirements contained in revised CAFO regulations at 40 CFR parts 122 and 412 which were published in the **Federal Register** at 68 FR 7175 on February 12, 2003.

DATES: Comments on this proposed permit must be submitted by February 7, 2005.

ADDRESSES: Comments on this proposed permit should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2145. The complete fact sheet and proposed permit can be found on the Internet at *http://www.epa.gov/earth1r6/6wq/6wq.htm.* Copies of the fact sheet and proposed permit may also be obtained from Ms. Smith. In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advanced notice.

SUPPLEMENTARY INFORMATION: EPA's comments and public hearing procedures may be found at 40 CFR 124.10 and 124.12 (48 FR 14264, April 1, 1983, as amended at 49 FR 38051, September 26, 1984). The comment period during which written comments on the draft permit may be submitted extends for 60 days from the date of this notice. During the comment period, any interested person may request a Public Hearing by filing a written request which must state the issues to be raised. A public hearing will be held when EPA finds a significant degree of public interest.

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of concentrated animal feeding operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I of the permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions require that NPDES permits include effluent limitations requiring that authorized discharges: (1) Meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

A. Application for Coverage

To be covered by this permit, CAFO owners/operators must submit a Notice of Intent (NOI) for permit coverage. The information required in the NOI is listed in the permit and is required by Federal regulations at 40 CFR 122.21(a)(1). For CAFOs that are not new sources, the Endangered Species and National Historic Preservation Act eligibility provisions contained in Appendices A and B of the permit must be met. For new source CAFOs (Large CAFOs whose construction began after April 14, 2003), and new source expansions of existing CAFOs, the facility must submit an Environmental Information Document (EID) that must contain information for EPA's use in consultations under the Endangered Species Act and National Historic Preservation Act. The EID enables EPA in performing a National Environmental Policy Act (NEPA) environmental review. Region 6 must have completed the NEPA review and issued an Environmental Impact Statement (EIS) or Finding of No Significant Impact (FNSI) for a new source CAFO before the facility is eligible for coverage under the general permit.

The permit specifies the deadlines by which facilities must apply for permit coverage. For facilities that were defined as CAFOs under regulations in effect prior to April 14, 2003, and are not new sources, coverage must be sought within 30 days after the effective date of this permit. For newly defined CAFOs (operations defined as CAFOs as of April 14, 2003), but not defined as CAFOs under regulations in effect prior to that date (for example, dry manure-handling poultry operations having as many or more than 125,000 birds), coverage must be sought no later than February 13, 2006. For new sources, coverage must be sought at least 30 days prior to the time the CAFO commences operation.

B. Limitations on Permit Coverage

In the proposed permit, certain CAFOs are not eligible for coverage under this NPDES general permit, but must apply for an individual NPDES permit:

1. CAFOs that have been notified by EPA to apply for an individual NPDES permit in accordance with 40 CFR 122.28(b)(3).
2. CAFOs that have been notified by EPA Region 6 that they are ineligible for coverge because of a past history of non-compliance.
3. CAFOs not meeting the Endangered Species and/or Historic Properties eligibility requirements specified in the permit.
4. CAFOs commencing operation after June 25, 1992, discharging to certain waters in Oklahoma that are designated as Outstanding Resource Waters and/or Scenic Rivers in the Oklahoma Water Quality Standards, Appendices A and B.

C. Effluent Limitations

The permit generally requires that there shall be no discharge of manure, litter or process wastewater pollutants into waters of the U.S. from the CAFO production area. Whenever precipitation causes an overflow of manure, litter or process wastewater, however, pollutants in the overflow may be discharged into U.S. waters provided the production area is designed, constructed, operated and maintained to contain all manure, litter and process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour rainfall event. The design standard for new source swine, poultry and veal calf CAFOs is a 100-year, 24-hour rainfall event. The permit requires no discharge of manure, litter or process wastewater from retention or control structures to groundwater with a direct hydrologic connection to surface waters of the U.S., and no discharge of rainfall runoff from manure or litter storage piles. The permit also requires no discharge of manure, litter or process wastewater to waters of the U.S. from land application areas under the operational control of the CAFO. These requirements are contained in the CAFO regulations at 40 CFR part 412 and/or the previous Region 6 NPDES general

permit for CAFOs in New Mexico and Oklahoma. The permit also contains a number of additional requirements, which were contained in the previous Region 6 CAFO general permit, for a CAFO's animal confinement, storage and handling areas, and manure/wastewater land application areas.

D. Nutrient Management Plan (NMP)

The permit requires each CAFO covered by the permit to develop and implement a site-specific NMP, as required by Federal regulations at 40 CFR parts 122 and 412. The permit gives the schedule for developing and implementing an NMP. New source CAFOs are required to develop and implement an NMP upon the date of permit coverage. The requirement for other than new source CAFOs is to develop and implement an NMP no later than December 31, 2006.

Other Legal Requirements

A. State/Tribal Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State or Tribe in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act, state or tribal law. The Region has solicited certification from the States of New Mexico and Oklahoma, and the Pueblos of Acoma, Isleta, Nambe, Picuris, Pojoaque, Sandia, San Juan, Santa Clara and Tesuque.

B. National Environmental Policy Act

With the exception of issuance of a permit to a ''new source'', section 511(c)(1) of the Clean Water Act exempts EPA NPDES permit actions from the requirements of the National Environmental Policy Act of 1969 (NEPA). New source CAFOs are Large CAFOs on which construction began after April 13, 2003. EPA anticipates that relatively few CAFOs seeking coverage under the general permit will be such ''new sources''. In the proposed CAFO general permit, a new source CAFO must go through the NEPA environmental review process prior to applying for coverage under the permit. A similar NEPA review procedure was used under the previous Region 6 CAFO general permit issued in 1993.

C. Endangered Species Act

The Endangered Species Act (ESA) requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS), to insure that any action they authorize is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. In order to fulfill it's obligations under ESA, Region 6 has begun consultation with FWS regarding reissuance of this general permit.

EPA proposes use of an eligibility screening mechanism to ensure protection of listed species and their critical habitat. It is designed to allow coverage under this general permit only to those existing CAFOs that (1) have no listed species or critical habitat in their county or in proximity to their CAFO or discharge locations; or (2) have completed an ESA section 7 consultation that considered all currently listed species and critical habitat and which resulted in either a ''no jeopardy'' opinion by FWS or FWS concurrence that the CAFO's permit-related activities are ''unlikely to adversely affect'' listed species or critical habitat; or (3) have an ESA section 10 permit which considers all currently listed species and critical habitat; or (4) can document that the CAFO's permit-related activities are ''not likely to adversely affect'' listed species or critical habitat, or has reached agreement with FWS on measures to avoid or eliminate adverse effects. Existing CAFOs that do not certify compliance with one or more of those criteria cannot obtain coverage under the general permit and must submit an individual permit application. This eligibility screening mechanism is similar to that included in several previously issued and proposed NPDES general permits, including the proposed NPDES general permit for Small Municipal Separate Storm Sewer Systems in New Mexico and in other areas where Region 6 retains NPDES permitting authority, and the Multi-sector Stormwater General NPDES Permit and the Construction Stormwater NPDES General Permit for those same areas in Region 6.

Note: As a possible alternative to the ESA eligibility screening mechanism requirements (1) and (4), above, EPA Region 6 is currently working with the U.S. Fish and Wildlife Service (FWS), as a part of its ESA consultation on the general permit, to geographically designate areas of concern for endangered species and critical habitat. Under this geographic alternative, the eligibility requirement (1) would be met if a CAFO, or the point(s) where authorized discharges reach waters of the U.S., is outside of any designated areas of concern. Where a CAFO, or the point(s) where authorized discharges reach waters of the U.S., is located within a designated area of concern, the eligibility requirement (4) would require the CAFO to meet conditions and measures to avoid or eliminate adverse effects to listed species or critical habitat that were caused by authorized discharges.

New source CAFOs and new source expansions of existing CAFOs must include analysis of their potential effects on federally listed species and critical habitat in their EIDs. If the CAFO may affect listed species or critical habitat, EPA will integrate the required ESA consultation with its NEPA review.

D. National Historic Preservation Act

Section 6 of the National Historic Preservation Act (NHPA) requires that federal agencies consider the effects of their undertakings (such as issuance of an NPDES permit) on properties listed or eligible for listing in the National Register of Historic Places. Prior to completion of such an undertaking, the Federal agency shall provide the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. To fulfill its NHPA obligations, Region 6 is initiating consultation with the Oklahoma Historical Commission, the New Mexico Historical Commission and Indian tribes in New Mexico and Oklahoma.

EPA proposes an eligibility screening mechanism designed to minimize harm to any properties listed or eligible for listing on the National Register of Historic Places that may be directly and adversely affected by the reissuance of this general permit. This mechanism is designed to allow coverage under this general permit only to those existing CAFOs (*i.e.*, those on which construction commenced prior to April 13, 2003) that (1) document that their permit-related activities do not affect properties listed or eligible for listing on the National Register of Historic Places; or (2) have obtained and are in compliance with a written agreement with the appropriate State Historic Preservation Officer and/or Tribal Historic Preservation Officer that outlines measures to be taken to mitigate or prevent adverse effects to historic properties. Existing CAFOs that do not certify compliance with one of these criteria cannot obtain coverage under the general permit and must submit an individual permit application. This eligibility screening mechanism is similar to that included in several issued and proposed NPDES general permits, including the proposed NPDES general permit for Small Municipal Separate Storm Sewer Systems in New Mexico and in other areas where Region 6 retains NPDES permitting authority, and the Multi-sector Stormwater General NPDES Permit and the Construction Stormwater NPDES General Permit for those same areas in Region 6.

New source CAFOs must include an analysis of their potential effects on properties listed or eligible for listing on the National Register of Historic Places in their EIDs. If the CAFO may affect eligible properties, EPA will integrate the required section 106 consultation with its NEPA review.

Dated: November 30, 2004.

Jane B. Watson,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 04–26817 Filed 12–6–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 68]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before January 6, 2005.

ADDRESSES: Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503 (202) 395–3897.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Ex-Im Bank Letter of Interest Application, EIB Form 95–9.

OMB Number: 3048–0005.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to determine eligibility for an indicative offer of support under the loan and guarantee programs.

Affected Public: Business and other for-profit institutions.

Respondents: Entities involved in the provision of financing or arranging of financing for foreign buyers of U.S. exports.

Estimated Annual Respondents: 500.

Estimated Time per Respondent: 20 Minutes.

Estimated Annual Burden: 165.

Frequency of Response: When applying for a Letter of Interest.

Dated: November 30, 2004.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

LETTER OF INTEREST APPLICATION

OMB No. 3048-0005
Expires 10/31/2004

Please type. Processing of applications may be delayed if the requested information is not provided.

1. **Applicant.** The applicant may be any responsible individual, financial institution or non-financial enterprise. • Check if applicant has been assisted by a city or state export agency and provide the name of the agency:

Applicant name:		Duns #:
Contact person:		Phone #:
Position title:		Fax #:
Street Address:		City:
State/Province:	Postal Code:	Country:
Taxpayer ID #:		

2. **Exporter.** The "exporter" is the company which contracts with the buyer for the sale of the U.S. goods and services. • Check if the exporter is also the applicant. If not, complete the information below.

Exporter name:		Duns #:
Street address:		Phone #:
City:	State:	Postal code:
Taxpayer ID #:		

3. **Supplier.** The "supplier" is the U.S. company which manufactures the goods and/or performs the services to be exported. • Check if the supplier is also the exporter. • Check if the supplier is not determined. If neither applies, attach the same information for the primary supplier as requested above for the exporter. Information on additional suppliers is not required for an LI.

4. **Borrower.** The "borrower" is the company which agrees to repay the Ex-Im Bank direct or guaranteed loan. Complete the information below. Check the box for "public sector" if the borrower is at least 50% directly or indirectly owned by a government. Check the box for "private sector" if the borrower is less than 50% owned by a government.

Contact person:		Fax #:
Borrower name:		Duns #:
Street address:	City:	• • public sector • • private sector
State/Province:	Postal Code:	Country:

5. **Buyer and End-user.** The "buyer" is the company which contracts with the exporter for the purchase of the U.S. goods and services. The "end-user" is the foreign company which utilizes the U.S. goods and services in its business. • Check if the borrower, buyer, and end-user are not the same entity. If box is checked, attach the same information for the buyer and the end-user as requested above for the borrower.

6. **Export Items.** The "export items" are the goods and services to be exported from the U.S.

   6a. **Large Aircraft.** • Check if the export items include aircraft which, in a passenger configuration, contain more than 70 seats. If box is checked, complete ***Attachment A***.

   6b. **Military.** • Check if the buyer is associated in ***any*** way with the military, if ***any*** export items are to be used by the military, or if ***any*** export items are defense articles or have a military application.

   6c. **Limited Recourse Project Finance.** • Check if you want a Letter of Interest issued by the Project Finance Division. If box is checked, complete ***Attachment D.***

   6d. **Description of Export Items.** Briefly describe the principal goods and services, including the ***type, quantity, model number and capacity (if applicable), and SIC Code.*** For an aircraft transaction, include a description of the engines.

LETTER OF INTEREST APPLICATION

OMB No. 3048-0005
Expires: 10/31/2004

6e. Utilization of Export Items. Briefly describe the principal business activity of the ***end-user***. If the export items are to be used in a project, also provide the name, location, purpose, and scope of the project.

7. Financing Type Requested. Check applicable box(es). You may request both a direct loan and a guarantee. If both financing options are acceptable to Ex-Im Bank, they will be indicated in the LI as options. Refer to ***Attachment A*** if the transaction involves the export of new large aircraft.

- Direct Loans
- Comprehensive Guarantee
- Political Risk Guarantee

8. Contract Price. The "contract price" is the ***amount to be shown in the supplier's invoice related to goods to be exported from the U.S. and services to be performed by U.S. companies***. If there is more than one supplier, the contract price is the sum of the suppliers' invoice amounts. The "eligible foreign content" is the portion of the contract price representing components to be purchased by the sup-plier outside the U.S. and ***incorporated in the U.S. into the items to be exported***. Costs to be incurred in the end-user's country are not considered eligible foreign content. Note that the eligible foreign content, if any, is part of the contract price.

8a. Contract Price: $ _____ (including eligible foreign content)

8b. Eligible Foreign Content: $ _____

9. Foreign Competition. • Check if, to the best of your knowledge, there is at least one entity offering non-U.S. goods and/or services in ***direct*** competition for this specific export sale.

10. Other U.S. Government Agencies. • Check if an application for support of this export contract or related project has been filed with the Agency for International Development, Maritime Administration, Overseas Private Investment Corporation or Trade Development Agency.

11. Environmental Effects. If 85% of the contract price exceeds $10,000,000, complete ***Attachment B***. Attachment B is not required for aircraft transactions.

12. Tied Aid Capital Projects Fund. If you want Ex-Im Bank to preclude or counter a tied aid offer, complete ***Attachment C***.

13. Certifications. The undersigned certifies that the facts stated and the representations made in this application and any attachments to this application are true, to the best of the applicant's knowledge and belief after due diligence, and that the applicant has not omitted any material facts.

The undersigned further certifies that it is not currently, nor has it been within the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Governmentwide Nonprocurement Debarment and Suspension Regulations: Common Rule), 53 fed. Reg. 19204 (1988).

Applicant (company) name: _____

Name and title of authorized officer: _____

Signature of authorized officer: _____ Date: _____

Payment, payable to the Export-Import Bank of the U.S., must accompany application; please indicate: • Visa • Mastercard • Check

Account #: _____ Expiration Date: _____

Signature: _____

Ex-Im Bank would be pleased to assist you in applying for financial support. If you have any questions, please contact the Business Development Division (Telephone: 202-565-3946 or Fax: 202-565-3931). For information concerning financing of large aircraft and ancillary equipment, please contact the Aircraft Finance Division (Telephone: 202-565-3550 or Fax: 202-565-3558).

Taxpayer Identifying Numbers: Ex-Im Bank intends to use the taxpayer identifying numbers furnished on this application for purposes of collecting and reporting on any claims arising out of such persons' or business entities' relationships with the U.S. government.

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Expires: 10/31/2004

Public Burden Statement: Public burden reporting for this collection of information is estimated to average 20 minutes per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Send comments on the accuracy of this esti-mate of the burden and recommendations for reducing it to: Office of Management and Budget, Paperwork Reduction Project (#3048-0004), Washington, D.C. 20503.

LETTER OF INTEREST APPLICATION
ATTACHMENT A: Large Aircraft Transactions

OMB No. 3048-0005
Expires 07/31/2001

1. **Financing Type Requested.** Three financing options are available for ***new*** large aircraft transactions under the Large Aircraft Sector Understanding (LASU), contained in the OECD Arrangement. Check the option(s) you are requesting. For ***used*** large aircraft transactions, complete No. 7 of the *Letter of Interest Application*.

   ☐ **Option 1:** An Ex-Im Bank guarantee for up to 85% of the contract price.

   ☐ **Option 2:** An Ex-Im Bank guarantee for 42.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 42.5% of the contract price. The Ex-Im Bank direct loan is repaid during the later maturities.

   ☐ **Option 3:** An Ex-Im Bank guarantee for 22.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 62.5% of the contract price. The Ex-Im Bank guaranteed loan and direct loan are repaid on a pari-passu basis.

2. **Spare Parts Financing.** Indicate in No. 6d. of the *Letter of Interest Application* if any spare parts or spare engines are included in the export sale. Provide the requested information on these items.

3. **Transaction Information.** Include with your application a background summary on the airline, the reason for the purchase, proposed routes, and delivery dates. This information replaces the information requested in No. 6e. of the *Letter of Interest Application*.

4. **Contract Price.** If credit memoranda information is available, deduct all airframe and engine credit memoranda, if any, from the aircraft price when calculating the contract price to be entered in No. 8a. of the *Letter of Interest Application*.

If you have questions about this attachment, please contact the Aircraft Finance Division at 202-565-3550.

EIB Form 95-9
Revised 04/99

LETTER OF INTEREST APPLICATION

ATTACHMENT B: Ex-Im Bank Environmental Screening Document

OMB No. 3048-0005
Expires 07/31/2001

Limited Recourse Project Financing and Long-Term Programs Only

Ex-Im Bank will screen project finance and long-term transactions into three categories, as defined in Ex-Im Bank's *Environmental Procedures*. The information you provide will help Ex-Im Bank to determine the proper category for your application. This information is crucial to the appropriate and timely review of your application. Check the boxes that apply to your application.

1. **Project Identification.**

☐ Check if the goods and/or services described in your application are destined for an identified project.

If checked, identify the project: _____

If not checked, explain: _____

_____

2. **Project Location.** Is the project located in or sufficiently near to have perceptible environmental effects in any of the following areas? Check all that apply.

☐ Tropical Forest
☐ Nationally designated wetlands or protected wildlands
☐ National parks
☐ Nationally designated refuges
☐ Coral reefs or mangrove swamps
☐ Nationally designated seashore areas
☐ Habitat of endangered species
☐ Large scale resettlement
(How many persons? _____)
☐ Properties on the World Heritage List

3. **Project Sector or Industry.** Which classification describes the project for which the exports are destined? Check all that apply.

☐ Airport construction
☐ Chemical plant
☐ Forestry
☐ Geothermal Power
☐ Hydropower plant
☐ Iron & steel plant
☐ Large infrastructure project
☐ Large-scale water reservoir
☐ Mining & mineral processing plant
☐ Nuclear power plant
☐ Oil & gas field development
☐ Petrochemical plant or refinery
☐ Pharmaceutical project
☐ Pulp & paper plant
☐ Smelter
☐ Thermal power plant
☐ Waste management
☐ Air traffic control systems or navigational aids
☐ Consulting services
☐ Hospitals and medical equipment
☐ Pre-project services (feasibility & environmental studies)
☐ Railway signaling
☐ Telecommunications or satellites
☐ Transportation carriers (aircraft, locomotives, boats)
☐ Other (describe)
_____

Name of Applicant _____ Date _____

If you have questions about this attachment, please contact the Engineering and Environment Division at 202-565-3570.

LETTER OF INTEREST APPLICATION
ATTACHMENT C: Tied Aid Capital Projects Fund

OMB No. 3048-0005
Expires 07/31/2001

1. ☐ Check if you are requesting appropriate Ex-Im Bank support to preclude or counter foreign tied aid offers.

2. ☐ Check if one or more foreign governments are offering, or planning to offer, unusually long repayment periods, unusually low interest rates, and/or mixed grant-credit financing for ***the specific contract for which Ex-Im Bank support is sought***. Attach available documentary evidence of a foreign tied aid credit offer. If such evidence is not available, specify your reasons for suspecting foreign tied aid.

_____

_____

_____

_____

3. ☐ Check if you authorize Ex-Im Bank to ask the OECD Secretariat to issue a confidential "no aid" common line request to OECD member governments. Acceptance of this request would preclude future foreign and U.S. aid financing for the project.

4. ☐ Check if you believe that loss of this contract will jeopardize follow-on sales opportunities for similar sales in the same market. Provide the type and estimated value of potential follow-on sales.

_____

_____

_____

5. Provide the following information, if known, for each foreign government's tied aid offer.

	Foreign Offer #1	Foreign Offer #2
Donor government		
Foreign exporters supported		
Total offer amount		
Currency of offer		
Credit portion amount		
Credit portion interest rate		
Credit portion grace period		
Credit portion repayment period		
Grant portion, if any		

If you have questions about this attachment, please contact the Credit Applications and Processing Unit at 202-565-3800.

EIB Form 95-9
Revised 04/99

OMB No. 3048-0005
Expires 07/31/2001

LETTER OF INTEREST APPLICATION

ATTACHMENT D: Project Finance Transactions, Executive Summary

Ex-Im Bank's analysis of potential limited recourse project finance transactions differs from routine export trade finance transactions. Therefore, we require additional information from applicants for a Project Finance Letter of Interest. Please provide the information outlined below to the best of your ability. It is highly recommended that you provide as much information as possible at this stage of the application process.

1. **Project Name:** _____

2. **Type of Project:** _____

3. **Project Location:** _____

4. **Project Description:** _____

5. **Project Participants**
   a. **Sponsors:** _____
   b. **EPC Contractor:** _____
   c. **Project Input Supplier(s):** _____
   d. **Off-taker(s):** _____

6. **Estimated Debt to Equity Ratio:** _____

7. **Other Potential Financing Sources:** _____

8. **Is this an international tender?**
   ☐ Yes ☐ No **Bid due date:** _____

9. **Estimated Project Timeline: (e.g. financial close, construction start date, etc.)** _____

10. **Project Status: (e.g. signed EPC contract, status of offtake contract, etc.)** _____

EIB Form 95-9
Revised 12/99

OMB No. 3048-0005
Expires 07/31/2001

LETTER OF INTEREST APPLICATION

ATTACHMENT D: Project Finance Transactions, Executive Summary

11. Other Relevant Factors: _____

_____

_____

If you have questions about this attachment, please contact Business Development Division at 202-565-3946.

EIB Form 95-9
Revised 12/99

[FR Doc. 04–26679 Filed 12–6–04; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12 p.m., Monday, December 13, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 3, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26960 Filed 12–3–04; 1:59 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Funding Opportunity Announcement: RFA EH 05013]

Environmental Health Specialist Network; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for an Environmental Health Specialist Network was published in the **Federal Register** on Thursday, October 21, 2004, Volume 69, Number 203, pages 61846–61853. On pages 61846, Column 2, heading, and 61851, Column 1, Section ''IV. Application and Submission Information,'' under ''IV.3. Submission Dates and Times,'' the notice is amended as follows:

The Letter of Intent (LOI) deadline date has been extended from November 22, 2004 to December 10, 2004.

If your organization has already submitted an LOI for this funding opportunity, there is no need to submit another.

Dated: December 1, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–26800 Filed 12–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Evaluation of the Community Healthy Marriage Initiative.

OMB No. New collection.

Description: The Administration for Children and Families, U.S. Department of Health and Human Services, is conducting a demonstration and evaluation called the Community Healthy Marriage Initiative (CHMI). Demonstration programs are currently funded through child support enforcement waivers authorized under section 1115 of the Social Security Act to support healthy marriage, improve child well-being and increase the financial security of children. The objective of the evaluation is to: (1) Assess the implementation of community interventions designed to provide marriage education by examining the way the projects operate and by examining child support outcomes among low-income families in the community; and (2) evaluate the community impacts of these interventions on marital stability and satisfaction, child well-being and child support outcomes among low-income families. Primary data for the implementation evaluation will come from observations, interviews, focus groups and records. One-on-one and small group interviews with project staff and marriage education service providers in the community will provide a detailed understanding of the administration and operation of the demonstrations. Focus group discussions will provide insights into participants' perspectives on marriage education and their experiences with the CHMI interventions. This request for comments is for semi-structured interviews and focus groups for the implementation evaluation.

The impact evaluation will be integrated with the implementation study and will assess the effects of healthy marriage initiatives by comparing family- and child well-being outcomes in the CHMI communities with similar outcomes in comparison communities that are well-matched to the project sites. Data from the implementation studies will provide the basis for the instrumental variable models of CHMI impacts to help determine direct or indirect exposure to marriage-related services. At a later date, comments will be sought on information collection for the impact evaluation.

Respondents: Lead Project Staff, Service Provider Organization Staff, Key Community, Civic Stakeholders, and Program Clients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Average number of responses per respondents	Average burden hours per response	Total burden hours
Administrative interviews	160 40 respondents x 4 sites	2 visits, on average	1	320

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Average number of responses per respondents	Average burden hours per response	Total burden hours
Focus groups	200 20 focus group participants per site x 10	1	1.5	300

Estimated Total Annual Burden Hours: 620

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20047, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 30, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–26763 Filed 12–6–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Institutes of Health Construction Grants—42 CFR Part 52b (Final Rule)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: National Institutes of Health Construction Grants—42 CFR Part 52b (Final Rule). *Type of Information Collection Request:* Extension of No. 0925–0424, expiration date 3/31/2005. *Need and Use of the Information Collection:* This request is for OMB review and approval of an extension for the information collection and recordkeeping requirements contained in the regulation codified at 42 CFR part 52b. The purpose of the regulation is to govern the awarding and administration of grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the buildings (or applicable part of the buildings) suitable for the purpose for which it was constructed. In terms of reporting requirements: Section 52b.9(b) of the regulation requires the transferor of a facility which is sold or transferred, or owner of a facility, the use of which has changed, to provide written notice of the sale, transfer or change within 30 days. Section 5b10(f) requires a grantee to submit an approved copy of the construction schedule prior to the start of construction. Section 52b.10(g) requires a grantee to provide daily construction logs and monthly status reports upon request at the job site. Section 52b.11(b) requires applicants for a project involving the acquisition of existing facilities to provide the estimated cost of the project, cost of the acquisition of existing facilities, and cost of remodeling, renovating, or altering facilities to serve the purposes for which they are acquired. In terms of recordkeeping requirements: Section 52b.10(g) requires grantees to maintain daily construction logs and monthly status reports at the job site. *Frequency of Response:* On occasion. *Affected Public:* Non-profit organizations and Federal agencies. *Type of respondents:* Grantees. The estimated respondent burden is as follows:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Estimated annual number of respondents	Estimated number of responses per per response	Average burden hours per response	Estimated total hour burden	Estimated total annual burden hours requested
Reporting:					
Section 52b.9(b)	1	1	.50	.50	.50
Section 52b.10(f)	(60)	1	1	60	60
Section 52b.10(g)	(60)	12	1	720	720
Section 52b.11(b)	100	1	1	100	100
Recordkeeping:					
Section 52b.10(g)	(60)	260	1	15,600	15,600
Total	101			16,481	16,481

The annualized cost to the public, based on an average of 60 active grants in the construction phase, is estimated at: $576,818. There are no Capital Costs to report. There are no operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information and recordkeeping are necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information and recordkeeping, including the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected and the recordkeeping information to be maintained; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection and recordkeeping techniques of other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, Division of Management Support, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, Maryland 20852; call (301) 496–4607 (this is not a toll-free number) or e-mail your request to *jm40z@nih.gov.*

DATES: Comments regarding this information collection and recordkeeping are best assured of having full effect if received on or before February 7, 2005.

Dated: November 30, 2004.

Jerry Moore,

Regulations Officer, National Institutes of Health.

[FR Doc. 04–26788 Filed 12–6–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: CBP Regulations for Customshouse Brokers

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: CBP Regulations for Customshouse Brokers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 56449) on September 21, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

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

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

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: CBP Regulations for Customhouse Brokers.

OMB Number: 1651–0034.

Form Number: N/A.

Abstract: This information is collected to ensure regulatory compliance for Customshouse brokers.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 3800.

Estimated Time Per Respondent: 1.4 hours.

Estimated Total Annual Burden Hours: 5450.

Estimated Total Annualized Cost on the Public: $545,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344–1429.

Dated: November 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–26773 Filed 12–6–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Cost Submission

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Cost Submission. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information

collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 56449) on September 21, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

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

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

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Cost Submission.

OMB Number: 1651–0028.

Form Number: Form CBP–247.

Abstract: These Cost Submissions, Form CBP–247, are used by importers to furnish cost information to CBP which serves as the basis to establish the appraised value of imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 50,000.

Estimated Total Annualized Cost on the Public: $1,089,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344–1429.

Dated: November 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–26774 Filed 12–6–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: U.S./Israel Free Trade Agreement. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 56448) on September 21, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

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

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

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes.

OMB Number: 1651–0036.

Form Number: N/A.

Abstract: The ''Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes'' is used to provide duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 55.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 27.

Estimated Total Annualized Cost on the Public: $754.65.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344–1429.

Dated: November 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–26775 Filed 12–6–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Commercial Invoice

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Commercial Invoice. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 56447) on September 21, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

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

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

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Commercial Invoice.

OMB Number: 1651–0090.

Form Number: N/A.

Abstract: The collection of the Commercial Invoice is necessary for the proper assessment of duties. The invoice(s) is attached to the CBP Form 7501. The information, which is supplied by the foreign shipper, is used to ensure compliance with statues and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, institutions.

Estimated Number of Respondents: 46,500,000.

Estimated Time Per Respondent: 10 seconds.

Estimated Total Annual Burden Hours: 130,200.

Estimated Total Annualized Cost on the Public: $2,050,650.00.

Estimated Number of Respondents: 34,500.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344–1429.

Dated: November 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–26776 Filed 12–6–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Canadian Boat Landing Permit (I–68)

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Canadian Boat Landing Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 59605–59606) on October 5, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of

Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

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

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

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Canadian Border Boat Landing Permit.

OMB Number: 1651–0108.

Form Number: Form I–68.

Abstract: This collection involves information from individuals who desire to enter the United States from Canada in a small pleasure craft.

Current Actions: This is an extension of a currently approved information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 68,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 11,288.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344–1429.

Dated: November 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–26778 Filed 12–6–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–97]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Third-Party Documentation Facsimile Transmittal Form

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval of a Third-Party Documentation Facsimile Transmittal form which will be used for third party certification, and other attached documents normally attached to paper submissions of applications. This is intended as an interim solution until an alternative solution is devised for submission of these types of documents.

DATES: *Comments Due Date:* December 17, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (10) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Paperwork Reduction Act Compliance Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Third-Party Documentation Facsimile Transmittal Form.

Description of Information Collection: This is a request for approval of a Third-Party Documentation Facsimile Transmittal form which will be used for third party certification, and other attached documents normally attached to paper submissions of applications. This intended as an interim solution until an alternative solution is devised for submission of these types of documents.

OMB Control Number: 2535—Pending.

Agency Form Numbers: HUD form 96011.

Members of Affected Public: Not-for-profit institutions; State, Local or Tribal Governments; and Businesses or other for-profits.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total amount of time needed to prepare the information collection is six minutes per applicant plus. The potential number of respondents is 33,000. The frequency of response is once per annum. The total public burden is estimated to be 3,300 hours.

Status: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–26768 Filed 12–6–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–95]

Notice of Submission of Proposed Information Collection to OMB; HUD Acquisition Regulation (HUDAR) (48 CFR 24)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for continued approval to collect information under HUD's Acquisition Regulations (HUDAR). HUDAR supplements the Federal Acquisition Regulation (FAR). Information collection required of the public is solely in connection with the procurement process.

DATES: January 6, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0091) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD Acquisition Regulation (HUDAR) (48 CFR 24).

OMB Approval Number: 2535–0091.

Form Numbers: HUD–770.

Description of the Need for the Information and Its Proposed Use: HUDAR supplements the Federal Acquisition Regulation (FAR). Information collection required of the public is solely in connection with the procurement process.

Frequency of Submission: On occasion, Monthly, Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	250	8.50		16.69		35,501

Total Estimated Burden Hours: 35,501.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–26770 Filed 12–6–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–96]

Notice of Submission of Proposed Information Collection to OMB; Congregate Housing Services Program

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request to continue the collection of information necessary to monitor the use of grant funds for the Congregate Housing Services Program (CHSP) according to statutory, regulatory, and administrative requirements. The Grantees must meet annual requirements.

DATES: *Comments Due Date:* January 6, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0485) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB a request for approval of the information collection described below. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance

the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Congregate Housing Services Program.

OMB Approval Number: 2502–0485.

Form Numbers: HUD–90006, HUD–90198, HUD–91180–A, SF–269.

Description of the Need for the Information and Its Proposed Use: This is a request to continue the collection of information necessary to monitor the use of grant funds for the Congregate Housing Services Program (CHSP) according to statutory, regulatory, and administrative requirements. The Grantees must meet annual requirements.

Frequency of Submission: On Occasion, Semi-annually, Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	75	450		5		2,213

Total Estimated Burden Hours: 2,213.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–26771 Filed 12–6–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 6, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Mitchel Kalmanson, Maitland, FL, PRT–092552, 092553, 092254, 093176, 093177, and 093178.

The applicant requests permits to temporarily export and re-import six captive-born tigers (*Panthera tigris*) to world-wide locations for the purpose of enhancement of the survival of the species through conservation education. The permit numbers and animals are 092552, Lucas; 092553, Zher Khan; 092554, Gengis Khan; 093176, Boris; 093177, Natasha; 093178, Chiquita. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while outside the United States.

Applicant: Randy Miller, Big Bear City, CA, PRT–018063.

The applicant requests a renewal of their permit to temporarily export and re-import one female captive-born tiger (*Panthera tigris*) ''Eden'' to world-wide locations for the purpose of enhancement of the survival of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while outside the United States.

Applicant: Lloyd B. Alford, Baton Rouge, LA, PRT–095498.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Francisco J. Cardenal, Miami, FL, PRT–096307.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Douglas J. Schippers, West Olive, MI, PRT–096079.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Dated: November 19, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–26767 Filed 12–6–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Revise a Comprehensive Conservation Plan and Associated Environmental Impact Statement for the Tetlin National Wildlife Refuge, Tok, AK

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to revise the Comprehensive Conservation Plan (Plan) and an associated Environmental Impact Statement, pursuant to the National Environmental Policy Act and its implementing regulations, for Tetlin National Wildlife Refuge, Tok, Alaska. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended, and with Service planning policy to administer other agencies and the public of our intentions and to obtain suggestions and information on the scope of issues to be addressed in the environmental document.

Special mailings, newspaper articles, and other media announcements will inform people of opportunities to provide written and oral input throughout the planning process. Public meetings will be held in communities near the Refuge (Tok, Northway, Tetlin, and Tanacross) and in the city of Fairbanks. The Draft and Final Plans and associated Environmental Impact Statement will be available for viewing and downloading at *http://alaska.fws.gov/nwr/planning.*

ADDRESSES: Address comments, questions, and requests to Mikel Haase, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503, or *fw7_tetlin_planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mikel Haase, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503, phone number (907) 786–3402 or *fw7_tetlin_planning@fws.gov.* Additional information concerning Tetlin Refuge and the Conservation Plan can be found at *http://alaska.fws.gov/nwr.*

SUPPLEMENTARY INFORMATION: By Federal law (National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee)), all lands within the National Wildlife Refuge System are to be managed in accordance with an approved Comprehensive Conservation Plan. Section 304(g) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 140hh–3233, 43 U.S.C. 1602–1784) also directs that these plans be prepared. The Plan guides management decisions and identifies goals, long-term objectives, and strategies for achieving the purposes of the Refuge. During the planning process, the planning team reviews a wide range of refuge administrative requirements, including conservation of the Refuge's fish and wildlife populations and habitats in their natural diversity; facilitation of subsistence use by local residents and access for traditional activities; and conservation of resource values, including cultural resources, wilderness, and wild rivers. The final revised Plan will detail the programs, activities, and measures necessary to best administer the Refuge to protect these values and to fulfill the purposes of the Refuge. The Comprehensive Conservation Plan and associated Environmental Impact Statement will describe and evaluate a range of reasonable alternatives and the anticipated impacts of each. Public input into the planning process is essential.

The plan will provide other agencies and the public with information to facilitate understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service will prepare an Environmental Impact Statement in accordance with procedures for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The Tetlin National Wildlife Refuge covers approximately seven hundred thousand acres. It is located northeast of the Alaska Range, adjacent to the U.S.-Canada border in the headwaters of the Tanana River. It is bordered to the south by Wrangell-St. Elias National Park and Preserve, Canada to the east, and the Alaska Highway along its northeast border.

The Refuge lies within the Nabesna/Chisana River Basin, in the Upper Tanana Valley. Formed by repeated glaciations, this large, flat basin is filled with sediments deposited in moraines and outwash plains, creating a landscape dominated by lakes, ponds, and wetland tundra. Most of the Refuge is rolling lowlands, however the Mentasta Mountains, in the southwest corner, are rugged, glacier carved peaks reaching elevations of 8,000 feet.

The vegetation is a complex mixture of spruce forests, mixed woodlands, shrub lands, and tussock peatlands that are heavily interspersed with wetlands and streams. The landscape provides valuable habitat for a wide variety of fish and wildlife species. Fourteen fish species, nearly 200 bird species, 44 mammal species, and 1 amphibian species are believed to use the Refuge for at least part of each year. The Tetlin Refuge is one of the most diverse interior refuges in Alaska. The Tanana Basin represents the northern extent of the range for many species found in other parts of North America. A number of species which use the Tetlin Refuge are not found in other Alaska Refuges.

The wetlands provide exceptional nesting habitat for many species including 18 species of ducks. Large numbers of tundra and trumpeter swans use the Refuge during migration. The Refuge also has a rapidly expanding breeding population of trumpeter swans.

Caribou, moose, and Dall's sheep are the large herbivores found on the Refuge. Caribou and moose are found seasonally throughout Tetlin Refuge. Dall's sheep are limited to the rugged Mentasta Mountains in the southwest corner. Both black and brown bears occur on the Refuge.

The Alaska National Interests Land Conservation Act of 1980 (Section 302(8)(B)) sets forth the following major purposes for which Tetlin Refuge was established and is to be managed:

(i) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, waterfowl, raptors and other migratory birds, furbearers, moose, caribou (including participation in cooperative ecological studies and management of the Chisana caribou herd), salmon and Dolly Varden;

(ii) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) To provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii) the opportunity for continued subsistence uses by local residents;

(iv) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity with the refuge; and

(v) To provide, in a manner consistent with subparagraphs (i) and (ii) opportunities for interpretation and environmental education, particularly in conjunction with any adjacent State visitor facilities.

The Comprehensive Conservation Plan for Tetlin National Wildlife Refuge was completed in 1987. It is being revised consistent with section 304(g) of the Alaska National Interest Lands Conservation Act, the National Wildlife Refuge System Improvement Act of 1997, and U.S. Fish and Wildlife Service planning policy.

Dated: November 22, 2004.

Rowan Gould,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 04–26784 Filed 12–6–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Denial of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of denial of permit for marine mammals.

SUMMARY: The following permit was denied.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On April 22, 2004, a notice was published in the **Federal Register** (69 FR 21858), that an application had been filed with the Fish and Wildlife Service by Peter A. Larsen, Newcastle, WY, for a permit (PRT–081356) to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada for personal use.

Notice is hereby given that on November 3, 2004, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service denied the requested permit.

Dated: November 19, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–26766 Filed 12–6–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST] ES–052518, Group No. 155, Minnesota

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 144 N., R. 39 W.

The plat of survey represents the dependent resurvey of a portion of the south and west boundaries and a portion of the subdivisional lines; and the survey of the subdivision of sections 2, 4, 11, 13–15, 18–28, and 32–36, Township144 North, Range 39 West, of the Fifth Principal Meridian, Minnesota, and was accepted November 17, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 17, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–26801 Filed 12–6–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489; ES–052452, Group No. 38, Missouri]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Missouri.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

Fifth Principal Meridian, Missouri

T. 51 N., Rs. 2 and 3 E.

The plat of survey represents the dependent resurvey of portions of the township boundaries, portions of the subdivisional lines and the survey of the Lock and Dam No. 25 acquisition boundary, in Township 51 North, Ranges 2 and 3 East, of the Fifth Principal Meridian, in the State of Missouri, and was accepted on October 29, 2004.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: October 29, 2004

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–26802 Filed 12–6–04; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–653 (Second Review)]

Sebacic Acid From China

AGENCY: International Trade Commission.

ACTION: Cancellation of the hearing in the full five-year review concerning the antidumping duty order on sebacic acid from China.

DATES: *Effective Date:* December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202) 205–3176, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2004 (69 FR 45075), the Commission published a notice in the **Federal Register** scheduling a full five-year review concerning the antidumping duty order on sebacic acid from China. The schedule provided for a public hearing on December 7, 2004. A request to appear at the hearing was filed by Arizona Chemicals (''Arizona'') on November 26, 2004. On December 2, 2004, Arizona withdrew its request. As no other requests to appear at the hearing were filed, the Commission determined to cancel the public hearing on sebacic acid from China. The Commission further determined that no earlier announcement of this cancellation was possible.

For further information concerning this review, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

(Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to sections 201.35 and 207.62 of the Commission's rules.)

Issued: December 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–26949 Filed 12–8–04; 8:45 am]

BILLING CODE 7020–02–P

PAROLE COMMISSION

Public Announcement; Pursuant to the Government in the Sunshine Act (Public Law 94–409) (5 U.S.C. Section 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Wednesday, December 8, 2004.

PLACE: 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting: (1) Approval of minutes from a previous Commission meeting; (2) reports from the Chairman, Commissioners, Chief of Staff, and Commission sections; and (3) a proposal to extend the video conference procedure to institutional revocation hearings.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: December 1, 2004.

Rockne Chickinell,

General Counsel, United States Parole Commission.

[FR Doc. 04–26909 Filed 12–3–04; 10:03 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,936]

3M Center Coated Abrasives Division St. Paul, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 5, 2004 in response to a petition filed by a state workforce representative on behalf of workers at 3M Center, Coated Abrasives Division, St. Paul, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 18th day of November, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3516 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55–964]

Accountemps, Leased Workers at Delta Energy Systems, Inc., Formerly Known as Ascom Energy Systems, Inc., Palm Court, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 9, 2004 in response to a worker petition which was filed on behalf of workers at Accountemps, leased to Delta Energy Systems, Inc., formerly known as Ascom Energy Systems, Inc., Palm Court, Florida.

An active certification covering the petitioning group of workers is already in effect (TA–W–55,407, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of November 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–26825 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,933]

Artisan Software Tools Inc. Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 4, 2004 in response to a worker petition filed by a company official on behalf of workers at Artisan Software Tools Inc., Portland, Oregon.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 19th day of November 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3517 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,955]

Atlas Copco Compressors Inc., Holyoke, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 9, 2004, in response to a worker petition filed on behalf of workers at Atlas

Copco Compressors Inc., Holyoke, Massachusetts.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 19th day of November, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3518 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,511]

Cherry Electrical Products, a Division of Cherry Corporation, Including Leased Workers From QPS Staffing, Pleasant Prairie, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Cherry Electrical Products, a division of Cherry Corporation, including leased workers from QPS Staffing, Pleasant Prairie, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–55,511; Cherry Electrical Products, a division of Cherry Corporation, including Leased workers from QPS Staffing, Pleasant Prairie, Wisconsin (November 24, 2004)

Signed at Washington, DC this 29th day of November 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–3525 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,407]

Delta Energy Systems, Inc. Formerly Known as Ascom Energy Systems, Inc. Including Leased Workers of Randstad North America And Accountemps, Palm Coast, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 17, 2004, applicable to workers of Delta Energy Systems, Inc., including leased workers of Randstad North America, Palm Coast, Florida. The notice was published in the **Federal Register** on September 8, 2004 (69 FR 54321). The certification was amended on September 30, 2004, to include workers of the subject firm operating in various other states. The notice was published in the **Federal Register** on October 12, 2004 (69 FR 60668).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of power conversion products.

New information shows that leased workers of Accountemps were employed at Delta Energy Systems, Inc., formerly known as Ascom Energy Systems, Inc., at the Palm Coast, Florida location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Accountemps working at Delta Energy Systems, Inc., formerly known as Ascom, Palm Coast, Florida.

The intent of the Department's certification is to include all workers of Delta Energy Systems, Inc., formerly known as Ascom Energy Systems, Inc. who was adversely affected by increased imports.

The amended notice applicable to TA–W–55,407 is hereby issued as follows:

All workers of Delta Energy Systems, Inc., formerly known as Ascom Energy Systems, Inc., including on-site leased workers of Randstad North America and Accountemps, Palm Coast, Florida, who became totally or partially separated from employment on or after July 14, 2003, through August 17, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1094.

Signed in Washington, DC this 18th day of November 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3519 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[A–W–55,636]

Notice of Affirmative Determination Regarding Application for Reconsideration; Fleetguard Corporation Subsidiary of Cummins Corporation; Cookeville, TN

By application of November 12, 2004, the Tennessee AFL–CIO Labor Council requested administrative reconsideration of the Department's Negative Determination Regarding Eligibility for workers and former workers of the subject firm to Apply for Alternative Trade Adjustment Assistance (ATAA).

The determination was signed on October 22, 2004. The Notice was published in the **Federal Register** on November 12, 2004 (69 FR 65463).

The denial of ATAA was based on the finding that workers of the workers' firm possess skills that are easily transferable to another position in the local commuting area.

The Department has carefully reviewed the petitioner's request for reconsideration and has determined that the Department will conduct further investigation based on new information provided.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3524 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,261]

Sony Electronics, Inc. AOEM Service Center Farmington Hills, MI; Notice of Negative Determination on Reconsideration

On October 7, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Notice was published in the **Federal Register** on October 25, 2004 (69 FR 62301). The Department initially denied Trade Adjustment Assistance (TAA) and Alternate Trade Adjustment Assistance (ATAA) to workers of Sony Electronics, Inc., AOEM Service Center, Farmington Hills, Michigan, because the workers did not produce an article but performed repair services on consumer electronics.

In the request for reconsideration, the company official alleged that the subject facility is engaged in production because the workers repair and refurbish Sony products.

During the reconsideration investigation, the Department requested that the subject company provide additional information regarding the allegations as well as complete a questionnaire.

The investigation revealed that the subject worker group primarily repaired consumer electronic and neither produced refurbished consumer electronics nor assembled electronics goods during the relevant time period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Sony Electronics, Inc., AOEM Service Center, Farmington Hills, Michigan.

Signed at Washington, DC, this 19th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3520 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,758]

Technical Associates Leased Workers at Brown & Williamson Tobacco Corporation, Currently Known as R.J. Reynolds Tobacco Corporation, an Operating Subsidiary of Reynolds American, Inc. Macon, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 23, 2004, applicable to workers of Technical Associates employed at Brown & Williamson Tobacco Corporation, Macon Georgia. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The subject firm workers were leased workers providing research and development, and training support services at the Macon, Georgia facility of Brown & Williamson Tobacco Corporation which produces cigarettes.

New information provided by the company shows that Brown & Williamson Tobacco Corporation is currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc. as of July 30, 2004. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for R.J. Reynolds Tobacco Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Technical Associates who were leased at Brown & Williamson Tobacco Corporation, Macon, Georgia, were adversely affected by increased imports.

The amended notice applicable to TA–W–54,758 is hereby issued as follows:

Workers employed by Technical Associates, working at Brown & Williamson Tobacco Corporation, currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., Macon, Georgia, who became totally or partially separated from employment on or after March 18, 2003, through June 23, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 17th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3521 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,761]

Technicon Engineering Leased Workers at Brown & Williamson Tobacco Corporation, Currently Known as R.J. Reynolds Tobacco Corporation, an Operating Subsidiary of Reynolds American, Inc., Macon, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 28, 2004, applicable to workers of Technicon Engineering employed at Brown & Williamson Tobacco Corporation, Macon, Georgia. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The subject firm workers were leased workers providing research and development, and training support services at the Macon, Georgia facility of Brown & Williamson Tobacco Corporation which produces cigarettes.

New information provided by the company shows that Brown & Williamson Tobacco Corporation is currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc. as of July 30, 2004. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for R.J. Reynolds Tobacco Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Technicon Engineering who were leased at Brown & Williamson Tobacco Corporation, Macon, Georgia, were adversely affected by increased imports.

The amended notice applicable to TA–W–55,761 is hereby issued as follows:

Workers employed by Technicon Engineering, working at Brown & Williamson Tobacco Corporation, currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., Macon, Georgia, who became totally or partially separated from employment on or after September 24, 2003, through October 28, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 16th day of November 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3522 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0179 (2005)]

Methylene Chloride Standard; Extensions of the Office of Management and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information-collection requirements contained in the Methylene Chloride Standard (29 CFR 1910.1052).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by February 7, 2005.

Facsimile and electronic transmission: Your comments must be received by February 7, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0179 (2004), by any of the following methods:

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (887) 889–5627). The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://dockets.osha.gov/.* Following instructions on the OSHA Webpage for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Webpage at *http://OSHA.gov.* Comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document).

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage.

Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Webpage are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about material not available through the OSHA Webpage and for assistance using the Webpage to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage. Since all submissions become public, private information such as a social security number should not be submitted.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act off 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The information-collection requirements specified in the Methylene Chloride Standard protect employees from the adverse health effects that may result from their exposure to methylene chloride. The requirements in the MC Standard include employee exposure monitoring, notifying employees of their MC exposures, administering medical examinations to employees, providing examining physicians with specific program and employee information, ensuring that employees receive a copy of their medical examination results, training employees on the hazards of MC, maintaining employees' exposure-monitoring and medical examination records for specific periods, and providing access to these records by OSHA, the National Institute of Occupational Safety and Health, the affected employees, and their authorized representatives.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employees who must comply; for example, by using automated other technological information-collection and -transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information-collection requirements contained in the Methylene Chloride Standard (29 CFR 1910.1052). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: Methylene Chloride (29 CFR 1910.1052).

OMB Number: 1218–0179.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 88,623.

Frequency of Response: Occasionally.

Total Responses: 217,753.

Average Time per Response: Varies from 1 hour for administering a medical examination to 5 minutes to maintain an employee's medical or exposure record.

Estimated Total Burden Hours: 64,142 hours.

Estimated Cost (Operation and Maintenance): $15,942,530.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on November 30, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–26805 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0137 (2005)]

Design of Cave-in Protection Systems; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection Requirements (Paperwork)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information-collection requirements contained in 29 CFR 1926.652 Requirements for Protective Systems.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by February 7, 2005.

Facsimile and electronic transmission: Your comments must be received by February 7, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0137 (2005), by any of the following methods:

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha,gov/*. Follow instructions on the OSHA Webpage for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Webpage at *http://OSHA.gov*. Comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney or Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

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II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act)

(29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Paragraphs (b) and (c) of § 1926.652 (''Requirements for Protective Systems''; the ''Standard'') contain paperwork requirements that impose burden hours or costs on employers. These paragraphs require employers to use protective systems to prevent cave-ins during excavation work; these systems include sloping the side of the trench, benching the soil away from the excavation, or using a support system or shield (such as a trench box). The standard specifies allowable configuration and slopes for excavations, and provides appendices to assist employers in designing protective systems. However, paragraphs (b)(3) and (b)(4) of the Standard permit employers to design sloping or benching systems based on tabulated data (Option 1), or to use a design approved by a registered professional engineer (Option 2).

Under Option 1, employers must provide the tabulated data in a written form that also identifies the registered professional engineer who approved the data and the parameters used to select the sloping or benching system drawn from the data, as well as the limitations of the data (including the magnitude and configuration of slopes determined to be safe); the document must also provide any explanatory information necessary to select the correct benching system based on the data. Option 2 requires employers to develop a written design approved by a registered professional engineer. The design information must include the magnitude and configuration of the slopes determined to be safe, and the identity of the registered professional engineer who approved the design.

Paragraphs (c)(2), (c)(3), and (c)(4) allow employers to design support systems, shield systems, and other protective systems based on tabulated data provided by a system manufacturer (Option 3) or obtained from other sources and approved by a registered professional engineer (Option 4); they can also use a design approved by a registered professional engineer (Option 5). If they select Option 3, employers must complete a written form that provides the manufacturer's specifications, recommendations, and limitations, as well as any deviations approved by the manufacturer. The paperwork requirements of Option 4 are the same as for Option 1. Option 5 requires a written form that provides a plan indicating the sizes, types, and configurations of the materials used in the protective system and the identity of the registered professional engineer who approved the design.

Each of these provisions requires employers to maintain a copy of the documents described in these options at the jobsite during construction. After construction is complete, employers may store the documents offsite provided they make them available to an OSHA compliance officer on request. These documents provide both the employer and the compliance officer with information needed to determine if the selection and design of a protective system are appropriate to the excavation work, thereby assuring employees of maximum protection against cave-ins.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information-collection requirements contained in 29 CFR 1926, Subpart Q, Concrete and Masonry Construction.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: Design of Cave-in Protection System.

OMB Number: 1218–0137.

Affected Public: Business or other for-profit.

Number of Respondents: 20,000.

Frequency of Response: On occasion.

Total Responses: 20,000.

Average Time per Response: Two hours to obtain information on the design of cave-in protection systems.

Estimated Total Burden Hours: 20,000 hours.

Estimated Cost (Operation and Maintenance): $721,100.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC on November 30, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–26806 Filed 12–6–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during a helicopter flight from Patriot Hills to South Pole and return. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 6, 2005. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of an expedition to Antarctica. Pole-to-Pole plans for two pilots to fly a Robinson R44 Raven II Helicopter from Ushuaia, Argentina to the South Pole and return to Patriot Hills, where the helicopter will be

loaded onto an Illyushin IL–76 for the return flight to Punta Arenas, Chile. The Illyushin is operated by Antarctic Logistics and Expeditions (ALE). Refueling operations will take place at pre-existing fuel caches.

Application for the permit is made by: Steve Brooks, Pole-To-Pole, 1202 Pierce 100 Street, Clearwater, Florida, 96161.

Location: Patriot Hills, and South Geographic Pole.

Dates: January 1, 2005 to January 31, 2005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–26826 Filed 12–6–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 20, 2004, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on November 30, 2004 to the following applicant: Ralph Fedor, Peter 1st Expedition, Permit No.: 2005 WM–003.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–26827 Filed 12–6–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: Nuclear Regulatory Commission.

Date: Weeks of December 6, 13, 20, 27, January 3, 10, 2004.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters To Be Considered: Week of December 6, 2004

Tuesday, December 7, 2004

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, (301) 415–7380).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, December 8, 2004

12:55 p.m. Affirmation Session (Public Meeting) (Tentative)

a. Motion to Quash OI Subpoena (Tentative)

b. Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); Intervenor's Motion for Reconsideration of CLI–04–29 (Tentative)

c. SECY–04–0180—Hydro Resources, Inc. (Rio Rancho, New Mexico) Review of LBP–04–3 (Financial Assurance) (Tentative)

d. SECY–04–0190—Final Rule: Security Requirements for Portable Gauges Containing Byproduct Material (RIN 3150–AH06) (Tentative)

e. SECY–04–0208—Louisiana Energy Services, L.P. (National Enrichment Facility) (Tentative)

f. SECY–04–0212—Dominion Nuclear Connecticut, Inc., (Millstone Nuclear Power Station, Units 2 and 3), Docket Nos. 50–336–LR & 50–423–LR; LBP–04–15, 60 NRC 81, LBP–04–22 (Tentative)

1 p.m. Briefing on Status of Davis Besse Lessons Learned Task Force Recommendations (Public Meeting) (Contact: John Jolicoeur, (301) 415–1724)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 9, 2004

2 p.m. Briefing on Reactor Safety and Licensing Activities (Public Meeting) (Contact: Steve Koenick, 301–415–1239).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 13, 2004—Tentative

Tuesday, December 14, 2004

1 p.m. Briefing on Emergency Preparedness Program Initiatives (Public Meeting) (Contact: Nader Mamish, (301) 415–1086).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 20, 2004—Tentative

There are no meetings scheduled for the Week of December 20, 2004.

Week of December 27, 2004—Tentative

There are no meetings scheduled for the Week of December 27, 2004.

Week of January 3, 2005—Tentative

There are no meetings scheduled for the Week of January 3, 2005.

Week of January 10, 2005—Tentative

There are no meetings scheduled for the Week of January 10, 2005.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–26899 Filed 12–3–04; 9:27 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly

notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 5, 2004, through November 24, 2004. The last biweekly notice was published on November 23, 2004 (69 FRN 68180).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the

applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *Hearingdocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: October 20, 2004.

Description of amendment request: The proposed amendment would revise the containment hatch closure requirement in the Technical Specifications (TSs) during fuel handling and refueling operations. Specifically, the requirement of TS 3.8.6 that the containment equipment hatch remain closed with a minimum of 4 bolts securing it in place is replaced with the requirement that the equipment hatch be capable of being closed during fuel handling and refueling operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is only related to a postulated fuel handling accident inside the Reactor Building occurring during fuel loading and refueling activities. The proposed change does not increase the probability of a fuel handling accident in that the proposed change deals with the results of such an accident, not the cause of such an accident. The proposed change does not increase the consequences of an accident previously evaluated in that the TMI Unit 1 Alternative Source Term has been previously reviewed and approved by the NRC [Nuclear Regulatory Commission], and this proposed change is consistent with the assumptions of [that] previous analysis. The Alternative Source Term analysis for the Fuel Handling Accident [i]nside the Reactor Building takes no credit for the closure of the containment equipment hatch opening or for a filtered release. Previous analyses of external events were reviewed and the proposed [change does] not affect the conclusions of these analyses. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not affect nor create a different [kind] of fuel handling accident. The proposed change is consistent with the existing licensing basis accident analysis for a postulated fuel handling accident inside containment during fuel loading and refueling operations. The proposed change does not involve any structure, system, or component relied upon to mitigate any design basis accident. The revised operations are consistent with the fuel handling accident analysis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Previously approved analysis demonstrates that the resultant dose consequences are well within the appropriate acceptance criteria. The proposed change is bounded by the previously approved analysis, and thus the margin of safety, as defined by 10 CFR 50.67 and Regulatory Guide 1.183, is maintained. Maintaining the capability to close the containment equipment hatch opening following an evacuation of the containment would further reduce the dose consequences in the event of a fuel handling accident inside containment and provides additional margin to the calculated doses. Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, AmerGen Energy Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Richard J. Laufer.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: July 13, 2004.

Description of amendment request: The proposed amendment would revise the fire protection license condition consistent with the guidance provided in Generic Letter 88–12, ''Removal of Fire Protection Requirements from Technical Specifications.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment is an administrative change. The proposed change will revise the fire protection license condition consistent with the guidance provided in Generic Letter 88–12. This revision to the fire protection license condition was to be made at the time the fire protection requirements were relocated from the Technical Specifications to licensee controlled documents. However, this change was not requested, nor granted in License Amendment Request dated December 4, 1996, approved in Amendment Nos. 227 and 201. Therefore, the necessary change was not reflected in the Operating Licenses.

This administrative request does not impact the probability or consequences of an accident previously evaluated. The incorporation of the requested change requires that an evaluation be performed to determine the need for prior NRC approval for changes to the Fire Protection Program. Changes to administrative programs will result from the addition of this condition in the Operating License. However, no changes to the facility or the way it is operated are expected to result from this change.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is administrative. This request does not involve a change in the operation of the plant, and no new accident initiation mechanism is created by the proposed change, nor does the change involve a physical alteration of the plant.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The fire protection requirements were removed from the Technical Specifications in accordance with Generic Letter 88–12 in Amendment Nos. 227 and 201, with the exception of the change to the Operating License's fire protection license condition. The proposed administrative change will require an evaluation be performed to determine the need for prior NRC approval for changes to the Fire Protection Program. No margin of safety is impacted by the proposed administrative change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Esquire, Counsel, Constellation Energy Group, Inc., 750 East Pratt Street, 5th floor, Baltimore, MD 21202.

NRC Section Chief: Richard J. Laufer.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut.

Date of amendment request: September 7, 2004.

Description of amendment request: The proposed changes would allow performance of testing for nozzle containment spray blockage to be based on the occurrence of activities that could cause nozzle blockage rather than a fixed periodic basis. Currently, the testing for nozzle blockage is performed every 10 years and Dominion Nuclear Connecticut, Inc. (DNC) proposes to change this frequency to ''following maintenance that could cause nozzle blockage''. In addition, specific details limiting the testing method to an air or smoke test that are currently part of the surveillance requirements would be removed. The Technical Specification Bases section would be updated with applicable spray nozzle testing information and will be expanded to include visual inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The spray nozzles and the associated containment spray systems are designed to perform accident mitigation functions only. The QSS [quench spray system] and RSS [recirculation spray system] and associated components are not considered as initiators of any analyzed accidents. The proposed change does not modify any plant equipment and only changes the frequency for performance of a surveillance test which does not impact any failure modes that could lead to an accident. Removing the testing details from the surveillance does not change the ability of the spray nozzles to function as assumed and therefore there is no affect on the consequence of any accident. Also the proposed change does not impact the capability of the QSS and RSS to perform accident mitigation functions and therefore does not impact the consequences of an accident. Based on this discussion, the proposed amendment does not increase the probability or consequence of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The QSS and RSS are not being physically modified and there is no impact on the capability of the systems to perform accident mitigation functions. No system setpoints are being modified and no changes are being made to the method in which borated water is delivered to the spray nozzles. The testing requirements imposed by this proposed change to check for nozzle blockage following activities that could cause nozzle blockage do not introduce new failure modes for the system. By removing the testing details from the surveillance requirement, additional flexibility in the testing methodology is allowed for verifying the nozzles are unobstructed and assists in ensuring operability of the systems. The proposed amendment does not introduce accident initiators or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not change or introduce any new setpoints at which mitigating functions are initiated. No changes to the design parameters of the QSS and RSS are being proposed. No changes in system operation are being proposed by this change that would impact an established safety margin. The proposed change modifies the frequency for verification of nozzle operability in such a way that continued high confidence exists for the containment spray systems to functions as designed. In addition, removing specific testing details from the surveillance does not affect the ability of the

spray nozzles to function as designed. Therefore, based on the above, the proposed amendment does not involve a significant reduction in a margin of safety.

In summary, DNC concludes that the proposed amendment does not represent a significant hazards consideration under the standards set forth in 10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: Daniel S. Collins, Acting Section Chief.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 1, 2004.

Description of amendment request: The proposed amendment would allow the use of a new gantry crane as part of the cask handling system in the fuel storage building (FSB) for moving spent fuel casks up to 110 tons into and out of the spent fuel pit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would allow the use of the new [IP2] FSB gantry crane for loads up to 110 tons, and the new crane will prevent the load from being dropped given a single malfunction or failure of a portion of the crane. The handling of a loaded spent fuel cask is below the maximum load that the crane is designed to handle.

This change does not increase the probability of an accident previously evaluated because the probability of a load drop is eliminated. The new crane system is designed in accordance with NUREG–0554 and Ederer's Generic Licensing Topical Report EDR–1 (NP)–A, that if a portion of the crane lifting devices malfunctions or fails, the load will move a limited distance downward prior to backup restraints becoming engaged. The change does not increase the consequences of an accident.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The process for transporting a cask with the new crane is limited from the FSB truck bay floor to the cask pit area of the spent fuel pool. Once a cask is loaded with spent fuel, it is lifted from the spent fuel pit, and lowered into the truck bay. The cask is never carried over spent fuel in the spent fuel pit.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The [IP2] FSB gantry crane has been installed to comply with the single-failure-proof requirements of NUREG–0554 and NRC-approved Ederer Topical Report EDR–1, Revision 3, dated October 8, 1982. The installation provides additional load carrying capability up to 110 tons and additional safety features to prevent a cask drop. The safety margins provided by the new crane prevent failure of the crane or any lifting devices associated with it. The implementation of NUREG–0612 general guidelines for the FSB gantry crane provides further assurance that safe load paths, procedures, crane operator training, and crane inspection and maintenance activities will be established to ensure crane operation is performed in a consistently reliable manner.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 29, 2004.

Description of amendment request: The proposed change to the Technical Specification (TS) assures that sufficient fuel oil inventories are available in the Emergency Diesel Generator (DG) Fuel Oil Storage Tank (FOST) to support the Extended Power Uprate (EPU) consistent with the current licensing basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change, which accounts for the fuel oil consumption related to the EPU, will revise the minimum TS volumes associated with the DG FOST. The change continues to assure that each DG can provide on-site power in the event of an accident and thereby assist in the mitigation of the accident.

The proposed change to the five day full load fuel oil volume results in a usable volume 37,000 gallons of fuel oil. The proposed change removes the unusable volume (760 gallons) and other conservatism (240 gallons) that were included in the current TS. The fuel oil volume continues to allow for a runtime of 5 days at full load with the removal of this conservatism.

These changes will not affect the capability of the AC [alternate current] Sources to power the systems required to safely shutdown the plant. The proposed changes are not accident initiators nor do they adversely affect accident initiators or precursors. These changes do not affect the mitigation of any accident nor do they adversely affect structures, systems, or components that are utilized for the mitigation of any analyzed events. The proposed changes will have no affect on the radiological consequences of any accident.

The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in the evaluation of radiological consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Fuel oil is not an accident initiator. Therefore, the possibility of a new or different kind of accident will not be created in relationship to the proposed changes to the TS. No modifications are proposed to the existing fuel oil storage system that would alter the design function or the ability of the DG to perform its safety function.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the 7-day time dependent fuel oil volume results in an increase in volume to accommodate fuel oil consumption needed to support the EPU.

The reduced volume associated with the 5-day full load volume is equivalent to less than one hour of runtime and does not result in a significant reduction in a margin of safety because the calculational method results in a conservative estimate of the amount of fuel that would be needed during a design bases accident.

The proposed change does not result in a change of the design bases for the DG or its support systems. The system will continue to provide a reliable source of power for safe shutdown of the reactor, assuming the single failure of one of the DGs. Independence, redundancy, and testability are maintained such that the required safety function can be performed by either DG train.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Michael K. Webb, Acting.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: November 5, 2004.

Description of amendment request: Waterford 3 Technical Specification (TS) currently requires all the Dry Cooling Tower (DCT) fans with cooling coils under the missile grating to be operable during a tornado watch. If one (or more) of these DCT fans is inoperable during a tornado watch, it is required to be restored to operable status within one hour or place the plant in Hot Standby within 6 hours. The purpose of this TS change is to allow the plant to take credit for the DCT fans that are not under the missile grating to meet the fan requirements specified in TS Table 3.7–3. In addition, the proposed change will delete the requirement to monitor ambient temperature conditions when the DCT fan is inoperable on an inoperable train of the Ultimate Heat Sink (UHS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will delete the requirement to have all the DCT fans with cooling coils under the missile grating operable during a tornado watch. It has been determined (using tornado missile strike probability methodology—TORMIS) that the probability of damage to the DCT components not under the missile grating (fans, motors, associated conduits, electrical boxes, and cooling coils) is acceptably low. With respect to the probability of occurrence or the consequences of an accident previously analyzed in the FSAR [Final Safety Analysis Report], the possibility of a tornado reaching Waterford 3 and causing damage to plant systems, structures and components, including the DCT fans, is a design basis event considered in the FSAR. The probability of a tornado-generated missile strike on the DCT components was analyzed using the NRC [Nuclear Regulatory Commission] Staff approved probability method TORMIS. TORMIS showed that the change from essentially relying on DCT fans with cooling coils under the missile grating to relying on all operable DCT fans during a tornado watch is acceptable and represents an acceptably low probability of occurrence of tornado generated missile strikes on the DCTs. On this basis, the proposed change is not considered to constitute a significant increase in the probability of occurrence or the consequences of an accident.

The proposed change to TS Action 3.7.4.d eliminates an unnecessary requirement, to determine ambient conditions and verify compliance with TS Table 3.7–3, when an Ultimate Heat Sink (UHS) fan is inoperable due to its associated train of UHS being inoperable. The determination of ambient temperature conditions and validation of the required number of fans based on the temperature will continue to be required when an UHS fan is inoperable and the associated train of UHS is operable. The UHS fans will not dissipate the required heat load when the associated train of UHS is inoperable, assuming the coincident ambient wet bulb temperature (78 °F) at the historically highest ambient dry bulb temperature (102 °F). This change represents a burden reduction and has no impact on plant safety. This change also does not impact the initiators or mitigation of any design basis event.

The proposed revision to TS Table 3.7–3 ensures consistency with the revisions to the TS Actions. This change is administrative and has no impact on the initiators or the mitigation of accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will delete the requirement to have all the DCT fans with cooling coils under the missile grating operable during a tornado watch. It has been determined that the probability of damage to the DCT components not under the missile grating is acceptably low. A tornado at Waterford 3 is a design basis event considered in the FSAR. Therefore, the change will not contribute to the possibility of or be the initiator for any new or different kind of accident, or occur coincident with any of the design basis accidents in the FSAR. The low probability threshold established for tornado missile damage to system components is consistent with these assumptions.

The proposed change to TS Action 3.7.4.d eliminates an unnecessary requirement, to determine ambient conditions and verify compliance with TS Table 3.7–3, when an Ultimate Heat Sink (UHS) fan is inoperable due to its associated train of UHS being inoperable. The determination of ambient temperature conditions will continue to be required when an UHS fan is inoperable with the associated train of UHS operable. There are no plant modifications or design changes proposed.

The proposed revision to TS Table 3.7–3 ensures consistency with the revisions to the TS Actions. This is an administrative change.

The above changes also do not have any impact on plant systems nor do they have any impact on the way plant systems are operated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not involve a significant reduction in a margin of safety. The existing licensing basis for Waterford 3 with respect to the design basis event of a tornado reaching the plant, generating missiles, and directing them toward the DCT components is to provide positive missile barriers. The basis for the proposed change recognizes that there is a low probability, below an established acceptance limit, that a tornado missile will strike DCT components. The change from essentially relying on DCT fans with cooling coils under the missile grating to relying on all operable DCT fans during a tornado watch is acceptable and represents an acceptably low probability of occurrence of tornado generated missile strikes on the DCTs. Therefore, this change is not considered to constitute a significant decrease in the margin of safety.

The proposed change to TS Action 3.7.4.d eliminates an unnecessary requirement, to determine ambient conditions and verify compliance with TS Table 3.7–3, when an Ultimate Heat Sink (UHS) fan is inoperable due to its associated train of UHS being inoperable. The determination of ambient temperature conditions will continue to be required when an UHS fan is inoperable with the associated train of UHS operable. When the UHS is not available, the fans cannot dissipate the required heat load, assuming the coincident ambient wet bulb temperature (78 °F) at the historically highest ambient dry bulb temperature (102 °F). Therefore, it is not necessary to monitor ambient temperature and ensure the fan requirements of TS Table 3.7–3 are met when the UHS train is inoperable. This change represents an operational burden reduction and has no impact on plant safety.

The proposed revision to TS Table 3.7–3 ensures consistency with the revisions to the TS Actions. These changes are administrative and have no impact on the operation of the plant, mitigation of analyzed events, or plant safety,

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Entergy concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Michael K. Webb, Acting.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: February 27, 2004, as supplemented by letter dated October 11, 2004.

Description of amendment request: The proposed amendments would revise the Dresden Nuclear Power Station and Quad Cities Nuclear Power Station technical specifications (TS) to add the Oscillation Power Range Monitor (OPRM) instrumentation to the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change has no impact on any of the existing neutron monitoring functions. It activates the OPRM scram function and updates the TS to add the OPRM-related functions.

Activation of the OPRM scram function will replace the current methods that require operators to insert an immediate manual reactor scram in the reactor operating region where thermal hydraulic instabilities could potentially occur. While this region will continue to be avoided during normal operation, certain transients, such as a reduction in reactor recirculation flow, could place the reactor in this region. Operation in this region, with the OPRM instrumentation scram function activated would no longer require an immediate manual scram and thus may potentially cause a marginal increase in the probability of occurrence of an instability event. This potential increase in probability is acceptable because the OPRM function will automatically detect the instability condition and initiate a reactor scram before the Minimum Critical Power Ratio (MCPR) Safety Limit is reached. Consequences of the potential instability event are reduced because of the more reliable automatic detection and suppression of an instability event, and the elimination of dependence on the manual operator actions. Operators will continue to monitor for indications of thermal hydraulic instability when the reactor is operating in regions of potential instability as a backup to the OPRM instrumentation.

The potential for spurious reactor scrams has been evaluated. Operating experience with the OPRM has not resulted in the generation of any spurious reactor scram signals.

Therefore, the proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes replace procedural actions that were established to avoid operating conditions where reactor instabilities might occur with an NRC approved automatic detect and suppress function (*i.e.*, OPRM).

Potential failures in the OPRM trip function could result in either failure to take the required mitigating action or an unintended reactor scram. These are the same potential effects of failure of the operator to take the appropriate action under the current procedural actions. The effects of failure of the OPRM equipment are limited to reduced or failed mitigation, but such failure cannot cause an instability event or other type of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The OPRM trip function is being implemented to automate the detection and subsequent suppression of an instability event prior to exceeding the MCPR Safety Limit. The OPRM trip provides a trip output of the same type as currently used for the APRM [Average Power Range Monitor]. Its failure modes and types are identical to those for the present APRM output. Since the MCPR Safety Limit will not be exceeded as a result of an instability event following implementation of the OPRM trip function, it is concluded that the proposed change does not reduce the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: October 4, 2004.

Description of amendment request: The proposed change requests approval to apply the Westinghouse best-estimate loss-of-coolant accident (BELOCA) analysis methodology to Beaver Valley Power Station, Unit Nos. 1 and 2, and requests an amendment of the related Technical Specifications. The BELOCA methodology has previously been approved on a generic basis by the NRC as presented in Topical Report WCAP–12945-P-A, Volume 1 (Revision 2) and Volumes 2 through 5 (Revision 1), ''Code Qualification Document for Best-Estimate LOCA Analysis,'' March 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. No physical changes are required as a result of implementing best-estimate large break loss of coolant accident (LOCA) methodology and associated Technical Specification changes. The plant conditions used in the analysis are bounded by the design conditions for all equipment in the plant. Therefore, there will be no increase in the probability of a LOCA. The consequences of a LOCA are not being increased, since it is shown that the emergency core cooling system is designed so that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, Paragraph b. No other accident is potentially affected by this change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously analyzed?

No. There are no physical changes being made to the Beaver Valley Power Station units. No new modes of plant operation are being introduced. The parameters used in the analysis are within the design limits of the existing plant equipment. All plant systems will perform as designed during the response to a potential accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

No. It has been shown that the methodology used in the analysis would more realistically describe the expected behavior of plant systems during a postulated LOCA. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of LOCAs with different break sizes, different locations and other variations in properties are analyzed to provide assurance that the most severe postulated LOCAs are addressed. It has been shown by analysis that there is a high probability that all criteria contained in 10 CFR 50.46, Paragraph b are met.

Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: October 15, 2004.

Description of amendment request: The licensee proposed to revise Section 1.7, regarding the definition of ''Instrument Channel Calibration,'' of the Technical Specifications by incorporating the additional guidance for instrument channels containing resistance temperature detector (RTD) and thermocouple sensors provided by the ''Standard Technical Specifications, General Electric Plants, BWR [Boiling-Water Reactor]/4 Specifications,'' NUREG–1433, Revision 3. The revised definition would permit in place qualitative assessment of the RTDs and thermocouples, and to allow a signal to be injected downstream of the sensor for the purpose of calibrating the remainder of the channel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the definition of Instrument Channel Calibration to allow RTD and thermocouple sensors to be qualitatively assessed with the remainder of the channel being calibrated normally. Instrument channel calibration is not an initiator of any accident previously evaluated. Furthermore, the proposed change will not affect the ability of the channel being calibrated to respond as assumed in any accident previously evaluated. The qualitative evaluation of sensor behavior for non-adjustable sensors will provide an accurate indication of sensor operation and will assure that portion of the channel is operating properly, ensuring that the consequences of an accident will remain as previously evaluated. Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the definition of Instrument Channel Calibration to allow RTD and thermocouple sensors to be qualitatively assessed with the remainder of the channel being calibrated as at present. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change also does not adversely affect the operation or operability of existing plant equipment. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change involves the definition of Instrument Channel Calibration to allow RTD and thermocouple sensors to be qualitatively assessed with the remainder of the channel being calibrated normally. The proposed change to the Instrument Channel Calibration definition does not alter the ability of a channel to respond as designed or as assumed in the safety analyses. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: October 22, 2004.

Description of amendment request: The licensee proposed to revise the Technical Specifications (TSs), Section 5.0, ''Design Features,'' by relocating the information to the Updated Final Safety Analysis Report (UFSAR). Specifically, the amendment would relocate these Sections: 5.3, ''Reactor Vessel,'' 5.4, ''Containment,'' and 5.6, ''Seismic Design.'' The licensee stated that such information does not meet the criteria of 10 CFR 50.36(c)(4) for inclusion in the TSs. The information to be relocated to the UFSAR already exists in the UFSAR, and will continue to be controlled by 10 CFR 50.59 and 10 CFR 50.71(e).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates certain design details from the TS to the UFSAR, where the information already exists. The UFSAR is maintained in accordance with 10 CFR 50.71(e). Any future change to these design details as described in the UFSAR will be evaluated per the requirements of 10 CFR 50.59 to assure that the change does not result in more than a minimal increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of the information will be maintained in accordance with applicable regulatory requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no impact on any analysis assumptions. The design details that

are being removed from the TS already exist in the UFSAR. Any future change to these design details described in the UFSAR will be evaluated per the requirements of 10 CFR 50.59 to assure that the change does not result in a design basis limit [or] a fission product barrier being exceeded or altered.

Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 14, 2004.

Description of amendment request: The proposed changes correct administrative errors in Technical Specifications 3.10.i and 6.9.a.4.A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

NMC [Nuclear Management Company, the licensee] Response for Proposed Change to TS 3.10.i: No. The NMC has reviewed the proposed change in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. This change is being proposed to correct an administrative error that currently exists within the KNPP [Kewaunee Nuclear Power Plant] Technical Specifications; therefore it would not have an affect on the probability of an accident previously evaluated.

NMC Response for Proposed Change to TS 6.9.a.4.A: No. The NMC has reviewed the proposed change in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. This change is being proposed to correct an administrative error that currently exists within the KNPP Technical Specifications; therefore it would not have an affect on the probability of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

NMC Response for Proposed Change to TS 3.10.i: No. The proposed change does not alter plant configuration, operating setpoints, or overall plant performance. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

NMC Response for Proposed Change to TS 6.9.a.4.A: No. The proposed change does not alter plant configuration, operating setpoints, or overall plant performance. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

NMC Response for Proposed Change to TS 3.10.i: No. The proposed change does not involve a significant reduction in a margin of safety. Inclusion of the omitted word ''and'' in TS 3.10.i will enhance the margin of safety.

NMC Response for Proposed Change to 6.9.a.4.A: No. The proposed change does not involve a significant reduction in a margin of safety. Correction of the references in TS Section 6.9.a.4.A will enhance the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of amendment request: July 9, 2004.

Description of amendment request: The Humboldt Bay Power Plant (HBPP), Unit 3, is a decommissioning nuclear power plant that was permanently shutdown in July 1976. In December of 2003, Pacific Gas and Electric (PG&E or the licensee) applied for a license to store its spent fuel in an onsite dry cask independent spent fuel storage installation (ISFSI). Moving the spent fuel to an ISFSI would permit the licensee to begin significant decommissioning activities. The licensee has chosen to use a Holtec HI–STAR HB spent fuel cask handling system involving a spent fuel multipurpose canister and overpack. To facilitate spent fuel transfer from the HBPP spent fuel pool to the ISFSI, the licensee will also need to install a new crane that can be used to lift the cask handling system loaded with spent fuel assemblies. The licensee states it will be able to satisfy the applicable guidance of NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants,'' and NUREG–0554. ''Single-Failure Proof Cranes for Nuclear Power Plants,'' in performing the necessary movement of the HBPP spent fuel to dry cask storage. The licensee has requested a license amendment that approves the use of the crane and associated changes to the HBPP Defueled Safety Analysis Report (DSAR) along with analyses, design, and procedural changes required to implement transfer of the spent fuel from the spent fuel pool to the ISFSI.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. With the HI–STAR HB System and the associated design and handling procedures, all cask drops and other events, which could damage other spent fuel, have been precluded through the robust handling systems, and mechanical arrangement that preclude crane movement over spent fuel, meeting the guidelines of NUREG–0612. Revisions of the HBPP procedures implementing the control of heavy loads ensures that PG&E will meet the NUREG–0612 guidelines and will protect the fuel storage locations and the new HI–STAR HB System loading/unloading activities. As a result of this design approach, a cask-handling accident that results in a significant offsite radiological release is not considered credible as demonstrated by the probabilistic evaluation that was performed using the guidelines of NUREG–0612 Appendix B and updated information from NUREG–1774 [''A Survey of Crane Operating Experience at U.S. Nuclear Power Plants from 1968 through 2002.'']

Other HBPP licensing-basis events, such as the drop of a spent fuel assembly, have not been affected by these changes and remain bounding events for potential radiological consequences.

The proposed design of the dry cask system, the handling system, and associated procedural controls provide assurance that: (1) Operational errors and mishandling events, and (2) support system malfunctions will not result in an increase in the probability or consequence of an accident previously analyzed.

The proposed changes to use the Holtec HI–STAR HB system have been evaluated for seismic events and tornado missile impacts and it has been determined that these changes will not result in an increase in the probability or consequences of an accident previously evaluated. The Fire Protection Program will ensure that the combustible materials are properly controlled such that the total combustibles meet the current program commitments. Therefore, the

proposed changes do not involve a significant increase in the probability or consequences of an accident.

2. Does the proposed amendment create the possibility of a new or different type of accident from any accident previously evaluated?

No. The engineering design measures and the handling procedures preclude the possibility of new or different kinds of accidents. Damage to 10 CFR 50 structures, systems, and components from the cask handling and associated activities, and events resulting from possible damage to contained fuel have been considered. Both the types of accidents and the results remain within the envelope of existing HBPP DSAR licensing basis analyses, as demonstrated by the PG&E and Holtec analyses.

The rupture of multipurpose canister (MPC) dewatering, forced helium dehydration or related closure system lines or the malfunction of equipment during cask handling operations resulting in radiological consequences are bounded by the HBPP DSAR fuel-handling accident analysis.

Other design considerations, such as spent fuel pool (SFP) thermal, water chemistry and clarity, criticality, and structural, were evaluated and determined not to introduce the possibility of a new or different kind of accident from any previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. With the Holtec HI–STAR HB System, and the associated design and handling procedures, cask drops and other events have been precluded through robust load handling systems, providing defense-in-depth as described in NUREG–0612. Cask tipovers, while not considered credible, are shown to be below the 60g limit, preventing damage to the contained fuel assemblies (and associated structures), and meeting the analysis guidelines of NUREG–0612. As the existing licensing basis assumes a nonmechanistic drop damaging the SFP and all fuel, the result of this design approach with the minimization of drops and the associated structural challenges assure the margin of safety has been maintained.

Other HBPP licensing-basis events, such as the drop of a spent fuel assembly, have not been affected by these changes and remain bounding events. Revision of HBPP procedures implementing the control of heavy loads to incorporate the additional restrictions on heavy loads movement will not affect the procedures or methodology used and will, therefore, not affect margins.

Adverse effects from seismic events and/or cask drops or tipovers have been evaluated, assuring that the fuel, MPC, and overpack remain within their design bases. Since design basis criteria are fully satisfied, there is no impact on the margin of safety.

The Fire Protection Program will continue to ensure that the combustible materials are properly controlled such that the total combustibles meet the current program commitments. Thus, there are no significant reductions in margin of safety associated with these changes.

Other design considerations, such as SFP thermal, water chemistry, criticality, and structural, were evaluated and determined to not involve a reduction in a margin of safety.

Based on the above evaluations, the licensee concludes that the activities associated with the above changes present no significant hazards consideration under the standards set forth in 10 CFR 50.92 and accordingly, a finding by the NRC of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esquire, Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Claudia Craig.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: September 8, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,'' to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18294). The licensee affirmed the applicability of the model NSHC determination in its application dated September 8, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead of requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDV is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDV is maintained through administrative controls. In addition, the reactor protection system will prevent filling of the SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: September 22, 2004.

Description of amendment request: The proposed amendment would extend

the validity of the reactor pressure vessel (RPV) pressure-temperature (P–T) limit curves from May 1, 2005, to May 1, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The evaluation for the Unit 2 P–T limit curves for 32 EFPYs [effective full-power years] was performed using the approved methodologies of 10 CFR [Part] 50 Appendix G and Code Case–640. The curves generated from these methods were approved as Amendment 174 (Ref. 1) and are currently in the Unit 2 TS. These curves ensure the P–T limits will not be exceeded during any phase of reactor operation. Resolution of the current industry issues related to fluence calculation methodology required PPL to limit applicability of the curves to May 1, 2005 for Unit 2. The proposed change does not alter any of the technical information shown on the present P–T curves. The change extends the expiration date for one year while maintaining the total accumulated exposure well below the 32 EFPY maximum exposure lifetime limit. Therefore, there is no increase in the probability or consequences of any previously evaluated accident as a result of this change.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves changing the expiration date on the Unit 2 P–T limit curves. The change does not affect the present operating margin in the P–T limit curves for inservice leakage and hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality. Operation in accordance with the present P–T curves, developed in accordance with the provisions of ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code], Section XI, Appendix G; 10 CFR [Part] 50 Appendix G, and ASME Code Case–640 provides adequate protection against a non-ductile-type fracture of the RPV. This proposed change does not create the possibility of any new or different [kind] of accident. The change extends the expiration date of the present P–T curves and does not result in any new or unanalyzed operation of any system or piece of equipment important to safety.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The technical information contained in the present P–T curves approved by Amendment 174 (Ref. 1) is not affected by this change. Extending the expiration date of the curves from May 1, 2005 to May 1, 2006 will not reduce the margin of safety to RPV brittle fracture.

Since the Unit 2 P–T curves have a maximum lifetime exposure of 32 EFPYs and the anticipated exposure by May 1, 2006 will be well below the maximum value, the margin of safety is not reduced as the result of this change in expiration date. Resolution of the current industry issues related to fluence calculation methodology requires PPL to limit applicability of the Unit 2 P–T curves to May 1, 2006.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179

NRC Section Chief: Richard J. Laufer.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: September 23, 2004.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to require automatic starting of the auxiliary feedwater (AFW) pumps upon trip of the Turbine Driven Main Feedwater (TDMFW) pumps only when one or more of TDMFW pumps are operating.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The design basis events which impose AFW safety function requirements are loss of normal main feedwater, main feedline or main steamline break, loss of offsite power, loss of coolant accident, and small break loss of coolant accident. These accident evaluations assume actuation of AFW occurring due to low-low steam generator level or a safety injection signal. These signals are required safety related features unlike start-up of the AFW pumps due to the trip of both TDMFW pumps which is an anticipatory function and not required for either transient or accident analyses. Requiring this function only when the TDMFW pumps are running will not impact any previously evaluated design basis events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This TS change involves the automatic start of the AFW pumps when the TDMFW Pumps trip. This change involves a function that is not a safety related feature and, therefore, is not credited in either transient or accident analyses. Since this change only affects the point at which this trip function needs to be operable and does not affect the function that actuates AFW due to low-low steam generator level or a safety injection signal, it will not be an initiator to a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in margin of safety?

No. This TS change involves the automatic start of the AFW pumps when the TDMFW pumps trip which is not a safety related plant function. This change does not change any values or limits involved in a safety related function. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: October 27, 2004.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.7.3, ''Main Feedwater Isolation Valves (MFIVs),'' to add the main feedwater regulating valves (MFRVs) and the associated MFRV bypass valves (MFRVBVs). In addition, the allowed outage time, or completion time, for inoperable MFIVs would be extended.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes add the MFRVs and MFRVBVs to TS 3.7.3 and extend the

Completion Time for one or more MFIVs inoperable from 4 hours to 72 hours. Extending the Completion Time is not an accident initiator and thus does not change the probability that an accident will occur. However, it could potentially affect the consequences of an accident if an accident occurred during the extended unavailability of the inoperable MFIV. The increase in time that the MFIV is unavailable is small and the probability of an event occurring during this time period which would require isolation of the MFW [main feedwater] flow paths is low. Moreover, the redundancy provided by the MFRVs and MFRVBVs, which have the same actuation signals and closure time requirements as the MFIVs, provides adequate assurance that automatic feedwater isolation will occur if called upon.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Closure of the MFIVs is required to mitigate the consequences of the Main Steam Line Break and Main Feedwater Line Break accidents. The MFRVs and MFRVBVs provide a diverse backup to this function. [The extended Completion Time for inoperable MFIVs is not an accident initiator.] The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not revise any Technical Specification [Safety] Limit or accident analysis assumption. Therefore, [they do] not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: October 27, 2004.

Description of amendment request: The amendment would delete or revise license conditions in the operating license for the Callaway Plant because the requirements are either obsolete or adequately described elsewhere. The amendment would also revise Technical Specification Tables 5.5.9–2, ''Steam Generator Tube Inspection,'' and 5.5.9–3, ''Steam Generator Repaired Tube Inspection,'' to delete the requirement to notify the NRC pursuant to 10 CFR 50.72(b)(2) if the steam generator tube inspection results in a C–3 classification because reporting requirements are given in the regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This request involves administrative changes only. The changes consist of duplicates or overly burdensome reporting requirements or the deletion of completed items required by [the TSs or] conditions from the original issuance of Operating License NPF–30 [for the Callaway Plant]. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This request involves administrative changes only. The changes consist of duplicates or overly burdensome reporting requirements or the deletion of completed items required by [the TSs or] conditions from the original issuance of Operating License NPF–30. No actual plant equipment or accident analyses will be affected by the proposed change[s] and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure [pressure boundary]) to limit the level of radiation dose to the public. This request involves administrative changes only.

No actual plant equipment or accident analyses will be affected by the proposed change[s]. The changes consist of duplicates or overly burdensome reporting requirements or the deletion of completed items required by [the TSs or] conditions from the original issuance of Operating License NPF–30. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 15, 2004.

Description of amendment request: The proposed changes will change the Administrative Controls Section of the Technical Specifications (TS) in order to incorporate title changes, change the location where the plant-specific titles and TS titles are correlated, and relocate the unit staff requirements to the Quality Assurance Program. These proposed changes will support the implementation of proposed Virginia Electric and Power Company Topical Report DOM–QA–1, ''Nuclear Facility Quality Assurance Program Description,'' currently under NRC staff review. In addition, these proposed TS changes eliminate the descriptions of the onsite and offsite safety review organizations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Surry Units 1 and 2 in accordance with the proposed license amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature and does not affect plant systems, structures or components (SSCs) or plant operation during normal or accident conditions. The proposed change only affects the designated titles of personnel, rewords or relocates requirements within TS or deletes requirements that are either not required to be part of TS or are already required by regulation. The change also relocates the detailed description of the onsite and offsite safety review organizations and non-licensed personnel qualification requirements to the Quality Assurance Program. Therefore, this change has no bearing on the probability of an accident. The management organizational structure and safety and operational reviews have not changed and, therefore, do not impact the ability of operating procedures or administrative controls to prevent or mitigate

a previously evaluated accident. As such, this change does not alter the conclusions of the existing safety analyses and therefore does not alter the consequences of an accident previously evaluated.

2. Operation in accordance with the proposed license amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed administrative change continues to ensure that adequate management oversight exists at the plant in accordance with the existing Technical Specifications. The proposed change only affects the designated titles of personnel, rewords or relocates requirements within TS or deletes requirements that are either not required to be part of TS or are already required per regulation. The change also relocates the detailed description of the onsite and offsite safety review organizations and non-licensed personnel qualification requirements to the Quality Assurance Program. Therefore this change does not impact plant SSCs or plant operation and therefore does not create the possibility of an accident of a different type than evaluated previously. The management organizational structure and safety and operational reviews have not changed. Therefore, there is no change in the method of plant operation, operation review or system design review. There are no new or different accident scenarios, accident initiators, nor failure mechanisms that will be introduced due to this change.

3. Operation in accordance with the proposed license amendments would not involve a significant reduction in a margin of safety.

The proposed change only affects the designated titles of personnel, rewords or relocates requirements within TS or deletes requirements that are either not required to be part of TS or are already required per regulation. The change also relocates the detailed description of the onsite and offsite safety review organizations and non-licensed personnel qualification requirements to the Quality Assurance Program. Consequently, this change does not impact plant design, plant operation or any safety margin and, therefore, does not significantly reduce a margin of safety.

This evaluation concludes that the proposed amendments to the Surry Units 1 and 2 Technical Specifications do not involve a significant increase in the probability or consequences of a previously evaluated accident, do not create the possibility of a new or different kind of accident and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: Mary Jane Ross-Lee (Acting).

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 23, 2004.

Description of amendment request: The amendment would revise Technical Specification 3.6.3, ''Containment Isolation Valves,'' by (1) Adding the abbreviation ''(CIV)'' for containment isolation valve in Condition A of the Actions for the Limiting Condition for Operation; (2) deleting the Note and revising Condition A to be for only one penetration flow path with one CIV inoperable; (3) revising the completion time for Required Condition A.1 from 4 hours to as much as 7 days depending on the category of the inoperable CIV; and (4) revising Condition C to be for two or more penetration flow paths with one CIV inoperable. The proposed amendment is based on Topical Report WCAP–15791–P, ''Risk-Informed Evaluation of Extensions to Containment Isolation Valve Completion Times.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to the Completion Times do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the containment isolation valves. The containment isolation valves will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the large early release frequency (LERF) and incremental conditional large early release probabilities (ICLERP) is acceptable. These changes are consistent with the acceptance criteria in [the risk-informed] Regulatory Guides 1.174 and 1.177. Therefore, since the containment isolation valves will continue to perform their [safety] functions with high reliability as originally assumed and the increase in risk as measured by LERF and ICLERP is acceptable, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended [safety] function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences [in Chapter 15, ''Accident Analysis,'' of the Updated Final Safety Analysis Report (USAR) for the plant].

Therefore, it is concluded that this change does not increase the probability of occurrence of a malfunction of equipment important to safety.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the containment isolation valves provide plant protection. There are no design changes associated with the proposed changes. The changes to Completion Times do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the possibility of a new or different malfunction of safety related equipment is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and is consistent with the acceptance criteria contained in Regulatory Guides 1.174 and 1.177.

Therefore, it is concluded that this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert Gramm.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: October 29, 2004.

Brief description of amendments: Provide a one-time change to Function 4a, ''Reactor Coolant System (RCS) Hot Leg Temperature Indication,'' of Technical Specification Table 3.3.4–1. This would allow continued operation until the next refueling outage (spring of 2005) with one out of four RCS hot leg temperature indications inoperable in the Auxiliary Control Room.

*Date of publication of individual notice in the **Federal Register:*** November 5, 2004 (69 FR 64596).

Expiration date of individual notice: November 19, 2004.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.)

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: August 27, 2004, as supplemented by letters dated October 11 and 19, 2004.

Brief description of amendment: The amendment revised the Technical Specifications, Section 2.1.A, changing the safety limit minimum critical power ratio value from 1.09 to 1.10 for both four-or five-recirculation-loop operation, and from 1.10 to 1.12 for three-recirculation-loop operation.

Date of Issuance: November 16, 2004.

Effective date: November 16, 2004, and shall be implemented within 60 days of issuance.

Amendment No.: 252.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** September 14, 2004 (69 FR 55467). The October 11 and 19, 2004, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 16, 2004.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et. al., Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendments: March 23, 2004, as supplemented June 16, 2004.

Brief description of amendments: The amendments relocate the Independent Onsite Safety Review Group requirements from the Administrative Controls in Section 6 of the Technical Specifications to the Exelon Generation Company, LLC (EGC)/AmerGen Energy Company, LLC (AmerGen) Quality Assurance Topical Report (QATR) at TMI–1 and OCNGS. In addition, administrative corrections are included, which update references to the EGC/AmerGen QATR, which has replaced the OCNGS and TMI–1 Operational Quality Assurance Plans.

Date of issuance: November 8, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 251 and 252.

Facility Operating License Nos. DPR–16 and DPR–50: Amendments revised the Technical Specifications.

*Date of initial notices in **Federal Register:*** May 11, 2004 (69 FR 26186).

The supplement dated June 16, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determinations.

The Commission's related evaluation of the amendments is contained in a

Safety Evaluation dated November 8, 2004.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: April 23, 2004.

Brief description of amendment: The amendment deletes Technical Specification Section 6.16, ''Post-Accident Sampling Programs NUREG 0737 (II.B.3, II–F.1.2),'' and the related requirements to maintain a Post Accident Sampling System.

Date of issuance: November 22, 2004.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 253.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 26187)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: March 12, 2004, and supplemented by letters dated June 16 and September 2, 2004.

Brief description of amendments: The amendments modify the LaSalle Technical Specifications (TS) to eliminate selected response time testing requirements associated with Reactor Protection System instrumentation and Primary Containment Isolation instrumentation for Main Steam Line Isolation functions. Specifically, the changes revise the response time testing requirements for TS Section 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' Reactor Vessel Steam Dome Pressure—High function and TS Section 3.3.6.1, ''Primary Containment Isolation Instrumentation,'' Reactor Vessel Water Level—Low Low Low, Level 1 and Main Steam Line Pressure—Low functions.

Date of issuance: November 19, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 169, 155.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the TS.

Date of initial notice in ***Federal Register:*** April 13, 2004 (69 FR 19569).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 23, 2003.

Brief description of amendment: The amendment modifies technical specification (TS) requirements to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF–359, ''Increased Flexibility in Mode Restraints.''

Date of issuance: November 10, 2004.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 219.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 16, 2004 (69 FR 55844).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 2004.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 14, 2004.

Brief description of amendment: The amendment relocates the requirements of Technical Specification 3.3(1)a, ''Reactor Coolant System and Other Components Subject to ASME XI Boiler & Pressure Vessel Code Inspection and Testing Surveillance'' and TS 3.4, ''Reactor Coolant System Integrity Testing,'' to the Updated Safety Analysis Report (USAR). Requirements in TS 3.3(1)a were related to inservice inspection of ASME Class 1, 2, and 3 components and requirements in TS 3.4 were related to reactor coolant system integrity testing.

Date of issuance: November 8, 2004.

Effective date: November 8, 2004, and shall be implemented within 120 days from the date of issuance.

Amendment No.: 230.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 22, 2004 (69 FR 34703)

The Commission's related evaluation of the amendment is contained in a safety evaluation dated November 8, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: June 22, 2004, as supplemented on September 27, 2004.

Brief description of amendments: The amendments revise the frequency associated with Surveillance Requirement (SR) 3.3.8.1.4, which directs the performance of the logic system functional test, from once every 18 months to once every 24 months. The amendments change the SRs in Hatch, Units 1 and 2 Technical Specifications.

Date of issuance: November 22, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 243/186.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Surveillance Requirements in the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 3, 2004 (69 FR 46592).

The supplement dated September 27, 2004, provided clarifying information that did not change the scope of the June 22, 2004, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 22, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: October 29, 2004, as supplemented November 5, 2004.

Description of amendment request: The amendment provides a one-time change to Function 4a, ''Reactor Coolant System (RCS) Hot Leg Temperature Indication,'' of Technical Specification (TS) Table 3.3.4–1 to allow continued operations until the next refueling outage with one out of four RCS Hot Leg Temperature Indications inoperable in the Auxiliary Control Room.

Date of Issuance: November 19, 2004.

Effective date: As of the date of issuance and shall be implemented immediately upon receipt.

Amendment No.: 53.

Facility Operating License No. (NPF–90): Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. On November 5, 2004, the Commission issued a notice (69 FR 64596) that included the staff's proposed determination that the amendment request involves no significant hazards consideration (NSHC). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by November 19, 2004, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment. The supplement of November 5, 2004, is within the scope of that notice, and did not change the proposed no significant hazards consideration.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated November 19, 2004.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Dated at Rockville, Maryland, this 29th day of November, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–26606 Filed 12–6–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–4; SEC File No. 270–198; OMB Control No. 3235–0279.

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.

Rule 17a–4 requires exchange members, brokers and dealers to preserve for prescribed periods of time certain records required to be made by Rule 17a–3. In addition, Rule 17a–4 requires the preservation of records required to be made by other Commission rules and other kinds of records which firms make or receive in the ordinary course of business. These include, but are not limited to, bank statements, cancelled checks, bills receivable and payable, originals of communications, and descriptions of various transactions. Rule 17a–4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be maintained under Rules 17a–3 and 17a–4.

There are approximately 6,900 active, registered broker-dealers. The staff estimates that the average amount of time necessary to preserve the books and records as required by Rule 17a–4 is 254 hours per broker-dealer per year. Thus the staff estimates that the total compliance burden for 6,900 respondents is 1,752,600 hours.

The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a–4. The staff estimates that the hourly salary of a compliance manager is $50 per hour.[1] Based upon these numbers, the total cost of compliance for 6,900 respondents is approximately $87.63 million (1,752,600 yearly hours x $50). The total burden hour decrease of 128,661 results from the decrease in the number of respondents from 7,217 to 6,900.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 29, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3498 Filed 12–6–04; 8:45 am]

BILLING CODE 8010–01–P

[1] This figure is based on the SIA Report on Office Salaries In the Securities Industry 2003 (Compliance Manager) and includes 35% for overhead charges.

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 17f–1(g); SEC File No. 270–30; OMB Control No. 3235–0290

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 a request for extension of the previously approved collection of information discussed below.

- Rule 17f–1(g) Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(g), under the Securities Exchange Act of 1934 (''Act''), requires that all reporting institutions (*i.e.*, every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies or all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting

institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are 25,714 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 14,142.7 hours (25,714 × .55 hours = 14,142.7). Assuming an average hourly cost for clerical work of $20.00, the average total yearly record retention cost for each respondent would be $11.00. Based on these estimates, the total annual cost for the estimated 25,714 reporting institutions would be approximately $282,854.

Rule 17f–1(g) does not require periodic collection, but does require retention of records generated as a result of compliance with Rule 17f–1. Under Section 17(b) and (f) of the Act, the information required by Rule 17f–1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0–4 of the Act deems such information to be confidential. Please note that 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 above information 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 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

November 30, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3499 Filed 12–6–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50759; File No. SR–CBOE–2004–74]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Options on Revised-Value Versions of the European-Style Exercise, P.M.-Settled Option Contract on the Standard & Poor's 100 Stock Index

November 30, 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 17, 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 and II below, which items have been prepared by the CBOE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to introduce for trading revised-value versions of the European-style, P.M.-settled option contract on the Standard & Poor's 100 Stock Index that is currently listed and traded on the Exchange. The text of the proposed rule change is below. Proposed new language is in *italics.*

CHAPTER XXIV

Index Options

* * * * *

Rule 24.9—Terms of Index Option Contracts

Rule 24.9(a)–(c) No Change.

* * * Interpretations and Policies:

.01 The procedures for adding and deleting strike prices for index options are provided in Rule 5.5 and Interpretations and Policies related thereto, as otherwise generally provided by Rule 24.9, and include the following:

(a) 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:

[Add the following to the end of the current list]

European-Style Exercise S&P 100 Index Options (XEO) (1/5th value), if the strike price is less than $200.00.

(b)–(d) No change.

.02–.11 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Since July 2001, the Exchange has listed for trading cash-settled and P.M.-settled options with European-style exercise on the Standard & Poor's 100 Stock Index (''S&P 100 Index'').[6] These options trade on the CBOE under the symbol XEO.[7] The purpose of this proposed rule change filing is to allow the Exchange to list European-style exercise, cash-settled, P.M.-settled options on (1) an increased-value version of the XEO, and (2) a reduced-value version of the XEO. The Exchange

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CBOE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] The S&P 100 Index is a broad-based, capitalization-weighted index that is based on 100 highly capitalized stocks from a broad range of industries. CBOE has traded cash-settled options with American-style exercise on the S&P 100 Index since 1983, under the trading symbol OEX.

[7] *See* Securities Exchange Act Release No. 44556 (July 16, 2001), 66 FR 38046 (July 20, 2001) (Notice of Filing and Immediate Effectiveness which allowed CBOE to list European-style exercise, cash-settled options on the XEO).

is proposing to offer these particular new versions of the XEO option to accommodate the needs of a broader range of investors than is currently served by listing options only on the XEO.

Increased-Value Options on the XEO

CBOE proposes to list a European-style exercise, cash-settled, P.M.-settled option that is based on two times the value of the XEO (''Increased-Value XEO''). The Exchange believes that offering Increased-Value XEO options will attract large institutional customers who seek a greater exposure to the underlying component stocks that make up the S&P 100 Index. With one Increased-Value XEO contract, an institutional customer will be able to gain twice the exposure to the S&P 100 Index than with one normal XEO contract.

Reduced-Value Options on the XEO

CBOE also proposes to list a European-style exercise, cash-settled, P.M.-settled option that is based on one-fifth (⅕th) the value of the XEO (''Reduced-Value XEO''). The Exchange believes that offering Reduced-Value XEO options will allow CBOE to attract additional business from customers that may not otherwise be able to invest in regular XEO or Increased-Value XEO options. To illustrate, currently an October XEO 545 call would cost an investor approximately $710, whereas with a Reduced-Value XEO, the ⅕th version of the same call would only cost an investor $142.[8] The Exchange believes that the Reduced-Value XEO will allow retail investors to obtain a hedge that is more proportionate to their respective positions in the stocks that comprise the S&P 100 Index and that will not require as large an outlay of capital as the regular XEO options.

The Exchange believes that both the Reduced-Value and Increased-Value options on the XEO should attract a wider range of investors and, in turn, create a more active and liquid trading environment for S&P 100 Index options. The Exchange will continue listing and trading the current XEO options contract and both the Increased-Value XEO options and the Reduced-Value XEO options will trade under their own respective trading symbols.

The Commission and The Options Clearing Corporation will be notified of the new trading symbols and CBOE will issue a circular detailing the option contract specifications to CBOE membership prior to the listing of options series on the Increased-Value and Reduced-Value XEO. Additionally, the Exchange will disseminate prices for the Increased-Value and Reduced-Value XEO contracts every 15 seconds through the Option Price Reporting Authority.

Strike price intervals on the Increased-Value XEO shall be identical to the strike price intervals for normal XEO options, which are currently set to bracket the S&P Index in 5-point increments. Strike prices for Reduced-Value XEO options will be set to bracket the index in 2½ point increments for strikes at or below 200 and in 5-point increments above 200. The minimum tick size for Increased-Value and Reduced-Value XEO series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for Increased-Value and Reduced-Value XEO contracts will be from 8:30 a.m. to 3:15 p.m. c.s.t.

Position Limits

Consistent with CBOE Rule 24.4(d), there are no position limits for broad-based index option contracts on the OEX,[9] or similarly, for XEO options.[10] The approval order giving CBOE the authority to list options on the XEO notes that, because the only difference between OEX and XEO options is the manner in which the respective contracts are exercised (*i.e.,* ''American-style'' versus ''European-style''), XEO series may also be traded without position limits for the purposes of CBOE Rule 24.4(d).[11] Similarly, the Exchange believes that Increased-Value and Reduced-Value XEO options are no different than the regular XEO options, other than the fact that one contract is based on twice the value of the S&P 100 Index, and one contract is based on one-fifth the value of the S&P 100 Index, respectively. As such, Increased-Value and Reduced-Value XEO options shall not be subject to any position limits.

Exercise and Settlement

Exercise and settlement on both the Increased-Value XEO and the Reduced-Value XEO options will be identical to existing XEO options. Series in both the Increased-Value XEO and the Reduced-Value XEO will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (c.s.t.) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise-settlement value of the Index at option expiration will be calculated by Standard and Poor's based on the exercise-settlement value, OEX, is calculated using the last (closing) reported sales price in the primary market of each component stock on the last business day before the expiration date. If a component security fails to open for trading, the exercise settlement value will be determined in accordance with CBOE Rules 24.7(e) and 24.9(a)(4). When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of index options at expiration will be determined at the opening of regular trading on Thursday.

S&P 100 Index Maintenance

Because the underlying S&P 100 Index is monitored and maintained by Standard and Poor's, Standard and Poor's will be responsible for making all necessary adjustments to the S&P 100 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 the use of an index divisor to effect adjustments.

Surveillance

Because the S&P 100 Index underlying the increased-value and the reduced-value options remains unchanged, the Exchange will use the same procedures used in the surveillance of XEO options for surveillance in the trading of the Increased-Value XEO and Reduced-Value XEO options. Further, CBOE represents that these surveillance procedures are adequate to monitor the trading in both Increased-Value XEO and Reduced-Value XEO options, as well as in LEAPS on the same respective options.

[8] Estimates are based on a randomly selected last sale price (intra day) for the 2004 OCT 545.00 call on the XEO during the September 15, 2004, trading day.

[9] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order approving CBOE's rule change, which proposed the elimination of position and exercise limits for OEX, SPX, and DJX index options).

[10] *See supra* note 7.

[11] *See supra* note 9.

Margin

The S&P 100 Index is a ''broad-based index'' and, under CBOE margin rules the margin requirement for a short put or call on each respective Increased-Value XEO and Reduced-Value XEO option contract shall be 100% of the current market value of the contract plus up to 15% of the respective underlying index value.[12] More specifically, for purchases of puts or calls with more than 9 months until expiration, customers must deposit and continue to maintain 75% of the total cost of the option's current market value. When time to expiration reaches 9 months, the option no longer has value for margin purposes. Purchases of puts or calls with 9 months or less until expiration must be paid for in full. Writers of uncovered puts or calls must deposit and continue to maintain 100% of the option proceeds plus 15% of the aggregate contract value (current index level x $100) minus the amount by which the option is out-of-the-money, if any, subject to a minimum for calls of option proceeds plus 10% of the aggregate contract value and a minimum for puts of option proceeds plus 10% of the aggregate exercise price amount.[13]

The Exchange also notes that Interpretation and Policy .04 to CBOE Rule 24.4, which authorizes the imposition of additional margin in OEX positions, shall also apply to all XEO option series, which are based on the same underlying index as OEX option series.[14]

Other Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will govern the trading of Increased-Value XEO and Reduced-Value XEO options on the Exchange. Additionally, in accordance with CBOE Rule 24A.4(b) (Special Terms for FLEX Index Options), CBOE reserves the right to approve and open for trading FLEX options on the Increased-Value XEO and Reduced-Value XEO and, in accordance with CBOE Rule 24A.7(a)(i), because the Increased-Value XEO and Reduced-Value XEO are both broad-based indexes, there shall be no position or exercise limits for these FLEX index options. Finally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of the aforementioned index options.

2. Statutory Basis

The Exchange believes that the addition of Increased-Value XEO and Reduced-Value XEO option series creates new investment options for a broader range of customers that will appeal to many institutions, professional traders, and investors. The Exchange believes that the introduction of these options will attract additional order-flow to the index floor and will increase liquidity in these options in the market in general. For these reasons, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[15] in general, and in particular with section 6(b)(5) of the Act[16] in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder[18] because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6)[19] 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 satisfied the five-day pre-filing requirement. The Exchange further requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative on November 18, 2004. The Commission notes that the proposed rule change does not raise any new, novel or complex regulatory issues because the Exchange currently trades the XEO contracts.[20] The proposed rule change would permit a reduced value version and an increased value version of the XEO products to be traded. These products should accommodate the needs of a broader range of investors investing in the options market. The Commission believes, therefore, that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case, and has determined to designate the operative date to be November 18, 2004, the date requested by the Exchange.[21] Allowing the rule change to become operative on November 18, 2004, will allow the Exchange to begin listing and trading the new options as soon as possible after the November expiration and will allow investors to establish positions during the earliest portion of the monthly cycle.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–74 on the subject line.

[12] *See* CBOE Rule 12.3(c)(5)(A).

[13] For calculating maintenance margin, the option's current market value, as opposed to the total cost/option proceeds method, must be used. Additional margin may be required pursuant to CBOE Rule 12.10.

[14] *See supra* note 7.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6).

[20] *See supra* note 7.

[21] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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–2004–74. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–74 and should be submitted on or before December 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3513 Filed 12–6–04; 8:45 am]

BILLING CODE 8010–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50775; File No. SR–CBOE–2004–64]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Allocation of N-Second Group Trades Pursuant to Rule 6.45A(c)

December 1, 2004.

On October 14, 2004, the Chicago Board Options Exchange, Inc., (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the Designated Primary Market-Maker (''DPM'') participation entitlement for trades occurring pursuant to CBOE Rule 6.45A(c). The Commission published the proposed rule change for comment in the **Federal Register** on November 1, 2004.[3] The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that by eliminating the DPM participation entitlement for trades occurring pursuant to CBOE Rule 6.45A(c), DPMs will be treated as any other market participant under the rule, allowing all market participants to be on equal footing.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–2004–64) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3515 Filed 12–6–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 50583 (October 22, 2004), 69 FR 63418 (November 1, 2004).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50773; File No. SR–MSRB–2004–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Amendments to MSRB Rule G–34, on CUSIP Numbers and New Issue Requirements, To Facilitate Real-Time Transaction Reporting of Trades in New Issue Municipal Securities

December 1, 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 18, 2004, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed rule change consisting of an amendment to its rule G–34, on CUSIP numbers and new issue requirements, to facilitate real-time transaction reporting of trades in new issue municipal securities.

Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Rule G–34: CUSIP Numbers and New Issue Requirements

(a) New Issue Securities.

(i) Assignment of CUSIP Numbers.

(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue (''*underwriter*'') shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue. The [broker, dealer or municipal securities dealer] *underwriter* shall make such application as promptly as possible, but in no event later than, in the case of negotiated sales, a time sufficient to ensure assignment of a CUSIP number or numbers [on or] prior to the [business day on which] *time* the contract to purchase the securities from the issuer is executed; or, in the case of competitive sales, the [date of award] *time of the first execution of a transaction in the new issue by the underwriter.* A broker, dealer or municipal securities dealer acting as a financial advisor to an issuer in connection with a competitive sale of an issue shall ensure that application for a CUSIP number or numbers is made in sufficient time to permit assignment of CUSIP numbers prior to the [date] *time* of award. [The broker, dealer or municipal securities dealer shall provide to the Board or its designee] *In making an application for CUSIP number assignment,* the following information *shall be provided:*

(1)–(8) No changes.

(B) The information required by subparagraph (i)(A) of this section (a) shall be provided in accordance with the provisions of this subparagraph. [At the time application is made the broker, dealer or municipal securities dealer making such application shall provide to the Board or its designee a] *The application shall include a* copy of a notice of sale, official statement, legal opinion, or other similar documentation prepared by or on behalf of the issuer, or portions of such documentation, reflecting the information required by subparagraph (i)(A) of this section (a). Such documentation may be submitted in preliminary form if no final documentation is available at the time of application. In such event the final documentation, or the relevant portions of such documentation, reflecting any changes in the information required by subparagraph (i)(A) of this section (a) shall be submitted when such documentation becomes available. If no such documentation, whether in preliminary or final form, is available at the time application for CUSIP number assignment is made, such copy shall be provided promptly after the documentation becomes available.

(C) The provisions of paragraph (i) of this section (a) shall not apply with respect to any new issue of municipal securities on which the issuer or a person acting on behalf of the issuer has submitted an application for assignment of a CUSIP number or numbers. [to such issue to the Board or its designee.]

(D) In the event that the proceeds of the new issue will be used, in whole or in part, to refund an outstanding issue or issues of municipal securities in such a way that part but not all of the outstanding issue or issues previously assigned a single CUSIP number is to be refunded to one or more redemption date(s) and price(s) (or all of an outstanding issue is to be refunded to more than one redemption date and price), the broker, dealer or municipal securities dealer shall apply in writing to the Board or its designee for a reassignment of a CUSIP number to each part of the outstanding issue refunded to a particular redemption date and price and shall provide to the Board or its designee the following information on the issue or issues to be refunded:

(1)–(3) No changes.

The [broker, dealer or municipal securities dealer] *underwriter* also shall provide documentation supporting the information provided pursuant to the requirements of this subparagraph (D).

(ii) Application for Depository Eligibility, CUSIP Number Affixture and Initial Communications. Each [broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue (''] underwriter ['')] shall carry out the following functions:

(A)–(B) No changes.

(C) The underwriter[, on initial trade date,] shall [communicate] *as promptly as possible announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.*

[the following information to syndicate and selling group members]:

(1) No changes.

(2) the [initial trade date] *time of formal award.* For purposes of this subparagraph (a)(ii)(C), [initial trade date] *time of formal award* shall mean, for competitive issues, [either] the [date] time [of] *the issuer announces the* award, [or the first date allocations are made to syndicate or selling group members, whichever date is later,] and, for negotiated issues, [either] the [date] *time* [on which] the contract to purchase the securities from the issuer is executed[, or the first date allocations are made to syndicate or selling group members, whichever date is later].

(D) No changes.

(iii) No changes.

(b)–(c) No changes.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 2005, the municipal securities market is scheduled to complete its conversion from overnight ''batch'' systems for trade reporting to ''real-time'' systems.[3] Beginning on this date, amendments to MSRB Rule G–14, on transaction reporting, become effective to require brokers, dealers and municipal securities dealers (collectively ''dealers'') to submit most trade reports within 15 minutes after trade execution rather than by midnight on trade date. The purpose of the proposed rule change is to help dealers meet these accelerated trade reporting obligations on the first day of trading in an issue.

Existing Provisions of Rule G–34 Supporting Overnight Trade Reporting

Rule G–14 currently sets a midnight deadline on trade date for dealers to submit trade reports for transaction reporting purposes.[4] The requirement applies to new issue trades as well as to secondary market trades. Rule G–34, on CUSIP numbers and new issue requirements, requires the underwriter[5]

[3] SR–MSRB–2004–07, November 15, 2004. *See* ''Notice of Filing of Implementation Plan for Real-Time Transaction Reporting System,'' MSRB Notice 2004–36, dated November 17, 2004, at *http://www.msrb.org. See also* ''Approval by the SEC of Real-Time Transaction Reporting and Price Dissemination: Rules G–12(f) and G–14,'' MSRB Notice 2004–29, dated September 2, 2004, at *http://www.msrb.org.*

[4] *See* Rule G–14, on transaction reporting, Rule G–14 Procedures, and the Transaction Reporting User Manual, at *http://www.msrb.org.*

[5] Except where context indicates otherwise, references to ''underwriter'' in the context of Rule

of a new issue to take several actions so that syndicate and selling group members can report their trades properly at the end of the first day of trading in a new issue. Under the existing requirements of the rule, the underwriter must: (i) Ensure that CUSIP numbers are assigned to the issue by the day that the issue is formally awarded; and (ii) communicate the CUSIP numbers and the initial trade date for the issue to syndicate and selling group members on the initial trade date. This latter provision allows syndicate and selling group members to process and report their own transactions in the issue in a coordinated and correct manner on the initial trade date.

The term ''initial trade date'' is defined in Rule G–34 as follows: For negotiated issues, it is the date that the BPA is executed or the date that allocations are first made by the underwriter, whichever is later. For competitive sales, it is the date the official award is made by the issuer or the date that allocations are first made by the underwriter, whichever is later. This definition gives some flexibility to the underwriter in determining the initial trade date on which trading in an issue officially starts. For example, if the underwriter chooses not to execute its first transactions [6] on the formal award date (as might be the case if the BPA is signed at night), it may instead execute its first transactions on the next business day.

Proposed Rule Change to Rule G–34 to Support Real-Time Trade Reporting

Beginning January 31, 2005, the transaction reporting process for municipal securities will convert to a ''real-time'' process, with most trades being subject to a 15-minute reporting requirement. Two exceptions in Rule G–14 would apply to some transactions done on the first day of trading. Under those exceptions: (i) Dealers that are members of a syndicate or selling group [7] that effect trades in a new issue at the list offering price may report trades by the end of the first day of trading; and (ii) dealers that are not syndicate or selling group members and that have not traded an issue in the previous year may report trades within three hours of the time of trade execution.[8] While many trades executed during the first day of trading will qualify for one of these exemptions, other trades (*e.g.*, ''non-list price'' trades by syndicate or selling group members) will have to be reported within 15 minutes of trade execution. It also should be noted that the three-hour reporting exception, which will generally be available to dealers outside the underwriting group on the first day of trading, will require accelerated reporting of trades compared with the current end-of-day reporting requirement. The proposed rule change modifies existing provisions of Rule G–34 to ensure that dealers can report trades in a timely manner in this real-time processing environment.

''Time of Formal Award''

Since the timing for trade reports in a real-time environment generally will be measured from the time of trade execution rather than the day that the trade occurs, the proposed rule change replaces the concept of ''initial trade date'' with ''time of formal award.'' This term, reflecting the earliest time that a trade in a new issue can be executed,[9] is defined as: (i) For negotiated issues, the time that the BPA is executed; and (ii) for competitive issues, the time of the issuer's official announcement of the award.[10]

Communication of CUSIP Numbers, Identifying Information and Time of Formal Award

The proposed rule change will ensure the dissemination of CUSIP numbers, identifying information and the time of formal award is made in a manner to allow real-time reporting of transactions in new issue securities. The proposed rule change states a duty of the underwriter to communicate this information ''as promptly as possible'' and ''in a manner reasonably designed to reach all market participants that may trade the new issue'' and also states a firm deadline for this to be done, in any event, no later than the time that the underwriter executes its first transaction in the issue.[11]

The requirement to provide this information ''as promptly as possible'' takes into account that CUSIP numbers may be available well in advance of the time of formal award for a negotiated issue and must be disseminated as soon as practical after they are known. The ''time of formal award'' for a negotiated issue generally will occur after CUSIP numbers are assigned. This information also should be communicated as soon as it is known, although it is not intended that this would require an underwriter to make such a communication after normal business hours, as might be the case if a BPA is signed at night.[12]

In the case of competitive issues, it is expected that the underwriter winning an auction would communicate the CUSIP numbers and time of formal award, together, shortly after the issuer announces the winner of the auction. However, if there is a lengthy delay between the opening of bids and the formal announcement (marking the time that trades can be executed), the presumed underwriter would be required to disseminate CUSIP numbers as soon as they are available in order to facilitate trade processing once the formal award is announced. As discussed in more detail below, it may be necessary in some cases for the winner of a competitive sale to delay making the required communication of CUSIP numbers (and to delay trade executions) if CUSIP numbers are not pre-assigned to the issue prior to the auction.

It is expected that syndicate and selling group members often will have pending orders in a new issue prior to its formal award and will await the underwriter's communication of the time of formal award before executing trades and reporting them to the transaction reporting system. However, dealers outside the underwriting group also may have pending orders in an issue and need to know the time of

G–34 are meant to include placement agents as well as dealers that purchase securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the underwriter for purposes of Rule G–34. *See, e.g.*, MSRB Rule G–34(a)(ii) and G–34(a)(iii).

[6] The term ''allocations'' used in the current language of Rule G–34 refers to the ''final'' allocations by the underwriter, which are confirmable transactions.

[7] References to ''syndicate and selling group members'' in this context are meant to include managers of syndicates as well as sole underwriters or placement agents in non-syndicated offerings.

[8] *See* ''Real-Time Transaction Reporting: Notice of Filing of Proposed Rule Change to Rules G–14 and G–12(f),'' MSRB Notice 2004–13, dated June 1, 2004, on *http://www.msrb.org.*

[9] *See* MSRB Rule G–12 Interpretive Letter, ''Confirmation: Mailing of WAII confirmation,'' dated April 30, 1982, on *http://www.msrb.org.*

[10] Although the time of formal award represents the earliest time that a trade in a new issue can be executed, the underwriter is not required by MSRB rules to execute trades at that time. In cases in which a formal award occurs after the end of the business day, or at night, for example, the underwriter might choose to execute its first transactions on the next business day, just as is permitted under the current language of Rule G–34.

[11] The proposed rule change thus states a deadline similar to the one that exists currently in the rule that requires communication of information to be made on ''initial trade date.'' The proposed rule change phrases the deadline in terms of ''first execution of a transaction by the underwriter'' rather than by use of the term ''first date that allocations are made.'' This avoids the ambiguity of the term ''allocations,'' which are sometimes conditional on the formal award of an issue.

[12] As discussed, underwriters should be aware that, when other dealers have pending orders in a new issue, those dealers will be waiting for the underwriter's announcement prior to executing their own transactions. Therefore, it is important that information on the time of formal award and CUSIP numbers not be delayed unreasonably.

formal award.[13] Under the existing provisions of Rule G–34, dealers that are not in the underwriting group do not receive a communication from the underwriter notifying them of the ''initial trade date'' of the issue. The proposed rule change will help ensure that these dealers receive the necessary information to execute trades by requiring underwriters to disseminate the information in ''a manner reasonably designed to reach market participants that may trade the issue.'' [14]

The proposed rule change does not specify the particular method that must be used to disseminate information ''in a manner reasonably designed to reach market participants that may trade the issue.'' For large issues that are widely sold in the market, it effectively would require dissemination of the information on an electronic platform that provides real-time bond information and that is generally accessible to dealers. Unlike the current provision in Rule G–34, the requirement to disseminate information applies to sole underwriters as well as to syndicate managers. However, the proposed rule change also contemplates that the method of dissemination be appropriate to the type of offering. For example, in the case of a limited placement or a small offering where the underwriter knows all of the parties that will have trades on the first day of trading, notification to those parties would be sufficient to satisfy the rule and further dissemination of the information would not be necessary.

As discussed below, industry commentators stated that existing information service providers are able to accommodate the dissemination of information necessary under the rule. Thus the proposed rule change does not specify or suggest particular electronic platforms by which a required dissemination should be made.

Timing for CUSIP Number Assignment

A final provision of the proposed rule change is a modification in the underwriter's deadline for CUSIP number assignment.[15] For negotiated issues, the proposed rule change advances the existing deadline that assignments be made by the ''business day on which the BPA is signed'' to a requirement that numbers be assigned ''by the time of formal award.'' For competitive issues, the proposed rule change alters the deadline from ''date of award'' to ''the first execution of a transaction by the underwriter.'' For various reasons CUSIP numbers are not always pre-assigned to competitively bid issues.[16] In a real-time environment, it may not be possible for the winning underwriter to have the CUSIP numbers assigned by the time of formal award under these circumstances. During normal business hours, the underwriter in these situations generally can obtain CUSIP numbers within an hour or two, at which time notifications would be made and trade executions in the issue could begin.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[17] which requires that the rules of the MSRB shall ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. * * *'' [18]

The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating pricing data on a contemporaneous, real-time, basis. The proposed rule change will facilitate the processing of transactions in new issue municipal securities so that such transactions can be reported to the MSRB in real-time and prices of such transactions can be disseminated on a contemporaneous basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition among dealers in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments in the proposed rule change were solicited in a notice dated June 18, 2004 (''June 2004 Notice'').[19] The MSRB received two comment letters. Comments were received from:

The Bond Market Association (''BMA'').[20]

Standard and Poor's CUSIP Service Bureau (''CUSIP'').[21]

BMA indicated general support for the proposed rule change. BMA ''fully support[s] dissemination of CUSIP numbers to the current information service providers as soon as practicable after they are known and in no case later than the 'time of first execution.' '' CUSIP, while neutral, suggested industry practices that would help implement the proposed rule change with respect to CUSIP number availability. CUSIP recommended applying as early as possible for CUSIP number assignment and states that it ''is not limited in any way from assigning CUSIP numbers prior to the sale of a new municipal offering so long as the [CUSIP Service Bureau] is properly notified and a preliminary official statement or similar offering document is provided.'' To expedite assignment of CUSIP numbers, CUSIP recommended that underwriters submit requests for CUSIP numbers electronically rather than by fax and stated that it is considering enhancements to its internet-based application process to further expedite the assignment and availability of CUSIP numbers.

Dissemination of Information by Underwriters

In the June 2004 Notice the MSRB specifically requested comment on whether electronic venues exist in the marketplace by which underwriters could make announcements that provide reasonable access to information about a new issue to all dealers. Such a venue would be necessary to communicate CUSIP

[13] Although trade executions and trade confirmations are not permitted prior to the time of formal award, dealers often solicit orders, accept orders and (after final pricing decisions are made) conditionally allocate to orders, even though the formal award has not yet occurred. The proposed rule change is designed to facilitate the flow of information so that these dealers will know the earliest time that these ''conditional trading commitments'' can be executed in a new issue and will have the information necessary to ensure that trade reports can be made in a timely manner after execution.

[14] Accordingly, the dissemination requirement in the proposed rule change applies to sole underwriters as well as to syndicate managers.

[15] The proposed rule change also makes technical changes for purposes of clarity.

[16] The proposed rule change does not affect existing provisions in Rule G–34 that require a dealer acting as financial advisor in connection with a competitive sale to ensure that CUSIP numbers are pre-assigned to the issue. Not all financial advisors, however, are dealers.

[17] 15 U.S.C. 78o–4(b)(2)(C).

[18] *Id.*

[19] ''Notice Requesting Comment on Draft Amendments to Rule G–34 to Facilitate Real-Time Transaction Reporting and Explaining Time of Trade for Reporting New Issue Trades,'' MSRB Notice 2004–18, dated June 18, 2004, on *http://www.msrb.org.*

[20] Letter to Justin R. Pica, MSRB, from Leslie M. Norwood, The Bond Market Association, dated August 18, 2004.

[21] Letter to Justin R. Pica, MSRB, from Harry J. Lopez and Gerard Faulkner, Standard and Poor's CUSIP Service Bureau, dated August 17, 2004.

numbers, identifying information and the time of formal award to dealers outside of the syndicate and selling group that may have ''conditional trading commitments'' in the new issue. The MSRB stated in the June 2004 Notice that, if such a venue did not currently exist, or if there would be problems in making effective announcements through existing venues, the MSRB could offer to provide such a special-purpose solution.

The BMA ''strongly supports the use of current information service providers to carry this information, and feels that additional systems, emails, newsgroup postings, and processes should not be implemented.'' In its comment letter, the BMA stated that it has set up a ''G–34 Task Force'' to work with current information service providers ''to: (a) Increase awareness about the need for quick and accurate dissemination of final CUSIP numbers, the ''time of formal award'' and the ''time of first execution,'' and (b) to include new fields in their systems, if necessary, to accommodate the dissemination of this information from underwriters to market participants on a real-time basis.'' CUSIP stated that it would ''consider offering a new service whereby [CUSIP Service Bureau] communicates newly assigned municipal CUSIP numbers to all syndicate members and dealers outside of the syndicate group.''

Based on the comments received indicating that existing industry systems can provide broad real-time dissemination of information to industry members, the MSRB has decided not to offer to provide a special-purpose solution for making announcements to market participants. However, the MSRB will review the operation of industry systems for disseminating information and will readdress this issue if necessary in the future.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation Of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2004–08 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–MSRB–2004–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2004–08 and should be submitted on or before December 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3514 Filed 12–6–04; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50749; File No. SR–NASD–2004–022]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Corporate Financing Rule and Shelf Offerings of Securities

November 29, 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 February 4, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On May 4, 2004, NASD filed Amendment No. 1 to its proposed rule change, which replaced and superseded the original rule filing in its entirety. On July 16, 2004, NASD filed Amendment No. 2 to its proposed rule change.[3] On October 12, 2004, NASD filed Amendment No. 3 to its proposed rule change.[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

NASD is proposing to amend NASD Rules 2710, 2810, IM–2440, and Schedule A to the NASD By-Laws to address the filing requirements and the regulation of public offerings of securities registered with the Commission and offered by members pursuant to SEC Rule 415 of Regulation C under the Securities Act of 1933 (''SEC Rule 415'') (''shelf offerings''). Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 6—No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 made several technical corrections and modified the Market Transactions Exception contained in the proposed rule change.

[4] Amendment No. 3 corrected clerical and typographical errors contained in Amendment No. 2.

Section 7—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the *initial* filing of [initial] documents *and information* relating to any offering filed with NASD pursuant to the Corporate Financing Rule equal to $500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents *and information* initially filed with NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed $30,500.

* * * * *

IM–2440. Mark-Up Policy

The question of fair mark-ups or spreads is one which has been raised from the earliest days of the Association. No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association's Board adopted what has become known as the ''5% Policy'' to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto, and in accordance with Article VII, Section 1(a)(ii) of the By-Laws, the Board has adopted the following interpretation under Rule 2440.

It shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable.

(a) through (b) No change.

(c) Transactions to Which the Policy is Applicable

The Policy applies to all securities handled in the over-the-counter market, whether oil royalties or any other security, in the following types of transactions:

(1) through (5) No change.

(6) Transactions in which a member sells securities from an offering registered with the SEC pursuant to SEC Rule 415 that comply with the exemption from filing with NASD under Rule 2710(b)(10)(B) for Market Transactions.

(d) Transactions to Which the Policy is Not Applicable

The Mark-Up Policy is not applicable to the sale of securities where a prospectus or offering circular is required to be delivered and the securities are sold at the specific public offering price[.]*, including any offering or transaction subject to the compensation limitations of Rule 2710 or Rule 2810.*

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

(1) through (2) No Change.

(3) Offering Proceeds

The maximum [P]public offering price of all securities *to be* offered *or that are sold in a public offering* [to the public], not including securities subject to any overallotment option, securities to be received by the underwriter and related persons, or securities underlying other securities.

(4) No Change.

(5) Participation or Participating in a Public Offering

Participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, *principal, agency* or any other basis, *participation in a shelf takedown that does not satisfy the requirements of the market transactions exemption;* furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to SEC Rule 13e–3.

(6) Underwriter and Related Persons

Consists of underwriter's counsel, financial consultants and advisors, finders, any participating member, and any other persons [related to any participating member] *that receive any item of value that would be considered underwriting compensation.*

(7) Listed Securities

Securities meeting the listing standards to trade on the national securities exchanges identified in SEC Rule 146, markets registered with the SEC under Sections 6 *or 11A* of the [Exchange] Act, and any offshore market that is a ''designated offshore securities market'' under Rule 902(b) of SEC Regulation S.

(8) through (9) No Change.

(10) Required Filing Date

The required filing date shall be the dates provided in subparagraph (b)(4), and for a public offering exempt from filing under subparagraph (b)(7), the required filing date for purposes of subparagraphs (d) and (g) shall be the date the public offering would have been [be] required to be filed with [the] NASD but for the exemption.

(11) Securities Act

The Securities Act of 1933, as amended.

(12) Shelf Offering

Any offering of securities registered with the SEC and offered pursuant to SEC Rule 415, under the Securities Act.

(13) Takedown

In connection with a shelf offering, the securities purchased by a member in a principal transaction or the securities sold by a member in an agency transaction.

(b) Filing Requirements

(1) through (3) No change

(4) Requirement for Filing

(A) Unless filed by the issuer, the managing underwriter, or another member, a member that anticipates participating in a public offering of securities subject to this Rule shall file with NASD the documents and information with respect to the offering specified in subparagraphs (5) and (6) below:

(i) No Change.

(ii) if not filed with or submitted to any regulatory authority, at least fifteen business days prior to the anticipated date on which offers will commence[.]*; or*

(iii) in the case of a shelf offering, before the member sells securities in any takedown required to be filed.

(B) No [sales of securities subject to this Rule shall commence] *member shall commence selling in any offering required to be filed by this Rule, Rule 2720 or Rule 2810* unless:

(i) No Change.

(ii) NASD has provided an opinion *to the member or that covers the member stating* that it has no objections to the proposed underwriting and other terms and arrangements[or an opinion that the proposed underwriting and other terms and arrangements are unfair and unreasonable]. If NASD's opinion states that the proposed underwriting and other terms and arrangements are unfair and unreasonable, the member may file modifications to the proposed underwriting and other terms and arrangements for further review.

(C) Any member acting as a managing underwriter or in a similar capacity that has been informed of an opinion by NASD[,or a determination by the appropriate standing committee of the Board of Governors,] that the proposed underwriting terms and arrangements of a proposed offering are unfair or unreasonable, and the proposed terms and arrangements have not been modified to conform to the standards of fairness and reasonableness, shall notify all other members proposing to participate in the offering of that opinion or determination at a time sufficiently prior to the effective date of the offering or the commencement of sales so the other members will have an opportunity as a result of specific notice to comply with their obligation not to participate in any way in the distribution of a public offering containing arrangements, terms and conditions that are unfair or unreasonable.

(5) through (6) No Change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with NASD for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

(A) securities offered by a corporate, foreign government or foreign government agency issuer which has unsecured non-convertible *investment grade rated* debt with a term of issue of at least four (4) years, or unsecured non-convertible *investment grade rated* preferred securities, [rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories,] except that the initial public offering of the equity of an issuer is required to be filed[;].

(B) *investment grade rated* non-convertible debt securities and *investment grade rated* non-convertible preferred securities [rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories;].

[(C) offerings of securities:]

[(i) registered with the Commission on registration statement Forms S–3 or F–3 pursuant to the standards for those Forms prior to October 21, 1992 and offered pursuant to SEC Rule 415 adopted under the Securities Act of 1933, as amended; or]

[(ii) of a foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory, and is registered with the Commission on Form F–10 pursuant to the standards for that Form approved in Securities Act Release No. 6902 (June 21, 1991) and offered pursuant to Canadian shelf prospectus offering procedures;]

[(D)] *(C)* securities offered pursuant to a redemption standby ''firm commitment'' underwriting arrangement registered with the Commission on Forms S–3, F–3 or F–10 (only with respect to Canadian issuers)[;].

[(E)] *(D)* financing instrument-backed securities which are *investment grade* rated [by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories]; and

[(F)] *(E)* exchange offers of securities where:

(i) No change.

(ii) the company issuing securities qualifies to register securities with the Commission on registration statement Forms S–3, F–3, or F–10, pursuant to the standards for those Forms as set forth in [subparagraphs (C)(i) and (ii) of this paragraph; and] *subparagraph 10(D) below; and*

[(G)] *(F)* offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required To Be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with NASD for review:

(A) through (H) No change.

(I) any exchange offer, merger and acquisition transaction, or other similar corporate reorganization involving an issuance of securities that results in the direct or indirect public ownership of the member; [and]

(J) any offerings of a similar nature that are not exempt under subparagraph (7) or (8) above[.]*; and*

(K) shelf offerings pursuant to paragraph (10) below, and any shelf offering that is the initial public offering of the equity of an issuer.

(10) Shelf Offerings.

(A) Filing Requirement: a member that is required under subparagraph (4) above to file with NASD documents and information required in subparagraphs (5) and (6) shall make an ''Initial Member Filing'' or, if another member has made the Initial Member Filing, a ''Subsequent Filing,'' and shall receive a no-objections opinion pursuant to such filing prior to its participation in the shelf offering.

(i) Issuer Filing: Documents and information that are required to be filed by members under subparagraphs (5) and (6) may be filed by the issuer. The fees specified in Section 6 of Schedule A to the NASD By-Laws will be required in connection with such a filing;

(ii) Initial Member Filing: Unless made by another member, prior to participating in a shelf offering a member shall make an Initial Member Filing of the documents and information required under subparagraphs (5) and (6) and pay the filing fee specified in Section 6 of Schedule A to the NASD By-Laws prior to participating in a takedown. Documents and Information previously provided to NASD in an Issuer Filing may be incorporated in the Initial Member Filing and no additional filing fees will be required if the entire filing fee has been paid in connection with an Issuer Filing;

(iii) Subsequent Member Filing: if the Initial Member Filing has been made in connection with a shelf offering, a member that has not already received a ''no-objections'' opinion under subparagraph (b)(4)(B) shall make a Subsequent Member Filing of the documents and information specified in subparagraphs (5) and (6) prior to its participation in a takedown. Information previously submitted in an Issuer Filing or Initial Member Filing may be incorporated into the

Subsequent Member Filing and no additional filing fees will be due if the entire fee due under Schedule A to the NASD By-Laws has already been paid in connection with an Issuer Filing or Initial Member Filing;

(iv) ''Life of Shelf'' Clearance: A member that has received a no-objections opinion in connection with a shelf registered offering shall not be required to make a Subsequent Member Filing in order to participate in future takedowns provided that:

a. the shelf registration statement discloses a maximum amount of underwriting compensation that will not be exceeded by participating members in takedowns; and

b. there is no material change to the information provided in the filing on which NASD relied in issuing the no-objections opinion.

(B) Market Transactions Exemption: a member may participate in a takedown of equity securities or convertible-to-equity debt securities and be exempt from the filing requirement in subparagraphs (4) and (10)(A) above if the following conditions are met:

(i) the shelf offering is not the initial public offering of the issuer's equity securities, and does not occur within 90 days of the issuer's initial public offering;

(ii) the security is listed on The Nasdaq Stock Market or a national securities exchange;

(iii) agency and principal transactions are unsolicited and do not exceed the greater of:

a. 2% of the average daily trading volume (ADTV) on the dates of the transactions, calculated in compliance with SEC Regulation M, or

b. 10,000 shares, or securities convertible or exercisable into such number of shares;

(iv) the participating member has not entered into any underwriting, distribution, equity line or other agreement with the issuer or any selling securityholder with respect to the sale of the securities offered;

(v) the participating member does not receive compensation (including the mark-up, mark-down, or commission) that exceeds the amount permitted under NASD IM–2440, the Mark-Up Policy;

(vi) the participating member has not acquired any item of value in connection with its participation in the shelf offering (excluding a mark-up, mark-down, or commission); and

(vii) the participating member is not an affiliate of the issuer and does not have a conflict of interest with the issuer under Rule 2720.

(C) Seasoned Issuer Exemption: notwithstanding subparagraphs (4) and (10)(A) above, documents and information related to the following shelf offerings need not be filed with NASD for review, unless the shelf offering is subject to the provisions of Rule 2720:

(i) offerings by a company that has been subject to the reporting requirements of Section 12 or 15(d) of the Act for at least 36 calendar months, is current in its reporting obligations, and at the time of the takedown, either:

a. has registered the offering with the Commission on registration statement Form S–3 and the aggregate market value of the company's voting stock held by non-affiliates is at least $150 million or, alternatively, at least $100 million and the stock has had an annual trading volume of at least three million shares; or

b. has registered the offering with the Commission on registration statement Form F–3 and the aggregate market value worldwide of the company's voting stock held by non-affiliates is the equivalent of at least $300 million;

(ii) offerings registered with the Commission on Form F–10 by a foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory and offered pursuant to Canadian reporting requirements for at least 36 calendar months and at the time of the takedown, is current in its reporting obligations and the aggregate market value of the company's outstanding equity is at least (CN) $360 million.

(10) and (11) renumbered as (11) and (12).

(c) Underwriting Compensation and Arrangements

(1) No change.

(2) Amount of Underwriting Compensation

(A) through (E) No change.

(F) For purposes of determining the amount of underwriting compensation in a shelf offering, the discount or commission paid to participating members shall be aggregated with all other items of value received or to be received in connection with the takedown and shall consist of:

(i) in a transaction governed by an agreement, the discount from the public offering price, or the discount from a reasonable measure of the market price, or the commission specified by the agreement that governs the transaction;

(ii) in an agency transaction not governed by an agreement, the amount of the actual commission that is received or to be received in connection with the sale of the securities;

(iii) in a principal transaction when the discount from the public offering price is not specified in an agreement or the transaction is not governed by an agreement, the difference between the purchase price of the security and the sale price of the security. If there is a bona fide independent market for the security, or the security is an Actively-Traded Security as defined in Rule 2720 and SEC Regulation M, respectively, the discount or commission may be calculated as the difference between the purchase price and the:

a. ''prevailing market price'' in the principal market for the security at the time of purchase, as calculated by reference to IM–2440, the Mark-Up Policy; or

b. initial resale price of the security, so long as:

1. the purchase price of the takedown is of at least $10 million but no more than $50 million of securities and at least 50% of the securities are sold at the initial resale price or at lower prices; or

2. the purchase price of the takedown exceeds $50 million of securities and at least 25% of the securities are sold at the initial resale price or at lower prices.

(3) Items of Value

(A) For purposes of determining the amount of underwriting compensation received or to be received by the underwriter and related persons pursuant to subparagraph (c)(2) above, the following items and all other items of value received or to be received by the underwriter and related persons in connection with or related to the distribution of the public offering, as determined pursuant to paragraph (d) below shall be included:

(i) through (iv) No change.

(v) wholesaler's fees[;], *whether in the form of cash, securities or any other item of value;*

(vi) through (xiii) No Change.

(B) No Change.

(d) Determination of Whether Items of Value Are Included In Underwriting Compensation

(1) Pre-Offering Compensation

(A) All items of value received and all arrangements entered into for the future receipt of an item of value by the underwriter and related persons during the period commencing 180 days immediately preceding the required filing date of the registration statement or similar document pursuant to subparagraph (b)(4) above until the date of effectiveness or commencement of

sales of the public offering will be considered to be underwriting compensation in connection with the public offering. *For a shelf offering that has been declared effective and for which sales have commenced, this period will be the 180 days immediately preceding the first takedown in which the member participates following the receipt of the item of value.*

(2) through (5) No change.

(e) Valuation of Non-Cash Compensation

For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures shall be applied.

(1) Limitation on Securities Received Upon Exercise or Conversion of Another Security

Neither [An] underwriter [and] *nor* related person may [not] receive a security (including securities in a unit), a warrant for a security, or a security convertible into another security as underwriting compensation in connection with a public offering unless:

(A) through (B) No Change.

(2) through (3) No Change.

(4) Valuation Discount For Securities With a Longer Resale Restriction

A lower value equal to 10% of the calculated value shall be *assigned* [deducted] for each 180-day period that the securities or underlying securities are restricted from sale or other disposition beyond the 180-day period of the lock-up restriction required by subparagraph (g)(1) below. The transfers permitted during the lock-up restriction by subparagraphs (g)(2)(A)(iii)–(iv) are not available for such securities.

(5) Valuation of Items of Value Acquired in Connection with a Fair Price Derivative or Debt Transaction

Any debt or derivative transaction acquired or entered into at a ''fair price'' as defined in subsection (a)(9) and *any* item of value received in or receivable in the settlement, exercise or other terms of such debt or derivative transaction shall not have a compensation value for purposes of determining underwriting compensation. If the actual price for the debt or derivative security is not a fair price, compensation will be calculated pursuant to this subsection (e) or based on the difference between the fair price and the actual price.

(f) No Change.

(g) Lock-Up Restriction on Securities

(1) Lock-Up Restriction

In any public equity offering, other than a public equity offering by an issuer that can meet the requirements in subparagraphs (b)[(7)]*(10)*(C)(i) or (ii) any common or preferred stock, options, warrants, and other equity securities of the issuer, including debt securities convertible to or exchangeable for equity securities of the issuer, that are unregistered and acquired by an underwriter and related person*(s)* during 180 days prior to the required filing date, or acquired after the required filing date of the registration statement and deemed to be underwriting compensation by NASD, and securities excluded from underwriting compensation pursuant to subparagraph (d)(5) above, shall not be sold during the offering, or sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of effectiveness or commencement of sales of the public offering, except as provided in subparagraph (g)(2) below. *The ''effective date of the offering'' for purposes of a shelf-registered offering shall be the day following the last takedown for which the participating member received securities as compensation.*

(2) Exceptions to Lock-Up Restriction

Notwithstanding subparagraph (g)(1) above, the following shall not be prohibited:

(A) the [transfer] *disposition* of any security:

(i) No Change.

(ii) to any member participating in the offering and the officers or partners thereof, if all *of the* securities [so transferred] remain subject to the lock-up restriction in subparagraph (g)(1) above for the remainder of the time period;

(iii) if the aggregate amount of securities of the issuer held by the underwriter [or] *and* related person do not exceed 1% of the securities being offered;

(iv) through (viii) No Change.

(B) No Change.

(h) Proceeds Directed to a Member

(1) through (2) No Change.

(3) Exception From Compliance

The provisions of subparagraphs (h)(1) and (2) shall not apply to:

(A) No Change.

(B) an offering of securities exempt from registration with the Commission under Section 3(a)(4) of the Securities Act [of 1933];

(C) through (D) No Change.

(i) through (j) No change.

* * * * *

2810. Direct Participation Programs

(a) through (b) No change.

(c) Filing Requirements: Coordination with Rule 2710.

All offerings of securities included within the scope of this Rule shall be subject to the provisions of Rule 2710, and documents and filing fees relating to such offerings shall be filed with NASD pursuant to the provisions of that Rule and Section 6 of Schedule A to the NASD By-Laws.

(c) renumbered as (d).

(d) renumbered as (e).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD is proposing to amend NASD Rules 2710, 2810, IM–2440, and Schedule A to the NASD By-Laws to address the filing requirements and the regulation of public offerings of securities registered with the Commission and offered by members pursuant to SEC Rule 415 (''shelf offerings''). NASD Rules 2710, 2720 and 2810 (collectively, the ''Corporate Financing Rules'') require NASD members that anticipate participating in a public offering of securities, including shelf offerings, to make a filing with NASD's Corporate Financing Department (''Department''). The Department reviews the proposed underwriting terms and other required information submitted by members.[5]

[5] NASD Rule 2710 regulates the underwriting terms and arrangements of most public offerings of securities sold through NASD members. The

Continued

Members are required to receive the Department's opinion of ''no-objections'' to the offering terms prior to participating in the offering.

In September 2001, NASD published *Notice to Members* 01–59 requesting comment on proposed amendments to the Corporate Financing Rules to modernize and improve the regulation of shelf offerings. NASD received six comment letters that generally supported the proposal and the need to amend the rules.[6] However, several commenters also were concerned that the new approach, with its emphasis on ''Notice Filings'' after each takedown off the shelf, might prove more burdensome and expensive than the current rules. The Corporate Financing Committee also considered the proposal at several meetings. At its May 2002 meeting, the Committee also expressed concern that the Notice Filing approach may not be as efficient and yield the benefits it was designed to provide.

In response to the comments received, NASD staff revised the proposal. In the proposed rule change, NASD has retained beneficial aspects of the original proposal (*e.g.*, the new calculation methodologies for determining underwriting compensation, the Market Transactions Exception), and eliminated those other aspects that raised legitimate concerns (*e.g.*, Notice Filings, special filing requirements for Thinly Traded Issuers). In addition, NASD staff modified and clarified the filing requirements.

a. Background. When a member anticipates participating in a shelf offering, the Corporate Financing Rules generally require the member to file the shelf offering with the Department. Many shelf offerings are not underwritten, however, and members have requested guidance in the past concerning their filing obligations in shelf offerings. In 1988, NASD published *Notice to Members* 88–101 (''NtM 88–101'') to clarify the filing requirements that apply to shelf offerings. The *Notice* states that the participation of a member in any offering of securities distributed pursuant to SEC Rule 415 constitutes participation in a public offering. The *Notice* also states that any member who is named as a potential distribution participant in the registration statement or who participates in any transaction that takes securities off the shelf is responsible for ensuring that a timely filing is made with the Department. *Notice to Members* 01–59 reiterated this position: ''Accordingly, NASD Regulation considers shelf offerings to be public offerings within the scope of the Corporate Financing Rules, and members that take securities off a shelf and sell them to the public must file information about the offering with the Department.''

While these *Notices* indicate that shelf offerings are public offerings that must be filed with the Department, the requirement to file as currently drafted also undermines some of the flexibility intended by the shelf offering process and has created some practical issues and uncertainties for members that sell shelf-registered securities:

- Members have been unclear at times whether the sale by a member of a small amount of shelf-registered securities offered by an issuer or a selling security holder triggers a filing obligation, and if so, at what point should the member make a filing. Members have questioned whether the execution of unsolicited transactions would constitute ''participation in a public offering'' for purposes of the Corporate Financing Rules.[7]
- When several members acting independently sell securities, it may be unclear which member must make the requisite filing with the Department.
- Many shelf offerings are initially filed with the SEC by issuers before they enter into underwriting agreements with members. Because the NASD filing requirements are the responsibility of members rather than issuers, few issuers file the offering with the Department. Those issuers that do file with the Department often cannot identify, at the time of filing, the members that will be engaged in sales, nor will they have information regarding underwriting discounts, commissions or other terms and arrangements.[8]
- The Department's review processes could delay the offering, thus affecting the registrant's ability to take advantage of market opportunities that shelf registration is designed to provide. This can occur when members do not promptly file shelf-registered offerings when they anticipate they will participate in a takedown, when information required by the rules is not readily available, or due to mistakes in the filing process or transmission of filing fees.

The proposed rule change addresses these issues by clearly delineating the filing responsibility for members that participate in shelf offerings and providing a streamlined, more automated process for all filers, including issuers. In addition, the proposed rule change provides a specific filing exemption for members that engage in occasional unsolicited takedown transactions, and thus members would not have to file when they participate in shelf takedowns that meet the criteria in the exemption. The proposed rule change is intended to provide clear guidance to members with regard to their filing obligations.

The proposed rule change also addresses the determination of underwriting compensation in shelf offerings. From time to time members have requested guidance on the appropriate calculation of underwriting compensation in shelf takedown transactions. The calculation methodology to apply to a particular takedown transaction can vary because of the many kinds of transactions in which shelf-registered securities are distributed. For example, shelf takedowns can be principal or agency transactions, may be sold to investors at a fixed price or at a discount to the market price, or sold at prevailing market prices. Shelf takedowns may also be made pursuant to an underwriting agreement or without any written agreement, and the agreements may involve complex formulas, such as those found in equity line transactions. In the proposed rule change, NASD proposes alternative methods to

underwriting terms and arrangements of Direct Participation Program (DPP) offerings are regulated by NASD Rule 2810. NASD Rule 2720 regulates public offerings when the securities offered are those of a member, the member's parent company, an affiliate of the member, or a company with which a member has a conflict of interest.

[6] Comment letters were received from the Committee on Securities Regulation of the New York State Bar Association, the Capital Markets Committee of the Securities Industry Association, and from the law firms of Fried, Frank, Harris, Shriver & Jacobson, Simpson Thacher & Bartlett, Sullivan and Cromwell, and Shearman and Sterling.

[7] Rule 2710(b)(4)(A) requires a member that anticipates participating in a public offering of securities subject to the Rule to make a filing with NASD. ''Participation in a public offering'' is defined in Rule 2710(a)(4) as ''* * * participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis * * *.'' Rule 2720 contains a definition of ''public offering'' that is incorporated by reference in Rule 2710. That definition broadly defines the term as ''any primary or secondary distribution of securities made pursuant to a registration statement or offering circular * * * and all other securities distributions of any kind whatsoever * * *.'' NASD does not define the term ''distribution'' and uses this term in the general sense.

[8] In addition, issuers may file shelf-registered offerings on behalf of selling securityholders, in anticipation of member participation in the sale of the registered securities. Because the timing and amount of securities sold off the shelf will be under the control of the securityholders, the issuer may have little or no information regarding the selling arrangements between the securityholders and members. In response to these uncertainties, NASD's proposed rule change would provide clear-cut filing responsibilities to all members or exempt them from filing under the proposed market transactions exception.

calculate the discount or commission received by members that participate in shelf offerings. The alternatives are intended to take into account the different ways members sell securities in shelf offerings and to recognize the effect of transaction size and whether the security has an actively traded market.

The proposed rule change would also make several conforming and clarifying amendments to the Corporate Financing Rules. NASD proposes to amend Rule 2710 to clarify how to apply the review period for underwriting compensation when shelf takedowns occur long after a shelf registration statement has been declared effective, and to clarify the application of the lock-up provisions in shelf offerings. We also propose to amend Rule 2810 so that DPP offerings that are registered pursuant to SEC Rule 415 qualify for the new regulatory treatment of shelf offerings under Rule 2710. The proposed rule change also modifies NASD's Mark-Up Policy in IM–2440 to more specifically delineate those shelf offerings that are subject to the Policy.[9]

b. Filing Process. Under the proposed rule change, the general filing requirement for shelf offerings would be the same as that for all other public offerings, *i.e.*, a member that anticipates participating in a shelf offering in any capacity shall file required information with the Department, unless a filing exemption is available. Unlike the current system, however, the information required in a filing would differ depending on whether a filing is an ''initial filing'' or a ''subsequent filing'' of a shelf offering. Because members would be able to rely on information contained in the initial filing, generally less information will be required in a subsequent filing. In addition, if an issuer makes a filing before the initial filing by a member, the information and documents filed by the issuer (''issuer filing'') would be incorporated into the member's initial filing, further reducing the filing obligation of the member. In keeping with current practice, if the full filing fee has already been paid by the issuer, no filing fee would be required of the member making the initial filing. As with other filings made under Rule 2710, members would be required to file shelf offerings with the Department electronically through the COBRADesk system.

Initial Member Filings: Under the proposed rule change, before a member participates in a shelf offering subject to a filing requirement, the member would be required to review a COBRADesk screen to see if an initial filing has already been made on web COBRADesk. If the initial filing has not already been made, the member will be required to make the initial filing with the Department and pay the filing fee based on the aggregate value of the securities registered on the registration statement.[10] The Department will review the filing and issue a no-objections letter with regard to the member's participation in the offering. If the maximum amount of compensation that the issuer or selling securityholders will pay the member in connection with takedowns off the shelf is approved and disclosed in the registration statement or in an amendment or supplement to the registration statement, the member will be able to rely on the no-objections opinion for ''the life of the shelf,'' as long as there are no material changes that would affect the Department's review and clearance.[11] If more than one member has entered into an underwriting agreement at the time the initial filing is made, the Department will issue a no-objections opinion that applies to every member disclosed in the initial filing or that executes the underwriting agreements that were reviewed in connection with the filing. If the maximum amount of compensation that any member will receive for selling the securities offered by the issuer or selling securityholders in takedowns off the shelf is disclosed in the registration statement or in an amendment or supplement to the registration statement, every member covered by the no-objections opinion will be able to rely on the no-objections opinion for ''the life of the shelf,'' subject to there being no material change to the terms and conditions of the Department's review and clearance.[12]

After it issues a no-objections opinion, the Department intends to post on a screen in COBRADesk the name of the issuer, the SEC Accession number of the base prospectus in EDGAR, and the identity of all members who have received no-objections clearance with regard to takedowns off that shelf. NASD intends to require and maintain information identifying each member that will participate in an offering in the COBRA database. All registered users of COBRAdesk will have access to the ''cleared members'' screen.

Subsequent Filings: A member that was not cleared to participate in the initial member filing but that wants to participate in a subsequent takedown would have to make a ''subsequent filing.'' In that case, a member that wants to participate in a shelf takedown first would check web COBRADesk to see if the offering has been filed with NASD. If the offering has been filed, the member would check the ''cleared members'' screen to see if an initial member filing has been made. If the initial member filing was made and one or more members were issued a no-objections opinion, these members would be identified. If the member that wants to participate in the takedown is not in the ''cleared members'' screen, such member would have to make a subsequent filing with regard to its proposed takedown from the shelf registration. If, on the other hand, the member has already received a ''life of shelf'' clearance, it would be listed on the ''cleared members'' screen and no further filing would be required, unless

[9] The proposed amendments to IM–2440, the Mark-Up Policy, clarify that Rule 2710 will govern member compensation in all shelf takedowns with the exception of those that comply with the requirements of the Market Transactions Exemption (MTE). Members will not be required to file takedowns that comply with the MTE, and member compensation in such takedowns will be subject to the Mark-Up Policy instead of Rule 2710. These clarifications are particularly significant in light of the decision on November 14, 2003 by NASD's National Adjudicatory Council (NAC) in the Matter of *Department of Enforcement* v. *Walsh Manning Securities, LLC et. al.* (NASD Complaint No. CAF000013), in which the NAC stated in *dicta* that certain shelf offerings were not subject to Rule 2710 and were instead subject to the Mark-Up Policy. Although the complaint alleged violations of the Mark-Up Policy, Walsh Manning's participation in takedowns from a selling securityholder shelf offering would have triggered a filing requirement under the proposed rule change. This is because, among other things, Walsh Manning engaged in solicited transactions and sold securities in an amount that would have exceeded the parameters of the MTE. Therefore, Walsh Manning would have had to file the offering for review under Rule 2710 if the proposed rule change had been in effect at the time.

[10] This is consistent with current procedures. Members from time to time request that they be able to pay filing fees only with regard to the value of securities the particular member takes off the shelf, but that is not permitted under the current rules, and would require members and issuers to pay multiple filing fees per shelf offering, creating administrative problems and delaying takedowns. In addition, if an issuer files documents and information with NASD, the filing fee paid by the issuer would satisfy the member's obligation to pay the filing fee.

[11] Rule 2710 requires the disclosure of all underwriting compensation in the prospectus. As part of its review of a filing, NASD would require the maximum compensation to be received by members be disclosed before issuing an opinion of no-objections regarding the offering.

[12] For example, NASD would consider changes such as the following to be material: the receipt of additional items of value by the underwriter and related persons that would be deemed underwriting compensation and would require an amendment to the offering documents, a modification to compensation arrangements already reviewed and approved and the existence or development of a potential conflict of interest that was not reviewed. A subsequent filing would be required in these instances.

a material change takes place in the future that would require additional review or another subsequent filing. Members are obligated under the Corporate Financing Rules to submit modifications to underwriting compensation or new items of compensation for review after the issuance of a no-objections opinion, and similarly, if a conflict of interest developed, this would be deemed a material change in the terms of the approval. Therefore, ''life of shelf'' clearance means that if a member remains in compliance with the terms of its clearance then it would not need to file again concerning any takedown from a shelf offering for which the member appears in the ''cleared members'' screen.

If an initial member filing has been made, but a particular member is not listed on the cleared members screen, then that member would have to make a subsequent filing. No fee would be charged in connection with such a filing, however.[13] The member making the subsequent filing would be required to provide certain summary information and representations through web COBRADesk, and receive a no-objections opinion prior to participating in the offering.

Expedited Reviews: In response to comments requesting expedited treatment for shelf offerings, NASD proposes to develop an automated review and clearance (ARC) process for Subsequent Member Filings of shelf offerings that meet eligibility criteria. Although certain offerings, such as those that require a qualified independent underwriter to resolve conflicts of interest, would not be eligible for an automated clearance generated by web COBRADesk, the staff anticipates that ARC would expedite a majority of Subsequent Member Filings. The system generated no-objections letter would be automatic, if all of the required information is provided and there are no review issues such as proposed compensation that exceeds the maximum allowable amount. The system would recognize when a Subsequent Member Filing satisfies these criteria and the member would be displayed in the ''cleared member'' screen automatically. ARC would permit filers to expedite their own reviews, as the system would issue the no-objections opinion to the members on a 24-hour basis as soon as the requirements for clearance are satisfied. Such approvals would generally be subject to spot checks and the routine member examination process with regard to the veracity of undertakings and information provided to NASD.

c. Market Transactions Exception (MTE). The MTE was designed to provide an exception from the filing requirements under the Corporate Financing Rules for members that participate in takedown transactions that are more like ordinary trading transactions than public offerings. The original proposal published in 2001 was well received by the commenters and the Committee, although many believed that it was too complex and that it lacked predictability as it exempted some, but not all transactions governed by underwriting agreements. Accordingly, NASD has simplified the MTE by excluding underwritten transactions and deleting some of the volume limitations published in *Notice to Members* 01–59, and clarified that agency and principal transactions must be unsolicited and may not exceed the greater of 2% of the ADTV for the security (calculated in accordance with SEC Regulation M) or 10,000 shares, on any given trading day.

The requirement that transactions be unsolicited applies to both sides of a securities transaction. For example, in a principal transaction, the member could neither solicit a selling securityholder to sell shelf-registered securities to it nor solicit a purchaser for such securities. Similarly, in an agency transaction, a member could not solicit an issuer or selling securityholder to sell, nor could it solicit an investor to purchase such securities. The MTE provides an exemption to members that engage in a variety of takedown transactions such as unsolicited brokerage transactions, principal transactions as a result of unsolicited customer orders and transactions in member proprietary accounts, subject to the 2% or 10,000 share daily limit.

Market making transactions in a security for which a member is a registered market maker would generally not constitute participation in a public offering, and NASD would not consider a posted bid or offer by a market maker in the ordinary course of its business to constitute solicitation for purposes of the MTE.[14]

With one exception, the remaining MTE requirements contained in the proposed rule change were published in *Notice to Members* 01–59, and include the following:[15]

- The shelf offering or takedown cannot be the initial public offering of the issuer's equity securities, and cannot occur within 90 days of the issuer's initial public offering;
- The security must be listed on The Nasdaq Stock Market or a national securities exchange;
- The participating member cannot be an affiliate of the issuer nor have a conflict of interest with the issuer;
- The transactions are subject to the 5% limitation under the Mark-Up Policy rather than the compensation limitations under the Corporate Financing Rule;[16] and
- The participating member and its associated persons have not acquired an item of value in connection with their participation in the shelf offering that would be considered underwriting compensation (excluding a discount or commission that complies with the Mark-Up Policy).

[13] An initial COBRADesk filing cannot be submitted unless the required filing fee is transmitted. Therefore, a fee based on the aggregate amount of securities registered would have already been paid in connection with the initial filing. After the fee for all of the securities registered for sale is paid, no further filing fees would be required. If, however, a subsequent filing includes an amendment that increases the size of the offering or if there is otherwise a balance due, such fees would be required in connection with the subsequent filing.

[14] A market maker that engages in solicited transactions involving securities offered by means of a shelf registration statement may have to file. For example, if a market maker engaged in solicited purchases of securities from selling securityholders who were offering their securities pursuant to a prospectus, or that engaged in the solicitation of retail investors to purchase such securities may incur a filing obligation. Market makers that engage in such transactions may in fact be participating in the distribution of a public offering, and may have to comply with the requirements of SEC Regulation M.

[15] In response to comments from SEC staff, NASD has narrowed the MTE to exclude securities quoted on the OTC Bulletin Board. The change was made in recognition that the NASD has a significant regulatory interest in the public distribution of shelf registered securities of thinly traded issuers quoted on the OTC Markets. Securities quoted on the OTCBB are generally less liquid and more volatile than those traded on the national securities exchanges and the Nasdaq Stock Market, and are not subject to the corporate governance and other qualification requirements of those markets.

[16] NASD is proposing to amend its Mark-Up Policy, IM–2440, to clarify that shelf takedown transactions that come within the parameters of the MTE will be subject to the Mark-Up Policy, instead of the generally higher compensation limits available under Rule 2710. NASD is also amending the Mark-Up Policy to specifically exclude shelf offerings that are subject to the compensation limits in Rule 2710, so that a takedown transaction by a member will either be subject to IM–2440 because it complies with the MTE, or it will be subject to the compensation limitations of Rule 2710. This is significant in light of the decision by NASD's National Adjudicatory Council (NAC) in *Department of Enforcement* v. *Walsh Manning LLC et al.* (November, 2003), in which the NAC stated in *dicta* that certain shelf offerings are not subject to Rule 2710 and affirmed that the takedowns in which Walsh Manning participated were subject to NASD's Mark-Up Policy instead of Rule 2710. Under the proposed rule change, Walsh Manning would have had to make a filing and its compensation would have been subject to Rule 2710, as the takedowns in which the firm participated would not have complied with the requirements of the MTE (see also footnote No. 5).

Based on these restrictions, members that anticipate selling shelf registered securities in non-underwritten transactions would be required to assess their intended participation level to determine whether the MTE (or other filing exemption) is available or whether an initial or subsequent filing should be made. Under the proposed rule change, a member that only intends to participate in transactions that satisfy the MTE requirements would not be required to make a filing. On the other hand, if a member anticipates that its level of participation would exceed the MTE parameters, the member should make a filing in advance of participation so that it can sell the securities in its accounts or the accounts of its associated persons or affiliates, taking advantage of market conditions without having to monitor compliance with various restrictions in the MTE or be subject to the delay of having to make a filing later. For example, a member should anticipate participating in a shelf offering by selling security holders if a substantial percentage of the securities offered by the selling security holders are held in the member's proprietary or customer accounts, such that it would be likely that proprietary transactions or transactions with its customers or affiliates would exceed 2% of the ADTV for the security on a given trading day.

The proposed rule change would require each member that anticipates participating in a shelf offering takedown to determine whether a filing exemption or the MTE is available, and if not, whether its participation would require an initial filing, subsequent filing, or no filing at all, because the member is already included in the ''cleared members'' COBRADesk screen for that shelf offering and has ''life of shelf'' clearance.

d. Underwriting Compensation. Under the proposed rule change, the amount of underwriting compensation in a shelf takedown governed by an underwriting, equity line, private investments in public equity (PIPE), or similar agreement between the issuer and any selling member would generally be based on the commission or discount set forth in the agreement. Such agreements may be firm commitment underwriting agreements, best-efforts underwriting agreements, equity lines of credit agreements, purchase agreements, or some other form of agreement for the sale of securities from a shelf registration. Where there may be some question concerning the appropriate valuation of a discount that is governed by a market-based formula or other more complex compensation arrangement, NASD intends to value the compensation based on its analysis of the arrangement, establishing an appropriate valuation through the review process.

In the absence of an agreement governing a member's participation in a takedown of securities from a shelf registration, the proposed rule change provides alternative methods of calculation depending on whether a transaction was an agency or principal transaction. In an agency transaction, the underwriting compensation would be the amount of the commission that is added to the sale price of the securities paid by investors. In a principal transaction where the discount or commission is not specified by an agreement, NASD proposes three methodologies that members could utilize to determine compensation amounts: (1) The Resale Spread Method, in which the discount would be calculated as the difference between the purchase price of the securities off the shelf and their resale price; (2) the Prevailing Market Price Method, in which the discount would be calculated as the difference between the purchase price of the securities off the shelf and the ''prevailing market price'' of the security at the time of purchase; [17] and (3) the Initial Resale Price Method, in which the discount would be calculated as the difference between the purchase price of the securities off the shelf and the price at which the first significant amount of sales after the takedown were executed. This third methodology would take into account market price movements that occur subsequent to a member's acquisition of the shelf-registered securities that could affect the discount, while ensuring that enough securities are sold to establish a reasonable, bona fide compensation calculation.

In a principal transaction, NASD anticipates that the Resale Spread method would be the primary method of calculating underwriting compensation, due to the market and transaction size requirements of the other methods. The Resale Price Method would generally be the most accurate measure of compensation regardless of the type of security or manner of distribution. The Prevailing Market Price and Initial Resale Price Methods would be available when members are subject to significant market risk due to the size of a takedown transaction or due to changes in market conditions (in an actively traded or bona fide independent [18] market) during the distribution of a shelf takedown. NASD solicits comment on whether the eligibility criteria for these alternative calculation methodologies should be expanded from those currently proposed.

NASD believes that these calculation methodologies will provide greater certainty to members and aid them in complying with the underwriting compensation requirements in connection with their participation in shelf offerings of securities.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, we believe that the proposed rule change amends NASD's Corporate Financing Rule to provide greater clarity regarding when to make filings for shelf offerings while also ensuring that such filing requirements do not undermine the flexibility intended by the shelf registration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD *Notice to Members* 01–59 (September 2001). NASD received six comment letters [19] that generally supported the proposal and the need to amend the rules. However, several commenters also were concerned that the new approach might prove more burdensome and expensive than the current rules. Of the six comment letters received, three were in favor of the proposed rule change and

[17] The prevailing market price would be determined pursuant to IM–2440, the Mark-Up Policy, and *Notice to Members* 92–16. Because this methodology would not work in a dominated or controlled market, we propose not to make it available for offerings of securities of thinly-traded issuers. The proposed rule change would require that the takedown security be an Actively Traded Security under Regulation M, or a security with a bona fide independent market, as defined in NASD Rule 2720(b) to qualify for the use of the Prevailing Market Price Method.

[18] Telephone conversation between NASD and Commission Staff on November 22, 2004.

[19] *See* note 6, *supra.*

three viewed portions of the proposal unfavorably. NASD notes that the proposed rule change has undergone significant revisions since the publication of *Notice to Members* 01–59 and the comment letters were sent in response to the original proposal.

In general, the commenters suggested further reductions in members' regulatory burdens and additional exemptions from the filing requirement. NASD does not believe that the more comprehensive exemptions suggested by some commenters, such as exemptions for all Form S–3 filings or all shelf offerings, is warranted. In addition, several commenters apparently misunderstood some aspects of the proposal. We describe the comments received and the way that the proposal was modified in response. We also describe several suggestions made by the commenters that NASD does not support because they would not improve the Corporate Financing Rules or would be inconsistent with their purpose.

Filing Exemptions for Shelf Offerings: The proposed rule change eliminates the explicit references to ''pre-1992'' Form S–3 eligibility requirements in the filing exemption for securities registered on Forms S–3 (and F–3) offered pursuant to SEC Rule 415 while preserving the current filing requirements. This change adds clarity and simplicity as members or their counsel will no longer need to determine what eligibility criteria for those forms were in effect prior to October 1992.

Some commenters requested that NASD reduce the S–3/F–3 exemption requirements to 12 months reporting history and $75 million in public float, in line with the current eligibility requirements for those forms. NASD believes there are important regulatory purposes for the current filing requirements and accordingly, we do not propose to expand the S–3/F–3 exemption in response to the comments for the reasons described below:

First, the 12-month reporting and $75 million float requirements currently in effect are criteria that determine whether an issuer is eligible for a particular type of registration form. The Commission does not exempt the companies that meet these eligibility requirements from filing a registration statement. Accordingly, the argument that NASD should exempt such offerings from filing, and that the Corporate Financing Rule's filing exemption should automatically track a registration form eligibility requirement is not persuasive. Second, SEC Regulation M requires a $150 million public float as a condition for exemption from trading restrictions during secondary distributions. This requirement supports NASD's position that issuers with less than a $150 million float are more prone to abusive or fraudulent trading and distribution activity. The SEC adopted SEC Regulation M in 1997, five years after the requirements for Forms S–3/F–3 were relaxed.

Third, in *Notice to Members* 93–88, the NASD stated that competitive market forces and an active following in the investment community were important factors in its decision to exempt S–3/F–3 shelf offerings.[20] When compared to issuers that are larger and have been reporting companies for a longer period, S–3/F–3 filers with only a 12-month reporting history and a $75 million float would be less likely to be followed by investment professionals and investors, and would be more likely to have thinly-traded markets for their equity securities. Accordingly, we believe that such companies would be more likely to be subjected to unreasonable underwriting provisions. NASD has ongoing investigations that involve securities registered on Form S–3.[21] The float and reporting history requirements in the Corporate Financing Rule provide the NASD with an opportunity to review these offerings prior to effectiveness and uncover problems with the compensation structure and other potential violations before members can sell the securities to the public.

One commenter suggests that the provision in Forms S–3 and F–3 that permits a successor entity to tack on the reporting period of a predecessor organization should be incorporated into the Form S–3/F–3 exception in the Corporate Financing Rule. We agree that a successor registrant should be eligible to tack the reporting history of its predecessor in order to meet the 36-month reporting history requirement in the Corporate Financing Rule. The requirements for tacking are narrowly drawn and ensure that the assets, liabilities and public information regarding the successor are equivalent to those of other issuers whose shelf-registered offerings are eligible for the S–3/F–3 exemption.

One commenter recommends that the Rule be amended to provide an additional exemption for offerings by issuers filing on Form F–9.[22] The Department rarely, if ever, receives offerings registered on Form F–9.[23] Form F–9 permits registration of non-convertible debt rated investment grade by an NRSRO or an ''Approved Rating Organization.'' Due to the fact that there is already an exemption in the Corporate Financing Rule for offerings of securities rated investment grade and the lack of filings on Form F–9, we do not find this request for a filing exemption necessary at this time.

Schedule B Issuers Exemption: Two commenters recommend that NASD amend the proposal to include an exemption from filing for Schedule B issuers.[24] They state that foreign sovereigns offering debt securities in the U.S. use Schedule B rather than the Forms F–3 or F–10. Currently, there is no exemption from NASD filing requirements for these offerings. We disagree that foreign governments or their political subdivisions that are eligible under SEC rules to use Schedule B are not likely to need NASD review of the underwriting terms and arrangements with U.S. underwriters. NASD believes such an exemption would be inappropriate in light of recent concerns related to inequitable practices of members in such offerings. These recent investigations call into question the assumptions that commenters have made concerning the ability of Schedule B issuers to negotiate on an even footing with global investment banking firms to whom the issuer depends on for advice and funding. Accordingly, NASD has not included such an exemption in the proposed rule change.

[20] NASD is proposing to rescind an interpretation included in *Notice to Members* 93–88 (December 1993) that stated the filing exemption for S–3/F–3 shelf offerings was not available if the shelf-registered securities were sold in a conventional underwritten offering within a few days following the effective date of the registration statement. This change will liberalize the filing exemption and allow more offerings to be exempt from filing. NASD also proposed to rescind this policy in *Notice to Members* 01–59 (September 2001).

[21] These cases involve allegations of undisclosed underwriting compensation, conflicts of interest, failure to file, violations of SEC Regulation M, and other charges. In addition, shelf-registered equity line financings have raised significant issues regarding compliance with NASD Conduct Rules and the federal securities laws.

[22] Large publicly-traded Canadian issuers registering non-convertible investment grade securities may use Form F–9.

[23] Based on the results of a database search, no recent filings on Form F–9 were identified.

[24] Schedule B is the Registration Statement used by foreign governments (or political subdivisions of foreign governments) to register securities. If the distribution involves a shelf offering, language appearing on a Schedule B Registration Statement would be similar to the following: ''The securities being registered hereby are to be offered on a delayed or continuous basis pursuant to Releases No. 33–6248 and 33–6424 under the Securities Act of 1933.'' Therefore, a Schedule B filer is not technically making its shelf offering pursuant to SEC Rule 415, but through other provisions afforded foreign governments.

Multi-Issuer (Trust) Exemptions: One commenter noted an increase in the number of ''multi-issuer'' shelf offerings by individual corporate groups. The commenter explained that these transactions involve multiple offerings of debt and equity securities by a parent or operating entity and offerings of trust preferred or pass-through securities (''Trust Preferred'') by special purpose vehicles created by the parent or operating entity. The commenter suggested that offerings of Trust Preferred securities should be exempt from filing when the parent or operating entity satisfies the criteria for the S–3/F–3 exemption or the exemption for issuers with investment grade rated debt.

NASD does not agree that the proposal should be amended to include an exemption for Trust Preferred securities due to problems recently uncovered in investigations that have involved securities issued from trusts formed as special purpose financing vehicles. The Department generally reviews Trust Preferred securities as DPP offerings under Rule 2810 because of their pass through features. The Department has recently encountered regulatory problems with a variety of DPP offering structures, terms and compensation arrangements, and does not believe it would be appropriate to exempt as a class such offerings from review.

Expedited Reviews: Several commenters suggested that the 15-business day review period should be shortened in light of the market timing and competitive environment associated with shelf offerings. In most cases, the Department believes it can complete its review in far fewer than 15 days. The Department is generally attentive to requests for expedited reviews and prioritizes the review of offerings to address the timing concerns of members, and the staff has developed procedures for expedited reviews and would give priority to meeting the timing needs of members that must receive a no-objections letter prior to participating in a shelf offering.

In addition, Subsequent Member Filings of shelf takedowns that meet certain criteria would be eligible for expedited reviews through an automated review and clearance (ARC) process. For certain takedown transactions, such as those that do not require a qualified independent underwriter due to conflicts of interest, members would be eligible for an automatic clearance generated by web COBRADesk for any filings that follow the Initial Member Filing. The system generated no-objections letter would be automatic, if all of the required information is provided and there are no review issues such as proposed compensation that exceeds the maximum allowable amount. The system would recognize when a Subsequent Member Filing satisfies these criteria and the member would be displayed in the ''cleared member'' screen automatically. ARC would permit filers to expedite their own reviews, as the system would issue the no-objections opinion to the member(s) on a 24-hour basis as soon as the requirements for clearance are satisfied.

Notice Filing Requirements: Notice Filings were proposed in *Notice to Members* 01–59 (September, 2001) in order to provide members with increased flexibility to quickly take advantage of market opportunities. For certain offerings, members could file after they participated in a takedown and would not need a no-objections opinion prior to such participation in the offering. Many commenters suggested that Notice Filings would not result in the efficiencies envisioned by the staff. Some commenters suggested that Notice Filings would create risks for members as the regulatory review would shift to an examination function as opposed to the pre-effective review and comment process that is currently in effect. Members expressed concern that the filing process and fees did not provide any benefit to members and that members would prefer to manage their regulatory risk in a different manner. Four commenters contend that since the NASD will not render an opinion in connection with these filings, then there would be reason to make a filing, as NASD rules generally do not require members to make filings for the purpose of confirming their compliance with the rules. Commenters also expressed concern that the Notice Filing deadlines within 3 and 10 business days of a takedown could cause confusion. To address these concerns, the staff has eliminated the Notice Filing proposal.

Coordination of Rule 2710 and Rule 2810: Two commenters were concerned that the proposal makes offerings subject to Rule 2810 (direct participation programs) subject to the provision of the Corporate Financing Rule. They recommend that the proposed rule change should not be made without further review of each of the provisions of the Corporate Financing Rule, as it would apply to offerings subject to Rule 2810.

The proposed amendments only apply to the *filing* requirements of Rule 2810 and conform these requirements and the filing fee requirements with the requirements in the Corporate Financing Rule. The Department would not review DPPs for compliance with the substantive provisions in the Corporate Financing Rule.

Mark-Up Policy: One commenter opposed amending IM–2440 since the amendment targets shelf offerings exempt under the Market Transaction Exception. The commenter claims that shelf offerings exempt under MTE are only exempt from the filing requirement of Rule 2710, yet still subject to the compensation limits of Rule 2710 and Rule 2810.

The commenter misunderstands the purpose of the exemption. We do not anticipate that the Market Transaction Exception will apply to most shelf offerings. The exception is designed to be narrow and cover securities sold on an agency basis in an ordinary market transaction that does not rise to the level of a ''distribution.'' Because such trades are not distributions, the generally higher compensation limits available under the Corporate Financing Rule for members engaged in a distribution would not be available. Instead, the transaction would be governed by the NASD's Mark-Up Policy.

The Acquisition of Unregistered Securities and Rule 144A: Two commenters state that, in their experience, securities acquired by members and their associated persons from issuers before a shelf offering are not compensatory and do not represent an opportunity to provide underwriting compensation to NASD members for a subsequent offering. The commenters state that members and their affiliates frequently hold securities of issuers sold in Rule 144A offerings, which may have been acquired as an unsold allotment by a dealer acting as an initial purchaser, from other dealers acting as initial purchasers, or from third parties in the private secondary resale market. These commenters claim that if a member purchased securities of the issuer's securities pursuant to Rule 144A, the member could not underwrite a shelf tranche within 180-days of the takedown, as the acquisitions would make the member ineligible for a Notice Filing. One commenter notes that this may have a negative effect upon issuers because they may be prohibited from using the investment bankers with whom they are most familiar and would create an unlevel playing field among members and reduce competitive choices for issuers.

NASD staff notes that these comments were generated as a result of the Notice Filing proposal, which was eliminated. Under the proposed rule change, members that anticipate participation in a shelf offering, subject to available

filing exemptions and the Market Transactions Exception, will make either an initial or a subsequent filing. Unregistered securities that constitute items of value that were acquired by such members, or their affiliates and associated persons within 180 days of the filing would be reviewed by NASD and would only be deemed underwriting compensation if appropriate, and subjected to the applicable compensation limitations and disclosure requirements of the Corporate Financing Rules.

Selected Dealers: One commenter suggested that compensation to selected dealers is not relevant to underwriting compensation. Another commenter wrote that selected dealers are not underwriters for purposes of the Securities Act.[25] These commenters claim that selected dealers should be excepted from the information required by the NASD concerning participating members, and unregistered securities and items of value received by selected dealers should not be included in the calculation of underwriting compensation. They also claim that selected dealers should not have an obligation to make filings under the Corporate Financing Rule.[26]

The basic premise for including selected dealers' compensation as underwriting compensation is that such members are participating in the distribution of an offering. The definition of ''participation in a public offering'' in the Corporate Financing Rules, includes participating on ''* * * an underwritten, non-underwritten, or any other basis * * *'' and therefore includes selected dealers. Moreover, the rule specifically requires that selected dealer agreements be filed for review. The staff has reviewed offerings in which a selected dealer was allocated a substantial portion of the underwritten securities due to its relationship with the issuer and the managing underwriter. NASD *Notice to Members* 88–101 states that the ''participation of a member in any offering of securities distributed pursuant to Rule 415 constitutes participation in a public offering.'' Excluding selected dealers would create loopholes in the treatment of underwriting compensation and conflicts of interest. NASD views selected dealers as members participating in public offerings.

[25] Section 2(a)(11) of the Securities Act provide that the term underwriter ''shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.''

[26] Selected Dealers are typically covered by the filing made by a managing underwriter.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NASD–2004–022 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–NASD–2004–022. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2004–022 and should be submitted by January 21, 2005.[27]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–26809 Filed 12–6–04; 8:45 am]

BILLING CODE 8010–01–P

[27] NASD has consented to an extension of time for the Commission to take action on this proposed rule change.

[28] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4917]

Culturally Significant Object Imported for Exhibition Determinations: ''André Kertész''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''André Kertész,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, DC from on or about January 30, 2005 to on or about May 1, 2005, the J. Paul Getty Museum, Los Angeles, CA from on or about June 7, 2005, to on or about August 28, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453–8048). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 1, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26822 Filed 12–6–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4918]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rembrandt's Late Religious Portraits''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Rembrandt's Late Religious Portraits,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about January 30, 2005 to on or about May 1, 2005, the J. Paul Getty Museum, Los Angeles, CA from on or about June 7, 2005, to on or about August 28, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453–8048). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 1, 2004.

C. Miller Crouch

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26823 Filed 12–6–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4919]

Culturally Significant Objects Imported for Exhibition Determinations: ''Tall Trees at the Jas de Bouffan''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition, ''Tall Trees at the Jas de Bouffan,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the J. Paul Getty Museum, Los Angeles, California, from on or about January 5, 2005, to on or about April 30, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 1, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26824 Filed 12–6–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 19, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–19687.

Date Filed: November 18, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC31 N&C/CIRC 0288 dated 19 November 2004, Mail Vote 420–TC31 North and Central Pacific Montreal, 25 October–2 November 2004, TC3 (except Japan)—North America, Caribbean Expedited Resolution 002at (except between Korea (Rep. of), Malaysia and USA) r1, Intended effective date: 15 January 2005.

Docket Number: OST–2004–19688.

Date Filed: November 18, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0301 dated 19 November 2004, Mail Vote 421, Montreal, 25 October–2 November 2004, TC123 North/Mid/South Atlantic Expedited Resolutions (except between USA and Korea (Rep. of), Malaysia) r1–r20, Intended effective date: 15 January 2005.

Maria Gulczewski,

Supervisory Dockets Officer, Federal Register Liaison.

[FR Doc. 04–26810 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–85]

Petitions for Exemption; Summary of Petitions Received; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received; correction.

SUMMARY: This document makes a correction to the docket number and the contact information in the summary of petitions received published in the **Federal Register** on November 30, 2004. That notice provided details of a petition for exemption from the Air Transport Association (ATA).

EFFECTIVE DATE: This correction is effective on December 7, 2004.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174.

Correction

In the notice of petition for exemption received, FR Doc. 04–26340, published on November 30, 2004, (69 FR 69665), make the following corrections:

1. On page 69665, in column 1, under the heading **ADDRESSES**, on the third line

from the bottom, correct the docket number to read ''FAA–2004–17481''.

2. On page 69665, in column 2, under the heading **FOR FURTHER INFORMATION CONTACT:**, replace ''Annette K. Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056;'' with ''Susan Lender (202–267–8029)''.

Issued in Washington, DC on December 2, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–26862 Filed 12–2–04; 4:27 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–19456]

Office of Research and Technology Forum; Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Meeting/Forum.

SUMMARY: This notice invites you to participate in a forum titled, ''FMCSA R&T: Today and Tomorrow'', sponsored by FMCSA's Office of Research and Technology (R&T) in conjunction with the 84th Annual Meeting of the Transportation Research Board (TRB). The purpose of the forum is to provide insight on some of the research and technology work that FMCSA sponsors in support of its missions of reducing the number and severity of commercial motor vehicle (CMV) crashes and fatalities and enhancing efficiency of CMV operations. Presenters will speak about current FMCSA R&T projects and the status of studies and technologies under consideration as part of the draft R&T 5-Year Strategic Plan. Speaker topics will cover the Crash Causation Study, Electronic On-Board Recorders, the HazMat Operational Test, Vehicle Infrastructure Integration, and Fatigue Management Technologies. The keynote address will feature a trucking association representative who will discuss both safety partnerships between industry and FMCSA and the role that research and technology plays in helping the trucking industry move towards safer, more efficient and secure operations. There will be an opportunity for attendees to talk with FMCSA subject-matter experts in an open question and answer session.

Where and When: Marriott Wardman Park Hotel, Salon III, 2660 Woodley Road, NW., Washington, DC 20008, on Sunday, January 9, 2005. Registration begins at 8 a.m. and the forum starts at 8:30 a.m. and ends at 1 p.m.

Registration: This forum is listed as a session in the TRB Annual Meeting Program, and all registrants are welcome to attend. TRB registration is not required to attend the forum, and it is open to the public at no cost. To register for the TRB Annual Meeting, visit *http://www.trb.org*. To attend the forum only, you can send an e-mail to *R&TPartnerships@fmcsa.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Alvarez, Office of Research and Technology (MC–RTR), Federal Motor Carrier Safety Administration, 400 Virginia Avenue, SW., Washington, DC 20024; telephone (202) 385–2387 or e-mail *albert.alvarez@fmcsa.dot.gov.* Office hours are from 8 a.m. to 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Forum attendees will receive an information packet on current programs of the Office of Research and Technology. While the forum will be open to the public, there is limited space. If you require accommodations (sign, reader, etc.) for a special need, please call Joanice Cole at (202) 334–2287, or e-mail *jcole@nas.edu*.

Issued on: November 29, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–26851 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–04–19469; Notice 1]

Pipeline Safety: Petition for Waiver; Duke Energy Gas Transmission Company (OH)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; petition for waiver.

SUMMARY: Duke Energy Gas Transmission Company (DEGT) petitioned the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) for a waiver of compliance with provisions of 49 CFR 192.611(a), which requires pipeline operators to confirm or revise the maximum allowable operating pressure (MAOP) of their pipelines after a class location change. DEGT proposes an alternative set of risk control activities in lieu of a reduction in pressure or pressure testing of selected pipeline segments in Ohio that have changed from Class 1 to Class 2.

DATES: Persons interested in submitting written comments on the waiver proposed in this notice must do so by January 6, 2005. Late-filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov*.

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov*, click on ''Comment/Submissions.'' You can also read comments and other material in the docket at *http://dms.dot.gov*. General information about our pipeline safety program is available at *http://ops.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at U.S. DOT, Research and Special Programs Administration, Office of Pipeline Safety, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *james.reynolds@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

Duke Energy Gas Transmission Company (DEGT) petitioned the Research and Special Programs Administration's Office of Pipeline Safety (RSPA/OPS) for a waiver from compliance with § 192.611(a) for selected gas transmission pipeline segments in Ohio. DEGT asks for a waiver from the requirement to revise the maximum allowable operating

pressure (MAOP) or upgrade pipeline segments after a class location change. DEGT proposes to conduct alternative risk control activities based on the principles and requirements of the integrity management program in lieu of this requirement and asserts that these alternative risk control activities will provide an equal or higher level of safety than that currently provided by the pipeline safety regulations.

The Federal pipeline safety regulations at § 192.609 require a gas pipeline operator to complete a class location change study whenever it believes an increase in population density may have caused a change in class location as defined in § 192.5. If a new class location is confirmed, the operator is required to either reduce pressure or replace the pipe to lower pipe wall stress in compliance with § 192.611(a). Section 192.5(a)(1) defines a ''class location unit'' as an onshore area extending 220 yards (200 meters) on either side of the centerline of any continuous one-mile length of pipeline. The Class Location for any class location unit is determined according to the following criteria in § 192.5(b):

Class 1—10 or fewer buildings intended for human occupancy;

Class 2—more than 10 but less than 46 buildings intended for human occupancy;

Class 3—46 or more buildings intended for human occupancy, or areas where a pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period;

Class 4—buildings with four or more stories above ground are prevalent.

The pipeline safety regulations impose more stringent design and operation requirements as the class location increases. When a class location changes to a higher class (*e.g.*, from Class 1 to Class 2) and the hoop stress corresponding to the established MAOP of the segment is not commensurate with the present class location, the MAOP must be confirmed by pressure test or revised using one of the options specified in § 192.611(a). An operator may avoid reducing the pressure if a previous pressure test is adequate to support operation at the existing pressure in the new class location, but the corresponding hoop stress may not exceed 72 percent specified maximum yield strength (SMYS) of the pipe in Class 2 locations, 60 percent SMYS in Class 3 locations, or 50 percent SMYS in Class 4 locations. Alternatively, the operator may need to reduce the pressure or replace the pipe with new pipe.

On June 29, 2004, RSPA/OPS published a Notice announcing the criteria it will use in considering class location change waiver applications (69 FR 38948). The criteria document has been placed in this docket and is the guideline RSPA/OPS will use to consider requests for waivers from the requirements of 49 CFR 192.611. RSPA/OPS will use these criteria to evaluate waiver applications submitted by natural gas pipeline operators whose pipeline segments have experienced a change in class location.

2. DEGT's Proposed Waiver

DEGT's request for a waiver of the requirements of § 192.611(a) is specific to two parallel line segments on Line 10 and Line 15, which are part of its Texas Eastern Pipeline System in the State of Ohio. These segments are located within DEGT's:

Wheelersburg Compressor Station Discharge: Milepost (MP) 563.72–620.70

Line 10: MP 568.99–569.13.

Line 15: MP 569.41–569.55.

The pipelines are 30-inch in diameter and the class locations have changed from Class 1 to Class 2. If this waiver is granted, DEGT intends to apply the alternative set of risk reduction strategies to any future sites changing from Class 1 to Class 2 on the same compressor station discharges of Lines 10 and 15, provided these new sites satisfy the technical requirements of the waiver.

Lines 10 and Lines 15 were hydrotested and all welds were X-rayed at installation in 1952 and 1957, respectively, to 100% SMYS. DEGT has internally inspected each of these pipelines. DEGT inspected Line 10 on January 24, 1986, and again on May 13, 1997. DEGT inspected Line 15 on January 27, 1986, and again on May 1, 2002. Both lines were internally inspected using a standard resolution in-line inspection (ILI) tool. All cathodic protection readings on these two pipelines either meet or exceed the minimum requirements of 49 CFR Part 192.

The proposed DEGT waiver segments have changed from Class 1 to Class 2 due to construction of additional buildings intended for human occupancy in the class location units. DEGT believes its alternative to § 192.611(a) will provide a level of safety in excess of that afforded by the pipeline safety regulations at 49 CFR Part 192.

3. DEGT's Proposed Alternative

In lieu of compliance with § 192.611(a), DEGT proposes to conduct the following activities to ensure the integrity of the two pipeline segments included in this waiver request and any future sites on the Wheelersburg Compressor Station discharge changing from Class 1 to Class 2:

- All site(s) covered by waiver have been in-line inspected at least twice between 1986 and 2002;
- All actionable anomalies within the site(s) have either been remediated or are scheduled to be investigated, and subsequently remediated, if necessary, as defined in ASME B31.8S and DEGT Pipeline Repair procedures. A schedule of remedial measures to be performed on future waiver sites will be submitted to OPS headquarters and OPS regional offices;
- For future sites covered by this waiver, DEGT will use tools and techniques developed through the activities described in the waiver request for the identification, classification and possible remediation of dents; and
- The site(s) must pass a hydrostatic test to a pressure of at least 125% of the MAOP of the pipeline. DEGT will make available to RSPA/OPS and the Ohio Public Utilities Commission (OH–PUC) a report of all hydrostatic test failures experienced at this test pressure.

DEGT has already satisfied the above criteria for the current pipeline segments proposed in this waiver request. DEGT commits to provide the OPS's Central Region and the OH–PUC with sufficient notice to enable RSPA/OPS and OH–PUC staff to attend and participate in all risk assessment activities.

In addition, DEGT has proposed the following schedule of near-term and long-term activities to help maintain pipeline integrity on the proposed waiver segments.

In 2004—

- Review the 2002 ILI results for Line 15 for any remaining actionable anomalies. Schedule these anomalies for investigation/remediation as defined in 49 CFR Part 192, Subpart O, ASME B31.8S, and DEGT Pipeline Repair Procedures.
- Depth of cover survey to be conducted in the waiver sites.

In 2005—

- Perform an in-line inspection using a high-resolution magnetic flux leakage tool and a geometry tool on Line 10. All actionable anomalies found through the in-line inspection will be investigated/remediated on as defined in 49 CFR Part 192, Subpart O, ASME B31.8S, and DEGT Pipeline Repair Procedures.

• Perform external corrosion direct assessment (ECDA) on the waiver sites of both lines. A minimum of one direct examination of each line will be performed.

• Perform stress corrosion cracking direct assessment on any pipe exposed as part of the work in support of this waiver.

Beyond 2005—

• Perform system integrity re-inspections in accordance with 49 CFR Part 192 Subpart O requirements.

4. Additional Considerations

In an October 7 letter, the Office of Pipeline Safety's Central Region office requested additional information to assist in evaluation of DEGT's waiver request:

Information on the timing of the class location change;

• Information demonstrating the condition of the pipeline coating;

• The results of depth of cover surveys;

• Description of any failures that occurred during hydrostatic testing;

• The results of in-line inspections; and

• Activities to address potential integrity issues associated with the hydrogen induced damage at hard spots after the November 2, 2003, failure on Line 15 in Kentucky.

This letter and any responses from DEGT will be placed in the docket for this Federal waiver request.

In addition, as part of its consideration of DEGT's waiver request, RSPA/OPS will also consider the cause(s) and contributing factor(s) to the November 2, 2003, failure of DEGT's Line 15 near the Owingsville Compressor Station in Bath County, Kentucky. The pipe used in Line 15 in Bath County, Kentucky and Line 15 in Scioto County, Ohio, were both manufactured by A.O. Smith and are of the same vintage.

5. Opportunity for Public Comments

This notice provides an opportunity for public comment on the DEGT waiver proposal. Comments should address whether or not DEGT's proposal complies with the criteria for consideration of waiver applications and any other issues regarding DEGT's proposed waiver.

After the comment period has ended, RSPA/OPS will evaluate the DEGT proposal and will consider all comments received by the deadline. RSPA/OPS will publish a subsequent **Federal Register** notice granting or denying DEGT's proposed waiver of § 192.611(a).

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC, on December 1, 2004.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 04–26811 Filed 12–6–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065–B and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

DATES: Written comments should be received on or before February 7, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbula, Internal Revenue Service, room 6515, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Return of Income for Electing Large Partnerships (Form 1065–B), and Partner's Share of Income (Loss) From an Electing Large Partnership (Schedule K–1 (Form 1065–B)).

OMB Number: 1545–1626.

Form Number: Form 1065–B and Schedule K–1 (Form 1065–B).

Abstract: Internal Revenue Code Section 6031 and Regulation section 1.6031–1 requires partnerships to file a return. Internal Revenue Code sections 771–777, enacted by the Taxpayer Relief Act of 1997, allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners. Form 1065–B is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 470,332.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–26840 Filed 12–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2005 as required by section 3241(d) of the Internal Revenue Code (26 U.S.C. 3241). Tier 2 taxes on railroad employees, employers, and employee representatives (a group unique to the railroad industry) fund a private pension benefit of the railroad retirement system.

DATES: The tier 2 tax rates for calendar year 2005 apply to compensation paid in calendar year 2005.

FOR FURTHER INFORMATION CONTACT: Margaret A. Owens, CC:TEGE:EOEG:ET1, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–6040 (not a toll-free number).

Tier 2 Tax Rates: The tier 2 tax rate for 2005 under § 3201(b) on employees is 4.4 percent of compensation. The tier 2 tax rate for 2005 under § 3221(b) on employers is 12.6 percent of compensation. The tier 2 tax rate for 2005 under § 3211(b) on employee representatives is 12.6 percent of compensation.

Dated: December 1, 2004.

Nancy Marks,

Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

[FR Doc. 04–26839 Filed 12–6–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 234

Tuesday, December 7, 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.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automotive Lift Institute

Correction

In notice document 04–25867 appearing on page 67942 in the issue of Monday, November 22, 2004, make the following corrections:

1. In the second column, in the first full paragraph, in the sixth line, ''Automotive Life Institute'' should read ''Automotive Lift Institute''.

2. In the same column, in the second full paragraph, in the fourth line, ''Automotive Life Institute'' should read ''Automotive Lift Institute''.

[FR Doc. C4–25867 Filed 12–6–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AA75

Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines

Correction

In rule document 04–25891 beginning on page 68078 in the issue of Tuesday, November 23, 2004 make the following correction:

§18.53 [Corrected]

On page 68078, in §18.53(o)(1)(ii), between the two equations insert the paragraph ''(1)(ii) Aluminum Wall/Cover:''.

[FR Doc. C4–25891 Filed 12–6–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
December 7, 2004

Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 710, 711, et al.
Chemical Weapons Convention Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728 and 729

[Docket No. 990611158–4077–03]

RIN 0694–AB06

Chemical Weapons Convention Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Bureau of Industry and Security (BIS) published an interim rule, on December 30, 1999, that established the Chemical Weapons Convention Regulations (CWCR) to implement the provisions of the CWC affecting U.S. industry and other U.S. persons. The CWCR include requirements to report certain activities, involving scheduled chemicals and unscheduled discrete organic chemicals, and to provide access for on-site verification by international inspectors of certain facilities and locations in the United States. This proposed rule revises the CWCR by updating them to include additional requirements identified in the implementation of the CWC and to clarify other CWC requirements.

DATES: Comments on this rule must be received January 6, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AB06, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *wfisher@bis.doc.gov*. Include ''RIN 0694–AB06'' in the subject line of the message.
- Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AB06.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on declarations, reports, advance notifications, chemical determinations, recordkeeping, inspections and facility agreements, contact the Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, telephone: (703) 605–4400; for legal questions, contact Rochelle Woodard, Office of the Chief Counsel for Industry and Security, telephone: (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

I. Summary of CWCR Changes Contained in This Proposed Rule

On April 25, 1997, the United States ratified the Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The CWC, which entered into force on April 29, 1997, is an arms control treaty with significant non-proliferation aspects. As such, the CWC bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties to the CWC from assisting or encouraging anyone to engage in a prohibited activity. The CWC provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities, and oversees the destruction of such weapons and facilities. To fulfill its arms control and non-proliferation objectives, the CWC also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain ''scheduled'' chemicals and unscheduled discrete organic chemicals, many of which have significant commercial applications. The CWC also requires States Parties to report exports and imports and to impose export and import restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals. States Parties to the CWC, including the United States, have agreed to this verification scheme in order to provide transparency and to ensure that no State Party to the CWC is engaging in prohibited activities.

The Chemical Weapons Convention Implementation Act of 1998 (the Act or CWCIA) (22 U.S.C. 6701 *et seq.*), enacted on October 21, 1998, authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections conducted by inspectors sent by the Organization for the Prohibition of Chemical Weapons. Executive Order (E.O.) 13128 delegates authority to the Department of Commerce to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate functions to implement the CWC, consistent with the Act. The Department of Commerce implements CWC import restrictions under the authority of the International Emergency Economic Powers Act, the National Emergencies Act, and E.O. 12938, as amended by E.O. 13128. The Departments of State and Commerce have implemented the CWC export restrictions under their respective export control authorities. E.O. 13128 designates the Department of State as the United States National Authority (USNA) for purposes of the CWC and the Act.

On December 30, 1999, the Bureau of Industry and Security (BIS), U.S. Department of Commerce, published an interim rule that established the Chemical Weapons Convention Regulations (CWCR) (15 CFR Parts 710–722). The CWCR implemented the provisions of the CWC, affecting U.S. industry and U.S. persons, in accordance with the provisions of the Act. This proposed rule revises the CWCR by updating them to include additional requirements identified necessary for the implementation of the CWC provisions and to clarify other CWC requirements.

Specifically, this rule proposes to make the following revisions to the CWCR:

A. Proposed Revisions to Section 710.1 of the CWCR (Definitions of Terms Used in the CWCR)

This proposed rule revises § 710.1 of the CWCR by amending the definition of ''domestic transfer'' to clarify that the term, as applied to the declaration requirements for Schedule 2 or Schedule 3 chemicals under the CWCR, means the movement of a Schedule 2 or Schedule 3 chemical, in quantities and concentrations greater than the specified thresholds in the convention, outside the geographical boundary of a facility in the United States to another destination in the United States, for any purpose.

This proposed rule adds a definition for the term ''intermediate'' to § 710.1 of the CWCR in order to clarify the use of that term in § 712.5(c) and Supplement No. 2 to part 715 of the CWCR. Section

710.1 of the CWCR would define ''intermediate'' as ''a chemical formed through chemical reaction that is subsequently reacted to form another chemical.'' The term ''intermediate'' also clarifies its use in §§ 712.5(d), 713.2(a)(2)(ii) and 714.1(a)(2)(ii), whereby Schedule 1, Schedule 2 and Schedule 3 chemicals that are intermediates, but not transient intermediates, must be considered when determining if a chemical is subject to declaration. Lastly, Supplement No. 2 to part 715 of the CWCR, which provides examples of unscheduled discrete organic chemicals (UDOCs) and UDOC production, indicates that intermediate UDOCs used in a single or multi-step process to produce another declared UDOC are not subject to declaration requirements under the CWCR.

In addition, this proposed rule adds a definition of the term ''advance notification'' to § 710.1 of the CWCR to clarify the use of that term in part 712 of the CWCR. Section 710.1 of the CWCR would define ''advance notification'' to mean ''a notice informing BIS of a company's intention to export to or import from a State Party a Schedule 1 chemical.'' Advance notifications must be submitted to BIS at least 45 days prior to the proposed export or import, except for exports or imports of saxitoxin for medical/diagnostic purposes which may be submitted to BIS at least 3 days prior to export or import. The definition proposed by this rule also indicates that this notification requirement is in addition to any export license requirement under the Export Administration Regulations (EAR) (15 CFR Parts 730–799) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), or import license requirement under the Alcohol, Tobacco, Firearms and Explosives Regulations (27 CFR part 447).

The definition of the term ''production'' in § 710.1 of the CWCR is revised by adding certain notes that incorporate decisions by the Organization for the Prohibition of Chemical Weapons' Conference of the States Parties (OPCW/CSP) regarding the production of Schedule 1, 2, and 3 chemicals. The first note would clarify that the production of Schedule 1 chemicals includes ''formation through chemical synthesis as well as processing to extract and isolate Schedule 1 chemicals.'' The second note would clarify that the ''production'' of a Schedule 2 or Schedule 3 chemical ''means all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (*e.g.*, purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical. The exact nature of any associated process (*e.g.*, purification, etc.) is not required to be declared.''

This proposed rule adds a definition of the term ''production by synthesis'' in § 710.1 of the CWCR to clarify the use of the term in § 715.1 of the CWCR (*i.e.*, declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC) and Supplement No. 2 to part 715 of the CWCR (*i.e.*, examples of activities that are not considered to be production by synthesis under part 715 of the CWCR). Section 710.1 of the CWCR would define ''production by synthesis'' to mean ''production of a chemical that is isolated for use or sale.''

Finally, this proposed rule amends § 710.1 of the CWCR by adding a definition of the term ''transient intermediate'' in order to clarify the scope of the declaration requirements that apply to the production of certain scheduled chemicals. Section 710.1 of the CWCR would define the term ''transient intermediate'' to mean ''any chemical that is produced in a chemical process, but that only exists for a very short period of time and cannot be isolated, even by modifying or dismantling the plant, altering the chemical production process operating conditions, or stopping the chemical production process altogether.''

B. Proposed Amendments to Section 710.2 of the CWCR (Scope of the CWCR)

This proposed rule amends § 710.2(a) of the CWCR by removing the phrase ''The CWCR declaration, reporting, and inspection requirements apply . . . .'' from that paragraph. Removal of this phrase will clarify which persons and facilities are generally subject to the provisions of the CWCR.

C. Proposed Amendments to Section 710.6 of the CWCR (Relationship Between the CWCR and the Export Administration Regulations)

This proposed rule amends § 710.6 of the CWCR to include a reference to Export Control Classification Number (ECCN) 1C395 on the Commerce Control List (CCL), which is in Supplement No. 1 to part 774 of the EAR. ECCN 1C395 controls the following items: (i) Mixtures that contain more than 10 percent, but less than 30 percent, by weight of any single CWC Schedule 2 chemical identified in ECCN 1C350.b; and (ii) certain medical, analytical, diagnostic and food testing kits that contain CWC Schedule 2 or Schedule 3 chemicals controlled by ECCN 1C350.b or .c, respectively, in an amount not exceeding 300 grams per chemical.

D. Proposed Amendments to Supplement No. 1 to Part 710 of the CWCR (List of States Parties to the CWC)

This proposed rule amends Supplement No. 1 to part 710 of the CWCR (States Parties to the Convention on The Prohibition of The Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction) by updating the list of States Parties to include the following recent additions: Afghanistan, Andorra, Azerbaijan, Cape Verde, Chad, Colombia, Dominica, Eritrea, Gabon, Guatemala, Jamaica, Kazakhstan, Kiribati, Kyrgyzstan, Malaysia, Marshall Islands, Micronesia (Federated States of), Mozambique, Nauru, Palau, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Thailand, Timor Leste, Tonga, Uganda, United Arab Emirates, Yemen, and Zambia. As of June 20, 2004, 164 countries had become States Parties to the CWC.

E. Proposed Amendments to Part 711 of the CWCR (General Information Regarding Declaration, Reporting and Advance Notification Requirements)

This proposed rule adds a new § 711.3 that establishes BIS's authority to contact any company to determine whether it is in compliance with the CWCR. Information requested may relate to the production, processing, consumption, export, import, or other activities involving scheduled chemicals and UDOCs described in Parts 712 through 715 of this subchapter. Any person or facility subject to the CWCR and receiving such a request for information will be required to provide a response to BIS within the time-frame specified in the request. However, this requirement does not, in itself, impose a requirement to create new records or maintain existing records.

This proposed rule amends § 711.3 of the CWCR by moving it to § 711.4 and specifying a time period within which the BIS will respond to chemical determination requests. BIS will respond, in writing, to a chemical determination request within 10 working days of receipt of the request.

This proposed rule removes the declaration and reporting requirements in § 711.4 of the CWCR concerning activities that occurred prior to December 30, 1999, since these requirements should already have been satisfied. A new § 711.7 is proposed to provide information on where to submit

declarations, advance notifications, and reports.

New § 711.8 is added with instructions for applying for authorization to submit electronic declarations and reports in order to fulfill requirements under the Government Paperwork Elimination Act (44 U.S.C. 3504).

F. Proposed Amendments to Part 712 of the CWCR (Activities Involving Schedule 1 Chemicals)

This proposed rule adds a new § 712.2(a) that prohibits production of Schedule 1 chemicals for protective purposes.

This proposed rule clarifies that initial declarations submitted in February 2000 remain valid until they are either amended or rescinded. If you plan to alter the technical layout of your declared facility, you must submit an amended declaration to BIS at least 200 calendar days prior to making any such change to your facility.

This proposed rule revises § 712.3 of the CWCR by moving the annual declaration requirements for Schedule 1 facilities to new § 712.5.

This proposed rule amends § 712.4 of the CWCR to clarify the declaration requirements that apply to the establishment of new Schedule 1 chemical production facilities. If a Schedule 1 chemical production facility has never been declared in a previous calendar year or its initial declaration has been withdrawn in accordance with the requirements of amended § 712.5(f) of this proposed rule, you must submit an initial declaration (including a current detailed technical description of the facility) to BIS at least 200 calendar days prior to commencing production of Schedule 1 chemicals at the facility in quantities greater than 100 grams aggregate per year. Such facilities are considered to be ''new Schedule 1 chemical production facilities'' and are subject to an initial inspection within 200 calendar days of the submission of the initial declaration to BIS.

This proposed rule revises the remainder of part 712 of the CWCR, as follows: (1) Advance notification and annual report requirements for Schedule 1 chemical exports and imports are proposed to be moved from § 712.5 of the CWCR to § 712.6; (2) provisions for Table 1 to § 712.6 of the CWCR are proposed to be moved to new Supplement No. 2 to part 712 of the CWCR; (3) procedures concerning declarations and reports returned without action by BIS are proposed to be described in new § 712.8 of the CWCR; and (4) the due date for Annual Declarations for Anticipated Activities is changed from August 3 to September 3 thereby giving Schedule 1 facilities an additional 30 days in which to complete and submit their declarations.

This proposed rule amends the CWCR provisions that require advance notification of exports and imports of Schedule 1 chemicals by establishing an exception to the requirement that BIS must be notified at least 45 calendar days prior to the export or import of a Schedule 1 chemical to or from another State Party. Advance notification of the export or import of 5 milligrams or less of Saxitoxin–B (7), which is listed in Supplement No. 1 to part 712 of the CWCR, for medical or diagnostic purposes only, would have to be submitted to BIS at least 3 calendar days (rather than 45 calendar days) prior to the date of export or import.

This proposed rule amends the CWCR provisions concerning requirements for amending Schedule 1 declarations and reports. Section 712.7 of the CWCR is proposed to be amended by clarifying and specifying deadlines for: (i) The types of changes to information on Schedule 1 chemicals and activities in the Annual Declaration of Past Activities that would require submission of an amended declaration to BIS; (ii) the types of changes to export or import information in the Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons that would require submission of an amended report to BIS; and (iii) the types of changes to Schedule 1 chemical facility information (*e.g.*, change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration or report to BIS. In addition, this proposed rule adds a new § 712.7(d) to the CWCR that will provide guidance concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar days of the date of BIS's post inspection letter.

This proposed rule adds a new § 712.8 to the CWCR that provides guidance concerning certain Schedule 1 declarations and reports that are returned without action. In these cases, BIS would return without action (RWA) any Schedule 1 declarations or reports that are determined to be not required by the CWCR. The returned declaration or report would be accompanied by a cover letter explaining why the declaration or report is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations or reports that were returned without action.

Finally, the provisions in § 712.6 and Table 1 to § 712.6 of the CWCR, which contain information on the deadlines for submitting Schedule 1 declarations, reports, advance notifications and amendments to BIS, are updated and moved to § 712.9 and Supplement No. 2 to part 712 of the CWCR, respectively.

G. Proposed Amendments to Part 713 of the CWCR (Activities Involving Schedule 2 Chemicals)

This proposed rule adds a prohibition against exports of Schedule 2 chemicals to States not Party to the CWC in § 713.1(a). Currently, the CWCR prohibit imports of Schedule 2 chemicals from States not Party to the CWC, but do not prohibit Schedule 2 chemical exports to such countries. However, note that § 742.18 of the EAR currently requires a license for exports of Schedule 2 chemicals to States not Party to the CWC and BIS applies a general policy of denial to license applications for such exports. A license is also required for export of Schedule 2 chemicals controlled under the ITAR.

This proposed rule revises § 713.1(b), which exempts certain mixtures containing Schedule 2 chemicals from the export and import prohibitions contained in § 713.1(a) of the CWCR, as proposed by this rule. Currently, § 713.1(b) of the CWCR exempts mixtures containing 10 percent or less, by weight, of any single Schedule 2 chemical. This rule revises § 713.1(b) of the CWCR to exempt the following mixtures: (i) Mixtures containing 1 percent or less, by weight, of any single Schedule 2A or 2A* chemical; (ii) mixtures containing 10 percent or less, by weight, of any single Schedule 2B chemical; and (iii) products identified as consumer goods packaged for retail sale for personal use or packaged for individual use. However, note that the consumer goods exemption for mixtures that contain Schedule 2 chemicals identified under ECCN 1C350 on the CCL (Supplement No. 1 to part 774 of the EAR) applies only to products identified as consumer goods not packaged for retail sale for personal use and not to products packaged for individual use (the latter are exempt only by the CWCR and not by the Australia Group controls under the EAR).

In addition, this proposed rule: (i) Removes the provisions concerning declarations on past production of Schedule 2 chemicals for chemical weapons purposes (currently found in § 713.2 of the CWCR); (ii) removes the provisions currently found in

§§ 713.3(a)(1)(i) and 713.4(c)(1) and (2) on Schedule 2 initial declarations and initial reports on exports and imports; (iii) amends the provisions providing guidance concerning amendments to declarations and reports (currently found in § 713.7 of the CWCR); (iv) moves the provisions concerning the frequency and timing of declarations and reports (currently found in § 713.6 of the CWCR) to § 713.7; and (v) provides a description of the procedures that BIS will follow concerning declarations and reports RWA'd in § 713.6 of the CWCR.

This proposed rule moves and revises § 713.3 of the CWCR to § 713.2 to clarify the scope of Schedule 2 production activities to include any associated processing steps of the Schedule 2 chemical and intermediates. Only transient intermediates are exempted. This will ensure that the CWCR requirements will apply to Schedule 2 chemical production where Schedule 2 chemicals are below the applicable concentration threshold when reacted, but subsequently are concentrated above the threshold during in-line processing.

The provisions in § 713.6 and Table 1 to § 713.6 of the CWCR, which contain information on the deadlines for submitting declarations, reports, advance notifications, and amendments to BIS, are proposed to be moved to § 713.7 and Supplement No. 2 to part 713 of the CWCR, respectively. In addition, the CWCR provisions on amended declarations and reports for Schedule 2 chemicals are proposed to be moved from § 713.7 of the CWCR to § 713.5 and amended by clarifying and specifying deadlines for: (i) The types of changes to information on Schedule 2 chemicals and activities in the Annual Declaration of Past Activities or the combined declaration and report that would require submission of an amended declaration to BIS; (ii) the types of changes to export or import information in the Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons that would require submission of an amended report to BIS; and (iii) the types of changes to Schedule 2 chemical facility information (*e.g.*, change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration or report to BIS. In addition, this proposed rule moves and revises § 713.6(d) of the CWCR to § 713.5(d) to provide guidance concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar days of the date of BIS's post inspection letter.

This proposed rule adds § 713.6 of the CWCR to provide guidance concerning the return of certain Schedule 2 declarations and reports without action. BIS would RWA any Schedule 2 declarations or reports that are determined not required by the CWCR. The returned declaration or report would be accompanied by a cover letter explaining why the declaration or report is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations or reports that were returned without action.

Finally, the provisions in § 713.6 and Table 1 to § 713.6 of the CWCR, which contain information on the deadlines for submitting Schedule 2 declarations, reports, and amendments to BIS, are updated and moved to § 713.7 and Supplement No. 2 to part 713 of the CWCR, respectively.

H. Proposed Amendments to Part 714 of the CWCR (Activities Involving Schedule 3 Chemicals)

This proposed rule amends part 714 of the CWCR by removing certain provisions concerning the past production of Schedule 3 chemicals in § 714.1. The requirements concerning when and how to amend declarations and reports for Schedule 3 chemicals, currently in § 714.6 of the CWCR, are proposed to be revised by this rule and moved to § 714.4. This rule also proposes to revise § 714.5 of the CWCR, which currently addresses the frequency and timing of Schedule 3 declarations, to describe the BIS procedures for returning declarations and reports without action. Section 714.5 is proposed to be moved to new § 714.6 and revised to address deadlines for submitting Schedule 3 declarations, reports, and amendments.

Section 714.2 of the CWCR, as proposed to be moved to new § 714.1 by this rule, will clarify the scope of Schedule 3 production activities, as defined by the CWCR, to include any associated processing steps of a Schedule 3 chemical and intermediates. Only transient intermediates are exempted. This will ensure that the CWCR requirements will apply to Schedule 3 chemical production where Schedule 3 chemicals are below the applicable concentration threshold when reacted, but subsequently are concentrated above the threshold during processing.

In addition, this proposed rule moves and revises § 714.2 of the CWCR to § 714.1 to clarify the procedures that must be followed when determining the range of Schedule 3 chemical production for your plant site during the previous calendar year. Specifically, this rule proposes to include a statement in § 714.1(c)(1) of the CWCR to indicate that you should not aggregate amounts of production from plants on your plant site that did not individually produce a Schedule 3 chemical in an amount exceeding the applicable declaration threshold (*i.e.*, greater than 30 metric tons). In short, only the production amounts from those plants on your plant site that individually produced greater than 30 metric tons of a Schedule 3 chemical should be aggregated for the purpose of calculating the total amount of a Schedule 3 chemical produced at your plant site during the previous calendar year.

The CWCR provisions on amended declarations and reports for Schedule 3 chemicals are proposed to be moved from § 714.6 of the CWCR to § 714.4 and amended by clarifying and specifying deadlines for: (i) The types of changes to information on Schedule 3 chemicals and activities in the Annual Declaration of Past Activities or the combined declaration and report that would require submission of an amended declaration to BIS; (ii) the types of changes to export or import information in the Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons that would require submission of an amended report to BIS; and (iii) the types of changes to Schedule 3 chemical facility information (*e.g.*, change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration or report to BIS. In addition, this proposed rule amends the CWCR to provide guidance in § 714.4(d) concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar days of the date of BIS's post inspection letter.

This proposed rule revises adds § 714.5 of the CWCR to provide guidance concerning the return of certain Schedule 3 declarations and reports without action. BIS would RWA any Schedule 3 declarations or reports that are determined not required by the CWCR. The returned declaration or report would be accompanied by a cover letter explaining why the declaration or report is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations or reports that were returned without action.

Finally, the provisions in § 714.5 and Table 1 to § 714.5 of the CWCR, which contain information on the deadlines for submitting Schedule 3 declarations, reports, and amendments to BIS, are proposed to be updated and moved to § 714.6 and Supplement No. 2 to part 714 of the CWCR, respectively.

I. Proposed Amendments to Part 715 of the CWCR (Activities Involving Unscheduled Discrete Organic Chemicals (UDOCs))

This proposed rule amends § 715.1(a)(1)(ii) (which describes the annual declaration requirements for the production of UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as ''PSF-chemicals'') to clarify how to calculate the production by synthesis of PSF chemicals at your plant site during the previous calendar year. Specifically, this proposed rule indicates that when determining the quantity of each PSF-chemical produced by a PSF plant on your plant site, you should only aggregate the PSF chemical production quantities from plants that individually produced a PSF chemical in an amount exceeding 30 metric tons. However, note that § 715.1(a)(1)(i) indicates that when determining UDOC production by synthesis on your plant site, you should aggregate all quantities of UDOCs and PSF-chemicals produced regardless of the amount of PSF chemicals produced (*i.e.*, aggregate any PSF chemicals produced).

This proposed rule also revises § 715.1(b)(1) of the CWCR by removing the initial declaration requirement and replacing it with the annual declaration requirement, and adding a new subsection that creates a new form called the ''No Changes Authorization'' form that may be submitted to BIS if there are no updates or changes to any information (other than the certifying official and dates signed and submitted) contained in the annual declaration on past activities previously submitted by your plant site. In addition, § 715.1(b)(1)(ii) of the CWCR, as proposed by this rule, would include a statement indicating that your plant site's UDOC activities would continue to be declared to the OPCW and that your plant site would remain subject to inspection (if applicable) based upon the data reported in your previous (*i.e.*, most recent) annual declaration on past activities.

The CWCR provisions on amended declarations for UDOCs are moved from § 715.3 of the CWCR to § 715.2 and revised by clarifying and specifying deadlines for: (i) The types of changes to information on UDOCs and activities in the Annual Declaration of Past Activities that would require submission of an amended declaration to BIS; and (ii) the types of changes to UDOC plant information (*e.g.*, change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration to BIS. In addition, this proposed rule amends the CWCR to provide guidance in § 715.2(c) concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar days of the receipt of BIS's post inspection letter.

This proposed rule adds § 715.3 of the CWCR to provide guidance concerning the return of certain UDOC declarations without action. BIS would RWA any UDOC declarations that are determined not required by the CWCR. The returned declaration would be accompanied by a cover letter explaining why the declaration is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations that were returned without action.

Finally, the provisions in the CWCR that currently contain information on the deadlines for submitting UDOC declarations and amendments to BIS (§ 715.2 and Table 1 to § 715.2), are proposed to be updated and moved to § 715.4 and Supplement No. 3 to part 715 of the CWCR, respectively.

J. Proposed Amendments to Part 716 of the CWCR (Initial and Routine Inspections of Declared Facilities)

As part of their obligation under the Convention, each State Party to the CWC is subject to inspection of its chemical facilities engaged in certain activities involving scheduled chemicals. Part 716 of the CWCR provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI(E), Part VII(B), Part VIII(B), and Part IX(B).

This proposed rule amends § 716.2(a)(2)(i) of the CWCR to clarify that a facility agreement will be concluded by the U.S. National Authority (in coordination with BIS) with the OPCW before a new Schedule 1 facility, declared pursuant to § 712.4 of the CWCR, can produce above threshold.

This proposed rule amends § 716.4(b)(1) of the CWCR to clarify the scope of inspections by specifying that inspections under part 716 of the CWCR may include visual inspection of parts or areas of the plant site, in addition to the facilities or plants producing scheduled chemicals, in order to address any ambiguity that might arise during the inspection. In addition, photographs may be taken and formal interviews of facility personnel may be conducted.

Section 716.4(b)(3) of the CWCR is amended to indicate that: (i) Technology subject to the ITAR shall not be divulged to the Inspection Team without U.S. Government authorization; and (ii) each facility that is inspected is responsible for identifying ITAR-controlled technology to the BIS Host Team, if known.

This proposed rule also clarifies the pre-inspection briefing requirements described in § 716.4(c) of the CWCR and the requirements in § 716.4(e) of the CWCR concerning the availability of records. The U.S. facility must provide the Inspection Team and the U.S. Government Host Team with appropriate accommodations in which to review relevant documents and must ensure that all relevant information will be available to the teams. In addition, this rule provides that, whenever a facility does not have access to records for activities that took place under a previous ownership, the previous owner must make such records available to the Host Team (for provision to the Inspection Team).

Section 716.7 of the CWCR, which describes requirements concerning the provision of samples by declared facilities, is revised to restrict the analysis of such samples to the verification of the absence of undeclared scheduled chemicals, unless otherwise agreed after consultation with the facility representative.

Finally, this proposed rule adds a new § 716.10 to clarify that, upon receipt of the final inspection report from the OPCW, BIS will send a copy of the final inspection report to the facility for its review. Facilities may submit comments on the final inspection report to BIS, and BIS will consider those comments, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter with instructions based on decisions made during the inspection.

K. Proposed Amendments to Part 717 of the CWCR (Clarification of Possible Non-Compliance With the Convention; Challenge Inspection Procedures)

Article IX of the CWC contains procedures for States Parties to clarify issues concerning compliance with the CWC. A State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under

the jurisdiction or control of any other State Party. A challenge inspection may be conducted solely for the purpose of clarifying and resolving any questions concerning possible non-compliance with the CWC.

This proposed rule amends § 717.1(b) of the CWCR to clarify that BIS will attempt to contact a person or facility that is subject to the Article IX clarification procedures as early as practical prior to the issuance of an official written request for clarification and that such person or facility must provide the information required by BIS, pursuant to an Article IX clarification request, within five working days of the receipt of BIS's written request for clarification.

In addition, this proposed rule amends § 717.2 (Challenge Inspections) by adding a new provision in § 717.2(b)(2)(ii) explaining that if consent is not granted within four hours of a facility's receipt of BIS's inspection notification, BIS will assist the Department of Justice in seeking a criminal warrant. A new provision, § 717.2(d)(5), also has been added that describes the requirements concerning pre-inspection briefings for challenge inspections. Section 717.2(d)(5) will require that, prior to the commencement of the challenge inspection, facility representatives must provide the Inspection Team and Host Team with a pre-inspection briefing on the facility that will include the following: (i) The types of activities being conducted at the facility (*e.g.*, business and manufacturing operations); (ii) safety procedures that must be followed during the inspection; and (iii) administrative and logistical arrangements necessary to facilitate the inspection.

Section 717.3 of the CWCR, which describes requirements concerning the provision of samples by declared facilities, is revised to restrict analysis of samples to verifying the presence or absence of scheduled chemicals or appropriate degradation products, unless agreed otherwise.

Finally, this proposed rule adds a new § 717.5 to clarify that, upon receipt of the final inspection report from the OPCW, BIS will forward a copy to the facility, for comment, and will give consideration to the facility's comments prior to responding to the OPCW via the U.S. National Authority. In addition, proposed § 717.5 will provide that, upon receipt of the final inspection report, BIS will send the facility a post inspection letter detailing the issues that require follow-up action.

II. Summary of Public Comments on the December 30, 1999, Interim CWCR Rule

On December 30, 1999, the Bureau of Industry and Security (BIS) published an interim rule in the **Federal Register** (64 FR 73744), with a request for comments, establishing the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Chemical Weapons Convention (CWC) and the Chemical Weapons Convention Implementation Act of 1998 (the Act or CWCIA) (22 U.S.C. 6701 *et seq.*), which was enacted on October 21, 1998. BIS received comments from five respondents. Following is a summary of those comments, along with BIS's responses.

A. Preamble to the December 30, 1999, Interim CWCR Rule

Comment: One respondent is concerned about the statement in 64 FR 73754, Part II (Public Comments on the Proposed Rule) of the preamble stating that ''the United States cannot withhold conclusion of a facility agreement with the OPCW because of facility concerns.'' The respondent suggests: (1) Because facility agreements are not required for Schedule 3 or unscheduled discrete organic chemical (UDOC) facilities, the United States could withhold conclusion of a facility agreement for such a facility because of facility concerns; (2) in the case of Schedule 1 or 2 facilities, the facility's legitimate concerns would become the U.S. Government's concerns; and (3) that these issues be addressed in the preamble.

Response: The CWC does not provide for facility approval of the facility agreement for any facility agreement concluded between the United States and Organization for the Prohibition of Chemical Weapons (OPCW). This includes facility agreements for Schedule 3 and UDOC facilities. Although Schedule 3 and UDOC facility agreements will only be pursued at the facility's request, the same negotiating procedures will apply as with Schedule 1 and 2 facility agreements.

The U.S. Government will provide facilities the opportunity to express concerns at several stages throughout the facility agreement process. However, as the facility agreement and inspection process is a U.S. government-led enterprise, it will ultimately be the decision of the U.S. Government whether to include reference to facility concerns and comments in the facility agreement.

B. Supplement No. 1 to Part 710—States Parties to the Convention

Comment: One respondent is concerned that, unlike Hong Kong, which was identified as part of China, Taiwan's status has not been resolved. Due to the volume of legitimate trade (imports/exports) that occurs with Taiwan, the respondent believes Taiwan's status should be resolved and communicated. The respondent commented on this issue on the proposed rule, but BIS had not previously responded to this comment.

Response: BIS responded to this respondent's concern in the interim-final rule dated December 30, 1999, under Section III Public Comments on Declarations and Reporting Forms and Handbooks. Supplement 3 to the Declaration and Report Handbook was changed to add a new Destination Code ''TAI'' for Taiwan for declaring or reporting exports to or imports from Taiwan of Schedule 2 or Schedule 3 chemicals. Schedule 2 chemicals may no longer be exported to or imported from Taiwan, which is not a State Party. Schedule 3 chemicals require an End-Use Certificate for exports to Taiwan or a license is required. Additionally, Supplement 3 to the Declaration and Report Handbook indicates that transfers to Taiwan do not imply recognition of the Taiwan authorities or an official relationship with Taiwan.

C. Part 711—General Information Regarding Declaration, Reporting and Advance Notification Requirements

Comment: Two respondents suggest that a new section (§ 711.7) be added to the final rule to specify the department and address for submittal of completed declarations and reports. Additionally, each declaration and report handbook should provide the same information in the ''Introduction'' section, and each declaration and report form should contain the information on where such form should be submitted.

Response: BIS created a new § 711.7 which provides the mailing address to which declarations and reports must be submitted. BIS also updated the Declaration and Report Handbook to include the applicable mailing address.

D. Sections 712.6, 713.7 and 714.6—Amended Declarations

Comment: Three respondents request that BIS eliminate the requirement for an amended declaration for minor changes, such as a change in company name. The respondents assert that a change in company name is not substantive and has no impact on CWC verification activities, the object and

purpose of the CWC and/or plant site identification code, and results in a paperwork burden.

Response: See BIS's response to the following comment.

Comment: One respondent requests that deadlines be provided for submission of amended declarations. Currently the regulations only require that companies submit amended declarations. Given that accurate declarations are important for on-site verification, the respondent contends that amendments should be submitted within 90 days of the event that triggered a requirement for an amended declaration, the same amount of time given for annual declarations following the close of a calendar year.

Response: Based upon the experience gained in implementing the CWC, BIS has determined that certain amended information is necessary to assist in the timely processing of inspection notifications and in effective communication with company personnel subject to inspection. As currently written, the CWCR do not adequately explain the amendment procedures required of companies, or the reasons why BIS requires that information. Accordingly, BIS has clarified the requirements and timelines for submitting amended declarations. BIS has established different timelines for submitting an amendment based upon the type of change that is being made to a declaration and the time it will take for BIS to receive and process data in order to submit relevant changes to the OPCW. Any company changes to declaration or report information dealing with the chemicals, quantities, activities, end-use purposes, additions, deletions, or similar changes that are submitted, via the U.S. National Authority, to the OPCW must be received by BIS within 15 days of the change in information. Changes to internal company information that is not submitted to the OPCW, such as a declaration or inspection point of contact, telephone numbers, or changes in company ownership, must be received by BIS within 30 days of the change to the information. Additionally, amendments required based upon an inspection finding must be submitted to BIS within 45 days after the company is notified of the required amendments. Finally, in lieu of submitting an amended declaration or report form, you may submit your amended information to BIS in a letter on company letterhead.

E. Section 713.3—Annual Declaration Requirements for Schedule 2 Plant Sites

Comment: Two respondents state that the interim rule is unclear on the requirements for annual declarations on past activities involving Schedule 2 chemicals. Specifically, the note to § 713.3(a)(1)(ii) creates confusion by basing the annual declaration requirement on three years of activity and conflicts with the CWC's and the CWCIA's time frame for annual declarations. Moreover, the CWCIA and CWC require annual declarations for a single year and not a series of years as presented in the note to § 713.3(a)(1)(ii). Since Section 401 of the CWCIA commits the U.S. government to require only the minimal information necessary to satisfy the requirements of the CWC and the CWCIA, these respondents oppose a three-year time frame for purposes of reporting on annual activities.

Response: BIS is upholding the CWCIA's commitment to require only minimum information necessary to satisfy the requirements of the treaty. The CWCR only require an annual Schedule 2 declaration on past activities for the previous calendar year. This declaration requirement is based upon the activities that occurred at the plant site during ''any of the previous three calendar years'' as provided in the note to § 713.2(a)(1)(i)(B). BIS refers to this CWC requirement as the ''three-year lookback.''

F. Section 713.5—Advance Declaration Requirements for Additionally Planned Production, Processing, or Consumption of Schedule 2 Chemicals

Comment: One respondent notes that this section states that facilities are allowed, but not required, to submit an amended declaration if they are merely listing additional countries for export. However, then the section goes on to state ''not to exceed 10 countries.'' The respondent proposes that these provisions be clarified, perhaps in the preamble, to state whether this means a limit of ten additional countries or ten total countries, and how this amendment should be done.

Response: New § 713.4 (previously § 713.5) requires submission of a Declaration on Additionally Planned Activities if any additional activity is planned after submission of the Annual Declaration on Anticipated Activities. This requirement is not an amendment, but rather is a specific type of declaration that must be submitted to the OPCW. Section 713.4 has been changed in this proposed rule to eliminate the limit on the total number of destinations that may be declared in both the Annual Declaration on Anticipated Activities and the Declaration on Additionally Planned Activities, as well as for question 2–3.7, on Form 2–3, on actual past exports. The forms required for submitting a Declaration on Additionally Planned Activities are identified in the new Supplement 2 to part 713 of the CWCR.

G. Sections 714.2 and 715.1—Annual Declaration Requirements

Comment: One respondent suggests that in some portions of the regulations it is not clear whether facilities are expected to aggregate quantities of chemicals among all the plants at the same plant site or whether each plant should be considered individually. This respondent proposes revisions to §§ 714.2(a)(l)(i) and (ii), 714.2(b)(l), (2), and (3), and 715.1(a)(l)(ii) that use the model in § 713.3(c)(1)(i) (''Do not aggregate amounts of production, processing or consumption among plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold'').

Response: The model paragraph identified by the respondent, new § 713.2(c)(1)(i) (previously § 713.3(c)(1)(i)), provides the specific requirements for ''quantities to be declared'' in a Schedule 2 declaration by determining if a Schedule 2 plant's activities must be aggregated with the quantities of other plants' activities that may have exceeded the specific declaration threshold. Similarly, § 714.1(c)(1) (previously § 714.2(c)(1)) provides the same requirements for ''quantities to be declared'' for a Schedule 3 plant thereby requiring that ''* * * you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons.'' For purposes of clarity, however, BIS has added the following sentence to § 714.1(c)(1), which states: ''Do not aggregate amounts of production from plants on the plant site that did not individually produce a Schedule 3 chemical in amounts greater than 30 metric tons.'' BIS also has clarified the requirements for unscheduled discrete organic chemicals in a note to § 715.1(a)(1)(ii) to state: ''In calculating the aggregate production quantity of each individual PSF chemical produced by a PSF plant, do not include production of a PSF chemical that was produced in quantities less than 30 metric tons. Include only production quantities from those PSF plants that produced more than 30 metric tons of an individual PSF chemical.''

H. Section 715.1—Annual Declaration Requirements for Unscheduled Discrete Organic Chemicals (UDOCs)

Comment: Two respondents interpret the exemption of UDOCs produced by synthesis that are ingredients or byproducts in foods and are designed for consumption by humans and/or animals to include dietary supplements, as defined under Section 201 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. Section 321. One respondent encouraged BIS to reference the FFDCA in interpreting § 715.1(a)(2)(ii)(E). Additionally, in response to BIS's request for public comment on the impact of the CWCR on facilities that produce UDOCs solely as consumer goods packaged for retail sale, two respondents recommend that BIS exempt facilities that process edible oils and edible oil byproducts solely for use in packaged consumer goods other than those intended for consumption by humans or animals, such as soaps, shampoos, detergents and consumer personal care products. Respondents argue that the concentration, distribution and reaction of these constituents vary from lot to lot, resulting in an unnecessary and costly analysis of mixtures made in-house expressly for incorporation into consumer products. Respondents argue that reporting of basic processing of edible oils operations is not consistent with the intent and purposes of the CWC. Edible oils are not discrete chemical entities and trying to ''force-fit'' them into the CWC's definition of UDOCs creates additional workplace burdens on facility personnel and forces changes in plant equipment and operations. Given the noticeable absence of any direct threat to the object and purpose of the Convention, these respondents recommend that BIS adopt an exemption for facilities involved exclusively in the processing of indiscrete edible oils for use in packaged consumer products. They argue in favor of a similar exemption for facilities which conduct acid-base reactions as a normal consumer product formulation. This type of reaction is pervasive in product formulation, is formulation specific, and is not currently quantified by most manufacturers. Therefore, according to respondents, quantifying this type of reaction would be technically difficult, costly and provide little information pertinent to the scope and objectives of the CWC.

Response: BIS will review, on a case-by-case basis, requests for chemical determinations of dietary supplements, edible oil products, and consumer products other than those intended for consumption by humans and animals. BIS has determined that only undifferentiated edible oils that are not discrete organic chemicals are exempt from the requirements of part 715 of the CWCR. Discrete organic chemicals are defined in part 710 of the CWCR.

Comment: One respondent suggests that the language for the exemption for polymers and oligomers in § 715.1(a)(2)(ii)(A) is confusing and that it need only say, ''Polymers and oligomers consisting of two or more repeating units.''

Response: BIS agrees with the recommendation and has changed 715.1(a)(2)(ii)(A) accordingly. BIS notes, however, that this change does not have any impact on those polymers and oligomers that are exempted.

I. Section 716.1—General Information on the Conduct of Initial and Routine Inspections

Comment: One respondent suggests that the list of responsibilities of BIS during inspections include: Assisting in the protection of confidential business information; consultation with facility representatives regarding facility concerns; serving as intermediary between the facility and the Inspection Team; and representing the interests of the facility, where appropriate.

Response: Part 716.1 is purposefully broad to allow for accommodation of the needs of the U.S. Government, the Inspection Team, and the facility during inspections.

J. Section 716.3—Consent to Inspections; Warrants for Inspections

Comment: One respondent states that the interim rule fails to expressly incorporate the following language from the CWCIA: ''The owner or the operator, occupant, or agent in charge of the premises to be inspected may withhold consent for any reason or no reason.'' In comments to the interim rule, as captured in the preamble (64 FR 73755), it was suggested that this be incorporated in § 716.3.

Response: The facility's right to withhold consent is included in the general reference to the CWCIA in 716.3(b).

Comment: Further, this respondent states that the interim rule should be amended to state that the owner, occupant, or agent in charge of the premises to be inspected may withdraw consent at any time and that withdrawal of consent will not be a violation under § 719.2(a)(1) of the CWCR (as stated in the 64 FR 73755).

Response: The CWCIA explicitly states that consent may be withheld and therefore no further regulation amendment is required. BIS does not see any need to further define who may withhold consent.

Comment: One respondent acknowledges that, if time passes without a facility expressing consent to an inspection, eventually BIS will need to make preparations for a warrant. However, there may be times when the facility voices its consent after BIS has initiated those preparations. BIS should clarify that it will not continue to seek (or serve) a warrant if the facility has consented to inspection and has not withdrawn its consent. The respondent suggests that this clarification does not require any change to the wording of the regulations, but it would be sufficient to provide a response to the public comment in the preamble of the final regulations.

Response: Whether BIS follows through with a warrant exercise is dependent upon at which stage a facility consents after not having consented to an inspection. If, for example, a facility has not consented and BIS initiates the warrant process, and is before a magistrate to obtain the warrant when a facility consents, it is highly likely that at that stage, BIS will obtain the warrant and the inspection will be continued under its terms. In certain instances, it may be more efficient for BIS to follow through with obtaining a warrant, and therefore, such circumstances will be reviewed on a case by case basis.

Comment: One respondent states that the requirement that the person who gives consent to an inspection ''represents that he or she has authority to make this decision for the facility'' serves no purpose and proposes that the applicable Declaration and/or Reporting forms have a place to designate (by name or job title) persons who are authorized to consent to inspections.

Response: As with a declaration made to BIS pursuant to the CWCR, an agreement to consent must be an official decision from the facility. Sections 304(b) and 305(a) of the CWCIA require that the owner, operator, occupant, or agent in charge of a facility be sent the notice of an inspection, and advise the U.S. Government of whether the facility consents to the inspection. It is for that reason that BIS requires that consent be made by a person with authority to speak on behalf of the company. In practice, BIS sends a written notice of inspection, including a request for consent via facsimile to the inspection point of contact (I–POC) listed on the declaration. If for some reason, the I–POC does not have authority to grant consent on behalf of the company, he or she would escalate the request to the

appropriate official. Because this procedure is in place, there is no need to change the existing CWCR.

K. Section 716.4—Scope and Conduct of Inspections

Comment: One respondent states that when an owner, occupant or agent in charge of the premises consents to an initial or routine inspection, he or she is not consenting to provide access to, and has the right to deny access to: (1) Research and development laboratories; (2) pilot plants; and (3) non-relevant production units, including, but not limited to, plants and production units that are exempted from UDOC declaration requirements and plants and production units producing chemicals by fermentation, extraction, purification, distillation, and/or filtration. The respondent references a presentation made by the U.S. Arms Control and Disarmament Agency to industry in 1993, during which these assurances were made under discussions on ''industry rights'' and ''declared plants.''

Response: An inspected facility at any point may withhold consent during the inspection. Such a withholding of consent would require the U.S. Government to obtain a warrant to continue the inspection. However, when consent is granted to conduct the inspection, the boundary of that consent is understood to be the declared facility or plant site, which, in some cases, includes common infrastructure that support both the declared plant and other activities located within the definition of the plant site. BIS will consult with plant sites to determine the access appropriate to comply with the mandate of the inspection while protecting confidential business information to the extent practicable. However, the BIS Host Team Leader has the responsibility under the CWCR (§ 716.4(b)(2)) to determine the appropriate access.

Comment: One respondent suggests that § 716.4(b)(2) should either: (1) Be deleted because the paragraph serves no purpose when consent is not given or is withdrawn; or (2) revised to state that inspection activities apply only to areas of a facility subject to inspection and that consent does not constitute a waiver of rights provided by the Act or other law.

Response: Section 716.4(b)(2) is appropriately included to define the scope of consent and to clarify that the areas of the facility subject to inspection pursuant to consent will be consistent with those subject to inspection pursuant to Section 305 of the CWCIA. No further waiver of rights provided by the CWCIA or law is implied by the consent provisions. Existing language to that effect is unnecessary and has therefore not been included.

Comment: One respondent suggests that § 716.4(c) (pre-inspection briefing (PIB)) should be revised to make the following items mandatory topics: (1) Plant, or plant site, health and safety and alarms; (2) protection of confidential business information; and (3) proposed inspection plan. The respondent also suggests that the term ''process flow'' be a ''simplified block flow diagram of the process,'' and that § 716.4(c)(1)(vii) should say ''Units or plants specific to declared operations.'' This respondent also suggests that BIS make a template for the PIB available on the Internet to let facilities do advance preparation.

Response: The regulations for PIB requirements have been amended to include plant site health and safety issues and requirements, and associated alarm systems in existing subparagraph 716.4(c)(1)(i). The CWCR already include as an optional topic discussion of confidential business information during pre-inspection briefings in 716.4(c)(2)(iii). Inclusion of this topic is at the discretion of the plant site and some plant sites may not wish to identify confidential business information. Therefore, it is not necessary to make this topic mandatory. As suggested by the respondent, the requirements of 716.4(c)(1)(vi) have been amended to require presentation of a block flow diagram or simplified process flow diagram as opposed to process flow in order to accurately reflect the intended detail of such presentations. Also, as suggested by the respondent, the requirements of 716.4(c)(1)(vii) have been amended to require presentation of units and plants specific to declared operations to more accurately reflect the intended scope of such presentation. The discussion of a proposed inspection plan remains optional in § 716.4(c)(2)(vi) (previously § 716.4(c)(2)(vii)) because it is not required by the CWC. BIS has developed a PIB template for downloading from its Web site at *www.cwc.gov*.

Comment: One respondent suggests that § 716.4(e) (Records review) is unnecessary because part 721 already deals with recordkeeping and should be deleted or substantially edited. If edited, the areas of concern are: (1) The idea that records must be provided ''on the inspection site'' as ''paper copies or via electronic remote access by computer'' is inconsistent with part 721 in several respects—''paper copies'' implies duplicates, providing only two options (paper or electronic) disqualifies other media such as microfilm or microfiche, ''electronic remote access'' seems to forbid local access by computer, and records must be provided ''on the inspection site'' which may distinguish it from the plant site; and (2) the wording says the Inspection Team and the Host Team leader may agree on other formats for records, not providing for consultation with the site.

Response: Section 716.4(e) is addressing an issue separate from the recordkeeping provisions of part 721. Specifically, § 716.4(e) is referring to the records to be made available during an inspection of a facility, and the ease with which such records may be made available. The recordkeeping requirements of part 721 of the CWCR separately address the obligation on how records should be maintained.

L. Section 716.5—Notification, Duration and Frequency of Inspections

Comment: One respondent suggests that, in order to ensure that facilities can express consent within four hours, inspection notification via telephone is also necessary to cover possible contingencies. To implement this, revisions to § 716.5(a)(l)(i) and the accompanying table are proposed.

Response: BIS generally provides inspection notification to facility inspection points of contact via telephone. However, we send written notification of inspection with the request for consent that is required by the CWCIA via facsimile. Because BIS has these notification procedures in place, there is no need to change the existing CWCR.

Comment: One respondent stated that, although §§ 716.5(a)(1)(i)(D) and 717.2(b)(2)(i)(D) state that a written inspection notice will tell the ''names and titles'' of each member of the Inspection Team, it would be useful to also know the nationality of each inspector. The respondent notes that this will perhaps become less important if the State Department revises the ITAR requirements. Facilities face the dilemma of possibly having to deny certain access in order to comply with ITAR requirements, although the CWC and the Act require sites to allow the Inspection Team into their facilities. Sites will need that information to make informed decisions.

Response: BIS forwards facilities the official OPCW inspection notification as part of its Host Team Notification requesting consent. The OPCW notification only contains inspector names and titles, which fulfills the relevant requirement under § 304(b)(3)(A)(iv) of the CWCIA. BIS provides facilities with the nationality

of inspectors during Advance Team activities upon request.

If technical data subject to the ITAR is present on an inspection site, its disclosure to any foreign person, regardless of nationality, would require a license from the Department of State. Since the Department of State has not instituted an ITAR license exception for purposes of CWC inspections, the policy of BIS is to deny access to any item or technology subject to ITAR to any inspector absent U.S. Government authorization (see § 716.4(b)(3). Therefore, no change has been made to the existing CWCR.

M. Sections 716.7 and 717.3—Samples

Comment: One respondent states that the regulations are worded in a manner that could result in unfair ''double penalties'' for a single violation. For example, a failure to comply with the State Department's regulations on samples would also constitute a violation of BIS's regulations which require compliance with the State Department's regulations. The respondent recommends that these provisions simply mention that the State Department's regulations address the topic of samples, without the requirement of compliance.

Response: Sections 716.7 and 717.3 serve as cross-references to the applicable sampling provisions in the State Department regulations. They are properly included in the CWCR to identify the existence of obligations under the State Department regulations. Since they reference the State Department regulations, only the State Department penalties would apply—there is no risk of duplicative violations.

N. Sections 716.9 and 717.4—Report of Inspection-Related Costs

Comment: One respondent proposed that these sections be modified to allow facilities to report the cost of preparing the report on inspection-related costs, in addition to the other required information for the submission. This respondent contends that BIS could have met Congress' needs in a manner that would have imposed fewer additional costs to facilities in compiling the information for the repot. The respondent insists that BIS should have provided a mechanism through which facilities could supply Congress information related to the costs incurred in preparing the reference report.

Response: The provisions of the CWCIA require the Department of Commerce to submit a report to Congress on the costs incurred by U.S. industry as a result of CWC inspections. In order to compile this report, BIS has required companies to submit information related to the costs incurred from the conduct of a CWC inspection. In the interest of reducing the burden of reporting on companies, the CWCR requests that only the minimum amount of information necessary to show these costs be submitted to BIS, which ordinarily is only an accounting of the total cost incurred by the facility as a result of the inspection. Companies can interpret this requirement in many ways, and they may include in this calculation all costs they feel are relevant to the inspection, which conceivably could include the costs associated with preparing the report. While BIS encourages facilities to provide additional detail as necessary, information beyond that relating to the costs of the inspection is not required by the CWCIA, and therefore, BIS is not obligated to include that information in its submission to Congress. However, BIS will consider all information submitted by companies when it prepares the cost report for submission.

Comment: One respondent suggested that BIS provide a written reminder a week or two after an inspection so that the facility would not forget to prepare the required cost report.

Response: Under the current regulations, BIS sends the Inspection Point of Contact a post-inspection letter (*see* new §§ 716.10 and 717.5). This letter is sent upon receipt of the Final Inspection Report from the Organization for the Prohibition of Chemical Weapons. The letter reminds the company of any declaration changes suggested and that its report of inspection-related costs is required. As a matter of policy, the companies are also contacted again if the report on inspection-related costs is not received within 90 days. Companies may also prepare the report during the inspection and provide it to the BIS Host Team Leader prior to BIS's departure from the site.

O. Section 717.1—Clarification Procedures; Challenge Inspection Requests Pursuant to Article IX of the Convention

Comment: One respondent stated that a domestic company should have more than five working days to respond to an information request. Because the Convention requires the U.S. government to respond to the requesting State Party within ten days, the respondent proposes that there be advance communication to the extent practicable, so that the formal information request does not come as a surprise and documentation collection can begin in advance.

Response: BIS will contact any domestic company as early as practical in the clarification process (*see* amended § 717.1(b)). Section 717.1 applies to official requests made by BIS. All official requests require a compliance deadline. Companies have five days to respond to a request for information. This gives the U.S. Government time to review and possibly clarify with the facility any additional information that may need to be provided.

P. Section 717.2—Challenge Inspections

Comment: One respondent states that BIS should clarify that, if consent is granted after the government has begun seeking, or has obtained, a criminal warrant, the warrant will not be served while the consent remains in effect.

Response: As stated above, whether BIS follows through with a warrant exercise is dependent upon at which stage a facility consents after having not consented to an inspection. In certain instances, it may be more efficient for BIS to follow through with obtaining a warrant, and the circumstances of each case will be reviewed on a case by case basis.

Comment: One respondent states that notification of a challenge inspection should be given in every case, not simply ''if such notification is deemed appropriate.''

Response: Section 304(b)(2) of the CWCIA provides the circumstances under which notice is provided for a challenge inspection. Specifically, it states that ''[n]otice for a challenge inspection shall be provided at any appropriate time determined by the United States National Authority.'' Therefore, it is true that a notice is required for routine inspections, but provision of notice of a challenge inspection is done at the decision of the USNA. Therefore, provision of notice in the instance of a challenge inspection is dependent upon a decision of the USNA. However, BIS recognizes that the CWCR is unclear on the timeline for notice in a challenge inspection, and therefore, Section 717.2(b) has been amended to include the phrase: ''if possible, and when such notification is deemed appropriate.''

Comment: One respondent questioned the language of § 717.2(b)(2)(ii), indicating that the U.S. Government may make an ''advance team'' available to assist with preparation for a challenge inspection. The concern is that the Act provides that (in the absence of consent) challenge inspections will be conducted under a criminal warrant. Under this situation, it is not clear how the Advance Team should be treated. The

respondent requests that BIS clarify whether the U.S. Government will provide any immunity or other protection to enable sites to work freely with an Advance Team in conjunction with a challenge inspection.

Response: No change to the CWCR is required. Although BIS may provide an Advance Team for those inspections, it is not obliged to do so. Given the broad range of possible circumstances covered by the challenge provisions of the CWC, it may not always be appropriate for BIS to provide Advance Team services. Immunity or other comparable protection is not appropriate in the inspection contest and has therefore not been included.

Comment: One respondent notes that BIS added provisions in a number of locations saying the Host Team will consult with the site before making certain decisions about inspections. However, it appears that § 717.2(c) does not provide for consultation with the site before agreeing to extend a challenge inspection. This respondent feels this section should be revised to provide for consultation.

Response: The respondent is correct that in certain sections of the CWCR, there is explicit provision for BIS to consult with facility representatives, when appropriate, but that in the challenge inspection context, there are no similar provisions. Since this is a U.S. Government-led inspection, BIS has the decision-making authority to extend a challenge inspection and is under no obligation to consult with the facility before extending the timeline for a challenge inspection. BIS is acting on behalf of the U.S. Government in fulfilling its obligations under the CWC for the conduct of a challenge inspection. It is therefore the responsibility of BIS to take whatever measures are necessary, and reasonable, to ensure that the inspection is completed and the Inspection Team meets the goals of their mandate. BIS will make every effort to consult with facility representatives and to take facility concerns under consideration when making decisions during inspections.

Q. Section 718.1—Definitions

Comment: Two respondents state that the definition of Confidential Business Information (CBI) in § 718.1 of the interim rule must be revised to conform to the much broader definition of CBI set forth in Section 103(g) of the CWCIA (*i.e.*, that no inspection shall extend to financial data, sales and marketing data, pricing data, personnel data, research data, patent data, data maintained for compliance with environmental or occupational health and safety regulations, or personnel and vehicles entering and personnel and personal passenger vehicles exiting the facility).

Response: CBI, as defined in § 718.1, follows the definition in the CWCIA, and therefore that paragraph requires no revision. Not only are the relevant sections of the Act referenced in § 718.1, but the definition of CBI is also included in that paragraph.

Comment: In § 718.1(h), one respondent notes a reference to ''personnel passenger vehicles'' (64 FR 73803). The term used in the CWC Verification Annex is ''personal passenger vehicles.'' The CWCR should be changed to reflect the terminology used in the CWC.

Response: BIS notes the difference in terms and agrees with the respondent. Accordingly, § 718.1(h) has been amended to follow the CWC, which reads, in Part X, paragraph 30 of the Verification Annex, ''* * * personnel and personal passenger vehicles * * *.''

R. Section 718.2—Identification of Confidential Business Information

Comment: One respondent suggests that there is a gap in this section because some confidential business information (CBI) may be disclosed directly to an international Inspection Team, rather than through the Host Team (*e.g.*, visual access or employee interview). The respondent suggests that a new paragraph be added as follows: ''(e) In any situation not addressed by paragraphs (b) through (d) of this section, where confidential business information is disclosed to the Inspection Team, the facility shall identify to the Host Team that the information is confidential. The Host Team shall then take appropriate steps to inform the Inspection Team of its obligation to safeguard the information from further disclosure.''

Response: Because the Host Team is the U.S. Government representative at the U.S. Government-led inspection, it will act as the intermediary between the facility and the Inspection Team. As such, any discussion, or any transfer of information, orally or in writing, should be reviewed and effectively cleared by the Host Team before being relayed to the Inspection Team. CBI relevant to inspection aims that is known to the facility must be identified to the Host Team, at best, before the inspection begins, or at the least, before disclosure to Inspection Teams. It is imperative that facilities and facility representatives be fully versed in the location of physical CBI on the facility and the presence of CBI in records or other documentation that could be reviewed by the Inspection Team. BIS does not anticipate, or wish to promote, the possibility of disclosure of CBI to the Inspection Team without the Host Team's knowledge, and therefore has not codified procedures in the CWCR whereby a facility would have opportunity to unilaterally release information to the Inspection Team. Nonetheless, in the unlikely event of CBI disclosure directly to the Inspection Team without prior disclosure to, or discussion with, the Host Team, facility representatives must immediately inform the Host Team so that appropriate measures contemplated by § 718.2(d) may be taken.

Comment: One respondent notes that the proposed rule indicates that companies could not shroud irrelevant confidential information unless the Host Team agreed to allow it, but that, in response to comments, BIS changed the language of § 718.2(d)(1) to say irrelevant confidential information may be shrouded ''as determined by'' the Host Team. The respondent argues that this change makes no real difference as it does not provide a role for the facility to express its legitimate concerns. Although the right to shroud irrelevant confidential information is a right granted to the State Party, the loss of confidential information is a harm to the facility. In order to be consistent with changes made elsewhere in the regulations, the respondent suggests that BIS provide for consultation with the facility before the Host Team makes its determination.

Response: BIS Host Teams are cognizant of facility concerns about protection of CBI and will work with facilities to protect the release of CBI that is unrelated to the inspection as much as possible. However, there are instances where release of CBI to the Inspection Team is unavoidable, and under those circumstances, the Inspection Team will be advised that the information is CBI and that it should be protected under the CWC's confidentiality provisions. Shrouding is one of many means through which CBI is protected, but it is not always the most reasonable means of protection, particularly considering the obvious nature of the shroud. Frequently, there are other alternatives employed to protect release of CBI to the Inspection Team, such as revising their inspection route through the facility, or taping over the words or symbols on tanks or drums. The BIS Host Team will work with the company in deciding the most appropriate method for protecting unrelated CBI, but ultimately, since this is a U.S. Government-led inspection, the Host Team will be the final decision-

making authority on which protective method will be employed. Since prior consultation with the company, as appropriate, will generally be pursued, the recommended change to the regulatory text has not been made.

S. Section 718.3—Disclosure of Confidential Business Information

Comment: One respondent states that, although § 718.3(c)(4)(ii) provides for notice of disclosure to the owner of the confidential business information with certain exceptions, notice is of limited value unless the owner has an opportunity to be heard. Section 404(c)(2)(B) of the Act expressly provides a right to a hearing to object to disclosure and requires the United States National Authority (USNA) to provide its decision no later than 10 days before the scheduled or rescheduled date for the disclosure. However, the CWCR do not discuss this. Respondents suggest revising § 718.3(c)(4) to specify the right to a hearing, how and when to request a hearing, what the hearing generally will consist of, how and when the decision will be communicated, and what avenue of redress is available to the owner of the information if the USNA decides to disclose the information.

Response: The respondent has referenced the hearing requirements that relate to the domestic release of company CBI that is in the possession and control of BIS. Under the referenced circumstances (*e.g.*, pending investigation, request of Congress, national interest, *etc.*) where CBI may be released, the company has a right to a hearing on the record prior to the release of such information. This hearing exercise is separate and distinct from the release of CBI during facility inspections. There is no right to a hearing during the inspection process, which is why all CBI must be identified to the Host Team prior to the start of the inspection in order for BIS to take measures to control access to CBI or prevent its release.

Comment: One respondent notes that because §§ 718.2(c) and 718.3(b) state that certain information is not subject to the CBI provisions of the Act, that this reference will therefore be misunderstood to mean that the information cannot be protected as confidential business information. Other provisions in the CWCR (such as §§ 718.3(b)(1) and (2)) indicate that this was not BIS's intent and that other laws will protect the information and provide the procedures to be followed. The respondent suggests that BIS clarify §§ 718.2(c) and 718.3(b) to say that the information, although not subject to the CBI provisions of the Act, may be protected under other laws.

Response: The reference to protection by other laws is already included in the text of the CWCR in § 718.3(a). That section specifically states that confidentiality of all information will be maintained consistent with the Act and the other listed statutes and regulations. There is no need to repeat this reference elsewhere in part 718.

T. Section 719.3—Violations of the IEEPA Subject to Judicial Enforcement Proceedings

Comment: One respondent noted that the 45 calendar day reference in § 719.3(a)(l)(iv) could be taken literally to allow for advance notification on only a single day. The respondent proposes that the wording of § 719.3 be revised to provide that the notice is required ''not less than 45 calendar days'' before the import.

Response: As suggested by the respondent, § 719.3(a)(1)(iv) has been amended to provide that notice is required ''not less than'' 45 calendar days before the import.

U. Section 719.6—Request for Hearing and Answer

Comment: One respondent is concerned that this section allows only fifteen days from ''the date of the Notice of Violation and Assessment (NOVA)'' to request a hearing. If the regulations do not provide sufficient time, the site's attorney will have to file a request for hearing automatically, as a precautionary measure, even though ultimately the company may decide that no hearing was necessary. As the fifteen-day period is specified by statute, the respondent suggests one of the following: (a) Interpret the word ''days'' to mean ''working days'' to address weekends and holidays; (b) interpret the term ''date of the NOVA'' to mean the date of receipt of the NOVA to address any delays in the mail; or (c) commit to provide a telephone call to let the company know that a NOVA is coming, with a follow-up facsimile if requested.

Response: BIS agrees with the respondent regarding the 15-day time period and the ''date'' of the NOVA. Accordingly, BIS has amended § 719.6(a) to state ''15 business days'' and has inserted the words ''from the postmarked date of the NOVA'' in the relevant sections of the CWCR. As to the respondent's suggestion in (c), BIS cannot guarantee a phone-call in these circumstances, but will note that the recipients should contact BIS in the event an extension is required for response time to these provisions.

V. Section 719.8—Filing and Service of Papers Other Than the NOVA

Comment: One respondent suggests that the idea that all papers must be served ''simultaneously'' with their filing is not achievable and that the word ''simultaneously'' be changed to ''contemporaneously.''

Response: Simultaneously and contemporaneously are interpreted by BIS as synonyms. BIS expects all motions and supporting documentation be served at the same time, and therefore, BIS requires simultaneous filing. This represents normal legal procedure.

W. Section 719.20—Record for Decision

Comment: One respondent notes that this section allows the Administrative Law Judge (ALJ), after an enforcement case, to transfer documents from the closed portion to the open portion of the record if the information becomes unrestricted through the passage of time without expressly providing notice or an opportunity for the owner of the information to be heard. In the preamble to the interim rule, BIS defended this by saying that the ALJ would necessarily make some sort of inquiry before transferring the records. The respondent is concerned that the ALJ may not have all the necessary information without allowing for notice and an opportunity to be heard.

Response: BIS cannot impose additional requirements upon the ALJ other than those authorized by the Act. It is unnecessary to include additional direction for the ALJ in the CWCR, unless such direction is uniquely related to the CWC implementation process. The issue raised by the respondent is not CWC-specific, and therefore does not meet that test.

X. Section 719.21—Payment of Final Assessment

Comment: One respondent suggests that, in order to prevent an ALJ from requiring payment within an unreasonably short time, that § 719.21(a) be revised to say ''or within a longer time specified in the order.'' This respondent commented on this provision in the proposal, but BIS has not addressed the comment.

Response: As suggested by the respondent, § 719.21(a) has been amended to provide that payment shall be made within 30 days of the effective date of the order or within such longer period of time as may be specified in the order.

Y. Section 721.1—Inspection of Records

Comment: One respondent suggests that this section begin, ''Upon formal

request * * *'' to avoid confusion over whether a request has been made and to assist in determining compliance.

Response: Requests made by the Department of Commerce may be made formally or informally, by telephone, in person, or through written correspondence. It is not necessary to distinguish between the types of requests that could be made. Therefore, no change has been made to the existing CWCR language.

Z. Section 721.2—Recordkeeping

Comment: Two respondents propose that the recordkeeping requirements recognize industry's records management programs in the interest of additional costs to and interruption of ordinary business and as recognized under other statutes. Respondents request that they be able to use whatever type of records normally used in the ordinary course of business (originals or duplicates), be allowed to use any duplication system normally used in the ordinary course of business, be able to store records in logical locations that do not unduly impair inspections (on or off the declared plant site), and be allowed but not required to provide personnel and equipment to assist with records.

Response: The existing regulatory language is designed to allow for accessibility of records within the time limitations imposed by the CWC. That language is further designed to require retention only of those records (or copies thereof) necessary to verify compliance with the CWCR. Unfortunately, based on the implementation of the CWCR to date, certain required records may not be kept in the ordinary course of business and certain document retention and duplication policies that are used in the ordinary course of business may likewise not adequately protect necessary documentation. As a result, the existing regulatory language has been largely retained.

AA. Section 721.3—Destruction or Disposal of Records

Comment: Two respondents state that the requirements of this section undermine records management programs. Respondents argue that the CWCR do not require that the governmental agency must justify requesting the record, that once a record has been provided to the government it should be of no concern whether the company retains its copy thereafter, that there is no ending date specified, that these requirements exceed BIS's authority, and that the regulations do not impose any standards on the agency's decision to grant or deny permission to dispose of the records. For these reasons, § 721.3 should either be deleted or revised to allow disposal of records after they are provided to the government.

Response: Section 404 of the Act provides for the release of certain CWC-related records in the national interest to Congress, enforcement agencies, or other federal agencies, as necessary. The Act provides guidelines for requesting records, the protection of the information contained in the records, and hearings related to their release. As the Act specifically addresses the handling of records, and since the Act is applicable to all government agencies, there is no need for BIS to further delineate those requirements in its regulations.

BB. Miscellaneous Comments

Comment: It is one respondent's understanding that the OPCW recently amended the requirements relating to transfers of saxitoxin and recommended that these changes be incorporated into all parts of the regulations that relate to the reporting of saxitoxin transfers. In addition, the Handbook for Schedule 1 Declarations and Reports should be amended to reflect these changes. Furthermore, the respondent contends that such OPCW amendments should initiate notice and comment rulemaking to change the CWCR where it does not conflict with the CWCIA.

Response: Based upon an OPCW Decision on transfers of the Schedule 1 chemical saxitoxin, BIS has changed the advance notification period for transfers of 5 milligrams or less of saxitoxin, only when the chemical will be used for medical/diagnostic purposes. The advance notification for these transfers must be submitted to BIS at least 3 calendar days prior to export or import.

CC. CWC Declaration Forms

Comment: Two respondents encourage BIS to allow another possible means of determining the latitude and longitude of a declarable plant site, namely Land View III Mapping Software. Respondents understand that various industries already rely on this software for such determinations and suggest BIS allow the use of this and similar software in the course of CWC inspections as a means to further minimize the CWC's compliance costs to industry.

Response: BIS has updated Supplement 1 to the Declaration and Report Handbook to clarify that the tools listed in the Handbook were only suggested options for industry to use in determining their facility's latitude and longitude coordinates. BIS did not intend to limit industry's activities to only these listed tools. There are a wide variety of commercial products available that may be used. Upon request, BIS will also assist companies in identifying their geographical coordinates.

Comment: One respondent notes that ''rounding rules'' have been provided for Schedule 1, Schedule 2, and Schedule 3 substances in mixtures and that these rounding rules are necessary for UDOCs for the very same reasons, *i.e.:* Low concentrations do not pose a risk to the aims of the Convention; low concentrations are not readily amenable to diversion; the producer may not even know that a substance is present, if the concentration is very low; low concentrations may reflect inadvertent production of an impurity; and, minor fluctuations in very low concentrations may make it difficult to provide an accurate estimate of the annual quantity. In addition, UDOCs are farther removed from possible ''chemical weapons'' use than any of the scheduled chemicals and may be present in large numbers in a product stream in different concentrations that fluctuate. In the absence of any ''rounding rule,'' additional Declarations and Reports will increase the cost of compliance without providing a corresponding benefit. The respondent proposes that any constituent less than 5% in a mixture be excluded; if not, perhaps the same ''0.5% round down to zero'' that applies to Schedule 1 substances could apply.

Response: BIS will review on a case-by-case basis requests for determinations of mixtures containing low concentrations of UDOCS.

Comment: According to § 718.2(b)(2) and a footnote to Supplement No. 1 to part 718, companies must submit an up-front, written rationale to claim certain information is confidential. One respondent suggests that this requirement be deleted to reduce the regulatory burden and require written substantiation only in cases where a challenge is raised to the confidentiality of the information. The respondent contends this was consistent with the reporting requirements of many different federal, state and local agencies.

Response: Due to the explicit definitional requirements provided in the Act pertaining to ''confidential business information,'' BIS has included in the CWCR the requirement that companies provide justification for why certain information should be considered CBI. BIS requests this ''rationale'' in writing in order to clearly ascertain that all elements of the Act's definition of CBI are met by the

company information. Additionally, this written justification assists BIS in keeping track of confidential business information identified by the company during the inspection process. As such, this requirement is an important tool that assists BIS in complying with the Act and meeting the needs of the companies.

Comment: One respondent suggests that BIS adopt a generic policy that no more than two significant digits are required. This will greatly reduce the rounding burdens, without harming the regulatory program in any way.

Response: This issue is currently under discussion at OPCW. Accordingly, BIS will not implement a policy until a final decision on this matter has been agreed upon by all States Parties.

Comment: One respondent contends that the choices for ''purpose of production'' leave a gap in reporting transfers to another company within the same industry. The respondent proposed revising the Schedule 3 import/export forms to say, ''Transfer to other company or industry.''

Response: BIS has changed the ''purpose(s) of production'' question on Schedule 3 Form 3–3 as suggested by the respondent.

Rulemaking Requirements

1. This proposed rule has been determined to be significant for purposes of E.O. 12866.

2. 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule proposes to revise an existing collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0091 (Chemical Weapons Convention—Declaration and Report Forms), which carries burden hour estimates of 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3/5.1 for unscheduled discrete organic chemicals, and 0.17 hours for Schedule 1 notifications. This rule proposes to add a new Section 711.3 to the Chemical Weapons Convention Regulations (CWCR) that would authorize BIS to contact any facility to request information concerning production, processing, consumption, export, import, or other activities involving scheduled chemicals and UDOCs, described in Parts 712 through 715 of the CWCR, in order to determine whether or not the facility is in compliance with the CWCR. This new requirement would apply to all persons and facilities that are subject to the reporting or declaration provisions of the CWCR, as set forth in Part 721. The total estimated annual burden hours for the compliance reviews authorized under new Section 711.3 would be 85 hours and the total estimated annual cost would be $3,236.46. This rule also proposes to add a new requirement for the submission of amendments (to previously submitted declarations and reports) resulting from inspection findings. The total estimated annual burden hours for this new amendment requirement would be 112 hours and the total estimated annual cost would be $4,267. Note that the estimated burden hours and cost for inspection related amendments are already included in the information collection authorization from OMB. Therefore, to avoid double counting the information, it does not appear as a separate line item under the revision to the information collection for this proposed rule. Finally, this rule proposes to add a new reporting form, entitled ''No Changes'' Certification Form, for UDOC facilities to use, if appropriate, for certifying that there are no changes to the information declared in the facilities prior year's annual declaration on past activities. This new form will reduce industry's estimated annual burden by 15 hours and $571.50. Note that, like the information related to inspection-related amendments, the estimated burden hours and cost for implementing the ''No Changes'' Certification Form are included in a prior information collection authorization from OMB. In conclusion, the total estimated annual burden hours for declarations, reports, amendments, and requests for compliance-related information under this proposed rule will increase from 4401 burden hours to 4471 burden hours. The changes proposed by this rule are addressed under two separate information collection submissions.

Comments are invited on: (i) Whether the collection of information is necessary for the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *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.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards), (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. BIS has determined that this proposed rule would affect only the first category of small entities (*i.e.*, small businesses).

The President reported to the Congress, in December 2003, as required under Section 309 of the CWC Implementation Act, that 297 U.S. companies representing 691 facilities, plant sites, and trading companies were subject to the declaration and reporting requirements under the Chemical Weapons Convention Regulations (CWCR). Although BIS estimates that the majority of these 297 companies are substantially sized businesses, having more than 500 employees, BIS does not have sufficient information on these companies to definitively characterize them as large entities. The Small Business Administration (SBA) has established standards for what constitutes a small business, with respect to each of the Standard Industrial Classification (SIC) code categories for ''Chemicals and Allied Products.'' However, BIS is not able to determine which of these SIC code categories apply to the companies that are subject to the declaration, reporting, advance notification, recordkeeping or inspection requirements of this rule. Therefore, for the purpose of assessing the impact of this proposed rule, BIS will assume that the 297 companies are small entities.

Although this proposed rule would affect a substantial number of small entities (*i.e.*, 297 companies), if adopted, the additional recordkeeping and reporting requirements that would be imposed by this rule would not have a significant economic impact on these entities.

First, this rule proposes to add a new Section 711.3 that would authorize BIS to contact any facility to determine whether or not it is in compliance with the CWCR. The information that BIS would be authorized to request would concern production, processing, consumption, export, import, or other activities involving scheduled chemicals and UDOCs described in Parts 712 through 715 of the CWCR. This new requirement would apply to all persons and facilities subject to the reporting or declaration provisions of the CWCR, as set forth in Part 721. The total estimated annual burden hours for the compliance reviews authorized under new Section 711.3 would be 85 hours and the total estimated annual cost would be $3,236.46.

Second, this rule proposes to add a new requirement for the submission of amendments (to previously submitted declarations and reports) resulting from inspection findings. The total estimated annual burden hours for the new amendment requirement would be 112 hours and the total estimated annual cost would be $4,267.

Finally, this rule proposes to add a new reporting form, entitled ''No Changes'' Certification Form, for UDOC facilities to use, if appropriate, for certifying that there are no changes to the information declared in the facilities prior year's annual declaration on past activities. This new form will reduce industry's estimated annual burden by 15 hours and $571.50.

The total estimated increase in annual burden hours to implement the additional recordkeeping and reporting requirements described above would be 197 burden hours and the total estimated annual cost would be $7,503.46. The total cost of these recordkeeping and reporting requirements would represent only a small percentage of the revenues generated by the affected companies. Although the proposed rule would affect a substantial number of small entities (*i.e.*, 297 companies), the total economic impact on the affected entities (*i.e.*, $7,503.46) would not be significant. Since the proposed revisions to the CWCR would not impose a significant economic impact on a substantial number of small entities, BIS did not prepare a regulatory flexibility analysis for this rule.

Finally, the changes proposed by this rule should be viewed in light of the fact that BIS's discretion in formulating the declaration, reporting and advance notification, and recordkeeping requirements of the CWCR is limited by the Chemical Weapons Convention (the Convention). The Organization for the Prohibition of Chemical Weapons (OPCW) has issued forms for States Parties to use for declarations. In drafting the CWCR requirements and the forms for U.S. persons to use, BIS has consistently interpreted the Convention's requirements as narrowly as possible to ensure that only information that the United States National Authority must declare to the OPCW is to be submitted to BIS. Other States Parties, such as Canada, have imposed much broader reporting requirements on their industries, with the government taking on the responsibility of determining which of the information collected must be declared to the OPCW. In addition, certain declaration requirements of the Convention are subject to interpretation by States Parties. Until the Conference of States Parties establishes clear rules for these requirements, States Parties may use their ''national discretion'' to implement them. ''National discretion'' generally means a reasonable interpretation of the requirement. For requirements currently subject to ''national discretion,'' BIS has adopted in this rule the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

15 CFR Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 712

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 713

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 714

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 715

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

15 CFR Part 717

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

15 CFR Part 718

Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 719

Administrative proceedings, Exports, Imports, Penalties, Violations.

15 CFR Part 720

Penalties, violations.

15 CFR Part 721

Reporting and recordkeeping requirements.

Accordingly, the Chemical Weapons Convention Regulations (15 CFR, Chapter VII, Subchapter B, Parts 710–729) are proposed to be revised to read as follows:

PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

Sec.
710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).
710.2 Scope of the CWCR.
710.3 Purposes of the Convention and CWCR.
710.4 Overview of scheduled chemicals and examples of affected industries.
710.5 Authority.
710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations, the International Traffic in Arms Regulations, and the Alcohol, Tobacco, Firearms and Explosives Regulations.
Supplement No. 1 to Part 710—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction
Supplement No. 2 to Part 710—Definitions of Production

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

The following are definitions of terms used in the CWCR (parts 710 through 729 of this subchapter, unless otherwise noted):

Act (The). Means the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 *et seq.*).

Advance Notification. Means a notice informing BIS of a company's intention to export to or import from a State Party a Schedule 1 chemical. This advance notification must be submitted to BIS at least 45 days prior to the date of export or import (except for transfers of 5 milligrams or less of saxitoxin for medical/diagnostic purposes, which must be submitted to BIS at least 3 days prior to export or import). BIS will inform the company in writing of the earliest date the shipment may occur under the advance notification procedure. Additionally, this advance notification requirement is imposed in addition to any export license requirements under the Department of Commerce's Export Administration Regulations (15 CFR Parts 730 through 799) or the Department of State's International Traffic in Arms Regulations (22 CFR Parts 120 through 130) or any import license requirements under the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives Regulations (27 CFR part 447).

Bureau of Industry and Security (BIS). Means the Bureau of Industry and Security of the United States Department of Commerce, including Export Administration and Export Enforcement.

By-product. Means any chemical substance or mixture produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.

Chemical Weapon. Means the following, together or separately:

(1) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention (CWC), provided that the type and quantity are consistent with such purposes;

(2) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (1) of this definition, which would be released as a result of the employment of such munitions and devices;

(3) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (2) of this definition.

Chemical Weapons Convention (CWC or Convention). Means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993.

Chemical Weapons Convention Regulations (CWCR). Means the regulations contained in 15 CFR parts 710 through 729.

Consumption. Consumption of a chemical means its conversion into another chemical via a chemical reaction. Unreacted material must be accounted for as either waste or as recycled starting material.

Declaration or report form. Means a multi-purpose form to be submitted to BIS regarding activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals. Declaration forms will be used by facilities that have data declaration obligations under the CWCR and are ''declared'' facilities whose facility-specific information will be transmitted to the OPCW. Report forms will be used by entities that are ''undeclared'' facilities or trading companies that have limited reporting requirements for only export and import activities under the CWCR and whose facility-specific information will not be transmitted to the OPCW. Information from declared facilities, undeclared facilities and trading companies will also be used to compile U.S. national aggregate figures on the production, processing, consumption, export and import of specific chemicals. *See* also related definitions of *declared facility, undeclared facility* and *report.*

Declared facility or plant site. Means a facility or plant site that submits declarations of activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals above specified threshold quantities.

Discrete organic chemical. Means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides, and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned. (Also see the definition for unscheduled discrete organic chemical.)

Domestic transfer. Means, with regard to declaration requirements for Schedule 1 chemicals under the CWCR, any movement of any amount of a Schedule 1 chemical outside the geographical boundary of a facility in the United States to another destination in the United States, for any purpose. Also means, with regard to declaration requirements for Schedule 2 and Schedule 3 chemicals under the CWCR, movement of a Schedule 2 or Schedule 3 chemical in quantities and concentrations greater than specified thresholds, outside the geographical boundary of a facility in the United States, to another destination in the United States, for any purpose. Domestic transfer includes movement between two divisions of one company or a sale from one company to another. Note that any movement to or from a facility outside the United States is considered an export or import for reporting purposes, not a domestic transfer. (Also *see* definition of *United States.*)

EAR. Means the Export Administration Regulations (15 CFR parts 730 through 799).

Explosive. Means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

Facility. Means any plant site, plant or unit.

Facility Agreement. Means a written agreement or arrangement between a State Party and the Organization relating to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Host Team. Means the U.S. Government team that accompanies the inspection team from the Organization for the Prohibition of Chemical

Weapons during a CWC inspection for which the regulations in this subchapter apply.

Host Team Leader. Means the representative from the Department of Commerce who heads the U.S. Government team that accompanies the Inspection Team during a CWC inspection for which the regulations in this subchapter apply.

Hydrocarbon. Means any organic compound that contains only carbon and hydrogen.

Impurity. Means a chemical substance unintentionally present with another chemical substance or mixture.

Inspection Notification. Means a written announcement to a plant site by the United States National Authority (USNA) or the BIS Host Team of an impending inspection under the Convention.

Inspection Site.—Means any facility or area at which an inspection is carried out and which is specifically defined in the respective facility agreement or inspection request or mandate or inspection request as expanded by the alternative or final perimeter.

Inspection Team. Means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat to conduct a particular inspection.

Intermediate. Means a chemical formed through chemical reaction that is subsequently reacted to form another chemical.

ITAR. Means the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, the Netherlands, that administers the CWC.

Person. Means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Plant. Means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

(1) Small administrative area;

(2) Storage/handling areas for feedstock and products;

(3) Effluent/waste handling/treatment area;

(4) Control/analytical laboratory;

(5) First aid service/related medical section; and

(6) Records associated with the movement into, around, and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

Plant site. Means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(1) Administration and other offices;

(2) Repair and maintenance shops;

(3) Medical center;

(4) Utilities;

(5) Central analytical laboratory;

(6) Research and development laboratories;

(7) Central effluent and waste treatment area; and

(8) Warehouse storage.

Precursor. Means any chemical reactant which takes part, at any stage in the production, by whatever method, of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

Processing. Means a physical process such as formulation, extraction and purification in which a chemical is not converted into another chemical.

Production. Means the formation of a chemical through chemical reaction, including biochemical or biologically mediated reaction (*see* Supplement No. 2 to this part).

Notes: 1. Production of Schedule 1 chemicals means formation through chemical synthesis as well as processing to extract and isolate Schedule 1 chemicals.

2. Production of a Schedule 2 or Schedule 3 chemical means all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (*e.g.*, purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical. The exact nature of any associated process (*e.g.*, purification, *etc.*) is not required to be declared.

Production by synthesis. Means production of a chemical that is isolated for use or sale.

Protective purposes in relation to Schedule 1 chemicals. Means any purpose directly related to protection against toxic chemicals and to protection against chemicals weapons. Further means the Schedule 1 chemical is used for determining the adequacy of defense equipment and measures.

Purposes not prohibited by the CWC. Means the following:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or

(4) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

Report. Means information due to BIS on exports and imports of Schedule 1, Schedule 2 or Schedule 3 chemicals above applicable thresholds. Such information is included in the national aggregate declaration transmitted to the OPCW. Facility-specific information is not included in the national aggregate declaration. **Note:** This definition does not apply to parts 719 and 720 (*see* § 719.1) of this subchapter.

Schedules of Chemicals. Means specific lists of toxic chemicals, groups of chemicals, and precursors contained in the CWC. *See* Supplements No. 1 to parts 712 through 714 of this subchapter.

State Party. Means a country for which the CWC is in force. *See* Supplement No. 1 to this part.

Storage. For purposes of Schedule 1 chemical reporting, means any quantity that is not accounted for under the categories of production, export, import, consumption or domestic transfer.

Technical Secretariat. Means the organ of the OPCW charged with carrying out administrative and technical support functions for the OPCW, including carrying out the verification measures delineated in the CWC.

Toxic Chemical. Means any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation, or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere. Toxic chemicals that have been identified for the application of verification measures are in schedules contained in Supplements No. 1 to parts 712 through 714 of this subchapter.

Trading company. Means any person involved in the export and/or import of scheduled chemicals in amounts greater than specified thresholds, but not in the production, processing or consumption of such chemicals in amounts greater than threshold amounts requiring declaration. If such persons exclusively export or import scheduled chemicals in

amounts greater than specified thresholds, they are subject to reporting requirements but are not subject to routine inspections. Such persons must be the principal party in interest of the exports or imports and may not delegate CWC reporting responsibilities to a forwarding or other agent.

Transfer. See domestic transfer.

Transient intermediate. Means any chemical which is produced in a chemical process but, because they are in a transition state in terms of thermodynamics and kinetics, exist only for a very short period of time, and cannot be isolated, even by modifying or dismantling the plant, or altering process operating conditions, or by stopping the process altogether.

Undeclared facility or plant site. Means a facility or plant site that is not subject to declaration requirements because of past or anticipated production, processing or consumption involving scheduled or unscheduled discrete organic chemicals above specified threshold quantities. However, such facilities and plant sites may have a reporting requirement for exports or imports of such chemicals.

Unit. Means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

United States National Authority (USNA). Means the Department of State serving as the national focal point for the effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention and implementing the provisions of the Chemical Weapons Convention Implementation Act of 1998 in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of other agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the USNA.

Unscheduled chemical. Means a chemical that is not contained in Schedule 1, Schedule 2, or Schedule 3 (*see* Supplements No. 1 to parts 712 through 714 of this subchapter).

Unscheduled Discrete Organic Chemical (UDOC). Means any ''discrete organic chemical'' that is not contained in the Schedules of Chemicals (*see* Supplements No. 1 to parts 712 through 714 of this subchapter) and subject to the declaration requirements of part 715 of this subchapter. Unscheduled discrete organic chemicals subject to declaration under this subchapter are those produced by synthesis that are isolated for use or sale as a specific end-product.

You. The term ''you'' or ''your'' means any person (see also definition of ''person''). With regard to the declaration and reporting requirements of the CWCR, ''you'' refers to persons that have an obligation to report certain activities under the provisions of the CWCR.

§ 710.2 Scope of the CWCR.

The Chemical Weapons Convention Regulations (parts 710 through 729 of this subchapter), or CWCR, implement certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as the CWC or Convention.

(a) *Persons and facilities subject to the CWCR.* (1) The CWCR apply to all persons and facilities located in the United States, except the following U.S. Government facilities:

(i) Department of Defense facilities;

(ii) Department of Energy facilities; and

(iii) Facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR.

(2) For purposes of this subchapter, ''United States Government facilities'' are those facilities owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those facilities leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). ''United States Government facilities'' do not include facilities owned by a U.S. Government agency and leased to a private company or other entity such that the private company or entity may independently decide for what purposes to use the facilities.

(b) *Activities subject to the CWCR.* The activities subject to the CWCR (parts 710 through 729 of this subchapter) are activities, including production, processing, consumption, exports and imports, involving chemicals further described in parts 712 through 715 of this subchapter. These do not include activities involving inorganic chemicals other than those listed in the Schedules of Chemicals, or other specifically exempted unscheduled discrete organic chemicals.

§ 710.3 Purposes of the Convention and CWCR.

(a) *Purposes of the Convention.* (1) The Convention imposes upon the United States, as a State Party, certain declaration, inspection, and other obligations. In addition, the United States and other States Parties to the Convention undertake never under any circumstances to:

(i) Develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

(ii) Use chemical weapons;

(iii) Engage in any military preparations to use chemical weapons; or

(iv) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

(2) One objective of the Convention is to assure States Parties that lawful activities of chemical producers and users are not converted to unlawful activities related to chemical weapons. To achieve this objective and to give States Parties a mechanism to verify compliance, the Convention requires the United States and all other States Parties to submit declarations concerning chemical production, consumption, processing and other activities, and to permit international inspections within their borders.

(b) *Purposes of the Chemical Weapons Convention Regulations.* To fulfill the United States' obligations under the Convention, the CWCR (parts 710 through 729 of this subchapter) prohibit certain activities, and compel the submission of information from all facilities in the United States, except for Department of Defense and Department of Energy facilities and facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR on activities, including exports and imports of scheduled chemicals and certain information regarding unscheduled discrete organic chemicals as described in parts 712 through 715 of this

subchapter. U.S. Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated. The CWCR also require access for on-site inspections and monitoring by the OPCW, as described in parts 716 and 717 of this subchapter.

§ 710.4 Overview of scheduled chemicals and examples of affected industries.

The following provides examples of the types of industries that may be affected by the CWCR (parts 710 through 729 of this subchapter). These examples are not exhaustive, and you should refer to parts 712 through 715 of this subchapter to determine your obligations.

(a) Schedule 1 chemicals are listed in Supplement No. 1 to part 712 of this subchapter. Schedule 1 chemicals have little or no use in industrial and agricultural industries, but may have limited use for research, pharmaceutical, medical, public health, or protective purposes.

(b) Schedule 2 chemicals are listed in Supplement No. 1 to part 713 of this subchapter. Although Schedule 2 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) Flame retardant additives and research;

(2) Dye and photographic industries (*e.g.*, printing ink, ball point pen fluids, copy mediums, paints, etc.);

(3) Medical and pharmaceutical preparation (*e.g.*, anticholinergics, arsenicals, tranquilizer preparations);

(4) Metal plating preparations;

(5) Epoxy resins; and

(6) Insecticides, herbicides, fungicides, defoliants, and rodenticides.

(c) Schedule 3 chemicals are listed in Supplement No. 1 to part 714 of this subchapter. Although Schedule 3 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) The production of:

(i) Resins;

(ii) Plastics;

(iii) Pharmaceuticals;

(iv) Pesticides;

(v) Batteries;

(vi) Cyanic acid;

(vii) Toiletries, including perfumes and scents;

(viii) Organic phosphate esters (*e.g.*, hydraulic fluids, flame retardants, surfactants, and sequestering agents); and

(2) Leather tannery and finishing supplies.

(d) Unscheduled discrete organic chemicals are used in a wide variety of commercial industries, and include acetone, benzoyl peroxide and propylene glycol.

§ 710.5 Authority.

The CWCR (parts 710 through 729 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (Act), the National Emergencies Act, the International Emergency Economic Powers Act (IEEPA), as amended, and the Export Administration Act of 1979, as amended, by extending verification and trade restriction requirements under Article VI and related parts of the Verification Annex of the Convention to U.S. persons. In Executive Order 13128 of June 25, 1999, the President delegated authority to the Department of Commerce to promulgate regulations to implement the Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the Act.

§ 710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations, the International Traffic in Arms Regulations, and the Alcohol, Tobacco, Firearms and Explosives Regulations.

Certain obligations of the U.S. Government under the CWC pertain to exports and imports. The obligations on exports are implemented in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). *See* in particular §§ 742.2 and 742.18 and part 745 of the EAR, and Export Control Classification Numbers 1C350, 1C351, 1C355 and 1C395 of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). The obligations on imports are implemented in the Chemical Weapons Convention Regulations (§§ 712.2 and 713.1) and the Alcohol, Tobacco, Firearms and Explosives Regulations in 27 CFR part 447.

Supplement No. 1 to Part 710—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of November 24, 2004

Afghanistan, Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan

Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Brunei Darussalam*, Bulgaria, Burkina Faso, Burundi

Cameroon, Canada, Cape Verde, Chad, Chile, China**, Colombia, Cook Islands*, Costa Rica, Cote d'Ivoire (Ivory Coast), Croatia, Cuba, Cyprus, Czech Republic

Denmark, Dominica

Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia

Fiji, Finland, France

Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana

Holy See*, Hungary

Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy

Jamaica, Japan, Jordan

Kazakhstan, Kenya, Kiribati, Korea (Republic of), Kyrgyzstan, Kuwait

Laos (P.D.R.)*, Latvia, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg

Macedonia (The Former Yugoslav Republic of), Madagascar, Malawi Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of) Moldova (Republic of)*, Monaco, Mongolia, Morocco, Mozambique

Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway

Oman

Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal

Qatar

Romania, Russian Federation, Rwanda

Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia and Montenegro*, Seychelles, Sierra Leone, Singapore, Slovak Republic*, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname*, Swaziland, Sweden, Switzerland

Tajikistan, Tanzania (United Republic of), Thailand, Timor Leste (East Timor), Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu

Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan

Venezuela, Vietnam

Yemen

Zambia, Zimbabwe

* For export control purposes, these destinations are identified using a different nomenclature under the Commerce Country Chart in Supplement No. 1 to part 738 of the Export Administration Regulations (15 CFR Parts 730 through 799).

** For CWC States Parties purposes, China includes Hong Kong and Macau.

SUPPLEMENT NO. 2 TO PART 710—DEFINITIONS OF PRODUCTION

Schedule 1 chemicals	Schedule 2 and Schedule 3 chemicals	Unscheduled discrete organic chemicals (UDOCs)
Produced by a biochemical or biologically mediated reaction.		Produced by synthesis.*
Formation through chemical synthesis. Processing to extract and isolate Schedule 1 chemicals.	All production steps in any units within the same plant which includes associated processes—purification, separation, extraction distillation or refining.**	

*Intermediates used in a single or multi-step process to produce another declared UDOC are not declarable.
**Intermediates are subject to declaration, except ''transient intermediates,'' which are those chemicals in a transition state in terms of thermodynamics and kinetics, that exist only for a very short period of time, and cannot be isolated, even by modifying or dismantling the plant, or by altering process operating conditions, or by stopping the process altogether are not subject to declaration.

PART 711—GENERAL INFORMATION REGARDING REQUIREMENTS FOR DECLARATION, REPORT, ADVANCE NOTIFICATION, AND ELECTRONIC FILING OF DECLARATIONS AND REPORTS

Sec.
711.1 Overviews of declaration, reporting, and advance notification requirements.
711.2 Who submits declarations, reports, and advance notifications?
711.3 Compliance review.
711.4 Assistance in determining your obligations.
711.5 Numerical precision of submitted data.
711.6 Where to obtain forms.
711.7 Where to submit declarations, reports, and advance notifications.
711.8 How to request authorization from BIS to make electronic submissions of declarations or reports.

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 711.1 Overviews of declaration, reporting, and advance notification requirements.

Parts 712 through 715 of the CWCR (parts 710 through 729 of this subchapter) describe the declaration, advance notification and reporting requirements for Schedule 1, 2 and 3 chemicals and for unscheduled discrete organic chemicals (UDOCs). For each type of chemical, the Convention requires annual declarations. If, after reviewing parts 712 through 715 of this subchapter, you determine that you have declaration, advance notification or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Industry and Security (BIS) (*see* § 711.6).

§ 711.2 Who submits declarations, reports, and advance notifications?

The owner, operator, or senior management official of a facility subject to declaration, report, or advance notification requirements under the CWCR (parts 710 through 729 of this subchapter) is responsible for the submission of all required documents in accordance with all applicable provisions of the CWCR.

§ 711.3 Compliance review.

Periodically, BIS will request information from persons and facilities subject to the CWCR to determine compliance with the reporting, declaration and notification requirements set forth herein. Information requested may relate to the production, processing, consumption, export, import, or other activities involving scheduled chemicals and unscheduled discrete organic chemicals described in parts 712 through 715 of this subchapter. Any person or facility subject to the CWCR and receiving such a request for information will be required to provide a response to BIS within the time-frame specified in the request. This requirement does not, in itself, impose a requirement to create new records or maintain existing records. The recordkeeping requirements that apply to persons and facilities that are subject to the reporting or declaration provisions of the CWCR are set forth in part 721.

§ 711.4 Assistance in determining your obligations.

(a) *Determining if your chemical is subject to declaration, reporting or advance notification requirements.* (1) If you need assistance in determining if your chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or is an unscheduled discrete organic chemical, submit your written request for a chemical determination to BIS. Such requests may be sent via facsimile to (703) 605–4425, e-mailed to *cdr@cwc.gov*, or mailed to the Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 700, Arlington, Virginia 22209–2405. Your request should include the information noted in paragraph (a)(2) of this section to ensure an accurate determination. Also include any additional information that you feel is relevant to the chemical or process involved (see part 718 of this subchapter for provisions regarding treatment of confidential business information). If you are unable to provide all of the information required in paragraph (a)(2) of this section, you should include an explanation identifying the reasons or deficiencies that preclude you from supplying the information. If BIS cannot make a determination based upon the information submitted, BIS will return the request to you and identify the additional information that is necessary to complete a chemical determination. BIS will provide a written response to your chemical determination request within 10 working days of receipt of the request.

(2) Include the following information in each chemical determination request:

(i) Date of request;

(ii) Company name and complete street address;

(iii) Point of contact;

(iv) Phone and facsimile number of contact;

(v) E-mail address of contact, if you want an acknowledgment of receipt sent via e-mail;

(vi) Chemical Name;

(vii) Structural formula of the chemical, if the chemical is not specifically identified by name and chemical abstract service registry number in Supplements No. 1 to parts 712 through 714 of the CWCR; and

(viii) Chemical Abstract Service registry number, if assigned.

(b) *Other inquiries.* If you need assistance in interpreting the provisions of this subchapter or need assistance with declaration, forms, reporting, advance notification, inspection or facility agreement issues, contact BIS's Treaty Compliance Division by phone at (703) 605–4400. If you require a response from BIS in writing, submit a detailed request to BIS that explains your question, issue, or request. Send the request to the address or facsimile

included in paragraph (a) of this section, or e-mail the request to *cwcqa@cwc.gov*.

§ 711.5 Numerical precision of submitted data.

Numerical information submitted in declarations and reports is to be provided per applicable rounding rules in each part (*i.e.*, parts 712 through 715 of this subchapter) with a precision equal to that which can be reasonably provided using existing documentation, equipment, and measurement techniques.

§ 711.6 Where to obtain forms.

(a) Forms to complete declarations and reports required by the CWCR may be obtained by contacting: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 700, Arlington, VA 22209–2405, Telephone: (703) 605–4400. Forms and forms software may also be downloaded from the Internet at *http://www.cwc.gov*.

(b) If the amount of information you are required to submit is greater than the given form will allow, multiple copies of forms may be submitted.

§ 711.7 Where to submit declarations, reports and advanced notifications.

Declarations, reports and advance notifications required by the CWCR must be sent to: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 700, Arlington, VA 22209–2405, Telephone: (703) 605–4400. Advanced notifications may also be facsimiled to (703) 235–1481. Specific types of declarations and reports and due dates are outlined in Supplement No. 2 to parts 712 through 715 of the CWCR.

§ 711.8 How to request authorization from BIS to make electronic submissions of declarations or reports.

(a) *Scope.* This section provides an optional method of submitting declarations or reports. Specifically, this section applies to the electronic submission of declarations and reports required under the CWCR. If you choose to submit declarations and reports by electronic means, all such electronic submissions must be made through the Web-Data Entry System for Industry (Web-DESI), which can be accessed on the CWC Web site at *http://www.cwc.gov*.

(b) *Authorization.* If you or your company has a facility, plant site, or trading company that has been assigned a U.S. Code Number (USC Number), you may submit declarations and reports electronically, once you have received authorization from BIS to do so. An authorization to submit declarations and reports electronically may be limited or withdrawn by BIS at any time. There are no prerequisites for obtaining permission to submit electronically, nor are there any limitations with regard to the types of declarations or reports that are eligible for electronic submission. However, BIS may direct, for any reason, that any electronic declaration or report be resubmitted in writing, either in whole or in part.

(1) *Requesting approval to submit declarations and reports electronically.* To submit declarations and reports electronically, you or your company must submit a written request to BIS at the address identified in § 711.6 of the CWCR. Both the envelope and letter must be marked ''Attn: Electronic Declaration or Report Request.'' Your request should be on company letterhead and must contain your name or the company's name, your mailing address at the company, the name of the facility, plant site or trading company and its U.S. Code Number, the address of the facility, plant site or trading company (this address may be different from the mailing address), the list of individuals who are authorized to view, edit, or edit and submit declarations and reports on behalf of your company, and the telephone number and name and title of the official responsible for certifying that each individual listed in the request is authorized to view, edit, or edit and submit declarations and reports on behalf of you or your company. Additional information required for submitting electronic declarations and reports may be found on BIS's Web site at *http://www.cwc.gov*. Once you have completed and submitted the necessary certifications, you may be authorized by BIS to view, edit, or edit and submit declarations and reports electronically.

Note to § 711.8(b)(1): You must submit a separate request for each facility, plant site or trading company owned by your company (*e.g.*, each site that is assigned a unique U.S. Code Number).

(2) *Assignment and use of passwords for facilities, plant sites and trading companies (USC password) and Web-DESI user accounts (user name and password).* (i) Each person, facility, plant site or trading company authorized to submit declarations and reports electronically will be assigned a password (USC password) that must be used in conjunction with the U.S.C. Number. Each individual authorized by BIS to view, edit, or edit and submit declarations and reports electronically for a facility, plant site or trading company will be assigned a Web-DESI user account (user name and password) telephonically by BIS. A Web-DESI user account will be assigned to you only if your company has certified to BIS that you are authorized to act for it in viewing, editing, or editing and submitting electronic declarations and reports under the CWCR.

Note to § 711.8(b)(2)(i): When individuals must have access to multiple Web-DESI accounts, their companies must identify such individuals on the approval request for each of these Web-DESI accounts. BIS will coordinate with such individuals to ensure that the assigned user name and password is the same for each account.

(ii) Your company may reveal the facility, plant site or trading company password (USC password) only to Web-DESI users with valid passwords, their supervisors, and employees or agents of the company with a commercial justification for knowing the password.

(iii) If you are an authorized Web-DESI account user, you may not:

(A) Disclose your user name or password to anyone;

(B) Record your user name or password, either in writing or electronically;

(C) Authorize another person to use your user name or password; or

(D) Use your user name or password following termination, either by BIS or by your company, of your authorization or approval for Web-DESI use.

(iv) To prevent misuse of the Web-DESI account:

(A) If Web-DESI user account information (*i.e.*, user name and password) is lost, stolen or otherwise compromised, the company and the user must report the loss, theft or compromise of the user account information, immediately, by calling BIS at (703) 235–1335. Within two business days of making the report, the company and the user must submit written confirmation to BIS at the address provided in § 711.6 of the CWCR.

(B) Your company is responsible for immediately notifying BIS whenever a Web-DESI user leaves the employ of the company or otherwise ceases to be authorized by the company to submit declarations and reports electronically on its behalf.

(v) No person may use, copy, appropriate or otherwise compromise a Web-DESI account user name or password assigned to another person. No person, except a person authorized access by the company, may use or copy the facility, plant site or trading company password (USC password), nor may any person steal or otherwise compromise this password.

(c) *Electronic submission of declarations and reports.*

(1) *General instructions.* Upon submission of the required certifications and approval of the company's request to use electronic submission, BIS will provide instructions on both the method for transmitting declarations and reports electronically and the process for submitting required supporting documents, if any. These instructions may be modified by BIS from time to time.

(2) *Declarations and reports.* The electronic submission of a declaration or report will constitute an official document as required under parts 712 through 715 of the CWCR. Such submissions must provide the same information as written declarations and reports and are subject to the recordkeeping provisions of part 720 of the CWCR. The company and Web-DESI user submitting the declaration or report will be deemed to have made all representations and certifications as if the submission were made in writing by the company and signed by the certifying official. Electronic submission of a declaration or report will be considered complete upon transmittal to BIS.

(d) *Updating.* A company approved for electronic submission of declarations or reports under Web-DESI must promptly notify BIS of any change in its name, ownership or address. If your company wishes to have an individual added as a Web-DESI user, your company must inform BIS and follow the instructions provided by BIS. Your company should conduct periodic reviews to ensure that the company's designated certifying official and Web-DESI users are individuals whose current responsibilities make it necessary and appropriate that they act for the company in either capacity.

PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

Sec.

712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.
712.2 Restrictions on the activities involving Schedule 1 chemicals.
712.3 Initial declaration requirements for declared facilities which are engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.
712.4 New Schedule 1 production facility.
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712.6 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States Parties.
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712.8 Declarations and reports returned without action by BIS.
712.9 Deadlines for submission of Schedule 1 declarations, reports, advance notifications, and amendments.
Supplement No. 1 to Part 712—Schedule 1 Chemicals
Supplement No. 2 to Part 712—Deadlines for Submission of Schedule 1 Declarations, Advance Notifications, Reports, and Amendments

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950, as amended by E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

Facilities that produce, export or import mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals (*see* Supplement No. 1 to this part) as unavoidable by-products or impurities may round to zero and are not subject to the provision of this part 712. Schedule 1 content may be calculated by volume or weight, whichever yields the lesser percent. Note that such mixtures may be subject to the regulatory requirements of other federal agencies.

§ 712.2 Restrictions on the activities involving Schedule 1 chemicals.

(a) You may *not* produce Schedule 1 chemicals for protective purposes.

(b) You may not import any Schedule 1 chemical unless:

(1) The import is from a State Party;

(2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified BIS at least 45 calendar days prior to the import, pursuant to § 712.6 of the CWCR.

Note 1 to § 712.2: Pursuant to § 712.6, advance notifications of import of saxitoxin of 5 milligrams or less for medical/diagnostic purposes must be submitted to BIS at least 3 days prior to import.

Note 2 to § 712.2: For specific provisions relating to the prior advance notification of exports of all Schedule 1 chemicals, see § 745.1 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, see § 742.2 and § 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and see the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

(c)(1) The provisions of paragraphs (a) and (b) of this section do not apply to the retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (c)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (c)(1) of this section is:

(i) Any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

§ 712.3 Initial declaration requirements for declared facilities which are engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

Initial declarations submitted in February 2000 remain valid until amended or rescinded. If you plan to change/amend the technical description of your facility submitted with your initial declaration, you must submit an amended initial declaration to BIS 200 calendar days prior to implementing the change (*see* 712.5(b)(1)(ii)).

§ 712.4 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility.* (1) If your facility has never before been declared under § 712.5 of the CWCR, or the initial declaration for your facility has been withdrawn pursuant to § 712.5(f) of the CWCR, and you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must provide an initial declaration (with a current detailed technical description of your facility) to BIS in no less than 200 calendar days in advance of commencing such production. Such facilities are considered to be ''new Schedule 1 production facilities'' and are subject to an initial inspection within 200 calendar days of submitting an initial declaration.

(2) New Schedule 1 production facilities that submit an initial declaration pursuant to paragraph (a)(1) of this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of that initial declaration.

(b) *Types of declaration forms required.* If your new Schedule 1

production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1–1 and Form A. You must also provide a detailed technical description of the new facility or its relevant parts, and a detailed diagram of the declared areas in the facility.

(c) Two hundred days after a new Schedule 1 production facility submits its initial declaration, it is subject to the declaration requirements of § 712.5(a)(1) and (a)(2), and § 712.5(b)(1)(ii).

§ 712.5 Annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

(a) *Declaration requirements.* (1) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule l chemicals in the previous calendar year. As a declared Schedule 1 facility, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare any Schedule 1, Schedule 2, or Schedule 3 precursor used to produce the declared Schedule 1 chemical. You must further declare each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(2) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (*see* § 712.4) 200 calendar days before commencing operations or increasing production which will result in production of more than 100 grams aggregate of Schedule 1 chemicals.

(b) *Declaration forms to be used.* (1) *Initial declaration.* (i) You must have completed the Certification Form, Form 1–1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar years 1997, 1998, or 1999. You must have provided a detailed current technical description of your facility or its relevant parts including a narrative statement, and a detailed diagram of the declared areas in the facility.

(ii) If you plan to change the technical description of your facility from your initial declaration completed and submitted pursuant to § 712.3 or § 712.4, you must submit an amended initial declaration to BIS 200 calendar days prior to the change. Such amendments to your initial declaration must be made by completing a Certification Form, Form 1–1 and Form A, including the new description of the facility. *See* § 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(1) of this section, you must complete the Certification Form and Forms 1–1, 1–2, 1–2A, 1–2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous calendar year. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1–1, 1–4, and Form A. Form B is optional.

(c) *Quantities to be declared.* If you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare the quantity of any Schedule 1, Schedule 2 or Schedule 3 precursor used to produce the declared Schedule 1 chemical, rounded to the nearest gram. You must further declare the quantity of each Schedule 1 chemical consumed or stored by, or domestically transferred from, your facility, whether or not the Schedule 1 chemical was produced by your facility, rounded to the nearest gram. In calculating the amount of Schedule 1 chemical you produced, consumed or stored, count only the amount of the Schedule 1 chemical(s) in a mixture, not the total weight of the mixture (*i.e.*, do not count the weight of the solution, solvent, or container).

(d) For the purpose of determining if a Schedule 1 chemical is subject to declaration, you must declare a Schedule 1 chemical that is an intermediate, but not a transient intermediate.

(e) *''Declared'' Schedule 1 facilities and routine inspections.* Only facilities that submitted a declaration pursuant to paragraph (a)(1) or (a)(2) of this section or § 712.4 are considered ''declared'' Schedule 1 facilities. A ''declared'' Schedule 1 facility is subject to initial and routine inspection by the OPCW (*see* part 716 of this subchapter).

(f) *Approval of declared Schedule 1 production facilities.* Facilities that submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of an annual declaration on past activities or annual declaration on anticipated activities (*see* paragraphs (a)(1) and (a)(2) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BIS is required.

(g) *Withdrawal of Schedule 1 initial declarations.* A facility subject to §§ 712.3, 712.4 and 712.5 of the CWCR may withdraw its initial declaration at any time by notifying BIS in writing. A notification requesting the withdrawal of the initial declaration should be sent on company letterhead to the address in § 711.6 of the CWCR. BIS will acknowledge receipt of the withdrawal of the initial declaration. Facilities withdrawing their initial declaration may not produce subsequently in excess of 100 grams aggregate of Schedule 1 chemicals within a calendar year unless pursuant to § 712.4.

§ 712.6 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States Parties.

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BIS in advance of the export or import and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit to the OPCW the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that the advance notification and annual report requirements of this section do not relieve you of any requirement to obtain a license for export of Schedule 1 chemicals subject to the EAR or ITAR or a license for import of Schedule 1 chemicals from the Department of Justice under the Alcohol, Tobacco, Firearms and Explosives Regulations in 27 CFR part 447. Only ''declared'' facilities as defined in § 712.5(d) are subject to

initial and routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* You must notify BIS at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical, except for exports or imports of 5 milligrams or less of Saxitoxin—B (7)—for medical/diagnostic purposes, listed in Supplement No. 1 to this part to or from another State Party. Advance notification of export or import of 5 milligrams or less of Saxitoxin for medical/diagnostic purposes only, must be submitted to BIS at least 3 calendar days prior to export or import. Note that advance notifications for exports may be sent to BIS prior to or after submission of a license application to BIS for Schedule 1 chemicals subject to the EAR and controlled under ECCN 1C351 or to the Department of State for Schedule 1 chemicals controlled under the ITAR. Such advance notifications must be submitted separately from license applications.

(1) Advance notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and facsimile numbers, along with the following information:

(i) Chemical name;

(ii) Structural formula of the chemical;

(iii) Chemical Abstract Service (CAS) Registry Number;

(iv) Quantity involved in grams;

(v) Planned date of export or import;

(vi) Purpose (end-use) of export or import (*i.e.,* research, medical, pharmaceutical, or protective purposes);

(vii) Name(s) of exporter and importer;

(viii) Complete street address(es) of exporter and importer;

(ix) U.S. export license or control number, if known; and

(x) Company identification number, once assigned by BIS.

(2) Send the advance notification by facsimile to (703) 235–1481 or to the following address for mail and courier deliveries: Treaty Compliance Division, Bureau of Industry and Security, Department of Commerce, 1555 Wilson Boulevard, Suite 700, Arlington, VA 22209–2405, Attn: ''Advance Notification of Schedule 1 Chemical [Export][Import].''

(3) Upon receipt of the advance notification, BIS will inform the exporter or importer of the earliest date after which the shipment may occur under the advance notification procedure. To export a Schedule 1 chemical subject to an export license requirement either under the EAR or the ITAR, the exporter must have applied for and been granted a license (*see* § 742.2 and § 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual report requirements for exports and imports of Schedule 1 chemicals.* Any person subject to the CWCR that exported or imported any quantity of Schedule 1 chemical to or from another State Party during the previous calendar year has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared and undeclared facilities, trading companies, and any other person subject to the CWCR that exported or imported any quantity of a Schedule 1 chemical to or from another State Party in a previous calendar year must submit an annual report on exports and imports.

(2) *Report forms to submit.* (i) *Declared Schedule 1 facilities.* (A) If your facility declared production of a Schedule 1 chemical and you also exported or imported any amount of that same Schedule 1 chemical, you must report the export or import by submitting either:

(1) *Combined declaration and report.* Submit, along with your declaration, Form 1–3 for that same Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(2) *Report.* Submit, separately from your declaration, a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(B) If your facility declared production of a Schedule 1 chemical and exported or imported any amount of a different Schedule 1 chemical, you must report the export or import by submitting either:

(1) *Combined declaration and report.* Submit, along with your declaration, a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(2) *Report.* Submit, separately from your declaration, a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared facility, trading company, or any other person subject to the CWCR, and you exported or imported any amount of a Schedule 1 chemical, you must report the export or import by submitting a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in § 712.2(b).

§ 712.7 Amended declaration or report.

In order for BIS to maintain accurate information on previously submitted facility declarations, including information necessary to facilitate inspection notifications and activities or to communicate declaration or report requirements, amended declarations or reports will be required under the following circumstances described in this section. This section applies only to annual declarations on past activities and annual reports on exports and imports submitted for the previous calendar year or annual declarations on anticipated activities covering the current calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affect inspection of a declared facility's Annual Declaration of Past Activities (ADPA) or Annual Declaration on Anticipated Activities (ADAA).* You must submit an amended declaration or report to BIS within 15 days of any change in the following information:

(1) Types of Schedule 1 chemicals produced (*e.g.,* additional Schedule 1 chemicals);

(2) Quantities of Schedule 1 chemicals produced;

(3) Activities involving Schedule 1 chemicals; and

(4) End-use of Schedule 1 chemicals (*e.g.,* additional end-use(s)).

(b) *Changes to export or import information submitted in Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons.* You must submit an amended report or amended combined declaration and report for changes to export or import information within 15 days of any change in the following export or import information:

(1) Types of Schedule 1 chemicals exported or imported (*e.g.,* additional Schedule 1 chemicals);

(2) Quantities of Schedule 1 chemicals exported or imported;

(3) Destination(s) of Schedule 1 chemicals exported;

(4) Source(s) of Schedule 1 chemicals imported;

(5) Activities involving exports and imports of Schedule 1 chemicals; and

(6) End-use(s) of Schedule 1 chemicals exported or imported (*e.g.,* additional end-use(s)).

(c) *Changes to company and facility information previously submitted to BIS in the ADPA, the ADAA, and the Annual Report on Exports and Imports.* (1) *Internal company changes.* You must

submit an amended declaration or report to BIS within 30 days of any change in the following information:

(i) Name of declaration/report point of contact (D–POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of inspection point(s) of contact (I–POC), including telephone number(s), and facsimile number(s);

(iii) Company name (*see* § 712.7(c)(2) of the CWCR for other company changes);

(iv) Company mailing address;

(v) Facility name;

(vi) Facility owner, including telephone number, and facsimile number; and

(vii) Facility operator, including telephone number, and facsimile number.

(2) *Change in ownership of company or facility.* If you sold or purchased a declared facility or trading company, you must submit an amended declaration or report to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration or report must include the following information:

(i) Information that must be submitted to BIS by the company selling a declared facility:

(A) Name of seller (*i.e.,* name of the company selling a declared facility);

(B) Name of the declared facility and U.S. Code Number for that facility;

(C) Name of purchaser (*i.e.,* name of the new company purchasing a declared facility) and identity of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional details on sale of the declared facility relevant to ownership or operational control over any portion of that facility (*e.g.,* whether the entire facility or only a portion of the declared facility has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the next declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the facility or trading company.

(1) If the new owner is responsible for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the facility.

(2) If the previous owner and new owner will submit separate declarations for the periods of the calendar year during which each owned the facility (''part-year declarations''), and if, at the time of transfer of ownership, the previous owner's activities are not above the declaration thresholds set forth in §§ 712.4 and 712.5 of the CWCR, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in §§ 712.4 and 712.5 of the CWCR, BIS will return the declarations without action as set forth in § 712.8 of the CWCR.

(4) If part-year reports are submitted by the previous owner and the new owner as required in § 712.5 of the CWCR, BIS will submit both reports in the OPCW.

(ii) Information that must be submitted to BIS by the company purchasing a declared facility:

(A) Name of purchaser (*i.e.,* name of company purchasing a declared facility;

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D–POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name of inspection points of contact (I–POC) for the purchaser, including telephone number(s), facsimile number(s) and e-mail address(es);

(E) Name of the declared facility and U.S. Code Number for that facility;

(F) Location of the declared facility;

(G) Owner and operator of the declared facility, including telephone number, and facsimile number; and

(H) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the facility or trading company.

(1) If the new owner is taking responsibility for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the facility.

(2) If the previous owner and new owner will submit separate declarations for the periods of the calendar year during which each owned the facility, and, at the time of transfer of ownership, the previous owner's activities are not above the declaration thresholds set forth in §§ 712.4 and 712.5 of the CWCR, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in §§ 712.4 and 712.5 of the CWCR, BIS will return the declarations without action as set forth in § 712.8 of the CWCR.

(4) If part-year reports are submitted by the previous owner and the new owner as required in § 712.5 of the CWCR, BIS will submit both reports to the OPCW.

Note 1 to § 712.7(c): You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (*e.g.,* company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (*e.g.,* for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

Note 2 to § 712.7(c): You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWCR. If you are submitting an amended declaration or report, use Form B to address details regarding the sale of the declared facility or trading company.

Note 3 to § 712.7(c): For ownership changes, the declared facility or trading company will maintain its original U.S. Code Number, unless the facility or trading company is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers for the new facilities.

(d) *Inspection-related amendments.* If, following completion of an inspection (*see* parts 716 and 717 of the CWCR), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information that will be required pursuant to §§ 716.10 and 717.5 of the CWCR. You must submit an amended declaration to BIS no later than 45 days following your receipt of the BIS post inspection letter.

(e) *Non-substantive changes.* If, subsequent to the submission of your declaration or report to BIS, you discover one or more non-substantive typographical errors in your declaration or report, you are not required to submit an amended declaration or report to BIS. Instead, you may correct these errors in a subsequent declaration or report.

(f) *Documentation required for amended declarations or reports.* If you are required to submit an amended declaration or report to BIS pursuant to paragraph (a), (b), (c), or (d) of this section, you must submit either:

(1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration or report; or

(2) Both of the following:

(i) A new Certification Form (*i.e.,* Form 1–1); and

(ii) The specific forms (*e.g.,* annual declaration on past activities) containing the corrected information required, in accordance with the provisions of this part, to amend your declaration or report.

§ 712.8 Declarations and reports returned without action by BIS.

If you submit a declaration or report and BIS determines that the information contained therein is not required by the CWCR, BIS will return the original declaration or report to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your confidential business information, BIS will not maintain a copy of any declaration or report that is returned without action (RWA). However, BIS will maintain a copy of the RWA letter.

§ 712.9 Deadlines for submission of Schedule 1 declarations, reports, advance notifications, and amendments.

Declarations, reports, advance notifications, and amendments required under this part must be postmarked by the appropriate date identified in Supplement No. 2 to this part 712. Required declarations, reports, advance notifications, and amendments include:

(a) Annual declaration on past activities (Schedule 1 chemical production during the previous calendar year);

(b) Annual report on exports and imports of Schedule 1 chemicals from facilities, trading companies, and other persons (during the previous calendar year);

(c) Combined declaration and report (production of Schedule 1 chemicals, as well as exports or imports of the same or different Schedule 1 chemicals, by a declared facility during the previous calendar year);

(d) Annual declaration on anticipated activities (anticipated production of Schedule 1 chemicals in the next calendar year);

(e) Advance notification of any export to or import from another State Party;

(f) Initial declaration of a new Schedule 1 chemical production facility; and

(g) Amended declaration or report, including combined declaration and report.

SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

	(CAS registry number)
A. Toxic Chemicals	
(1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates:	
e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107–44–8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96–64–0)
(2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates:	
e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77–81–6)
(3) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts:	
e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	(50782–69–9)
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	(2625–76–5)
Mustard gas: Bis(2-chloroethyl)sulfide	(505–60–2)
Bis(2-chloroethylthio)methane	(63869–13–6)
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane	(3563–36–8)
1,3-Bis(2-chloroethylthio)-n-propane	(63905–10–2)
1,4-Bis(2-chloroethylthio)-n-butane	(142868–93–7)
1,5-Bis(2-chloroethylthio)-n-pentane	(142868–94–8)
Bis(2-chloroethylthiomethyl)ether	(63918–90–1)
O-Mustard: Bis(2-chloroethylthioethyl)ether	(63918–89–8)
(5) Lewisites:	
Lewisite 1: 2-Chlorovinyldichloroarsine	(541–25–3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	(40334–69–8)
Lewisite 3: Tris(2-chlorovinyl)arsine	(40334–70–1)
(6) Nitrogen mustards:	
HN1: Bis(2-chloroethyl)ethylamine	(538–07–8)
HN2: Bis(2-chloroethyl)methylamine	(51–75–2)
HN3: Tris(2-chloroethyl)amine	(555–77–1)
(7) Saxitoxin	(35523–89–8)
(8) Ricin	(9009–86–3)
B. Precursors	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides:	
e.g. DF: Methylphosphonyldifluoride	(676–99–3)
(10) O-Alkyl (H or $\leq C^{10}$, incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, N-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts:	
e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite	(57856–11–8)
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	(1445–76–7)
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	(7040–57–5)

Notes to Supplement No. 1:

Note 1: Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (*see* part 774 of the EAR, the Commerce Control List): Saxitoxin (35523–89–8) and Ricin (9009–86–3).

Note 2: All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

SUPPLEMENT NO. 2 TO PART 712—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS, ADVANCE NOTIFICATIONS, REPORTS, AND AMENDMENTS

Declarations, advance notifications and reports	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year)—Declared facility (past production) (optional).	Certification, 1–1, 1–2, 1–2A, 1–2B, A (as appropriate), B.	February 28th of the year following any calendar year in which more than 100 grams aggregate of Schedule 1 chemicals were produced.
Annual report on exports and imports (previous calendar year) (facility, trading company, other persons).	Certification, 1–1, 1–3, A (as appropriate), B (optional).	February 28th of the year following any calendar year in which Schedule 1 chemicals were exported or imported.
Combined Declaration and Report	Certification, 1–1, 1–2, 1–2A, 1–2B, 1–3, A (as appropriate), B (optional).	February 28th of the year following any calendar year in which Schedule 1 chemicals were produced, exported, or imported.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 1–1, 1–4, A (as appropriate), B (optional).	September 3rd of the year prior to any calendar year in which Schedule 1 activities are anticipated to occur.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. *See* § 712.6 of the CWCR.	45 calendar days prior to any export or import of Schedule 1 chemicals, except 3 days prior to export or import of 5 milligrams or less of saxitoxin for medical/diagnostic purposes.
Initial Declaration of a new Schedule 1 facility (technical description).	Certification, 1–1, A (as appropriate), B (optional).	200 calendar days prior to producing in excess of 100 grams aggregate of Schedule 1 chemicals.
Amended Declaration	Certification, 1–1, 1–2, 1–2A	
—Chemicals/activities: § 712.7(a)		—15 calendar days after change in information
—Company information: § 712.7(c)		—30 calendar days after change in information
—Post-inspection letter: § 712.7(d)		—45 calendar days after receipt of letter
Amended Report § 712.7(b)	Certification, 1–1, 1–3, A (as appropriate), B (optional.	—15 calendar days after change in information
Combined Declaration & Report	Certification, 1–1, 1–2, 1–2A 1–3, (as appropriate), B (optional).	—15 calendar days after change in information

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on exports and imports of Schedule 2 chemicals to and from States not Party to the CWC.
713.2 Annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.
713.3 Annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.
713.4 Advance declaration requirements for additionally planned production, processing or consumption of Schedule 2 chemicals.
713.5 Amended declaration or report.
713.6 Declarations and reports returned without action by BIS.
713.7 Deadlines for submission of Schedule 2 declarations, reports, and amendments.
Supplement No. 1 To Part 713—Scgedyke 2 Chemicals
Supplement No. 2 To Part 713—Deadlines For Submission of Schedule 2 Declarations, Reports, And Amendments

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950, as amended by E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 713.1 Prohibition on exports and imports of Schedule 2 chemicals to and from States not Party to the CWC.

(a) You may not export any Schedule 2 chemical (see Supplement No. 1 to this part) to any destination or import any Schedule 2 chemical from any destination other than a State Party to the Convention. See Supplement No. 1 to part 710 of this subchapter for a list of States that are party to the Convention.

Note to paragraph (a): *See* § 742.18 of the Export Administration Regulations (15 CFR part 742) for prohibitions that apply to exports of Schedule 2 chemicals to States not Party to the CWC.

(b) Paragraph (a) of this section does not apply to:

(1) The export or import of a Schedule 2 chemical to or from a State not Party to the CWC by a department, agency, or other entity of the United States, or by any person, including a member of the Armed Forces of the United States, who is authorized by law, or by an appropriate officer of the United States to transfer or receive the Schedule 2 chemical;

(2) Mixtures containing Schedule 2A chemicals, if the concentration of each Schedule 2A chemical in the mixture is 1% or less by weight (note, however, that such mixtures may be subject to the regulatory requirements of other federal agencies);

(3) Mixtures containing Schedule 2B chemicals if the concentration of each Schedule 2B chemical in the mixture is 10% or less by weight (note, however, that such mixtures may be subject to the regulatory requirements of other federal agencies); or

(4) Products identified as consumer goods packaged for retail sale for personal use or packaged for individual use.

§ 713.2 Annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

(a) *Declaration of production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC.*

(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (b) of this section if you have been or will be involved in the following activities:

(i) *Annual declaration on past activities.* (A) You produced, processed or consumed at one or more plants on your plant site during any of the

previous three calendar years, a Schedule 2 chemical in excess of any of the following declaration threshold quantities:

(1) 1 kilogram of chemical BZ: 3–Quinuclidinyl benzilate (*see* Schedule 2, paragraph A.3 in Supplement No. 1 to this part);

(2) 100 kilograms of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of chemical Amiton: 0,0-Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts (*see* Schedule 2, paragraphs A.1 and A.2 in Supplement No. 1 to this part); or

(3) 1 metric ton of any chemical listed in Schedule 2, Part B (*see* Supplement No. 1 to this part).

(B) In order to trigger a declaration requirement for a past activity (*i.e.*, production, processing or consumption) involving a Schedule 2 chemical, a plant on your plant site must have exceeded the applicable declaration threshold for that particular activity during one or more of the previous three calendar years. For example, if a plant on your plant site produced 800 kilograms of thiodiglycol and consumed 300 kilograms of the same Schedule 2 chemical, during the previous calendar year, you would not have a declaration requirement based on these activities, because neither activity at your plant would have exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. However, a declaration requirement would apply if an activity involving a Schedule 2 chemical at the plant exceeded the declaration threshold in an earlier year (*i.e.*, during the course of any other calendar year within the past three calendar years), as indicated in the example provided in the note to this paragraph.

Note to paragraph (a)(1)(i)(B): To determine whether or not you have an annual declaration on past activities requirement for Schedule 2 chemicals, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold at one or more plants on your plant site in any one of the three previous calendar years. For example, for the 2004 annual declaration on past activities period, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 2002, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold in calendar years 2003 or 2004, you still have a declaration requirement under this paragraph for the previous calendar year (2004). However, you must only declare on Form 2–3 (question 2–3.1), production data for calendar year 2004. You would declare ''0'' production because you did not produce BZ above the applicable threshold in calendar year 2004. Since the plant site did not engage in any other declarable activity (*i.e.*, consumption, processing) in the 2002–2004 declaration period, you would leave blank questions 2–3.2 and 2–3.3 on Form 2–3. Note that declaring a ''0'' production quantity for 2004, as opposed to leaving the question blank, permits BIS to distinguish the activity that triggered the declaration requirement from activities that were not declarable during that period.

(ii) *Annual declaration on anticipated activities.* You anticipate that you will produce, process or consume at one or more plants on your plant site during the next calendar year, a Schedule 2 chemical in excess of the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A)(1) through (3) of this section.

Note to paragraph (a)(1)(ii): A null ''0'' declaration is not required if you do not plan to produce, process or consume a Schedule 2 chemical in the next calendar year.

(2) *Schedule 2 chemical production.* (i) For the purpose of determining Schedule 2 production, you must include all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (*e.g.*, purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical. The exact nature of any associated process (*e.g.*, purification, etc.) is not required to be declared.

(ii) For the purpose of determining if a Schedule 2 chemical is subject to declaration, you must declare an intermediate Schedule 2 chemical, but not a transient intermediate Schedule 2 chemical.

(3) *Mixtures containing a Schedule 2 chemical.* (i) *Mixtures that must be counted.* You must count the quantity of each Schedule 2 chemical in a mixture, when determining the total quantity of a Schedule 2 chemical produced, processed, or consumed at a plant on your plant site, if the concentration of each Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent. Do not count a Schedule 2 chemical in the mixture that represents less than 30% by volume or by weight.

(ii) *How to count the quantity of each Schedule 2 chemical in a mixture.* If your mixture contains 30% or more concentration of a Schedule 2 chemical, you must count the quantity (weight) of each Schedule 2 chemical in the mixture, not the total weight of the mixture. You must separately declare each Schedule 2 chemical with a concentration in the mixture that is 30% or more and exceeds the quantity threshold detailed in paragraphs (a)(1)(i)(A)(*1*) through (*3*) of this section.

(iii) *Determining declaration requirements for production, processing and consumption.* If the total quantity of a Schedule 2 chemical produced, processed or consumed at a plant on your plant site, including mixtures that contain 30% or more concentration of a Schedule 2 chemical, exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A)(*1*) through (*3*) of this section, you have a declaration requirement. For example, if during calendar year 2001, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 32% and also produced 800 kilograms of thiodiglycol, the total amount of thiodiglycol produced at that plant for CWCR purposes would be 1100 kilograms, which exceeds the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 2001. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWCR purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture is less than 30% and therefore did not have to be ''counted'' and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used.* (1) *Annual declaration on past activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A)(*1*) through (*3*) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(2) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, 2–3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold set forth in paragraphs (a)(1)(i)(A)(*1*) through (*3*) of this section during the following calendar year. Form B is optional.

(c) *Quantities to be declared.* (1) *Production, processing and consumption of a Schedule 2 chemical above the declaration threshold.*

(i) *Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold for that Schedule 2 chemical. Do not include in these aggregate production, processing, and consumption quantities any data from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold. For example, if a plant on your plant site produced a Schedule 2 chemical in an amount greater than the applicable declaration threshold during the previous calendar year, you would have to declare only the production quantity from that plant, provided that the total amount of the Schedule 2 chemical processed or consumed at the plant did not exceed the applicable declaration threshold during any one of the previous three calendar years. If in the previous calendar year your production, processing and consumption activities all were below the applicable declaration threshold, but your declaration requirement is triggered because of production activities occurring in an earlier year, you would declare ''0'' only for the declared production activities.

(ii) *Annual declaration on anticipated activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity of any Schedule 2 chemical that you plan to produce, process or consume at any plant(s) on your plant site above the applicable thresholds set forth in paragraphs (a)(1)(i)(A)(*1*) through (*3*) of this section during the next calendar year. Do not include in these anticipated aggregate production, processing, and consumption quantities any data from plants on the plant site that you do not anticipate will individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable thresholds.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram (10 grams). For PFIB and the Amiton family, report quantities to the nearest 1 kilogram. For all other Schedule 2 chemicals, report quantities to the nearest 10 kilograms.

(d) *''Declared'' Schedule 2 plant site.* A plant site that submitted a declaration pursuant to paragraph (a)(1) of this section is a ''declared'' plant site.

(e) *Declared Schedule 2 plant sites subject to initial and routine inspections.* A ''declared'' Schedule 2 plant site is subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons if it produced, processed or consumed in any of the three previous calendar years, or is anticipated to produce, process or consume in the next calendar year, in excess of ten times the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A)(*1*) through (*3*) of this section (*see* part 716 of this subchapter). A ''declared'' Schedule 2 plant site that has received an initial inspection is subject to routine inspection.

§ 713.3 Annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

(a) *Declarations and reports of exports and imports of Schedule 2 chemicals.* (1) *Declarations.* A Schedule 2 plant site that is declared because it produced, processed or consumed a Schedule 2 chemical at one or more plants above the applicable threshold set forth in paragraph (b) of this section, and also exported from or imported to the plant site that same Schedule 2 chemical above the applicable threshold, must submit export and import information as part of its declaration.

(2) *Reports.* The following persons must submit a report if they individually exported or imported a Schedule 2 chemical above the applicable threshold indicated in paragraph (b) of this section:

(i) A declared plant site that exported or imported a Schedule 2 chemical that was different than the Schedule 2 chemical produced, processed or consumed at one or more plants at the plant site above the applicable declaration threshold ;

(ii) An undeclared plant site;

(iii) A trading company; or

(iv) Any other person subject to the CWCR.

Note to paragraphs (a)(1) and (a)(2)(i): A declared Schedule 2 plant site may need to declare exports or imports of Schedule 2 chemicals that it produced, processed or consumed above the applicable threshold and also report exports or imports of different Schedule 2 chemicals that it did not produce, process or consume above the applicable threshold quantities. The report may be submitted to BIS either with or separately from the annual declaration on past activities (see § 713.3(d) of the CWCR).

Note to paragraph (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 2 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to export and import information contained in declarations to establish the U.S. national aggregate declaration on exports and imports.

Note to paragraphs (a)(1) and (2): Declared and undeclared plant sites must count, for declaration or report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

(b) *Quantities of exports or imports that trigger a declaration or report requirement.* (1) You have a declaration or report requirement and must complete the forms specified in paragraph (d) of this section if you exported or imported a Schedule 2 chemical in excess of the following threshold quantities:

(i) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (*See* Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(ii) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of Amiton : O,O Diethyl S-[2(diethylamino)ethyl] phosphorothiolate *and* corresponding alkylated or protonated salts (*see* Schedule 2, paragraphs A.1 and A.2 included in Supplement No.1 to this part); or

(iii) 1 metric ton of any chemical listed in Schedule 2, Part B (*see* Supplement No.1 to this part).

(2) *Mixtures containing a Schedule 2 chemical.* The quantity of each Schedule 2 chemical contained in a mixture must be counted for the declaration or reporting of an export or import only if the concentration of each Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent. You must declare separately each Schedule 2 chemical whose concentration in the mixture is 30% or more.

Note 1 to paragraph (b)(2): See § 713.2(a)(2)(ii) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration and report requirements.

Note 2 to paragraph (b)(2): The ''30% and above'' mixtures rule applies only for declaration and report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from BIS (*see* § 742.2, § 742.18 and § 745.2 of the Export Administration Regulations) or from the Department of State (*see* the International Traffic in Arms Regulations (22 CFR parts 120 through130)).

(c) *Declaration and report requirements.* (1) *Annual declaration on past activities.* A plant site described in paragraph (a)(1) that has an annual declaration requirement for production, processing, or consumption of a Schedule 2 chemical for the previous calendar year also must declare the export and/or import of that same Schedule 2 chemical if the amount exceeded the applicable threshold set forth in paragraph (b) of this section. The plant site must declare such export or import information as part of its annual declaration of past activities.

(2) *Annual report on exports and imports.* Declared plant sites described in paragraph (a)(2)(i) of this section, and undeclared plant sites, trading companies or any other person (described in paragraphs (a)(2)(ii) through (iv) of this section) subject to the CWCR that exported or imported a Schedule 2 chemical in a previous calendar year in excess of the applicable thresholds set forth in paragraph (b) of this section must submit an annual report on such exports or imports.

(d) *Types of declaration and report forms to be used.* (1) *Annual declaration on past activities.* If you are a declared Schedule 2 plant site, as described in paragraph (a)(1) of this section, you must complete Form 2–3B, in addition to the forms required by § 713.2(b)(1) of the CWCR, for each declared Schedule 2 chemical exported or imported above the applicable threshold in the previous calendar year.

(2) *Annual report on exports and imports.* (i) If you are a declared plant site, as described in paragraph (a)(2)(i) of this section, you may fulfill your annual reporting requirements by:

(A) Submitting, with your annual declaration on past activities, a Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your annual declaration on past activities, a Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site, trading company or any other person subject to the CWCR, you must complete the Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold. Attach Form A, as appropriate; Form B is optional.

(e) *Quantities to be declared.* (1) *Calculations.* If you exported from or imported to your plant site, trading company, or other location more than the applicable threshold of a Schedule 2 chemical in the previous calendar year, you must declare or report all exports and imports of that chemical by country of destination or country of origin, respectively, and indicate the total amount exported to or imported from each country.

(2) *Rounding.* For purposes of declaring or reporting exports and imports of a Schedule 2 chemical, you must total all exports and imports per calendar year per recipient or source and then round as follows: for the chemical BZ, the total quantity for each country of destination or country of origin (source) should be reported to the nearest hundredth of a kilogram (10 grams); for PFIB and Amiton and corresponding alkylated or protonated salts, the quantity for each destination or source should be reported to the nearest 1 kilogram; and for all other Schedule 2 chemicals, the total quantity for each destination or source should be reported to the nearest 10 kilograms.

§ 713.4 Advance declaration requirements for additionally planned production, processing, or consumption of Schedule 2 chemicals.

(a) *Declaration requirements for additionally planned activities.* (1) You must declare additionally planned production, processing, or consumption of Schedule 2 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BIS if:

(i) You plan that a previously undeclared plant on your plant site under § 713.2(a)(1)(ii) will produce, process, or consume a Schedule 2 chemical above the applicable declaration threshold;

(ii) You plan to produce, process, or consume at a plant declared under § 713.2(a)(1)(ii) an additional Schedule 2 chemical above the applicable declaration threshold;

(iii) You plan an additional activity (production, processing, or consumption) at your declared plant above the applicable declaration threshold for a chemical declared under § 713.2(a)(1)(ii);

(iv) You plan to increase the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.2(a)(1)(ii) from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (*see* § 716.1(b)(2) of the CWCR);

(v) You plan to change the starting or ending date of anticipated production, processing, or consumption declared under § 713.2(a)(1)(ii) by more than three months; or

(vi) You plan to increase your production, processing, or consumption of a Schedule 2 chemical by a declared plant site by 20 percent or more above that declared under § 713.2(a)(1)(ii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1)(i) through (vi) of this section, you also should declare changes to your declaration relating to the following activities. You do not have to submit an additionally planned declaration if you are only changing the following non-quantitative activities:

(i) Changes to the plant's production capacity;

(ii) Changes or additions to the product group codes for the plant site or the plant(s);

(iii) Changes to the plant's activity status (*i.e.,* dedicated, multipurpose, or other status);

(iv) Changes to the plant's multipurpose activities;

(v) Changes to the plant site's status relating to domestic transfer of the chemical;

(vi) Changes to the plant site's purposes for which the chemical will be produced, processed or consumed; or

(vii) Changes to the plant site's status relating to exports of the chemical or the addition of new countries for export.

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this part, you must complete the Certification Form and Forms 2–1, 2–2, 2–3, and 2–3C as appropriate. Such forms are due to BIS at least 15 days prior to beginning the additional activity.

§ 713.5 Amended declaration or report.

In order for BIS to maintain accurate information on previously submitted plant site declarations, including information necessary to facilitate inspection notifications and activities or to communicate declaration or report requirements, amended declarations or reports will be required under the circumstances described in this section. This section applies only to annual declarations on past activities submitted for the three previous calendar years, annual reports on exports and imports for the previous calendar year or annual declarations on anticipated activities covering the current calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affect inspection of a declared plant site's Annual Declaration of Past*

Activities (ADPA) or Combined Annual Declaration and Report. You must submit an amended declaration or report to BIS within 15 days of any change in the following information:

(1) Types of Schedule 2 chemicals produced, processed, or consumed;

(2) Quantities of Schedule 2 chemicals produced, processed, or consumed;

(3) Activities involving Schedule 2 chemicals (production, processing, consumption);

(4) End-use of Schedule 2 chemicals (*e.g.,* additional end-use(s));

(5) Product group codes for Schedule 2 chemicals produced, processed, or consumed;

(6) Production capacity for manufacturing a specific Schedule 2 chemical at particular plant site;

(7) Exports or imports (*e.g.,* changes in the types of Schedule 2 chemicals exported or imported or in the quantity, recipients, or sources of such chemicals);

(8) Domestic transfers (*e.g.,* changes in the types of Schedule 2 chemicals, types of destinations, or product group codes); and

(9) Addition of new plant(s) for the production, processing, or consumption of Schedule 2 chemicals.

(b) *Changes to export or import information submitted in Annual Reports on Exports and Imports from undeclared plant sites, trading companies and U.S. persons.* You must submit an amended report or amended combined declaration and report to BIS within 15 days of any change in the following export or import information:

(1) Types of Schedule 2 chemicals exported or imported (additional Schedule 2 chemicals);

(2) Quantities of Schedule 2 chemicals exported or imported;

(3) Destination(s) of Schedule 2 chemicals exported;

(4) Source(s) of Schedule 2 chemicals imported; and

(5) End-use(s) of Schedule 2 chemicals imported or exported (*e.g.,* addition of new end-use(s)).

(c) *Changes to company and plant site information that must be maintained by BIS for the ADPA, Annual Declaration on Anticipated Activities (ADAA), and the Annual Report on Exports and Imports.* (1) *Internal company changes.* You must submit an amended declaration or report to BIS within 30 days of any change in the following information:

(i) Name of declaration/report point of contact (D–POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of inspection point(s) of contact (I–POC), including telephone number(s), facsimile number(s) and e-mail address(es);

(iii) Company name (*see* paragraph (c)(2) of this section for other company changes);

(iv) Company mailing address;

(v) Plant site name;

(vi) Plant site owner, including telephone number, and facsimile number;

(vii) Plant site operator, including telephone number, and facsimile number;

(viii) Plant name;

(ix) Plant owner, including telephone number, and facsimile number; and

(x) Plant operator, including telephone number and facsimile number.

(2) Change in ownership of company, plant site, or plant. If you sold *or* purchased a declared plant site, plant, or trading company you must submit an amended declaration or report to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration or report much include the following information:

(i) Information that must be submitted to BIS by the company selling a declared plant site:

(A) Name of seller (*i.e.,* name of the company selling a declared plant site);

(B) Name of the declared plant site and U.S. Code Number for that plant site;

(C) Name of purchaser (*i.e.,* name of the new company/owner purchasing a declared plant site) and identity of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional (*e.g.,* unique) details on the sale of the declared plant site relevant to ownership or operational control over any portion of the declared plant site (*e.g.,* whether the entire plant site or only a portion of the declared plant site has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the next declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

(1) If the new owner is responsible for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the plant site.

(2) If the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site, and, if at the time of transfer of ownership, the previous owner's activities are not above the declaration or report thresholds set forth in § 713.2(a)(1)(i)(A)(1) through (3) and § 713.3(b)(1)(i) through (iii) of the CWCR, respectively, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration thresholds set forth in § 713.2(a)(1)(i)(A)(1) through (3) of the CWCR, BIS will return the declarations without action as set forth in § 713.6 of the CWCR.

(4) If part-year reports submitted by the previous owner and the new owner are not, when combined, above the thresholds in §§ 713.3(b)(1)(i) through (iii) of the CWCR, BIS will return the reports without action as set forth in § 713.6 of the CWCR.

(ii) Information that must be submitted to BIS by the company purchasing a declared plant site:

(A) Name of purchaser (*i.e.,* name of individual or company purchasing a declared plant site);

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D–POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name of inspection point(s) of contact (I–POC) for the purchaser, including telephone number(s), facsimile number(s) and e-mail address(es);

(E) Name of the declared plant site and U.S. Code Number for that plant site;

(F) Location of the declared plant site;

(G) Owner of the declared plant site, including telephone number, and facsimile number;

(H) Operator of the declared plant site, including telephone number, and facsimile number;

(I) Name of plant(s) where Schedule 2 activities exceed the applicable declaration threshold;

(J) Owner and operator of plant(s) where Schedule 2 activities exceed the applicable declaration threshold, including telephone numbers, and facsimile numbers;

(K) Location of the plant where Schedule 2 activities exceed the applicable declaration threshold; and

(L) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change

occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

Note 1 to § 713.5(c): You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (*e.g.*, company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (*e.g.,* for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

Note 2 to § 713.5(c): You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWCR. If you are submitting an amended declaration or report, use Form B to address details regarding the sale of the declared plant site or trading company.

Note 3 to § 713.5(c): For ownership changes, the declared facility or trading company will maintain its original U.S. Code Number, unless the plant site or trading company is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers.

(d) *Inspection-related amendments.* If, following the completion of an inspection (*see* parts 716 and 717 of the CWCR), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information that will be required pursuant to §§ 716.10 and 717.5 of the CWCR. You must submit an amended declaration to BIS no later than 45 days following your receipt of BIS's post inspection letter.

(e) *Non-substantive changes.* If, subsequent to the submission of your declaration or report to BIS, you discover one or more non-substantive typographical errors in your declaration or report, you are not required to submit an amended declaration or report to BIS. Instead, you may correct these errors in a subsequent declaration or report.

(f) *Documentation required for amended declarations or reports.* If you are required to submit an amended declaration or report to BIS pursuant to paragraph (a), (b), (c), or (d) of this section, you must submit either:

(1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration or report; or

(2) Both of the following:

(i) A new Certification Form; and

(ii) The specific forms required for the declaration or report type being amended (*e.g.,* annual declaration on past activities) containing the corrected information required, in accordance with the requirements of this section, to amend your declaration or report.

§ 713.6 Declarations and reports returned without action by BIS.

If you submit a declaration or report and BIS determines that the information contained therein is not required by the CWCR, BIS will return the original declaration or report to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your confidential business information, BIS will not maintain a copy of any declaration or report that is returned without action (RWA). However, BIS will maintain a copy of the RWA letter.

§ 713.7 Deadlines for submission of Schedule 2 declarations, reports, and amendments.

Declarations, reports, and amendments required under this part must be postmarked by the appropriate date identified in Supplement No. 2 to this part 713. Required declarations, reports, and amendments include:

(a) Annual declaration on past activities (production, processing, or consumption) of Schedule 2 chemicals during the previous calendar year);

(b) Annual report on exports and imports of Schedule 2 chemicals by plant sites, trading companies, and other persons subject to the CWCR (during the previous calendar year);

(c) Combined declaration and report (production, processing, or consumption of Schedule 2 chemicals, as well as exports or imports of the same or different Schedule 2 chemicals, by a declared plant site during the previous calendar year);

(d) Annual declaration on anticipated activities (production, processing or consumption) involving Schedule 2 chemicals during the next calendar year;

(e) Declaration on Additionally Planned Activities (production, processing or consumption) involving Schedule 2 chemicals; and

(f) Amended declaration and report, including combined declaration and report.

SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS

	(CAS registry number)
A. Toxic Chemicals	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate	(78–53–5) and corresponding alkylated or protonated salts
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	(382–21–8)
(3) BZ: 3-Quinuclidinyl benzilate	(6581–06–2)
B. Precursors	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms:	
e.g. Methylphosphonyl dichloride	(676–97–1)
Dimethyl methylphosphonate	(756–79–6)
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate	(944–22–9)
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides.	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates.	
(7) Arsenic trichloride	(7784–34–1)
(8) 2,2-Diphenyl-2-hydroxyacetic acid	(76–93–7)
(9) Quinuclidine-3-ol	(1619–34–7)
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts.	

SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS—Continued

	(CAS registry number)
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts.	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	(108–01–0)
N,N-Diethylaminoethanol and corresponding protonated salts	(100–37–8)
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts.	
(13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide	(111–48–8)
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol	(464–07–3)

Notes to Supplement No. 1

Note 1: Note that the following Schedule 2 chemicals are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130): Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (78–53–5); BZ: 3-Quinuclidinyl benzilate 6581–06–2); and Methylphosphonyl dichloride (676–97–1).

Note 2: All Schedule 2 chemicals not listed in Note 1 to this Supplement are controlled for export purposes under the Export Administration Regulations (*see* part 774 of the EAR, the Commerce Control List).

SUPPLEMENT NO. 2 TO PART 713—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS, REPORTS, AND AMENDMENTS

Declarations and reports	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year). Declared plant site (production, processing, or consumption).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production, processing, or consumption of a Schedule 2 chemical exceeded the applicable declaration thresholds in § 713.2(a)(1)(i) of the CWCR.
Annual Report on Exports and Imports (previous calendar year). Plant site, trading company, other persons.	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which exports or imports of a Schedule 2 chemical by a plant site, trading company, or other person subject to the CWCR (as described in § 713.3(a)(2) of the CWCR) exceeded the applicable thresholds in § 713.3(b)(1) of the CWCR.
Combined Declaration & Report Declared plant site (production, processing, or consumption; exports and imports).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production, processing, or consumption of a Schedule 2 chemical and the export or import of the same or a different Schedule 2 chemical by a declared plant site exceeded the applicable thresholds in §§ 713.2(a)(1)(i) and 713.3(b)(1), respectively, of the CWCR.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3C, A (as appropriate), B (optional).	September 3 of the year prior to any calendar year in which Schedule 2 activities are anticipated to occur.
Declaration on Additionally Planned Activities (production, processing and consumption).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3C, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Amended Declaration: —Declaration information —Company information —Post-inspection letter	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	—15 calendar days after change in information —30 calendar days after change in information —45 calendar days after receipt of letter
Amended Report	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	—15 calendar days after change in information
Amended Combined Declaration & Report	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B, A (as appropriate), B (optional).	—15 calendar days after change in information

PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS

Sec.

714.1 Annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.
714.2 Annual reporting requirements for exports and imports in excess of 30 metric tons of Schedule 3 chemicals.
714.3 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.
714.4 Amended declaration or report.
714.5 Declarations and reports returned without action by BIS.
714.6 Deadlines for submission of Schedule 3 declarations, reports, and amendments.
Supplement No. 1 to Part 714—Schedule 3 Chemicals
Supplement No. 2 to Part 714—Deadlines for Submission of Schedule 3 Declarations, Reports, and Amendments

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 714.1 Annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

(a) *Declaration of production of Schedule 3 chemicals for purposes not*

prohibited by the CWC. (1) *Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (b) of this section if you have produced or anticipate producing a Schedule 3 chemical (*see* Supplement No. 1 to this part) as follows:

(i) *Annual declaration on past activities.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year.

(ii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Schedule 3 chemical production.* (i) For the purpose of determining Schedule 3 production, you must include all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (*e.g.*, purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical. The exact nature of any associated process (*e.g.*, purification, etc.) is not required to be declared.

(ii) For the purpose of determining if a Schedule 3 chemical is subject to declaration, you must declare an intermediate Schedule 3 chemical, but not a transient intermediate Schedule 3 chemical.

(3) *Mixtures containing a Schedule 3 chemical.* (i) *When you must count the quantity of a Schedule 3 chemical in a mixture for declaration purposes.* The quantity of each Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of each Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(ii) *How to count the amount of a Schedule 3 chemical in a mixture.* If your mixture contains 80% or more concentration of a Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical in the mixture, not the total weight of the mixture.

(b) *Types of declaration forms to be used.* (1) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year. Form B is optional.

(2) *Annual declaration on anticipated activities.* You must complete the Certification Form, and Forms 3–1 and 3–3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared.* (1) *Production of a Schedule 3 chemical in excess of 30 metric tons.* If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3–3. When specifying the range of production for your plant site, you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons. Do not aggregate amounts of production from plants on the plant site that did not individually produce a Schedule 3 chemical in amounts greater than 30 metric tons. You must complete a separate Form 3–3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site that produced the Schedule 3 chemical in amounts exceeding 30 metric tons, and round to the nearest ten metric tons.

(d) *''Declared'' Schedule 3 plant site.* A plant site that submitted a declaration pursuant to paragraph (a)(1) of this section is a ''declared'' Schedule 3 plant site.

(e) *Routine inspections of declared Schedule 3 plant sites.* A ''declared'' Schedule 3 plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (*see* part 716 of the CWCR) if:

(1) The declared plants on your plant site produced in excess of 200 metric tons aggregate of any Schedule 3 chemical during the previous calendar year; or

(2) You anticipate that the declared plants on your plant site will produce in excess of 200 metric tons aggregate of any Schedule 3 chemical during the next calendar year.

§ 714.2 Annual reporting requirements for exports and imports in excess of 30 metric tons of Schedule 3 chemicals.

(a) Any person subject to the CWCR that exported from or imported into the United States in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, or any other person subject to the CWCR that exported from or imported into the United States in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year must submit an annual report on exports and imports.

Note 1 to paragraph (a)(1): Declared and undeclared plant sites must count, for report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

Note 2 to paragraph (a)(1): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 3 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(2) *Mixtures containing a Schedule 3 chemical.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for reporting an export or import only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. For reporting purposes, only count the weight of the Schedule 3 chemical in the mixture, not the entire weight of the mixture.

Note to paragraph (a)(2): The ''80% and above'' mixtures rule applies only for report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from BIS (*see* 15 CFR 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (*see* the International Traffic in Arms Regulations (22 CFR parts 120 through 130)).

(b) *Types of forms to be used.* (1) *Declared Schedule 3 plant sites.* (i) If your plant site is declared for production of a Schedule 3 chemical (and has completed questions 3–3.1 and 3–3.2 on Form 3–3) and you also exported from or imported to your plant site in excess of 30 metric tons of that same Schedule 3 chemical, you must report the export or import by either:

(A) Completing question 3–3.3 on Form 3–3 on your declaration for that same Schedule 3 chemical; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1, and a Form 3–3 for each Schedule 3 chemical to be reported, completing

only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(ii) If your plant site is declared for production of a Schedule 3 chemical and you exported or imported in excess of 30 metric tons of a different Schedule 3 chemical, you must report the export or import by either:

(A) Submitting, along with your declaration, a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1 and a Form 3.3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(2) If you are an undeclared plant site, a trading company, or any other person subject to the CWCR, you must submit a Certification Form, Form 3–1, and a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(c) *Quantities to be reported.* (1) *Calculations.* If you exported from or imported to your plant site or trading company more than 30 metric tons of a Schedule 3 chemical in the previous calendar year, you must report all exports and imports of that chemical by country of destination or country of origin, respectively, and indicate the total amount exported to or imported from each country.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 3 chemical, you must total all exports and imports per calendar year per recipient or source and then round to the nearest 0.1 metric tons.

Note to § 714.2(c): Under the Convention, the United States is obligated to provide the OPCW a national aggregate annual declaration of the quantities of each Schedule 3 chemical exported and imported. The U.S. Government will *not* submit your company-specific information relating to the export or import of a Schedule 3 chemical reported under this § 714.2. The U.S. Government will add all export and import information submitted by various facilities under this section to produce a national aggregate annual declaration of destination-by-destination trade for each Schedule 3 chemical.

§ 714.3 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.

(a) *Declaration requirements.* (1) You must declare additionally planned production of Schedule 3 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BIS if:

(i) You plan that a previously undeclared plant on your plant site under § 714.1(a)(1)(ii) will produce a Schedule 3 chemical above the declaration threshold;

(ii) You plan to produce at a plant declared under § 714.1(a)(1)(ii) an additional Schedule 3 chemical above the declaration threshold;

(iii) You plan to increase the production of a Schedule 3 chemical by declared plants on your plant site from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (*see* § 716.1(b)(3) of the CWCR); or

(iv) You plan to increase the aggregate production of a Schedule 3 chemical at a declared plant site to an amount above the upper limit of the range previously declared under § 714.1(a)(1)(ii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1)(i) through (iv) of this section, you also should declare any changes to the anticipated purposes of production or product group codes. You do not have to submit a declaration on additionally planned activities if you are only changing your purposes of production or product group codes.

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this section, you must complete the Certification Form and Forms 3–1, 3–2, and 3–3 as appropriate. Such forms are due to BIS at least 15 days in advance of the beginning of the additional or new activity.

§ 714.4 Amended declaration or report.

In order for BIS to maintain accurate information on previously submitted plant site declarations, including information necessary to facilitate inspection notifications and activities or to communicate declaration or report requirements, amended declarations or reports will be required under the following circumstances described in this section. This section applies only to annual declarations on past activities and annual reports on exports and imports submitted for the previous calendar year or annual declarations on anticipated activities covering the current calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affects a declared plant site's Annual Declaration of Past Activities (ADPA) or Combined Annual Declaration or Report which was previously submitted to BIS.* You must submit an amended declaration or report to BIS within 15 days of any change in the following information:

(1) Types of Schedule 3 chemicals produced (*e.g.*, production of additional Schedule 3 chemicals);

(2) Production range (*e.g.*, from 30 to 200 metric tons to above 200 to 1000 metric tons) of Schedule 3 chemicals;

(3) Purpose of Schedule 3 chemical production (*e.g.*, additional end-uses); and

(4) Addition of new plant(s) for production of Schedule 3 chemicals.

(b) *Changes to export or import information submitted in Annual Reports on Exports and Imports from undeclared plant sites, trading companies and U.S. persons.* You must submit an amended report or amended combined declaration and report to BIS within 15 days of any change in the following export or import information:

(1) Types of Schedule 3 chemicals exported or imported (additional Schedule 3 chemicals);

(2) Quantities of Schedule 3 chemicals exported or imported;

(3) Destination(s) of Schedule 3 chemicals exported;

(4) Source(s) of Schedule 3 chemicals imported; and

(5) End-use(s) of Schedule 3 chemicals exported or imported (*e.g.*, addition of new end-use(s)).

(c) *Changes to company and plant site information submitted in the ADPA, the Annual Declaration of Anticipated Activities, and the Annual Report on Exports and Imports.* (1) *Internal company changes.* You must submit an amended declaration or report to BIS within 30 days of any change in the following information:

(i) Name of declaration/report point of contact (D-POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of inspection point(s) of contact (I-POC), including telephone number, and facsimile number, and e-mail address(es);

(iii) Company name (*see* 714.4(c)(2) for other company changes);

(iv) Company mailing address;

(v) Plant site name;

(vi) Plant site owner, including telephone number and facsimile number;

(vii) Plant site operator, including telephone number and facsimile number;

(viii) Plant name;

(xi) Plant owner, including telephone number and facsimile number; and

(x) Plant operator, including telephone number and facsimile number.

(2) *Change in ownership of company, plant site, or plant.* If you sold *or* purchased a declared company, plant site or plant, you must submit an amended declaration or report to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration or report must include the following information.

(i) Information that must be submitted to BIS by a company selling a declared plant site:

(A) Name of seller (*i.e.*, name of the company selling a declared plant site);

(B) Name of declared plant site and U.S. Code Number for that plant site;

(C) Name of purchaser (*i.e.*, name of company purchasing a declared plant site) and identity of the new owner and contact person for the purchaser, if known;

(D) Date of ownership transfer;

(E) Additional (*e.g.*, unique) details on the sale of the plant site relevant to ownership or operational control over any portion of the declared plant site (*e.g.*, whether the entire plant site or only a portion of the declared plant site has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the declaration or report for the entire calendar year during which the ownership changed occurred, or whether the previous owner and the new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

(1) If the new owner is responsible for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the plant site or trading company.

(2) If the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company, and, at the time of transfer of ownership, the previous owner's activities are not above the declaration or report thresholds set forth in § 714.1(a)(1) and § 714.2(a)(1) of the CWCR, respectively, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in § 714.1(a)(1) of the CWCR, BIS will return the declarations without action as set forth in § 714.5 of the CWCR.

(4) If part-year reports are not, when combined, above the report threshold set forth in § 714.2(a)(1) of the CWCR, BIS will return the reports without action as set forth in § 714.5 of the CWCR.

(ii) Information that must be submitted to BIS by the company purchasing a declared plant site:

(A) Name of purchaser (*i.e.*, name of individual or company purchasing a declared plant site);

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D-POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name(s) of inspection point(s)s of contact (I-POC) for the purchaser, including telephone number, facsimile number, and e-mail address(es);

(E) Name of the declared plant site and U.S. Code Number for that plant site;

(F) Location of the declared plant site;

(G) Operator of the declared plant site, including telephone number, and facsimile number;

(H) Name of plant where Schedule 3 production exceeds the declaration threshold;

(I) Owner of plant where Schedule 3 production exceeds the declaration threshold;

(J) Operator of plant where Schedule 3 production exceeds the declaration threshold; and

(K) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

Note 1 to § 714.4(c): You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (*e.g.*, company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (*e.g.*, for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

Note 2 to § 714.4(c): You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWCR. If you are submitting an amended declaration or report, use Form B to address details regarding the sale of the declared plant site or trading company.

Note 3 to § 714.4(c): For ownership changes, the declared plant site or trading company will maintain its original U.S. Code Number, unless the plant site or trading company is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers.

(d) *Inspection-related amendments.* If, following the completion of an inspection (*see* parts 716 and 717 of the CWCR), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information to be amended pursuant to §§ 716.10 and 717.5(b) of the CWCR. Amended declarations must be submitted to BIS no later than 45 days following your receipt of BIS's post inspection letter.

(e) *Non-substantive changes.* If, subsequent to the submission of your declaration or report to BIS, you discover one or more non-substantiative typographical errors in your declaration or report, you are not required to submit an amended declaration or report to BIS. Instead, you may correct these errors in a subsequent declaration or report.

(f) *Documentation required for amended declarations or reports.* If you are required to submit an amended declaration or report to BIS pursuant to paragraph (a), (b), (c), or (d) of this section, you must submit either:

(1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration or report; or

(2) Both of the following:

(i) A new Certification Form; and

(ii) The specific forms required for the declaration or report type being amended (*e.g.*, annual declaration on past activities) containing the corrected information required, in accordance with the requirements of this section, to amend your declaration or report.

§ 714.5 Declarations and reports returned without action by BIS.

If you submit a declaration or report and BIS determines that the information contained therein is not required by the CWCR, BIS will return the original declaration or report to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your confidential business information, BIS will not maintain a copy of the any declaration or report that is returned without action. However, BIS will maintain a copy of the RWA letter.

§ 714.6 Deadlines for submission of Schedule 3 declarations, reports, and amendments.

Declarations, reports, and amendments required under this part

must be postmarked by the appropriate date identified in Supplement No. 2 to this part 714 of the CWCR. Required declarations, reports, and amendments include:

(a) Annual declaration on past activities (production of Schedule 3 chemicals during the previous calendar year);

(b) Annual report on exports and imports of Schedule 3 chemicals from plant sites, trading companies, and other persons subject to the CWCR (during the previous calendar year);

(c) Combined declaration and report (production of Schedule 3 chemicals, as well as exports or imports of the same or different Schedule 3 chemicals, by a declared plant site during the previous calendar year);

(d) Annual declaration on anticipated activities (anticipated production of Schedule 3 chemicals during the next calendar year);

(e) Declaration on Additionally Planned Activities (additionally planned production of Schedule 3 chemicals); and

(f) Amended declaration and report, including combined declaration and report.

SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

	(CAS registry number)
A. Toxic chemicals	
(1) Phosgene: Carbonyl dichloride	(75–44–5)
(2) Cyanogen chloride	(506–77–4)
(3) Hydrogen cyanide	(74–90–8)
(4) Chloropicrin: Trichloronitromethane	(76–06–2)
B. Precursors	
(5) Phosphorus oxychloride	(10025–87–3)
(6) Phosphorus trichloride	(7719–12–2)
(7) Phosphorus pentachloride	(10026–13–8)
(8) Trimethyl phosphite	(121–45–9)
(9) Triethyl phosphite	(122–52–1)
(10) Dimethyl phosphite	(868–85–9)
(11) Diethyl phosphite	(762–04–9)
(12) Sulfur monochloride	(10025–67–9)
(13) Sulfur dichloride	(10545–99–0)
(14) Thionyl chloride	(7719–09–7)
(15) Ethyldiethanolamine	(139–87–7)
(16) Methyldiethanolamine	(105–59–9)
(17) Triethanolamine	(102–71–6)

Note to Supplement No. 1: Refer to Supplement No. 1 to part 774 of the Export Administration Regulations (the Commerce Control List), ECCNs 1C350 and 1C355, for export controls related to Schedule 3 chemicals.

SUPPLEMENT NO. 2 TO PART 714—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS, REPORTS, AND AMENDMENTS

Declarations	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year). Declared plant site (production)	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production of a Schedule 3 chemical exceeded the declaration threshold in §714.1(a)(1)(i) of the CWCR.
Annual Report on Exports and Imports (previous calendar year); Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which exports or imports of a Schedule 3 chemical by a plant site, trading company, or other person subject to the CWCR (as described in §714.2(a) of the CWCR) exceeded the threshold in §714.2(a) of the CWCR.
Combined Declaration & Report	Certification, 3–1, 3–2, and 3–3, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production of a Schedule 3 chemical and the export or import of the same or a different Schedule 3 chemical by a declared plant site exceeded the applicable thresholds in §§714.1(a)(1)(i) and 714.2(a), respectively, of the CWCR.
Annual Declaration on Anticipated Activities (Production); (next calendar year).	Certification, 3–1, 3–2, 3–3.2, A (as appropriate), B (optional).	September 3 of the year prior to any calendar year in which Schedule 3 production is anticipated to occur.
Declaration on Additionally Planned Activities	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Amended Declaration: —Declaration information —Company information —Post-inspection letter.	Certification, 3–1, 3–2, 3–3	—15 calendar days after change in information —30 calendar days after change in information —45 calendar days after receipt of letter
Amended Report	Certification, 3–1, 3–2, 3–3, A (as appropriate), B (optional.	—15 calendar days after change in information

Declarations	Applicable forms	Due dates
Combined Declaration & Report	Certification, 3–1,3–2, 3–3, A (as appropriate), B (optional).	—15 calendar days after change in information

PART 715—ACTIVITIES INVOLVING UNSCHEDULED DISCRETE ORGANIC CHEMICALS (UDOCs)

Sec.
715.1 Annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).
715.2 Amended declaration.
715.3 Declarations returned without action by BIS.
715.4 Deadlines for submitting UDOC declarations, no changes authorization forms, and amendments.
Supplement No. 1 to part 715—Definition of an Unscheduled Discrete Organic Chemical.
Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production.
Supplement No. 3 to Part 715—Deadlines for Submission of Declarations, No Changes Authorization Forms, and Amendments for Unscheduled Discrete Organic Chemical (UDOC) Facilities.

Authority: 22 U.S.C. 6701 *et seq.;* E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 715.1 Annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

(a) *Declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC.* (1) *Production quantities that trigger the declaration requirement. See* § 711.6 of the CWCR for information on obtaining the forms you will need to declare production of unscheduled discrete organic chemicals. You must complete the forms specified in paragraph (b) of this section if your plant site produced by synthesis:

(i) In excess of 200 metric tons aggregate of all UDOCs (including all UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as ''PSF-chemicals'') during the previous calendar year; or

(ii) In excess of 30 metric tons of an individual PSF-chemical at one or more plants at your plant site during the previous calendar year.

Note to § 715.1(a)(1)(ii): In calculating the aggregate production quantity of each individual PSF chemical produced by a PSF plant, do not include production of a PSF chemical that was produced in quantities less than 30 metric tons. Include only production quantities from those PSF plants that produced more than 30 metric tons of an individual PSF chemical.

(2) *UDOCs subject to declaration requirements under this part.* (i) UDOCs subject to declaration requirements under this part are those produced by synthesis that have been isolated for:

(A) Use; or

(B) Sale as a specific end product.

(ii) *Exemptions.*

(A) Polymers and oligomers consisting of two or more repeating units;

(B) Chemicals and chemical mixtures produced through a biological or biomediated process;

(C) Products from the refining of crude oil, including sulfur-containing crude oil;

(D) Metal carbides (*i.e.,* chemicals consisting only of metal and carbon); and

(E) UDOCs produced by synthesis that are ingredients or by-products in foods designed for consumption by humans and/or animals.

Note to paragraph (a)(2): *See* Supplement No. 2 to this part for examples of UDOCs subject to the declaration requirements of this part, and for examples of activities that are not considered production by synthesis.

(3) *Exemptions for UDOC plant sites.* UDOC plant sites that exclusively produced hydrocarbons or explosives are exempt from UDOC declaration requirements. For the purposes of this part, the following definitions apply for hydrocarbons and explosives:

(i) *Hydrocarbon* means any organic compound that contains only carbon and hydrogen; and

(ii) *Explosive* means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

(b) *Types of declaration forms to be used.* (1) *Annual declaration on past activities.* (i) You must complete the Certification Form and Form UDOC (consisting of two pages), unless there are no changes from the previous year's declaration and you submit a No Changes Authorization Form pursuant to paragraph (b)(1)(ii) of this section. Attach Form A as appropriate; Form B is optional.

(ii) You may complete the No Changes Authorization Form if there are no updates or changes to any information (except the certifying official and dates signed and submitted) in your plant site's previously submitted annual declaration on past activities. Your plant site's activities will be declared to the OPCW and subject to inspection, if applicable, based upon the data reported in the most recent UDOC Declaration that you submitted to BIS.

Note to § 715.1(b)(1)(ii): If, after submitting the No Changes Authorization Form, you have changes to information, you must submit a complete amendment to the annual declaration on past activities. *See* § 715.2.

(c) *''Declared'' UDOC plant site.* A plant site that submitted a declaration pursuant to paragraph (a)(1) of this section is a ''declared'' UDOC plant site.

(d) *Routine inspections of declared UDOC plant sites.* A ''declared'' UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (*see* part 716 of the CWCR) if it produced by synthesis more than 200 metric tons aggregate of UDOCs during the previous calendar year.

§ 715.2 Amended declaration.

In order for BIS to maintain accurate information on previously submitted plant site declarations, including current information necessary to facilitate inspection notifications and activities or to communicate declaration requirements, amended declarations will be required under the following circumstances described in this section. This section applies only to annual declarations on past activities submitted for the previous calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affects a declared plant site's Annual Declaration of Past Activities (ADPA) which was previously submitted to BIS.* You must submit an amended declaration to BIS within15 days of any change in the following information:

(1) Product group codes for UDOCs produced in quantities exceeding the applicable declaration threshold specified in § 715.1(a)(1);

(2) Approximate number of plants at the declared plant site that produced any amount of UDOCs (including all PSF chemicals);

(3) Aggregate amount of production (by production range) of UDOCs produced by all plants at the declared plant site;

(4) Exact number of plants at the declared plant site that individually produced more than 30 metric tons of a single PSF chemical; and

(5) Production range of each plant at the declared plant site that individually

produced more than 30 metric tons of a single PSF chemical.

(b) *Changes to company and plant site information submitted in the ADPA that must be maintained by BIS.* (1) Internal company changes. You must submit an amended declaration to BIS within 30 days of any change in the following information:

(i) Name of declaration point of contact (D–POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of inspection point(s) of contact (I–POC), including telephone number, facsimile number(s) and e-mail address(es);

(iii) Company name (*see* 715.2(b)(2) for other company changes);

(iv) Company mailing address;

(v) Plant site name;

(vi) Plant site owner, including telephone number and facsimile number; and

(vii) Plant site operator, including telephone number and facsimile number.

(2) *Change in ownership of company or plant site.* If you sold or purchased a declared plant site, you must submit an amended declaration to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration must include the following information.

(i) Information that must be submitted to BIS by the company selling a declared plant site:

(A) Name of seller (*i.e.,* name of company selling a declared plant site);

(B) Name of declared plant site name and U.S. Code Number for that plant site;

(C) Name of purchaser (*i.e.,* name of new company purchasing a declared plant site) and identity of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional details on the sale of the declared plant site relevant to ownership or operational control over any portion of the declared plant site (*e.g.,* whether the entire plant site or only a portion of the declared plant site has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the declaration for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations for the periods of the calendar year during which each owned the plant site.

(1) If the new owner is responsible for submitting the declaration for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the plant site.

(2) If the previous owner and new owner will submit separate declarations for the periods of the calendar year during which each owned the plant site, and, if at the time of transfer of ownership, the previous owner's activities are not above the declaration thresholds set forth in § 715.1(a)(1) of the CWCR, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in § 715.1(a)(1) of the CWCR, BIS will return the declarations without action as set forth in § 715.3 of the CWCR.

(ii) Information that must be submitted to BIS by the company purchasing a declared plant site:

(A) Name of purchaser (*i.e.,* name of individual or company purchasing a declared plant site);

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D-POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name(s) of inspection point(s) of contact (I-POC) for the purchaser, including telephone number(s), facsimile number(s), and e-mail address(es);

(E) Name of the declared plant site and U.S. Code Number for that plant site;

(F) Location of the declared plant site;

(G) Name of plant site where the production of UDOCs exceeds the applicable declaration threshold;

(H) Owner of plant site where the production of UDOCs exceeds the applicable declaration threshold, including telephone number and facsimile number;

(I) Operator of plant site where the production of UDOCs exceeds the applicable declaration threshold, including telephone number and facsimile number; and

(J) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or report for the periods of the calendar year during which each owned the plant site.

Note 1 to § 715.2(b): You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (*e.g.,* company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (*e.g.,* for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

Note 2 to § 715.2(b): You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWCR. If you are submitting an amended declaration, use Form B to address details regarding the sale of the declared plant site.

Note 3 to § 715.2(b): For ownership changes, the declared plant site will maintain its original U.S. Code Number, unless the plant site is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers.

(c) *Inspection-related amendments.* If, following completion of an inspection (see parts 716 or 717 of the CWCR), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information that will be required pursuant to §§ 716.10 and 717.5 of the CWCR. You must submit an amended declaration to BIS no later than 45 days following your receipt of BIS's post inspection letter.

(d) *Non-substantive changes.* If, subsequent to the submission of your declaration to BIS, you discover one or more non-substantive typographical errors in your declaration, you are not required to submit an amended declaration to BIS. Instead, you may correct these errors in a subsequent declaration.

(e) *Documentation required for amended declarations.* If you are required to submit an amended declaration to BIS pursuant to paragraph (a), (b), or (c) of this section, you must submit either:

(1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration; or

(2) Both of the following:

(i) A new Certification Form; and

(ii) The specific form required for the declaration containing the corrected information required, in accordance with the requirements of this section, to amend your declaration.

§ 715.3 Declarations returned without action by BIS.

If you submit a declaration and BIS determines that the information contained therein is not required by the CWCR, BIS will return the original declaration to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your

confidential business information, BIS will not maintain a copy of any declaration that is returned without action. However, BIS will maintain a copy of the RWA letter.

§ 715.4 Deadlines for submitting UDOC declarations, no changes authorization forms, and amendments.

Declarations, no changes authorization forms, and amendments required under this part must be postmarked by the appropriate dates identified in Supplement No. 3 to this part 715 of the CWCR. Required declarations include:

(a) Annual declaration on past activities (UDOC production during the previous calendar year);

(b) No changes authorization form (may be completed and submitted to BIS when there are no changes to any information in your plant site's previously submitted annual declaration on past activities, except the certifying official and the dates signed and submitted); and

(c) Amended declaration.

Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical

Unscheduled discrete organic chemical means any chemical: (1) Belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned; and (2) that is not contained in the Schedules of Chemicals (*see* Supplements No. 1 to parts 712 through 714 of this subchapter). Unscheduled discrete organic chemicals subject to declaration under this part are those produced by synthesis that are isolated for use or sale as a specific end-product.

Note: Carbon oxides consist of chemical compounds that contain only the elements carbon and oxygen and have the chemical formula C_xO_y, where x and y denote integers. The two most common carbon oxides are carbon monoxide (CO) and carbon dioxide (CO_2). Carbon sulfides consist of chemical compounds that contain only the elements carbon and sulfur, and have the chemical formula C_aS_b, where a and b denote integers. The most common carbon sulfide is carbon disulfide (CS_2). Metal carbonates consist of chemical compounds that contain a metal (*i.e.*, the Group I Alkalis, Groups II Alkaline Earths, the Transition Metals, or the elements aluminum, gallium, indium, thallium, tin, lead, bismuth or polonium), and the elements carbon and oxygen. Metal carbonates have the chemical formula $M_d(CO_3)_e$, where d and e denote integers and M represents a metal. Common metal carbonates are sodium carbonate (Na_2CO_3) and calcium carbonate ($CaCO_3$). In addition, metal carbides or other compounds consisting of only a metal, as described in this Note, and carbon (*e.g.*, calcium carbide (CaC_2)), are exempt from declaration requirements (*see* § 715.1(a)(2)(ii)(D)).

Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production

(1) Examples of UDOCs not subject to declaration include:

(i) UDOCs produced coincidentally as by-products that are not isolated for use or sale as a specific end product, and are routed to, or escape from, the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) UDOCs, contained in mixtures, which are produced coincidentally and not isolated for use or sale as a specific end-product;

(iii) UDOCs produced by recycling (*i.e.,* involving one of the processes listed in paragraph (3) of this supplement) of previously declared UDOCs;

(iv) UDOCs produced by the mixing (*i.e.,* the process of combining or blending into one mass) of previously declared UDOCs; and

(v) UDOCs that are intermediates and that are used in a single or multi-step process to produce another declared UDOC.

(2) Examples of UDOCs that you must declare under part 715 include, but are not limited to, the following, unless they are not isolated for use or sale as a specific end product:

(i) Acetophenone (CAS # 98–86–2);

(ii) 6-Chloro-2-methyl aniline (CAS # 87–63–8);

(iii) 2-Amino-3-hydroxybenzoic acid (CAS # 548–93–6); and

(iv) Acetone (CAS # 67–64–1).

(3) Examples of activities that are not considered production by synthesis under part 715 and, thus, the end products resulting from such activities would not be declared under part 715, are as follows:

(i) Fermentation;

(ii) Extraction;

(iii) Purification;

(iv) Distillation; and

(v) Filtration.

SUPPLEMENT NO. 3 TO PART 715—DEADLINES FOR SUBMISSION OF DECLARATIONS, NO CHANGES AUTHORIZATION FORMS, AND AMENDMENTS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICAL (UDOC) FACILITIES

Declarations	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year). Declared plant site	Certification, UDOC, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWCR.
No Changes Authorization Form (declaration required, but no changes to data contained in previously submitted annual declaration on past activities (previous calendar year). Declared plant site	No Changes Authorization Form	February 28 of the year following any calendar year in which the production of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWCR.
Amended Declaration —Declaration information ..... —Company information —Post-inspection letter	Certification, UDOC, A (as appropriate), B (optional).	—15 calendar days after change in information. —30 calendar days after change in information. —45 calendar days after receipt of letter.

PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

Sec.
716.1 General information on the conduct of initial and routine inspections.
716.2 Purposes and types of inspections of declared facilities.
716.3 Consent to inspections; warrants for inspections.
716.4 Scope and conduct of inspections.
716.5 Notification, duration and frequency of inspections.
716.6 Facility agreements.
716.7 Samples.
716.8 On-site monitoring of Schedule 1 facilities.
716.9 Report of inspection-related costs.
716.10 Post inspection activities.
Supplement No. 1 to Part 716—Notification, Duration, and Frequency of Inspections.
Supplement No. 2 to Part 716—[Reserved].
Supplement No. 3 to Part 716—[Reserved].

Authority: 22 U.S.C. 6701 *et seq.;* E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI (E), Part VII(B), Part VIII(B) and Part IX(B). *See* part 717 of this subchapter for provisions concerning challenge inspections.

(a) *Overview.* Each State Party to the CWC, including the United States, has agreed to allow certain inspections of declared facilities by inspection teams employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the Convention. BIS is responsible for leading, hosting and escorting inspections of all facilities subject to the provisions of this subchapter (*see* § 710.2 of this subchapter).

(b) *Declared facilities subject to initial and routine inspections.* (1) *Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

(ii) If you are a new Schedule 1 production facility pursuant to § 712.4 of the CWCR, your facility is subject to an initial inspection within 200 days of submitting an initial declaration.

Note to paragraph (b)(1): All Schedule 1 facilities submitting a declaration are subject to inspection.

(2) *Schedule 2 plant sites.* (i) Your declared plant site is subject to inspection if at least one plant on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(A) 10 kg of chemical BZ: 3-Quinuclidinyl benzilate (*see* Schedule 2, Part A, paragraph 3 in Supplement No. 1 to part 713 of this subchapter);

(B) 1 metric ton of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (*see* Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of this subchapter); or

(C) 10 metric tons of any chemical listed in Schedule 2, Part B (*see* Supplement No. 1 to part 713 of this subchapter).

(ii) *Initial inspection for new Schedule 2 plant sites.* Your declared plant site is subject to an initial inspection within the first year after submitting a declaration, if at least one plant on your plant site produced, processed or consumed in any of the three previous years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the threshold quantities set forth in paragraphs (b)(2)(i)(A) through (C) of this section.

Note to paragraph (b)(2): The applicable inspection threshold for Schedule 2 plant sites is ten times higher than the applicable declaration threshold. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold, are subject to inspection.

(3) *Schedule 3 plant sites.* Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate they will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical.

Note to paragraph (b)(3): The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals (UDOC) during the previous calendar year.

Note 1 to paragraph (b)(4): You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

Note 2 to paragraph (b)(4): All UDOC plant sites that submit a declaration based on § 715.1(a)(1)(i) of the CWCR are subject to a routine inspection.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of the CWCR under this part, BIS will:

(1) Lead on-site inspections;

(2) Provide Host Team notification to the facility of an impending inspection;

(3) Take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection;

(4) Dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation;

(5) Escort the Inspection Team on-site throughout the inspection process;

(6) Assist the Inspection Team with verification activities;

(7) Negotiate the development of a site-specific facility agreement, if appropriate (*see* § 716.6); and

(8) Ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

§ 716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities.* (1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections.* (i) *Initial inspections.* (A) During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see § 716.6) for the conduct of routine inspections.

(B) For new Schedule 1 production facilities declared pursuant to § 712.4 of the CWCR, the U.S. National Authority, in coordination with BIS, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (§ 716.6) developed during the initial inspections and concluded between the U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites.* (1) *Purposes of inspections.* (i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 plant sites are to verify:

(A) The absence of any Schedule 1 chemical, especially its production,

except in accordance with the provisions of the Convention;

(B) Consistency with declarations of production, processing or consumption of Schedule 2 chemicals; and

(C) Non-diversion of Schedule 2 chemicals for activities prohibited under the Convention.

(ii) During initial inspections, Inspection Teams shall collect information to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. The Inspection Team will take the following criteria into account, inter alia:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 2 plant sites, in addition to the verification activities listed in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see § 716.6).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 plant sites, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to any appropriate site-specific facility agreements developed during the initial inspections (see § 716.6), and concluded between the U.S. Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 plant sites.* (1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared Schedule 3 plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and the Inspection Team may draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared Schedule 3 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled discrete organic chemical plant sites.* (1) *Purposes of inspections.* The general aim of inspections of declared UDOC plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared UDOC plant sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the Inspection Team may develop draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared UDOC plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

§ 716.3 Consent to inspections; warrants for inspections.

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility.

(b) In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, BIS will seek administrative warrants as provided by the Act.

§ 716.4 Scope and conduct of inspections.

(a) *General.* Each inspection shall be limited to the purposes described in § 716.2 and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(b) *Scope.* (1) *Description of inspections.* During inspections, the Inspection Team:

(i) Will receive a pre-inspection briefing from facility representatives;

(ii) Will visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection;

(iii) May visually inspect other parts or areas of the plant site to clarify an ambiguity that has arisen during the inspection;

(iv) May take photographs or conduct formal interviews of facility personnel;

(v) May examine relevant records; and

(vi) May take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States National Authority, at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission pursuant to paragraph (a) of this section, except for information subject to export control under ITAR (22 CFR parts 120 through 130) (see paragraph (b)(3) of this section). When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

(3) *ITAR-controlled technology.* ITAR-controlled technology shall not be divulged to the Inspection Team without U.S. Government authorization. Facilities being inspected are responsible for the identification of ITAR-controlled technology to the BIS Host Team, if known.

(c) *Pre-inspection briefing.* Upon arrival of the Inspection Team and Host Team at the inspection site and before commencement of the inspection, facility representatives will provide the Inspection Team and Host Team with a

pre-inspection briefing on the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

(1) The pre-inspection briefing will address:

(i) Facility health and safety issues and requirements, and associated alarm systems;

(ii) Declared facility activities, business and manufacturing operations;

(iii) Physical layout;

(iv) Delimitation of declared facility;

(v) Scheduled chemicals on the facility (declared and undeclared);

(vi) Block flow diagram or simplified process flow diagram;

(vii) Plants and units specific to declared operations;

(viii) Administrative and logistic information; and

(ix) Data declaration updates/revisions.

(2) The pre-inspection briefing may also address, inter alia:

(i) Introduction of key facility personnel;

(ii) Management, organization and history;

(iii) Confidential business information concerns;

(iv) Types and location of records/documents;

(v) Draft facility agreement, if applicable; and

(vi) Proposed inspection plan.

(d) *Visual plant inspection.* The Inspection Team may visually inspect the declared plant or facility and other areas or parts of the plant site as agreed by the Host Team Leader after consulting with the facility representative.

(e) *Records review.* The facility must provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to comply with the CWCR (see §§ 721.1 and 721.2 of the CWCR) and with appropriate accommodations in which the Inspection Team can review these supporting materials and documentation. Such access will be provided in appropriate formats (*e.g.*, paper copies, electronic remote access by computer, microfilm, or microfiche) through the U.S. Government Host Team to Inspection Teams during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader. If a facility does not have access to records for activities that took place under previous ownership, the previous owner must make such records available to the Host Team for provision to the Inspection Team in accordance with section 305 of the Act.

(f) *Effect of facility agreements.* Routine inspections at facilities for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

(g) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the Inspection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the facility, and the Host Team Leader will take into consideration the facility's input when providing official comments on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

§ 716.5 Notification, duration and frequency of inspections.

(a) *Inspection notification.* (1)(i) *Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. BIS will also provide a separate inspection notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, BIS (or the Federal Bureau of Investigation, if BIS is unable) may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or location for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection; and

(D) The names and titles of the Inspection Team members.

(ii) *Consent to inspection.* In addition to appropriate information provided by the OPCW in its notification to the USNA, BIS's inspection notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the inspection notification, BIS will seek an administrative warrant.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

Activity	Agency Action	Facility action
(A) OPCW notification of inspection.	(*1*) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours.	Acknowledges receipt of facsimile.

TABLE TO § 716.5(a)(1)—Continued

Activity	Agency Action	Facility action
	(*2*) Upon notification from the U.S. National Authority, BIS immediately transmits inspection notification via facsimile to the inspection point of contact to ascertain whether the facility (*i*) grants consent and (*ii*) requests assistance in preparing for the inspection. In absence of consent within four hours of facility receipt, BIS intends to seek an administrative warrant.	(*A*) Indicates whether it grants consent. (*B*) May request advance team support. No requirement for reimbursement of U.S. Government services.
(B) Preparation for inspection.	BIS advance team generally arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.	If advance team support is provided, facility works with the advance team oninspection-related issues.

(2) *Timing of notice.* (i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the Inspection Team in the United States, and will notify the USNA of a routine inspection not less than 24 hours prior to arrival of the Inspection Team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and UDOC plant sites.* For declared Schedule 3 and UDOC plant sites, the Technical Secretariat will notify the USNA of a routine inspection not less than 120 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections.* (1) *Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader, and will be based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out there. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4(c) and (i) for a description of these activities.

(2) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4(c) and (i) for a description of these activities.

(3) *Schedule 3 and UDOC plant sites.* For declared Schedule 3 or UDOC plant sites, the maximum duration of routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4(c) and (i) for a description of these activities.

(c) *Frequency of inspections.* The frequency of inspections is as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites.* As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is 2 per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the Inspection Team's assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites.* As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United State may not exceed 20 per calendar year.

(4) *UDOC plant sites.* As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

§ 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific agreement between the U.S.

Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities. For new Schedule 1 production facilities declared pursuant to § 712.4 of the CWCR, the U.S. National Authority, in coordination with Department of Commerce, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and UDOC plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or UDOC plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, BIS shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with BIS representatives for the negotiation of such an agreement. During the initial or routine inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement or amendment to a facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BIS will consult with the affected facility on the contents of the agreements and take facility's into consideration during negotiations. BIS will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BIS will give consideration to such comments prior to approving final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and UDOC facilities are concluded, as appropriate, with the OPCW in coordination with BIS.

(c) [Reserved]

(d) *Further information.* For further information about facility agreements, please write or call: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 700, Arlington, VA 22209, Telephone: (703) 605–4400.

§ 716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. Analysis will be restricted to verifying the absence of undeclared scheduled chemicals, unless otherwise agreed after consultation with the facility representative.

§ 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWCR, however, such monitoring is not anticipated. The U.S. Government will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

§ 716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to the CWCR during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d), with the following notation: ''Attn: Report of inspection-related costs.''

§ 716.10 Post inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit comments on the final inspection report to BIS, and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action, *e.g.*, amended declaration requirement (see §§ 712.7(d), 713.5(d), 714.4(d), and 715.2(c) of the CWCR), information on the status of the draft facility agreement, if applicable, and the date on which the report on inspection-related costs (see § 716.9 of the CWCR) is due to BIS.

SUPPLEMENT NO. 1 TO PART 716 NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	72 hours prior to arrival of Inspection Team at the point of entry (initial; 24 hours prior to arrival of Inspection Team at the point of entry (routine).	48 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.
Duration of inspection	As specified in facility agreement.	96 hours	24 hours	24 hours.

SUPPLEMENT NO. 1 TO PART 716 NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS—Continued

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry			
Duration of Challenge inspection*.	84 hours			

* See part 717 of this subchapter

Supplement No. 2 To Part 716—[RESERVED]

Supplement No. 3 To Part 716—[RESERVED]

PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.
717. 1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.
717.2 Challenge inspections.
717.3 Samples.
717.4 Report of inspection-related costs.
717.5 Post inspection activities.

Authority: 22 U.S.C. 6701 *et seq.,* 2681; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. States Parties may attempt to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW) or a State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) Any person or facility subject to the CWCR (15 CFR parts 710 through 729) must, within five working days from receipt of an official written BIS request for clarification, provide information required by BIS pursuant to an Article IX clarification request from another State Party, or the OPCW, concerning possible non-compliance with the CWC. BIS will contact the person or facility subject to the Article IX clarification as early as practical prior to the issuance of an official written request for clarification.

§ 717.2 Challenge inspections.

Persons or facilities, whether or not they are required to submit declarations or reports, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention, other than U.S. Government facilities as defined in § 710.2(a). BIS will host and escort the international Inspection Team for challenge inspections in the United States of such persons or facilities.

(a) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, BIS will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. BIS will provide inspection notification to the inspection point of contact at such time that a person or facility has been clearly established, if possible, and when such notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, BIS (or another appropriate agency, if BIS is unable) may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the Inspection Team at the U.S. point of entry. Written notice will be provided to the owner and to the operator, occupant, or agent in charge of the premises at any appropriate time determined by the USNA after receipt of notification from the OPCW Technical Secretariat.

(2)(i) *Content of notice.* The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or locations for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection;

(D) The names and titles of the Inspection Team members; and

(E) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, BIS's inspection notification to the facility will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the inspection notification, BIS will assist the Department of Justice in seeking a criminal warrant.

(c) *Period of inspection.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the Inspection Team and the Host Team Leader.

(d) *Scope and conduct of inspections.* (1) *General.* Each inspection shall be limited to the purposes described in this section and conducted in the least intrusive manner, consistent with the

effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility or location consents to a challenge inspection, the inspection will be conducted in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted in accordance with a criminal warrant, as provided by the Act, and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention.

(3) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(4) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

(5) *Pre-inspection briefing.* Upon arrival of the Inspection Team and the Host Team in the vicinity of the inspection site and before commencement of the inspection, facility representatives will provide the Inspection Team and the Host Team with a pre-inspection briefing concerning the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

§ 717.3 Samples.

The owner, operator, occupant or agent in charge of a facility or location must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. Analysis may be restricted to verifying the presence or absence of Schedule 1, 2, or 3 chemicals, or appropriate degradation products, unless agreed otherwise.

§ 717.4 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of this subchapter, with the following notation: ''ATTN: Report of Inspection-related Costs.''

§ 717.5 Post inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit comments on the final inspection report to BIS, and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action and the date on which the report on inspection-related costs (see § 717.4 of the CWCR) is due to BIS.

PART 718—CONFIDENTIAL BUSINESS INFORMATION

Sec.
718.1 Definition.
718.2 Identification of confidential business information.
718.3 Disclosure of confidential business information.
Supplement No. 1 to Part 718—Confidential Business Information Declared or Reported

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 (''the Act'') defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

(a) Financial data;

(b) Sales and marketing data (other than shipment data);

(c) Pricing data;

(d) Personnel data;

(e) Research data;

(f) Patent data;

(g) Data maintained for compliance with environmental or occupational health and safety regulations;

(h) Data on personnel and vehicles entering and personnel and personal passenger vehicles exiting the site;

(i) Any chemical structure;

(j) Any plant design, process, technology or operating method;

(k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(l) Any commercial sale, shipment or use of a chemical; or

(m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

§ 718.2 Identification of confidential business information.

(a) *General.* Certain confidential business information submitted to BIS in declarations and reports does not need to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BIS in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.* (1) BIS has identified those data fields on the declaration and report forms that request ''confidential business information'' as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of the data fields listed in the table included in Supplement No. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.

Note to paragraph (b): BIS has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in advance notifications.* Information contained in advance notifications of exports and imports of

Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify information in your advance notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See § 718.3(b) for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections, certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see § 718.3(c)(1)(ii)). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

§ 718.3 Disclosure of confidential business information.

(a) *General.* Confidentiality of information will be maintained by BIS consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in advance notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information contained in these advance notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these advance notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to § 404(b) of the Act. (1) Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).*

(i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as ''restricted,'' ''protected,'' or ''highly protected,'' depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) OPCW Inspection Team members are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons, for five years after termination of their employment, any confidential information coming to their knowledge or into their possession in the performance of their official duties.

(iii) *U.S. Government designation of information to the Technical Secretariat.* It is the policy of the U.S. Government to designate all facility information it provides to the Technical Secretariat in declarations, reports and Schedule 1 advance notifications as ''protected.'' It is the policy of the U.S. Government to designate confidential business information that it discloses to Inspection Teams during inspections as ''protected'' or ''highly protected,'' depending on the sensitivity of the information. The Technical Secretariat is responsible for storing and limiting access to any confidential business information contained in a document according to its established procedures.

(2) *Disclosure to Congress.* Section 404(b)(2) of the Act provides that the U.S. Government must disclose confidential business information to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, and no member and no staff member of such committee or subcommittee, may disclose such information or material except as otherwise required or authorized by law.

(3) *Disclosure to other Federal agencies for law enforcement actions and disclosure in enforcement proceedings under the Act.* Section 404(b)(3) of the Act provides that the U.S. Government must disclose confidential business information to other Federal agencies for enforcement of the Act or any other law, and must disclose such information when relevant in any proceeding under the Act. Disclosure will be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. Section 719.14(b) of the CWCR provides that all hearings will be closed, unless the Administrative Law Judge for good cause shown determines otherwise. Section 719.20 of the CWCR provides that parties may request that the administrative law judge segregate and restrict access to confidential business information contained in material in the record of an enforcement proceeding.

(4) *Disclosure to the public; national interest determination.* Section 404(c) of the Act provides that confidential business information, as defined by the Act, that is in the possession of the U.S. Government, is exempt from public disclosure in response to a Freedom of Information Act request, except when

such disclosure is determined to be in the national interest.

(i) *National interest determination.* The United States National Authority (USNA), in coordination with the CWC interagency group, shall determine on a case-by-case basis if disclosure of confidential business information in response to a Freedom of Information Act request is in the national interest.

(ii) *Notification of intent to disclose pursuant to a national interest determination.* The Act provides for notification to the affected person of intent to disclose confidential business information based on the national interest, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA does not determine that such notification of intent to disclose is contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information and the person to whom the information pertains of the intent to disclose the information.

SUPPLEMENT NO. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED*

Schedule 1 forms:	Fields containing confidential business information
Certification Form	NONE
Form 1–1	NONE
Form 1–2	All fields
Form 1–2A	All fields
Form 1–2B	All fields
Form 1–3	All fields
Form 1–4	All fields
Schedule 2 Forms:	
Certification Form	NONE
Form 2–1	NONE
Form 2–2	Question 2–2.8
Form 2–3	All fields
Form 2–3A	All fields
Form 2–3B	All fields
Form 2–3C	All fields
Form 2–4	All fields
Schedule 3 Forms:	
Certification Form	NONE
Form 3–1	NONE
Form 3–2 NONE.	
Form 3–3 All fields.	
Form 3–4 All fields.	
Unscheduled Discrete Organic Chemicals Forms	
Certification Form	NONE
Form UDOC	NONE

SUPPLEMENT NO. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED*—Continued

FORMS A and B and attachments (all Schedules and UDOCs).	Case-by-case; must be identified by submitter.

*This table lists those data fields on the Declaration and Report Forms that request "confidential business information" (CBI) as defined by the Act (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the Act, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)–(4)), unless a determination is made, pursuant to section 404(c) of the Act, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. You must identify CBI provided in Form A and/or Form B attachments, and provide the reasons supporting your claim of confidentiality, except that Schedule 1 facility technical descriptions submitted with initial declarations are always considered to include CBI. If you believe that information you are submitting in a data field marked "none" in the Table is CBI, as defined by the Act, you must identify the specific information and provide the reasons supporting your claim of confidentiality in a cover letter.

PART 719—ENFORCEMENT

Sec.

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Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950, E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 719.1 Scope and definitions.

(a) *Scope.* This part 719 describes the various sanctions that apply to violations of the Act and the CWCR. It also establishes detailed administrative procedures for certain violations of the Act. The three categories of violations are as follows:

(1) *Violations of the Act subject to administrative and criminal enforcement proceedings.* This CWCR sets forth in § 719.2 violations for which the statutory basis is the Act. BIS investigates these violations and, for administrative proceedings, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and makes recommendations to officials of the Department of State with respect to the initiation and resolution of proceedings. The administrative procedures applicable to these violations are found in §§ 719.5 through 719.22 of this part. The Department of State gives notice of initiation of administrative proceedings and issues orders imposing penalties pursuant to 22 CFR part 103, subpart C.

(2) *Violations of the International Emergency Economic Powers Act (IEEPA) subject to judicial enforcement proceedings.* Section 719.3 sets forth violations of the Chemical Weapons Convention for which the statutory basis is the IEEPA. BIS refers these violations to the Department of Justice for civil or criminal judicial enforcement.

(3) *Violations and sanctions under the Act not subject to proceedings under the CWCR.* Section 719.4 sets forth violations and sanctions under the Act that are not violations of the CWCR and that are not subject to proceedings under the CWCR. This section is included solely for informational purposes. BIS may assist in investigations of these violations, but has no authority to initiate any enforcement action under the CWCR.

Note to paragraph (a): This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used only in parts 719 and 720. For definitions of terms applicable to parts 710 through 722 of this subchapter, see part 710 of this subchapter.

The Act. The Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701–6777).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise

disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

IEEPA. The International Emergency Economic Powers Act, as amended (50 U.S.C. 1701–1706).

Office of Chief Counsel. The Office of Chief Counsel for Industry and Security, United States Department of Commerce.

Report. For purposes of parts 719 and 720 of the CWCR, the term ''report'' means any declaration, report, or advance notification required under parts 712 through 715 of the CWCR.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Under Secretary, Bureau of Industry and Security. The Under Secretary, Bureau of Industry and Security, United States Department of Commerce.

§ 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations.* (1) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or this subchapter; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or the CWCR; or

(iii) To permit access to or copying of any record that is exempt from disclosure under the Act or the CWCR.

(b) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record or submit any report, notice, or other information required by the Act or the CWCR, or to permit access to or copying of any record exempt from disclosure under the Act or this subchapter as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the Act or the CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(d) *Denial of export privileges.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of the CWCR if that person has been convicted under Title 18, section 229 of the United States Code.

§ 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.

(a) *Violations.* (1) *Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.2 of the CWCR, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of the CWCR) unless:

(i) The import is from a State Party;

(ii) The import is for research, medical, pharmaceutical, or protective purposes;

(iii) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(iv) The importing person has notified BIS not less than 45 calendar days before the import pursuant to § 712.6 of the CWCR.

(2) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of the CWCR, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part 713 of the CWCR) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed $11,000 may be imposed in accordance with this part on any person for each violation of this section.[1]

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.[2]

§ 719.4 Violations and sanctions under the Act not subject to proceedings under the CWCR.

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 299 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed $100,000 for each such violation.

(c) *Criminal forfeiture.* (1) Any person convicted under section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(i) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(ii) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(iii) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(d) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

[1] The maximum civil penalty allowed under the International Emergency Economic Powers Act is $11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

[2] Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) The amount provided by the statute that was violated; (2) an amount not more than $250,000 for an individual, or not more than $500,000 for an organization; or (3) an amount based on gain or loss from the offense.

(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(ii) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the Act, or compel the taking of any action required by or under the Act or the Convention.

§ 719.5 Initiation of administrative proceedings.

(a) *Request for Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may request that the Secretary of State initiate an administrative enforcement proceeding under this § 719.5 and 22 CFR 103.7. If the request is in accordance with applicable law, the Secretary of State will initiate an administrative enforcement proceeding by issuing a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(b) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that BIS has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BIS to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BIS within the specified time, or if the respondent requests it, BIS will make its request for initiation of an administrative enforcement proceeding to the Secretary of State in accordance with paragraph (a) of this section.

(c) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to § 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(d) *Proposed order.* A proposed order shall accompany every NOVA, letter of intent to charge, and draft NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(e) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings shall be given to the respondent (or respondent's agent for service of process, or attorney) by sending relevant documents, via first class mail, facsimile, or by personal delivery.

§ 719.6 Request for hearing and answer.

(a) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must request a hearing in writing within 15 business days from the postmarked date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(b) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent contends supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(c) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the proposed order will be signed and become final and unappealable.

§ 719.7 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.

§ 719.8 Filing and service of papers other than the NOVA.

(a) *Filing.* All papers to be filed with the ALJ shall be addressed to ''CWC Administrative Enforcement Proceedings'' at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery, is acceptable. Filing from a foreign country shall be by airmail or via facsimile. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. The Department of State is a party to cases under the CWCR, but will be represented by the Office of Chief Counsel. Therefore, service on the government party in all proceedings shall be addressed to Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–3839, Washington, DC 20230, or sent via facsimile to (202) 482–0085. Service on a respondent shall be to the address to which the NOVA and proposed order was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or

other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA and proposed order, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 719.9 Summary decision.

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is no genuine issue as to any material fact and the party is entitled to summary decision as a matter of law.

§ 719.10 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including Confidential Business Information (CBI) as defined by the Act.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

§ 719.11 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas to any person requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with such subpoena. Any failure to obey such order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ may be served by any of the methods set forth in § 719.8(b).

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 719.12 Matters protected against disclosure.

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information, including Confidential Business Information as defined by the Act. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a party in order to avoid prejudice, the ALJ may direct the other party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive

information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 719.13 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 719.14 Hearings.

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for good cause shown, that another location would better serve the interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will be closed, unless the ALJ for good cause shown determines otherwise. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight, except that any evidence of settlement which would be excluded under Rule 408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both wish a transcript.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§ 719.15 Procedural stipulations.

Unless otherwise ordered and subject to § 719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

§ 719.16 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time, except that the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

§ 719.17 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

§ 719.18 Decisions.

(a) *Initial decision.* After considering the entire record in the case, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act. If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, NW., Room 5519, Washington, DC 20520, to the Office of Chief Counsel at the address in § 719.8, and to the respondent, by personal delivery or overnight mail.

(d) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Secretary of State modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

§ 719.19 Settlement.

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will approve and sign if the recommended settlement is in accordance with applicable law.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Secretary will approve

and sign if the recommended settlement is in accordance with applicable law.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 719.20 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents.* (1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be displayed on the BIS Freedom of Information Act (FOIA) Web site, at *http://www.bis.doc.gov/foia*, which is maintained by the Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce. This office does not maintain a separate inspection facility. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to any portion of the record under paragraph (b) of this section.

§ 719.21 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the effective date of the order or within such longer period of time as may be specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under the CWCR. This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 719.22 Reporting a violation.

If a person learns that a violation of the Convention, the Act, or the CWCR has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–4520, Washington, DC 20230; Tel: (202) 482–1208; Facsimile: (202) 482–0964.

PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Denial of export privileges for convictions under 18 U.S.C. 229.
720.2 Initiation of administrative action denying export privileges.
720.3 Final decision on administrative action denying export privileges.
720.4 Effect of denial.

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

Any person in the United States or any U.S. national may be denied export privileges after notice and opportunity for hearing if that person has been convicted under Title 18, Section 229 of the United States Code of knowingly:

(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person to violate paragraph (a) of this section, or attempting or conspiring to violate paragraph (a) of this section.

§ 720.2 Initiation of administrative action denying export privileges.

(a) *Notice.* BIS will notify any person convicted of Section 229, Title 18, United States Code, of BIS's intent to deny that person's export privileges. The notification letter shall reference the person's conviction, specify the number of years for which BIS intends to deny export privileges, set forth the statutory and regulatory authority for the action, state whether the denial order will be standard or non-standard pursuant to Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799), and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver.* The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BIS intends to impose.

(c) *Order of Assistant Secretary.* If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

§ 720.3 Final decision on administrative action denying export privileges.

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in § 719.14 of the CWCR.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an initial decision and order, based on a preponderance of the evidence. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing a denial of export privileges for the length of time the ALJ deems appropriate. An order denying export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799). The initial decision and order will be served on

each party, and will be published in the **Federal Register** as the final decision of BIS 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, petition the Under Secretary, Bureau of Industry and Security, for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary, Bureau of Industry and Security, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, and shall be served on the Office of Chief Counsel for Industry and Security or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *Appeal procedure.* The Under Secretary, Bureau of Industry and Security, normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The Under Secretary's decision will be in writing and will be accompanied by an order signed by the Under Secretary, Bureau of Industry and Security, giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings. Any order that imposes a denial of export privileges will be published in the **Federal Register**.

§ 720.4 Effect of denial.

Any person denied export privileges pursuant to this part shall be considered a ''person denied export privileges'' for purposes of the Export Administration Regulations (15 CFR parts 730 through 799). The name and address of the denied person will be published on the Denied Persons List found in Supplement 2 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799).

PART 721—INSPECTION OF RECORDS AND RECORDKEEPING

Sec.
721.1 Inspection of records.
721.2 Recordkeeping.
721.3 Destruction or disposal of records.

Authority: 22 U.S.C. 6701 *et seq.;* E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

§ 721.1 Inspection of records.

Upon request by BIS or any other agency of competent jurisdiction, you must permit access to and copying of any record relating to compliance with the requirements of the CWCR. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

§ 721.2 Recordkeeping.

(a) *Requirements.* Each person, facility, plant site or trading company required to submit a declaration, report, or advance notification under parts 712 through 715 of the CWCR must retain all supporting materials and documentation used by a unit, plant, facility, plant site or trading company to prepare such declaration, report, or advance notification to determine production processing, consumption, export or import of chemicals.

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or advance notification, or for five years from the date of submission of the applicable declaration, report or advance notification, whichever is later. Due dates for declarations, reports and advance notifications are provided in parts 712 through 715 of the CWCR.

(c) *Location of records.* If a facility is subject to inspection under part 716 of the CWCR, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is *not* subject to inspection under part 716 of the CWCR, records retained under this section may be maintained either at the facility subject to a declaration, report, or advance notification requirement, or at a remote location, but all records must be accessible to any authorized agent, official or employee of the U.S. Government under § 721.1.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

§ 721.3 Destruction or disposal of records.

If BIS or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

PART 722—INTERPRETATIONS [RESERVED]

Note: This part is reserved for interpretations of parts 710 through 721 and also for applicability of decisions by the Organization for the Prohibition of Chemical Weapons (OPCW).

PARTS 723–729—[RESERVED]

Dated: November 26, 2004.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 04–26517 Filed 12–6–04; 8:45 am]

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Federal Register

Tuesday,
December 7, 2004

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2005 State Justice Institute grants, cooperative agreements, and contracts.

DATES: December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Schwartz, Acting Executive Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Through the Consolidated Appropriations Act of 2005 (H.R. 4818), Congress appropriated $2.613 million for SJI. An Interagency Agreement (IAA) with the Department of Justice's Office on Violence Against Women will provide up to $420,000 to support projects aimed at educating judges about rape and sexual assault. Other sources of funds available to SJI in FY 2005 are expected to include an IAA with the Department of Justice's Bureau of Justice Assistance, under which up to $320,000 may be transferred to SJI to support specific projects; and amounts deobligated from expired grants, which are not expected to exceed $100,000.

The Institute's Board of Directors is dedicating the funds available for Project Grants this fiscal year to continuing the most important Project Grants currently assisting courts nationwide. To the extent that additional funding becomes available over the course of the fiscal year, the Board of Directors may identify other projects of interest and invite selected applicants to apply for grants to carry them out. If additional funding does not become available, SJI will not award any new Project Grants in FY 2005 other than those that may be awarded within the scope of the Interagency Agreements noted above.

Types of Grants Available and Funding Schedules

SJI is offering four types of grants in FY 2005: Continuation Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) grants, and Scholarships. As noted above, to the extent sufficient additional funding becomes available, the Institute may also offer selected applicants the opportunity to apply for new Project Grants.

Continuation Grants. Continuation Grants (see sections II.A., III.D., V.B.1., and VI.A.) are intended to enhance the specific program or service begun during an earlier Project Grant period. An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

Technical Assistance Grants. Section II.B. reserves up to $300,000 for Technical Assistance Grants. Under this program, a State or local court or court association may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. Court associations' eligibility for TA grants is new this fiscal year.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by January 7, 2005 will be notified by April 8, 2005; those submitting letters between January 8 and February 25, 2005 will be notified by June 10, 2005; those submitting letters between February 26 and June 3, 2005 will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005 will be notified of the Board's decision by December 2, 2005. See section VI.B. for Technical Assistance Grant application procedures.

Judicial Branch Education Technical Assistance Grants. Section II.C. of the Guideline allocates up to $100,000 for grants under the JBE TA grant program this year. Grants of up to $20,000 are available to: (1) Enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (*i.e.*, curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants:

Applicants submitting letters by January 7, 2005 will be notified by April 8, 2005; those submitting letters between January 8 and February 25, 2005 will be notified by June 10, 2005; those submitting letters between February 26 and June 3, 2005 will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005 will be notified of the Board's decision by December 2, 2005. See section VI.C. for JBE TA Grant application procedures.

Scholarships. Section II.D. of the Guideline allocates up to $200,000 of FY 2005 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. A scholarship of up to $1,500 may be awarded to pay for a recipient's tuition, travel, and lodging costs.

Scholarships for eligible applicants are approved largely on a ''first come, first served'' basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel.

Beginning in FY 2005, recipients are limited to no more than one scholarship in a three-year period, absent programmatic reasons that would require attendance at a series of courses held on a more frequent schedule.

Applicants interested in obtaining a scholarship for a program beginning between April 1 and June 30, 2005, must submit their applications and documents between January 3 and February 28, 2005. For programs beginning between July 1 and September 30, 2005, the applications and documents must be submitted between April 1 and May 27, 2005. For programs beginning between October 1 and December 31, 2005, the applications and documents must be submitted between July 5 and August 29, 2005. For programs beginning between January 1 and March 31, 2006, the applications and documents must be submitted between October 3 and November 28, 2005. See section VI.D. for scholarship application procedures.

Project Grants. If additional funds become available in FY 2005, the Institute may invite applications for Project Grants to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. SJI may also invite applications for ''think piece'' Project Grants to support the development of essays of publishable

quality that explore emerging issues that could result in significant changes in court processes or judicial administration. ''Think pieces'' are limited to no more than $10,000. SJI will inform potential applicants of the application requirements for these grants in their invitation letters.

Matching Requirements

With the exception of JBE TA grantees, other grantees that can demonstrate a financial hardship, and scholarship recipients, all grantees must provide match, including cash match, for any Institute grant. The matching requirements are summarized in sections III.L. and VIII.A.8. of the Guideline.

The following Grant Guideline is adopted by the State Justice Institute for FY 2005:

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I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by a Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. However, during FY 2005, the Institute will consider funding only the following:

A. Continuation Grants

This category includes critical SJI-supported Project Grants of proven merit to courts nationwide. These projects must have:

1. Developed products, services, and techniques that may be used in States across the country; and

2. Created and disseminated products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

The application procedures for Continuation Grants may be found in section VI.A.

B. Technical Assistance Grants

The Board is reserving up to $300,000 to support the provision of technical assistance to State and local courts and court associations. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court or court association may apply for a Technical Assistance grant. The application procedures may be found in section VI.B.

C. Judicial Branch Education Technical Assistance Projects

The Board is reserving up to $100,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds. Judicial Branch Education Technical Assistance Grants are limited to no more than $20,000 each.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) in FY 2005 are to:

1. Provide State and local courts and court associations with the opportunity to access expert strategic assistance to enable them to maintain judicial branch

education programming during the current budget crisis; and

2. Enable courts and court associations to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix C.

Only State or local courts or court associations may apply for JBE TA funding. Application procedures may be found in Section VI.C. Applicants are not required to contribute cash match to JBE TA grants.

D. Scholarships for Judges and Court Managers

The Institute is reserving up to $200,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

1. Enhance the skills, knowledge, and abilities of judges and court managers;

2. Enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and

3. Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in Section VI.D.

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. Acknowledgment of SJI Support

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

B. Application

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed description, not to exceed 25 pages, of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. See section VI. for a complete description of application submission requirements. See Appendix D for the application forms.

C. Close-Out

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

D. Continuation Grant

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VI.A. for a complete description of Continuation Grant application requirements.

E. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: The learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

F. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

G. Disclaimer

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section VIII.A.11.a.(2) for the precise wording of this statement.

H. Grant Adjustment

A change in the design or scope of a project from that described in theapproved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Ordinarily, changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) should be requested at least 30 days in advance of the implementation of the requested change.

I. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court or its designee.

J. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

K. Judicial Branch Education Technical Assistance (JBE TA) Grant

A grant of up to $20,000 awarded to a State or local court or court association to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. See section VI.C. for a complete description of JBE TA Grant application requirements.

L. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project; that portion of the grantee's federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of

salaries and benefits); any other reduction in the indirect cost rate to be charged to the grant; and the application of project income (*e.g.*, tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (*e.g.*, advisory board members) working directly on the project.

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

See section VIII.A.8. for the Institute's matching requirements.

M. Products

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

N. Project Grant

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $150,000 a year; however, a grant in excess of $100,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact.

O. Project-Related Income

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, see section IX.G.

P. Scholarship

A grant of up to $1,500 awarded to a judge or court manager to cover the cost of tuition, transportation, and reasonable lodging to attend an out-of-State educational program within the United States. See section VI.D. for a complete description of scholarship application requirements.

Q. Special Condition

A requirement attached to a grant award that is unique to a particular project.

R. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

S. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

T. Technical Assistance Grant

A grant, lasting up to 12 months, of up to $30,000 to a State or local court or court association to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem. See section VI.B. for a complete description of Technical Assistance Grant application requirements.

IV. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. the applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. institutions of higher education;

c. individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

In FY 2005, the Institute will support the following types of grants:

1. Continuation Grants.

See sections II.A., III.D. and VI.A. In FY 2005, the Institute is allocating all of the funds available to support Project Grants to Continuation Grants.

2. Technical Assistance Grants.

See sections II.B., III.T., and VI.B. In FY 2005, the Institute is reserving up to $300,000 for these grants.

3. Judicial Branch Education Technical Assistance Grants.

See sections II.C., III.K., and VI.C. In FY 2005, the Institute is reserving up to $100,000 for Judicial Branch Education Technical Assistance Grants.

4. Scholarships.

See sections II.D., III.P., and VI.D. In FY 2005, the Institute is reserving up to

$200,000 for scholarships for judges and court managers.

C. Maximum Size of Awards

1. Applicants for continuation grants may request funding in amounts up to $150,000 for 15 months.
2. Applicants for Technical Assistance Grants may request funding in amounts up to $30,000.
3. Applicants for Judicial Branch Education Technical Assistance Grants may request funding in amounts up to $20,000.
4. Applicants for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for continuation projects ordinarily may not exceed 15 months. Absent extraordinary circumstances, no grant will continue for more than five years.
2. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

VI. Applications

A. Continuation Grants

1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities performed under a previous grant. They are intended to maintain or enhance the specific program or service produced or established during the prior grant period.

2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant will continue for more than five years.

3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices. See Appendix D for the application forms. A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

For a summary of the application process, visit the Institute's Web site (*http://www.statejustice.org*) and click on On-Line Tutorials, then Continuation Grant.

a. Forms

(1) Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in FORM D.

(2) Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

(3) Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VI.A.4.d. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

(4) Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

(5) Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section VIII.A.7. and the Disclosure of Lobbying Activities form in Appendix D.)

b. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

c. Program Narrative

The program narrative for a continuation grant application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract,

the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should describe the following:

(1) *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

(2) *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

(3) *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

(4) *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

(5) *Tasks, Methods, Staff, and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

(6) *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

(7) *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

d. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Changes in the funding level from prior years should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

(1) Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

(2) Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

(3) Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.*, the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day. Honorarium payments must be justified in the same manner as consultant payments.

(4) Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

(5) Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

(6) Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

(7) Construction

Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense

should be described in detail in the budget narrative.

(8) Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

(9) Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

(10) Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

(11) Indirect Costs

Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. *See* sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement must be attached to the application.

(12) Match

State and local units of government must provide match equaling at least 50% of the amount provided by the Institute in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

For example, if the Institute awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court would be required to provide $60,000 in match. A State or local unit of government would have to provide at least 20% of the required match in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

All other grantees must provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization would be required to provide $25,000 in match. If the second year grant is also $100,000, the court would be required to provide $30,000 in match. A non-profit organization must provide at least 10% of the required match in the form of cash.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (See sections III.L., VIII.A.8., and IX.E.1.)

The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.b.

e. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover.

f. Submission Requirements

Every applicant must submit an original and three copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

The Institute will notify applicants of the submission deadline when it responds to their letters of intent. A postmark or courier receipt will constitute evidence of the submission date. Please mark CONTINUATION APPLICATION on the application package envelope and send it to:

State Justice Institute,
1650 King Street,
Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

B. Technical Assistance Grants

1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts and court associations to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site (*http://www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator. Letters from court associations must be signed by the president of the association.

3. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire

project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. Support for the Project from the State Supreme Court or its Designated Agency or Council. If a State or local court submits a request for technical assistance, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, Line-Item Budget Form (see Appendix E), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.*, the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.b.

Recipients of Technical Assistance Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures. (See section VIII.A.3.)

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 7, 2005 will be notified of the Institute's decision by April 8, 2005; those submitting letters between January 8 and February 25, 2005 will be notified by June 10, 2005; those submitting letters between February 26 and June 3, 2005 will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005 will be notified by December 2, 2005.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Grant Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (*i.e.*, by February 16, April 21, June 30, and October 13, 2005).

C. Judicial Branch Education Technical Assistance Grants

1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts and court associations to support: (1) The provision of expert strategic assistance designed to enable them to present judicial branch education programs; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a specific curriculum once (*i.e.*, with one grant) in a given State.

JBE TA Grants may support consultant assistance in maintaining or developing systematic or innovative judicial branch educational programming. The assistance might include expert consultation in developing strategic plans to ensure the continued provision of judicial branch education programming despite fiscal constraints; development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State or in a region.

2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's Web site (*http://www.statejustice.org*) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. For on-site consultant assistance: (1) *Need for Funding.* What is the critical judicial branch educational need facing the court or association? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) *Project Description.* What tasks would the consultant be expected to perform, and how would they be

accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff or association members undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or affiliated with the association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court or association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the applicant, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* If a State or local court submits an application, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

b. For adaptation of a curriculum: (1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.*, from across the State, from a single local jurisdiction, from a multi-State region)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? (Applicants may demonstrate this by attaching letters of support.)

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Appendix D, FORM B.)

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix E) and a budget narrative (see A.4.d. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested. Recipients of JBE TA grants are not required to provide a cash match. The Institute may waive the match requirements in certain circumstances. See section VIII.A.8.b.

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 7, 2005 will be notified of the Institute's decision by April 8, 2005; those submitting letters between January 8 and February 25, 2005 will be notified by June 10, 2005; those submitting letters between February 26 and June 3, 2005 will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005 will be notified by December 2, 2005.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2005 should submit its application no later than January 7, 2005, in time for the Board's decision by April 8, 2005.

D. Scholarships

1. Purpose and Scope

The purposes of the Institute's scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an educational program in another State. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed $150 per night, including taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship

recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.375/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of $1,500 and other costs of attending the program—such as meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the scholarship award process, visit the Institute's Web site at *www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

c. *Limitation.* Beginning in FY 2005, applicants may not receive more than one scholarship in a three-year period, absent programmatic reasons that require attendance at a series of courses held on a more frequent schedule.

3. Forms

a. *Scholarship Application—FORM S1 (Appendix F).*

The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. *Scholarship Application Concurrence—FORM S2 (Appendix F).*

Judges and court managers applying for scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix F). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

January 3 and February 28, 2005, for programs beginning between April 1 and June 30, 2005;

April 1 and May 27, 2005, for programs beginning between July 1 and September 30, 2005;

July 5 and August 29, 2005 for programs beginning between October 1 and December 31, 2005; and

October 3 and November 28, 2005 for programs beginning between January 1 and March 31, 2006.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to:

Scholarship Program Coordinator,
State Justice Institute,
1650 King Street, Suite 600,
Alexandria, VA 22314.

VII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. Continuation Grant Applications

a. Continuation Grant applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) The key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

b. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section IV.); the availability of financial assistance from other sources for the project; the amount and nature (cash

and in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. For on-site consultant assistance:

(1) Whether the assistance would address a critical need of the court or association;

(2) The soundness of the technical assistance approach to the problem;

(3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

(4) The commitment of the court or association to act on the consultant's recommendations; and

(5) The reasonableness of the proposed budget.

b. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent;

b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Continuation Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. The staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch Education Technical Assistance Grants to the committee established for each program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval

may be rescinded and the application presented to the Board for reconsideration.

VIII. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project and Continuation Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project and continuation grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles. (See section IX.K. of the Guideline for the requirements of such audits.) Scholarship recipients, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients and individuals who receive ''think piece'' grants are required to provide match. See section III.L. for the definition of match. The amount and nature of required match depends on the type of organization receiving the grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The Board of Directors considers the amount and nature of unrequired match contributed by applicants in making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsection a. below.

a. Continuation Grants

All grantees are required to assume a greater share of project support over time.

(1) *State and local units of government.* State and local units of government are required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court is

required to provide $60,000 in match. A court that wishes to limit its second-year contribution to $50,000 may ask the Institute for a reduced amount, *i.e.*, $83,333, in order to meet the 60% requirement.

(2) *All other grantees.* All other grantees are required to provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization must provide $25,000 in match. If the second-year grant is also $100,000, the grantee is required to provide $30,000 in match. An organization that wishes to limit its second-year contribution to $25,000 may ask the Institute for a reduced amount, *i.e.*, $83,333, in order to meet the 30% requirement.

b. Waiver.

(1) *Match generally.*

(a) The match requirement for State and local units of government may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

(b) The match requirement for all other grantees required to provide match may be waived in exceptionally rare circumstances upon the request of an appropriate official and approval by the Board of Directors.

(2) *Cash match.* For all grantees required to provide cash match, the requirement may be waived upon the applicant's demonstration that providing the required cash match will cause the applicant a financial hardship.

(3) The Board of Directors encourages all applicants to provide the maximum amount of in-kind and cash match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process. See section VII.B.1.b.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

b. Charges for Grant-Related Products/Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.O. and IX.G. for requirements regarding project-related income realized during the project period.

c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in Appendix A. Labels for these libraries are available on the Institute's Web site, *http://*

www.statejustice.org.) Grantees that develop Web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

f. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination and approval in section VIII.A.11.d. and e.) and the reporting requirements below:

1. Judicial Branch Education Technical Assistance Grant Reporting Requirements

Recipients of Judicial Branch Education Technical Assistance Grants must submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report.

2. Technical Assistance Grant Reporting Requirements

Recipients of Technical Assistance Grants must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Vouchers should be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

IX. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;
3. Generating financial data to be used in planning, managing, and controlling projects; and
4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained on the OMB Web site at *www.whitehouse.gov/omb*.)

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.
2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.
3. *Office of Management and Budget (OMB) Circular A–88,* Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.
4. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
5. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
6. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.
7. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.
8. *Office of Management and Budget (OMB) Circular A–133,* Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (See section III.F.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will

ensure that subgrantees comply with the match requirements specified in this Guideline (see section VIII.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (see sections K. below and VIII.A.3.)

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a total project cost basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section IX.C.2. above.)

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (See section IX.H.2. below.) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or

other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a ''check-issued'' basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Grants.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (*i.e.*, on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be number 1, the second number 2, *etc.*

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) engages in the improper award and administration of subgrants or contracts; or

(3) is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; A–87, Cost Principles for State and Local Governments; and A–122, Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *www.whitehouse.gov/omb*.

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget requires prior Institute approval. See section X.A.1.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with

those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. See sections III.L. and VI.A.4.d.(11).

a. *Approved Plan Available.*

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.*, accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of OMB Circular A–102. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of OMB Circular A–110.

2. Property Management Standards

The property management standards as prescribed in Attachment N of OMB Circulars A–102 and A–110 apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project or Continuation Grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a subsequent grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship, even when the project

will continue under a Continuation Grant.

2. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of the Institute:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget. See section IX.I.2.d.

For Continuation Grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (see section IX.I.2.b.).

14. Consultant rates (see section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his or her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section IX.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H.Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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Kathy Schwartz, Acting Executive Director (ex officio).

Kathy Schwartz,

Acting Executive Director.

Appendix A—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court, Judicial Building, 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–4347, *aoc@alalinc.net.*

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska State Court Law Library, 303 K Street, Anchorage, AK 99501, (907) 264–0583, *cfellows@courts.state.ak.us.*

Arizona

Supreme Court Library

Ms. Lani Orosco, Staff Assistant, Arizona Supreme Court, Staff Attorney's Office, Library, 1501 W. Washington, Suite 445, Phoenix, AZ 85007, (602) 542–5028, *lorosco@supreme.sp.state.az.us.*

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, 625 Marshall Street, Little Rock, AR 72201, (501) 682–9400, *jd.gingerich@mail.state.ar.us.*

California

Administrative Office of the Courts

Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102, (415) 865–4235, *william.vickrey@jud.ca.gov.*

Colorado

Supreme Court Library

Ms. Linda Gruenthal, Deputy Supreme Court Law Librarian, 2 East 14th Avenue, Denver, CO 80203, (303) 837–3720, *cscltech@state.co.us.*

Connecticut

State Library

Ms. Denise D. Jernigan, Law Librarian, Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106, (860) 757–6598, *djernigan@cslib.org.*

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577–8481.

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks, Executive Officer, District of Columbia Courts, 500 Indiana Avenue, NW., Suite 1500, Washington, DC 20001, (202) 879–1700, *Wicksab@dcsc.gov.*

Florida

Administrative Office of the Courts

Ms. Elisabeth H. Goodner, State Courts Administrator, Office of the State Courts Administrator, Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399, (850) 922–5081, *goodner1@flcourts.org.*

Georgia

Administrative Office of the Courts

Mr. David Ratley, Director, Administrative Office of the Courts, 244 Washington Street, S.W., Suite 300, Atlanta, GA 30334, (404) 656–5171, *ratleyd1@gaaoc.us.*

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, 417 South King St., Room 119, Honolulu, HI 96813, (808) 539–4964, *Ann.S.Koto@courts.state.hi.us.*

Idaho

AOC Judicial Education Library/State Law Library

Mr. Richard Visser, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316, *lawlibrary@isc.state.id.us.*

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court of Illinois Library, 200 East Capitol Avenue, Springfield, IL 62701–1791, (217) 782–2425, *blarison@court.state.il.us.*

Indiana

Supreme Court Library

Ms. Terri L. Ross, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232–2557, *tross@courts.state.in.us.*

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Director of Judicial Branch Education, Iowa Judicial Branch, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, IA 50319, (515) 242–0190, *jerry.beatty@jb.state.ia.us.*

Kansas

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, Kansas Judicial Center, 301 S.W. 10th Avenue, Topeka, KS 66612, (785) 296–3257, *knechtf@kscourts.org.*

Kentucky

State Law Library

Ms. Vida Vitagliano, Cataloging and Research Librarian, Kentucky Supreme Court Library, 700 Capitol Avenue, Suite 200, Frankfort, KY 40601, (502) 564–4185, *vidavitagliano@mail.aoc.state.ky.us.*

Louisiana

State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, Louisiana Supreme Court Building, 400 Royal Street, New Orleans, LA 70130, (504) 310–2401, *cbillings@lasc.org.*

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, 43 State House Station, Augusta, ME 04333, (207) 287–1600, *lynn.randall@legislature.maine.gov.*

Maryland

State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeals Building, 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260–1430, *mike.miller@courts.state.md.us.*

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148.

Michigan

Michigan Judicial Institute

Dawn F. McCarty, Director, Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 373–7509, *mccartyd@courts.mi.gov.*

Minnesota

State Law Library (Minnesota Judicial Center)

Ms. Barbara L. Golden, State Law Librarian, G25 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, MN 55155, (612) 297–2089, *barb.golden@courts.state.mn.us.*

Mississippi

Mississippi Judicial College

Hon. Leslie G. Johnson, Executive Director, Mississippi Judicial College, P.O. Box 8850, University, MS 38677, (662) 915–5955, *lwleslie@olemiss.edu*.

Montana

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, P.O. Box 203004, Helena, MT 59620, (406) 444–3660, *jmeadows@state.mt.us*.

Nebraska

Administrative Office of the Courts

Mr. Frank E. Goodroe, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Post Office Box 98910, Lincoln, NE 68509–8910, (402) 471–3730, *fgoodroe@nsc.state.ne.us*.

Nevada

National Judicial College

Mr. Randall Snyder, Law Librarian, National Judicial College, Judicial College Building, MS 358, Reno, NV 89557, (775) 327–8278, *snyder@judges.org*.

New Hampshire

New Hampshire Law Library

Ms. Mary Searles, Technical Services Law Librarian, New Hampshire Law Library, Supreme Court Building, One Noble Drive, Concord, NH 03301–6160, (603) 271–3777.

New Jersey

New Jersey State Library

Ms. Marjorie Garwig, Supervising Law Librarian, New Jersey State Law Library, 185 West State Street, P.O. Box 520, Trenton, NJ 08625–0250, (609) 292–6230.

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827–4850.

New York

Supreme Court Library

Ms. Barbara Briggs, Law Librarian, Syracuse Supreme Court Law Library, 401 Montgomery Street, Syracuse, NY 13202, (315) 671–1150, *bbriggs@courts.state.ny.us*.

North Carolina

Supreme Court Library

Mr. Thomas P. Davis, Librarian, North Carolina Supreme Court Library, 500 Justice Building, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–3425, *tpd@sc.state.nc.us*.

North Dakota

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, Dept. 182, 2nd Floor, Judicial Wing, Bismarck, ND 58505–0540, (701) 328–2229, *mkramer@ndcourts.com*.

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Ms. Margarita M. Palacios, Director of Courts, Supreme Court of the Commonwealth of the Northern Mariana Islands, P.O. Box 502165, Saipan, MP 96950, (670) 235–9700, *supremecourt@saipan.com*.

Ohio

Supreme Court Library

Mr. Ken Kozlowski, Director, Law Library, Supreme Court of Ohio, 65 South Front Street, 11th Floor, Columbus, OH 43215–3431, (614) 387–9666, *kozlowsk@sconet.state.oh.us*.

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers, State Court Administrator, Administrative Office of the Courts, 1915 North Stiles Avenue, Suite 305, Oklahoma City, OK 73105, (405) 521–2450, *conyersh@oscn.net*.

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click, State Court Administrator, Oregon Judicial Department, Supreme Court Building, 1163 State Street, Salem, OR 97301, (503) 986–5500, *kingsley.w.click@ojd.state.or.us*.

Pennsylvania

State Library of Pennsylvania

Ms. Barbara Miller, Collection Management Librarian, State Library of Pennsylvania, Bureau of State Library, 333 Market Street, Harrisburg, PA 17126–1745, (717) 787–5718, *barbmiller@state.pa.us*.

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919.

Rhode Island

Roger Williams University

Ms. Gail Winson, Director of Law Library/Associate Professor of Law, Roger Williams University, School of Law Library, 10 Metacom Avenue, Bristol, RI 02809, (401) 254–4531, *gwinson@law.rwu.edu*.

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley, Director, Coleman Karesh Law Library, University of South Carolina, Main and Green Streets, Columbia, SC 29208, (803) 777–5944, *hinckley@law.sc.edu*.

South Dakota

State Law Library

Librarian, South Dakota State Law Library, 500 East Capitol, Pierre, South Dakota 57501, (605) 773–4898.

Tennessee

Tennessee State Law Library

Hon. Cornelia A. Clark, Executive Director, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219, (615) 741–2687, *cclark@tscmail.state.tn.us*.

Texas

State Law Library

Mr. Marcelino A. Estrada, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722, *tony.estrada@sll.state.tx.us*.

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00804.

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen, State Judicial Administration Library, Administrative Office of the Courts, 450 South State Street, P.O. Box 140241, Salt Lake City, UT 84114–0241, (801) 578–3807, *info@email.utcourts.gov*.

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan, Law Librarian, Vermont Department of Libraries, 109 State Street, Pavilion Office Building, Montpelier, VT 05609, (802) 828–3268, *paul.donovan@dol.state.vt.us*.

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin, State Court Administrator, Supreme Court of Virginia, Educational Services Department, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455, *rbaldwin@courts.state.va.us*.

Washington

Washington State Law Library

Ms. Kay Newman, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504–0751, (360) 357–2136, *kay.newman@courts.wa.gov*.

West Virginia

Supreme Court of Appeals Library

Ms. Kaye Maerz, State Law Librarian, West Virginia Supreme Court of Appeals Library, 1900 Kanawha Boulevard East, Building 1, Room E–404, Charleston, WV 25305, (304) 558–2607, *klm@courts.state.wv.us*.

Wisconsin

State Law Library

Ms. Jane Colwin, State Law Librarian, State Law Library, 120 M.L.K. Jr. Boulevard, Madison, WI 53703, (608) 261–2340, *jane.colwin@wicourts.gov*.

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, 2301 Capitol Avenue, Cheyenne, WY 82002, (307) 777–7509, *kcarls@state.wy.us*.

National

American Judicature Society

Ms. Deborah Sulzbach, Acquisitions Librarian, Drake University Law Library, Opperman Hall, 2507 University Avenue, Des Moines, IA 50311–4505, (515) 271–3784, e-mail: *deborah.sulzbach@drake.edu*.

National Center for State Courts

Ms. Joan Cochet, Library Specialist, National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185–4147, (757) 259–1826, *library@ncsc.dni.us*.

JERITT

Dr. Maureen E. Conner, Executive Director, The JERITT Project, Michigan State University, 1407 S. Harrison Road, Suite 330 Nisbet, East Lansing, MI 48823–5239, (517) 353–8603, (517) 432–3965 (fax), *connerm@msu.edu*, Web site: *http://jeritt.msu.edu*.

Appendix B—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (*http://jeritt.msu.org* or (517) 353–8603) for more information about these and other SJI-supported technical assistance projects.

Application of Technology

Technology Plan (Office of the South Dakota State Court Administrator: SJI–99–066).

Children and Families in Court

Expanded Unified Family Court (Ventura County, CA, Superior Court: SJI–01–122).

Trial Court Performance Standards for the Unified Family Court of Delaware (Family Court of Delaware: SJI–98–205).

Court Planning, Management, and Financing

Job Classification and Pay Study of the New Hampshire Courts (New Hampshire Administrative Office of the Courts: SJI–98–011).

A Model for Building and Institutionalizing Judicial Branch Strategic Planning (12th Judicial Circuit, Sarasota, FL: SJI–98–266).

Strategic Planning (Fourth Judicial District Court, Hennepin County, MN: SJI–99–221).

Differentiated Case Management for the Improvement of Civil Case Processing in the Trial Courts of Texas (Texas Office of Court Administration: SJI–99–222).

Dispute Resolution and the Courts

Evaluating the New Mexico Court of Appeals Mediation Program (New Mexico Supreme Court: SJI–00–122).

Improving Public Confidence in the Courts

Mississippi Task Force on Gender Fairness in the Courts (Mississippi Administrative Office of the Courts: SJI–00–108).

Analysis of the Juror Debriefing Project (King County, WA, Superior Court: SJI–00–049).

Improving the Court's Response to Family Violence

New Hampshire Fatality Reviews (New Hampshire Administrative Office of the Courts: SJI–99–142).

Education and Training for Judges and Other Court Personnel

Iowa Supreme Court Advisory Committee on Judicial Branch Education (Iowa State Court Administrator's Office: SJI–01–200).

Appendix C—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. *Please refer to section VI.C. for information on submitting a letter application for a Judicial Branch Education Technical Assistance Grant.* A list of all SJI-supported education projects is available on the SJI Web site (*http://www.statejustice.org*). Please also check with the JERITT project (*http://jeritt.msu.edu* or (517) 353–8603) and your State SJI-designated library (see Appendix A) for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

Alternative Dispute Resolution

Judicial Settlement Manual (National Judicial College: SJI–89–089).

Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277).

Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002).

Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038).

Court Coordination

Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027).

Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88-NIC–001).

Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087).

Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175).

Court Management

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).

Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056).

A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052).

Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043).

Strengthening Rural Courts of Limited Jurisdiction and Team Training for Judges and Clerks (Rural Justice Center: SJI–90–014, SJI–91–082).

Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214).

Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068).

Managing Mass Tort Cases (National Judicial College: SJI–94–141).

Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).

Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/National Center for State Courts: SJI–96–159).

Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041).

Courts and Communities

Reporting on the Courts and the Law (American Judicature Society: SJI–88–014).

Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083).

National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013).

Access to Justice: The Impartial Jury and the Justice System and *When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide* (National Judicial College: SJI–91–054).

You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048).

Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040).

Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide

Conference (California Administrative Office of the Courts: SJI–98–008).
Charting the Course of Public Trust and Confidence in Our Courts (Mid-Atlantic Association for Court Management: SJI–98–208).
Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI–98–268).
Public Trust and Confidence (Arizona Courts Association: SJI–99–063).

Diversity, Values, and Attitudes

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071).
The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058).
Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI–91–043).
Cultural Diversity Awareness in Nebraska Courts from *Native American Alternatives to Incarceration Project* (Nebraska Urban Indian Health Coalition: SJI–93–028).
Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063).
A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and *The Ethics Fieldbook: Tool For Trainers* (American Judicature Society: SJI–93–068).
Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075).
Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019).
Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006).
Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082).
Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95–245).
Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96–089).
Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150).
When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96–161).
When Judges Speak Up: Ethics, the Public, and the Media (American Judicature Society: SJI–96–152).

Family Violence and Gender-Related Violent Crime

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).
Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081).
Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062).
Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003, SJI–98–133 [video curriculum]).
Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255).
Adjudicating Allegations of Child Sexual Abuse When Custody Is in Dispute (National Judicial Education Program: SJI 95–019).
Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274).

Health and Science

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030).

Judicial Education for Appellate Court Judges

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086).
Civil and Criminal Procedural Innovations for Appellate Courts (National Center for State Courts: SJI–94–002).

Judicial Branch Education: Faculty and Program Development

The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education (University of Memphis: SJI–91–021).
''Faculty Development Instructional Program'' from Curriculum Review (National Judicial College: SJI–91–039).
Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233).
Institute for Faculty Excellence in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–96–042; University of Memphis: SJI–01–202).

Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040).
Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028).
A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078).
Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043).
New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155).
Magistrates Correspondence Course (Alaska Court System: SJI–92–156).
Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058).
Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142).
Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).
Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI–98–001).
Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041.

Juveniles and Families in Court

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017).
Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI 94–321).
Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders (Brandeis University: SJI–99–150).

Strategic and Futures Planning

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI–89–029).
An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045).

Substance Abuse

Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–91–095).
Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291).
Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030).
Judicial Education on Substance Abuse (American Judges Association and National Center for State Courts: SJI–01–210).

BILLING CODE 6820–SC–P

Appendix D

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

2. TYPE OF APPLICANT *(Circle appropriate letter)*
a. State court
b. National organization operating in conjunction with State court
c. National State court support organization
d. College or university
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Other unit of government
i. Other _____ *(specify)*

3. PROPOSED START DATE _____

4. PROJECT DURATION (Months) _____

5. EMPLOYER IDENTIFICATION # _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____

7. ENTITY TO RECEIVE FUNDS *(if different from above)*
a. Organizational Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

8. a. AMOUNT REQUESTED FROM SJI $_____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash match $_____
c. TOTAL MATCH $_____
d. TOTAL PROJECT COST $_____

9. TITLE OF PROPOSED PROJECT

10. CONGRESSIONAL DISTRICT OF: _____ Name of Representative; District Number _____ Project (if different than applicant): Name of Representative; District Number

11. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.

SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT _____ TITLE _____ DATE _____
(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)

FOR INSTITUTE USE ONLY

12. a. APPLICATION NUMBER _____ b. CONCEPT PAPER NUMBER _____ c. GRANT NUMBER _____	13. DATE RECEIVED	14. DATE OF ACTION

Form A 09/00

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-1 Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of applicant, including phone and fax numbers and web site address; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award.

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. **Employer Identification #** as assigned by the Internal Revenue Service.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).

7. a-1 **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**

8. a Insert the **amount requested** from the State Justice Institute to conduct the project.

8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.

8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.

8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.

9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district,** along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

(Form B)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

☐ agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

☐ designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
Signature *Date*

_____
Name

_____
Title

INSTRUCTIONS - FORM B

The State Justice Institute Act requires that:

Each Application for funding by a state or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b) (4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs							
Total							

Remarks:

Form C 5/95 *(Instructions on reverse side)*

91853

STATE JUSTICE INSTITUTE

PAGE ____ OF ____

PROJECT BUDGET

(SPEADSHEET FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

(See instruction regarding column headings)

ITEM							
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs (%)							
SJI Total							
STATE FUNDS							
FEDERAL FUNDS							
APPLICANT FUNDS							
OTHER FUNDS							
IN-KIND FUNDS							
Total							

Form C1 5/95 *(Instructions on reverse side)*

91854

Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE

ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

   a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

   b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

   c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:
    This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____

Signature **Name (Typed)**

_____

Title **Date**

Appendix E

(Form E)

STATE JUSTICE INSTITUTE

LINE-ITEM BUDGET FORM

For Judicial Branch Education Technical Assistance and
Technical Assistance Grant Requests*

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____

PROJECT TOTAL $_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Appendix F

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____

6. Email Address: _____

7. Congressional District: _____

PROGRAM INFORMATION:

8. Course Name: _____

9. Course Dates: _____

10. Course Provider: _____

11. Location Offered: _____

ESTIMATED EXPENSES:

Please note: Scholarships are limited to tuition (excluding the conference fee), reasonable lodging up to $150 per night (including taxes), and transportation expenses to and from the site of the course, up to a maximum of $1,500.

Tuition: $ _____

Transportation: $ _____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: $ _____

Total Amount Requested: $ _____

Are you seeking/have you received a scholarship for this course from another source?

☐ Yes ☐ No If so, please specify the source(s) and amount(s) _____

_____

Form S1 (11/04)

SJI Scholarship Application Page 2

ADDITIONAL INFORMATION:

Please attach a current resume or professional summary, and provide the information requested below.
(You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how taking this course will benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course?
   If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally and, if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ Signature

_____ Date

Please return this form and Form S-2 to:
Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314

SJI Scholarship Application

Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____,

prepared by _____.
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature

_____
Name

_____
Title

_____
Date

Form S2 (9/98)

[FR Doc. 04–26718 Filed 12–6–04; 8:45 am]
BILLING CODE 6820–SC–C

Federal Register

Tuesday,
December 7, 2004

Part IV

Securities and Exchange Commission

17 CFR Part 240

Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–50758; File No. S7–24–04]

RIN 3235–AJ26

Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting a new rule under the Securities Exchange Act of 1934 (''Exchange Act'') that prohibits registered transfer agents from effecting any transfer of any equity security registered under Section 12 or any equity security that subjects an issuer to reporting under Section 15(d) of the Exchange Act if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary, such as clearing agencies, banks, or broker-dealers. The primary purpose of the rule is to promote the integrity and efficiency of the U.S. clearance and settlement system.

DATES: Effective Date: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director, or Susan M. Petersen, Special Counsel, Office of Risk Management, 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

Recently, a number of issuers of equity securities trading in the public markets have imposed restrictions on their securities to limit or to prohibit ownership of the securities by securities intermediaries such as depositories, broker-dealers, and banks. Such restrictions require these securities to be certificated and transactions in these securities to be manually cleared, settled, and transferred on a transaction-by-transaction basis.

To facilitate the clearance and settlement of securities transactions, securities held by a securities intermediary on behalf of its customers or another securities intermediary are commonly registered in the name of the securities intermediary or in its nominee name, which makes the securities intermediary the registered owner.[1] This is often referred to as holding a security in ''street name.''[2] Holding securities in street name at a securities depository facilitates the transfer of negotiable certificates and obviates manually processed paperwork and physical delivery of certificates. Registered clearing agencies acting as securities depositories help to centralize and automate the settlement of securities, in part by reducing the physical movement of securities traded in the U.S. markets using book-entry movements. On occasion, other types of securities intermediaries, such as broker-dealers or banks, may perform similar functions by holding a certificate registered in its name but held on behalf of its customers.

The use of securities depositories in order to minimize the physical movement in connection with the settlement for securities traded in the public market is essential to the prompt and accurate clearance and settlement of securities transactions.[3] The effort by some issuers to restrict ownership of publicly traded securities by securities intermediaries can result in many of the inefficiencies and risks Congress sought to avoid when promulgating Section 17A of the Exchange Act.[4] Restrictions on intermediary ownership deny investors the ability to use a securities intermediary to hold their securities and to efficiently and safely clear and settle their securities transactions by book-entry movements.

On June 4, 2004, the Commission proposed Rule 17Ad–20 that would prohibit registered transfer agents from effecting any transfer of any equity security registered under Section 12 or any equity security that subjects an issuer to reporting under 15(d) of the Exchange Act[5] if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary.[6] Under the proposed rule, the term ''securities intermediary'' would be defined as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. As proposed, the rule would exclude any equity security issued by a partnership, as defined in Item 901 of Regulation S–K. For tax or other reasons, partnerships may have an appropriate need to restrict ownership and issue a securities certificate.

The Commission solicited comments on the proposed rule and received fourteen comment letters from eleven commenters.[7] The responses varied widely, with three commenters supporting the rule as proposed, five commenters opposing the proposal or expressing reservations about the proposal until certain preconditions have been met, and three commenters not expressing support or opposition but instead raising interpretive, operational, or timing concerns with adoption of the rule. After carefully considering the comments received, we have decided to adopt Rule 17Ad–20 with a minor modification to address certain commenter concerns raised relating to private placements and certain types of private agreements.

[1] The registered owner is the name of the individual shareholder recorded on the official records of the issuer (sometimes referred to as the record owner or legal owner of the securities).

[2] In the case of securities held in street name, generally the securities are held by a securities depository (*e.g.*, The Depository Trust Company) who as the registered owner holds the securities on behalf of another securities intermediary (*e.g.*, a broker-dealer or bank) who in turn holds the securities for its customers, the beneficial owners. All the rights and obligations of the securities are passed through the registered owner to the beneficial owners. For more information on the relationship between securities intermediaries and beneficial owners, *see infra* note 21.

[3] Section 17A(e) of the Exchange Act directs the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities. 15 U.S.C. 78q–1(e).

[4] 15 U.S.C. 78q–1.

[5] Pursuant to Section 12(g) of the Exchange Act and the rules thereunder, a company must generally register a class of equity securities if on the last day of its fiscal year it has total assets of more than $10 million and the class is held of record by more than 500 persons. 15 U.S.C. 78*l*(g). Under Section 12(b), all securities registered on a securities exchange must also be registered with the Commission. 15 U.S.C. 78*l*(b). Section 15(d) of the Exchange Act generally requires a company with an effective Securities Act registration statement to file the same periodic reports as a company that has a Section 12 registered class of securities. 15 U.S.C. 78o(d).

[6] Securities Exchange Act Release No. 49809 (June 4, 2004), 69 FR 32784 (June 10, 2004), [File No. S7–24–04].

[7] Letters from David Patch (May 29, 2004, June 7, 2004, and August 3, 2004); Glenda King (June 5, 2004); Frederick D. Lipman, Esq. (June 10, 2004); Larry E. Thompson, Managing Director and Senior Deputy General Counsel, The Depository Trust & Clearing Corporation (July 8, 2004, and August 19, 2004); Robert L. Stevens, Chairman, X–Clearing Corporation (July 9, 2004); Marc Castonguay, Vice President and CEO, Pacific Corporate Trust Company (July 12, 2004); H. Glenn Bagwell, Jr., Esq. (July 12, 2004); Thomas L. Montrone, President and Chief Executive Officer, Registrar and Transfer Company (July 16, 2004); Cleary, Gottlieb, Steen & Hamilton (July 19, 2004); Ernest A. Pittarelli, Chairman, Securities Industry Association (''SIA'') (July 28, 2004), and D. Stuart Bowers, Senior Vice President, Legg Mason Wood Walker, Incorporated (July 30, 2004) (''Legg Mason'').

II. Background

A. The National System for Clearance and Settlement of Securities Transactions

In Section 17A(a) of the Exchange Act, Congress made findings that (1) the prompt and accurate clearance and settlement of securities transactions, including the transfer of registered ownership and safeguarding of securities and funds related to clearance and settlement activities, are necessary for the protection of investors and those acting on behalf of investors,[8] and (2) inefficient clearance and settlement procedures impose unnecessary costs on investors and those acting on their behalf.[9] To address these concerns, Congress gave the Commission the authority and responsibility to regulate, coordinate, and direct the processing of securities transactions in order to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.[10] The basic purpose of Section 17A is to promote the development of a modern, nationwide system for the safe and efficient processing of securities transactions that serves the interests of the financial community and the investing public.[11] Congress expressly provided the Commission with jurisdiction over clearing agencies [12] and transfer agents,[13] as well as other participants [14] in the national system for clearance and settlement.[15] Furthermore, specifically recognizing that the use of securities certificates to transfer registered ownership decreases efficiency and safety in the capital markets, Congress also directed the Commission to end the physical movement of securities certificates in connection with the settlement among brokers and dealers.[16]

B. The Role of Securities Intermediaries

The process for delivering and transferring certificated securities is almost entirely manual and as such, is labor-intensive, expensive, and time-consuming.[17] The use of securities certificates can result in significant delays and expense in processing securities transactions.[18] Moreover, as negotiable instruments, certificates also can be lost, stolen, or forged.[19] All this adversely affects the national system for clearance and settlement. The concern associated with lost certificates was dramatically demonstrated after September 11, 2001, when thousands of certificates at broker-dealers or banks (either being held in custody in vaults or being processed for transfer) either were destroyed or were unavailable for transfer. Certificates have also been identified by the financial services industry as an obstacle to achieving streamlined processing (*i.e.*, straight-through-processing) and shorter settlement cycles.[20]

Securities intermediaries hold securities on behalf of others in order to facilitate more efficient clearance and settlement of securities transactions by reducing the need to transfer certificates. Investors' securities generally are held in the name of a securities intermediary, such as a securities depository, broker-dealer, or bank, or its nominee, for the benefit of the security intermediary's customers. The securities intermediary or its nominee is generally the registered owner of the securities while the securities intermediary's customer typically is the beneficial owner.[21]

[8] 15 U.S.C. 78q–1(a)(1)(A).

[9] 15 U.S.C. 78q–1(a)(1)(B).

[10] 15 U.S.C. 78q–1(a)(2)(A)(i). Congress envisioned the Commission's authority to extend to every facet of the securities handling process involving securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[11] *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 122 (1975).

[12] The Exchange Act defines the term clearing agency as any person who acts as an intermediary in making payment or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means a person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or they hypothecation or lending of securities without the physical delivery of securities certificates. 15 U.S.C. 78c(a)(23).

[13] The Exchange Act defines the term transfer agent generally as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates. 15 U.S.C. 78c(a)(25).

[14] Section 17A(f)(1) permits the Commission to adopt rules concerning the transfer of securities and the rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries involved in or affected by such transfers, and the rights of third parties whose interests devolve from such transfers. 15 U.S.C. 78q–1(f)(1).

[15] *See, e.g.*, Section 17A(b)(1) of the Exchange Act makes it unlawful for any clearing agency, unless registered with the Commission, to perform the function of a clearing agency with respect to any security other than an exempted security. 15 U.S.C. 78q–1(b)(1). Section 17A(c)(1) of the Exchange Act, which makes it unlawful for any transfer agent, unless registered with the Commission, to directly or indirectly perform the function of a transfer agent with respect to any security registered under Section 12 of the Act or which would be required to be registered except for the exemption from registration proved by Section 12(g)(2)(B) (investment companies) or Section 12(g)(2)(G) (certain securities issued by insurance companies). 15 U.S.C. 78q–1(c)(1) and 15 U.S.C. 78*l*(a) respectively. Exchange Act Section 17A(d)(1) prohibits any registered clearing agency or registered transfer agent from engaging in any activity as a clearing agency or transfer agent in contravention of rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act. 15 U.S.C. 78q–1(d)(1).

[16] 15 U.S.C. 78q–1(e).

[17] For more information on the costs and risks associated with processing certificates, *see* Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (securities transaction settlement concept release).

[18] If a broker-dealer is unable to have the security reregistered into the name of the buyer or the buyer's securities intermediary after trade date, the rejection of the transfer after trade date exposes the customer to the costs and risks that she may have to buy in the security and exposes the broker-dealer to the costs and risks associated with buy-ins. Investors bear direct costs as well. Transfer agents require investors to obtain a surety bond before the transfer agent will issue a replacement certificate for lost and stolen certificates. We understand that generally most transfer agents charge investors between 2%–4% of the current market value of the securities to obtain a surety bond.

[19] In an effort to identify lost, missing, counterfeit, and stolen securities, Exchange Act Rule 17f–1 requires, among other entities, every exchange, the securities association, broker, dealer, transfer agent, registered clearing agency, and many banks to report to the Commission or delegee, which currently is the Securities Information Center (''SIC''), missing, lost, counterfeit, or stolen securities certificates. *See* 17 CFR 240.17f–1. SIC operates a centralized database that records lost and stolen securities. When a broker-dealer receives a security certificate to sell, the broker-dealer will submit information about the certificate to SIC so that SIC may search its database to see if the certificate has been reported as missing, lost, stolen, or counterfeited. (For more information about SIC, see *www.secic.com*.)

[20] See Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (securities transaction settlement concept release).

[21] The relationship between various levels of securities intermediaries and beneficial owners is complex. There may be many layers of beneficial owners (some of which may also be securities intermediaries) with all ultimately holding securities on behalf of a single beneficial owner, who is sometimes referred to as the ultimate beneficial owner. For example, an introducing broker-dealer may hold its customer's securities in its account at a clearing broker-dealer, that in turn holds the introducing broker-dealer's securities in an account at DTC. In this context, DTC or its nominee is the registered owner and DTC's

Continued

Securities registered in the name of the securities intermediary or its nominee allows the securities to be immobilized [22] and held in fungible bulk [23] thereby significantly reducing the number of certificates that need to be delivered and transferred. This in turn reduces the risk and cost associated with transferring the securities. Transfers in ownership of securities held in the name of a securities intermediary are accomplished by making book-entry adjustments to the accounts on the securities intermediary's records.

Consistent with Congress' directive to establish a national system for clearance and settlement and to decrease the inefficiencies and risks associated with processing securities certificates, the Commission has long encouraged the use of alternatives to holding securities in certificated form. The Commission's approval of the registration of securities depositories as clearing agencies in 1983 constituted an important step in achieving the mandates established by Congress by immobilizing securities in a registered clearing agency and settling transactions by book-entry movements.[24] The Commission also has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities [25] and that require securities to be made depository eligible if possible before they can be listed for trading.[26]

Registered clearing agencies acting as securities depositories immobilize securities and centralize and automate securities settlements.[27] Holding securities positions in book-entry form at securities depositories reduces the physical movement of publicly traded securities in the U.S. markets and significantly improves efficiencies and safeguards in processing securities certificates, which in turn reduces the costs of those transactions to investors and market professionals alike.

The Depository Trust Company (''DTC''), the largest securities depository in the world, provides custody and book-entry transfer services for the vast majority of securities transactions in the U.S. market involving equities, corporate and municipal debt, money market instruments, American depositary receipts, and exchange-traded funds.[28] In accordance with its rules, DTC accepts deposits of securities from its participants (*i.e.*, broker-dealers and banks),[29] credits those securities to the depositing participants' accounts, and effects book-entry movements of those securities.[30] The securities deposited with DTC are registered in DTC's nominee name [31] and are held in fungible bulk for the benefit of its participants and their customers.[32] Each participant having an interest in securities of a given issue credited to its account has a pro rata interest in the securities of that issue held by DTC.[33]

Some securities trading in the public market are not deposited at a securities depository because either the securities are not eligible for deposit [34] or the securities intermediary chooses not to deposit the securities.[35] To clear and settle securities transactions without the use of a securities depository, broker-dealers must make independent arrangements to provide for delivery of securities (in certificated form) and payment on a trade-by-trade basis. In cases where an issuer has prohibited ownership of their securities by certain securities intermediaries, such as DTC, some broker-dealers register their customers' positions in the name of the broker-dealer so that certificates do not need to be issued for each customer and transferred on each trade. However, securities transactions between broker-dealers would still have to be manually processed. Thus, clearing and settling securities transactions outside of a depository causes greater risks and

participants (*i.e.*, broker-dealers and banks) are beneficial owners, as are the participants' customers. However, DTC, the clearing broker-dealer (the DTC participant), and the introducing broker-dealer are all securities intermediaries. These distinctions may be important under both federal and state law when determining the rights and obligations of the parties holding securities on behalf of others.

[22] Immobilization of securities occurs where a securities depository holds the underlying certificate and transfers of ownership are recorded through book-entry movements between the depository's participants' accounts. An issue is partially immobilized (as is the case with most equity securities traded on an exchange or at the NASD) when the street name positions are immobilized (*i.e.*, those held through broker-dealers that are participants of a depository), but certificates are still available to individual shareholders upon request. Dematerialization of securities occurs where there are no paper certificates available, and all transfers of ownership are made through book-entry movements. For more information about immobilization and dematerialization, *see* Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04].

[23] Fungible bulk means that no participant or customer of a participant has any claim or ownership rights to any particular certificate held by DTC. Rather, participants have a securities entitlement to obtain a certificate representing securities held in their DTC accounts.

[24] Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983), [File Nos. SR–600–5 and 600–19] (order approving the clearing agency registration of four depositories and four clearing corporations).

[25] Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993), [File Nos. SR–Amex–93–07; SR–BSE–93–08; SR–MSE–93–03; SR–NASD–93–11; SR–NYSE–93–13; SR–PSE–93–04; and SR–Phix–93–09)] (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary). In rare circumstances, DTC will be unable to accept a deposit of a security because it is unable to process it. In those cases, the rules of the self-regulatory organizations do not require the security to be depository eligible.

[26] Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–PHLX–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Pacific Stock Exchange, and the Philadelphia Stock Exchange).

[27] Securities depositories work in conjunction with securities clearing corporations. Both types of entities must be registered as clearing agencies under Section 17A of the Exchange Act. Clearing corporations, such as the National Securities Clearing Corporation, serve to compare trades submitted to it by its participants and net those trades to a single position at the end of the day. The trade position data is then submitted to the depository in order to effectuate settlement by debiting or crediting the participants' book-entry securities position at DTC and facilitating the payments to or from the participants.

[28] Of the four depositories registered as clearing agencies in 1983, DTC is the only one still operating. DTC estimates that as of December 31, 2002, approximately 84% of the shares issued by domestic companies listed on the NYSE and 88% of the domestic companies listed on the Nasdaq are deposited at DTC. (These statistics do not include ADRs.) E-mail from Joseph Trezza, Senior Product Manager, DTCC, to the Commission staff (November 14, 2003).

[29] In the case of ''book-entry-only'' securities (*e.g.*, no securities certificates are available), the issuer will authorize DTC to credit the account or accounts of participants with all of the issuer's outstanding shares.

[30] *See, e.g.*, Rules 5 and 6 of DTC's Rules.

[31] DTC registers securities in the name of its nominee, Cede & Co., which makes it the registered owner of the securities.

[32] Securities deposited at DTC by its participants or the issuers in the case of book-entry-only securities are legally or beneficially owned by the participants or their customers at the time of the deposit and are subsequently transferred into DTC's nominee name.

[33] While DTC is the registered owner, the participants and their customers are the beneficial owners. *See supra* note 21.

[34] A securities depository determines whether a security is eligible for deposit. Certain securities may not be eligible for a variety of reasons such as the security cannot conform to the depository's processing systems or ownership of the security is restricted in such a manner that it cannot be freely transferred. *See* Rule 5 of DTC's Rules.

[35] For example, DTC participants may choose not to deposit the securities in the depository if the security is not widely traded, and instead hold certificated securities registered in the name of either the participant's nominee or its customer.

inefficiencies, including credit risk issues and risk of defaults, than clearing and settling securities transactions within a depository.

C. Need for the Rule

A small but growing number of issuers whose securities are registered under Section 12 or are reporting under Section 15(d) of the Exchange Act [36] recently have restricted, or indicated their intention to restrict, ownership of their securities by prohibiting their transfer agents from acknowledging ownership of shares registered in the name of DTC or by prohibiting transfer of their securities to DTC or in some cases to any securities intermediary.[37] Most, if not all, of the issuers restricting ownership of their securities have also required that the shares be represented in certificated form.[38] In several cases, the issuer has required the broker-dealer to disclose the name of the ultimate beneficial owner before reregistering any securities held by the broker-dealer either in the name of the broker-dealer or in the name of DTC. [39] Some brokers refused because they believed disclosure of the customer's name would violate federal securities laws [40] or contractual obligations to the customer. Other broker-dealers could not disclose the name of the ultimate beneficial owner because they knew only the identity of their customer and not necessarily for whom their customer was holding the securities.

Issuers imposing these restrictions, sometimes referred to as ''custody-only trading,'' frequently state that they are imposing ownership or transfer restrictions on their securities to protect their shareholders and their share price from ''naked'' short selling.[41] These issuers believe that requiring all securities to be in certificated form and precluding ownership by certain securities intermediaries forces broker-dealers to deliver certificates on each transaction and eliminates the ability of naked short sellers to maintain a naked short sale position.[42]

A number of these issuers indicated that they had adopted or would adopt restrictions, assertedly pursuant to state corporation laws, to prohibit ownership of their securities by a depository, securities intermediaries, or both.[43] Issuers' actions to implement the restrictions caused numerous clearance and settlement problems. Some of these issuers refused to recognize positions that had been registered in the name of DTC's nominee or in the name of broker-dealers before the adoption of the restriction and refused to transfer (or allow their transfer agent to transfer) stock to the name of any entity or person that the issuer believed was not the ultimate beneficial owner. Where issuers refused to recognize ownership positions registered in the name of securities intermediaries, the broker-dealers and banks were forced individually to negotiate a solution directly with the issuer.

If securities intermediaries are precluded from having securities registered in their names, the securities intermediaries' ability to hold and move securities is severely limited. As a result, trading and clearance and settlement efficiency suffers, and costs and risks increase. This consequence of issuer restrictions is not compatible with the Congressional objective that trades in the securities of publicly traded companies should be settled through the national system for clearance and settlement and benefit from its efficiencies and risk reductions and is a significant step backwards in our progress to develop the national system. Furthermore, forced certification of securities is inconsistent with the industry's goals of streamlining processing of securities transactions.[44]

These types of restrictions have also caused investors increased costs and delays. By forcing securities intermediaries to submit securities as part of an issuer's recapitalization, the transfer agent must transfer the securities by canceling the certificate registered in the name of the securities intermediary and re-register a new certificate in the name of the beneficial owner. Transfer agent registration fees, which may range from $10.00 to $75.00 per transfer, and costs for secure delivery of securities certificates, can be more than the market value of the securities being processed.[45] In some cases, the broker-dealers assume these costs but in many cases the cost is passed along to investors. Broker-dealers that did reregister securities received numerous complaints from investors about the fees, particularly where the investors had not issued instructions to reregister the securities. Where broker-dealers must deliver the securities certificates to an issuer's transfer agent and the transfer agent similarly must deliver the newly registered certificates, there are significant costs and delays in obtaining certificates, which could ultimately impede the customers' ability to sell or otherwise negotiate the security in the marketplace.

III. The Proposed Rule

On June 4, 2004, the Commission proposed Rule 17Ad–20[46] that would prohibit registered transfer agents [47] from effecting any transfer of any equity security registered under Section 12 or any equity security that subjects an issuer to reporting under 15(d) of the Exchange Act [48] if such security is subject to any restriction or prohibition

[36] *Supra* note 5.

[37] *See, e.g., www.jagnotes.com; www.nutk.com.* Also *see* ''Intergold Corporation Announces Custody Only CommonShare Transfer System,'' PRNewswire-First Call (January 30, 2003).

[38] *Id.* The certification requirement does not in and of itself preclude securities from being deposited at DTC. In fact, DTC's nominee owns many of the securities deposited at DTC in certificated form, generally by a global or balance certificate.

[39] *Id.* Registration of a transfer is necessary to change registered ownership of a security.

[40] For example, some broker-dealers have expressed concern that such disclosure may cause them to violate Exchange Act Rule 14b–1 that requires a broker to provide a requesting issuer only with the identities of beneficial owners who have not objected to disclosures of this information to issuers. 17 CFR 240.14b–1.

[41] *See* Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02] (order approving proposed rule change concerning requests for withdrawal of certificates by issuers). A short sale is a sale of a security that the seller does not own or is effectuated by the delivery of borrowed securities. Although ''naked short sale'' is not a defined term under federal securities laws, it generally refers to situations where a seller sells a security without owning or borrowing the security and does not deliver when delivery is due. Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7–23–03] (adoption of Regulation SHO).

[42] *Id.*

[43] *See, e.g., www.jagnotes.com; www.nutk.com.* Also *see* ''Intergold Corporation Announces Custody Only CommonShare Transfer System,'' PRNewswire-First Call (January 30, 2003). Previously, some issuers sought to withdraw from DTC all securities issued by them and indicated that they would not allow their securities to be reregistered in the name of DTC. In June 2003, the Commission approved a DTC rule change clarifying that DTC's rules and procedures provide only for participants (*i.e.*, broker-dealers and banks) to submit withdrawal instructions for securities deposited at DTC and do not require DTC to comply with withdrawal requests from issuers. Exchange Act Release Nos. 47365 (February 13, 2003), 68 FR 8535 (February 21, 2003), [File No. SR–DTC–2003–02] (notice of proposed rule change); 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02] (order approving proposed rule change concerning requests for withdrawal of certificates by issuers).

[44] See Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04]. *See also* ''SIA T+1 Business Case Final Report,'' at 18–21 (August 2000)(''SIA Business Case Report''). The report is available online at *http://www.sia.com/t_plus_one_issue/pdf/BusinessCaseFinal.pdf.*

[45] Only issuers whose securities are trading on the NYSE are prohibited from charging transfer or certification fees.

[46] Securities Exchange Act Release No. 49809 (June 4, 2004), 69 FR 32784 (June 10, 2004), [File No. S7–24–04].

[47] *Supra note 13.* Issuers acting as their own transfer agent would be subject to Rule 17Ad–20.

[48] *Supra note 5.*

on transfer to or from a securities intermediary.[49] Under the proposed rule, the term ''securities intermediary'' would be defined as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. As proposed, the rule would exclude any equity security issued by a partnership, as defined in Item 901 of Regulation S–K.[50]

IV. Comment Letters

As noted above, the Commission received fourteen comment letters from eleven commenters in response to the proposed rule.[51] Three commenters submitting four letters supported the proposal in its current form.[52] The SIA stated that precluding securities intermediaries from having securities registered in their own name will increase the use of securities certificates and thereby will increase the costs and risks associated with processing these certificates. Legg Mason stated in its comment letter that it concurred with the SIA's comment. They noted that the use of certificates adversely affects the clearance and settlement system and undermines the industry's long-term efforts to streamline securities processing and achieving straight-through processing in the U.S.

DTC noted in its support for Rule 17Ad–20 that some issuers have refused to process or return shares presented by DTC for transfer or have significantly delayed transfer.[53] In many cases, DTC asserts, issuers' actions have resulted in the suspension of clearance and settlement services, and thereby have delayed or prevented the settlement of trades and ultimately disrupted the national system for clearance and settlement. While some issuers have claimed they have the right to control the disposition of securities trading in the public market and have directed that shares owned by and registered in the name of DTC's nominee be surrendered, DTC contends that issuers do not have continuing ownership rights in securities they have sold into the marketplace and that attempts to exercise control is improper and may constitute conversion. As such, DTC believes Rule 17Ad–20 will prevent transfer agents from aiding and abetting wrongful conduct by certain issuers that interferes with the exercise by DTC and by its participants of their duties to securityholders with respect to securities deposited at DTC.

DTC submitted a second comment letter[54] to address one commenter who opposed the adoption of Rule 17Ad–20 and who criticized the National Securities Clearing Corporation's (''NSCC'')[55] stock borrow program because he believed that the stock borrow program facilitated naked short selling by allowing broker-dealers to trade more shares than have been issued.[56] DTC stated that the program was implemented in order to satisfy its members' priority needs for stock that the members do not receive because of fails, and therefore the program facilitates the settlement of securities transactions.[57] DTC further stated that shares must be on deposit at DTC and that the lender cannot loan shares multiple times.

Five commenters submitting seven comment letters were either against adoption of the proposal or expressed reservations about adopting such a rule until certain preconditions were met.[58] One of the five commenters opposed the adoption of the proposed rule for a variety of reasons, including that adoption of the rule would remove the ''self help'' measure issuers were using to protect themselves against the negative effects of naked short selling.[59] Another commenter opposed to adoption of Rule 17Ad–20 expressed her belief that it was important to be able to register shares in her own name and to obtain certificates.[60]

One of these commenters opposed to adoption of Rule 17Ad–20 believed that adoption of the rule raises state law concerns.[61] This commenter stated that restrictions on transfer, as well as the rights of a corporation and its securityholders, are a matter of state law and that by prohibiting transfer agents from effecting certain transfers, the rule circumvents the rights of issuers to ''control its own destiny and protect its shareholders.''[62]

Three of these commenters believe that certain preconditions should be met before Rule 17Ad–20 is adopted.[63] Two of these commenters believe the Commission should develop an effective program to prevent naked short selling before limiting the efforts of small companies to prevent naked short selling and to reasonably guarantee the ''integrity'' of the U.S. clearance and settlement system, including the alleged problems relating to ''DTC's stock borrow program,'' which they believe facilitates naked short selling.[64] One commenter also recommended, without addressing legal and regulatory concerns, that issuers should be able to require that their securities be cleared and settled through the issuer or other alternative means and that the proposed rule be amended to provide an exception to allow the issuer to do so if it can demonstrate the capability to settle transactions in electronic book-entry form.[65]

Three commenters did not express their support for or opposition to the adoption of Rule 17Ad–20 but instead raised interpretive, operational, or timing issues with the proposal.[66] Two of these commenters suggested the proposed the rule should not be adopted

[49] *Supra note 15.*

[50] Item 901(b)(1) defines the term partnership to mean any: (i) Finite-life limited partnership or (ii) other finite-life entity. 17 CFR 229.901(b)(1). The Commission has the authority under Section 36 of the Exchange Act to conditionally or unconditionally exempt any security or class of securities from the provisions of the Exchange Act to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm(a)(1).

For tax or other reasons, partnerships may have an appropriate need to restrict ownership and issue a securities certificate. A ''publicly traded partnership'' as defined in Section 7704 of the Internal Revenue Code is subject to treatment as a corporation rather than a partnership for tax purposes. 26 CFR 1.7704–1.

[51] *Supra note 7.*

[52] Letters from the SIA, Legg Mason, and DTC.

[53] Letter from DTC (July 8, 2004).

[54] Letter from DTC (August 19, 2004).

[55] NSCC is an affiliate of DTC and is a registered clearing agency that maintains a book-entry accounting system that centralizes the settlement of compared security transactions and maintains an orderly flow of security and money balances.

[56] Letter from H. Glenn Bagwell.

[57] NSCC's Stock Borrow Program was approved by the Commission. Securities Exchange Act Release No. 17422 (December 29, 1980), 46 FR 3104 (January 13, 1981).

[58] Letters from David Patch, Glenda King, Frederick D. Lipman, X–Clearing Corporation, and H. Glenn Bagwell.

[59] Letter from David Patch.

[60] Letter from Glenda King.

[61] Letter from X–Clearing Corporation.

[62] *Id.*

[63] Letters from David Patch, H. Glenn Bagwell, and Frederick D. Lipman.

[64] Letters from H. Glenn Bagwell, and Frederick D. Lipman. One of these commenters maintained that state corporation laws generally permit corporations to establish the number of authorized shares in their certificates or articles or incorporation and authorize the board of directors to issue those shares. Naked short selling, this commenter contends, can increase the supply of shares beyond those authorized, thereby undermining the board's authority under state law to control the number of outstanding shares. Another commenter alluded to this issue when he noted that Regulation SHO indicated that in some cases settlement failure exceed the public float. Letter from David Patch (August 16, 2004). The Commission recently adopted Regulation SHO that addresses certain concerns relating to naked short selling. Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7–23–03]. See Section IV for further discussion on Regulation SHO.

[65] Letter from X–Clearing Corporation.

[66] Letters from Pacific Corporate Trust Company, Registrar and Transfer Company, and Cleary, Gottlieb, Steen & Hamilton.

until after Regulation SHO has become effective to ensure that the rules have effectively dealt with the naked short selling problem and therefore have eliminated the issuers' need to impose restrictions on ownership by or transfer to securities intermediaries.[67] Another commenter expressed concern that adoption of Rule 17Ad–20 may lead to unintended consequences. [68] This commenter argued that by prohibiting transfer agents from following the directions of issuers, the rule could force issuers to terminate their current transfer agent and assume the processing responsibilities as ''self agents,'' which may lead to a deterioration of recordkeeping and shareholder services.

One of these three commenters expressed concerns that adoption of Rule 17Ad–20 as proposed may unintentionally result in prohibiting certain restrictions on transfers that were never intended to be covered by the rule.[69] The commenter contended that, as currently worded, the rule would not only cover ''custody-only'' trading restrictions on equity securities but would also prohibit issuers from issuing equity securities of the same class that are ''subject to'' transfer restrictions that may be imposed for a variety of commercial reasons, such as escrow arrangements, collateral security arrangements, and the issuance of equity securities in private placements. This commenter suggested that any restriction or prohibition on transfer be exempt from the rule when the same class of securities is eligible for clearance through a securities intermediary.

V. Discussion

A. Adoption of the Rule

After considering the comments received, the Commission is adopting proposed Rule 17Ad–20, with one minor modification. In response to the concern raised by one commenter that Rule 17Ad–20 might unintentionally result in prohibiting transfers that were not intended to be covered by the rule (*e.g.,* restrictions imposed by private placements or restrictions resulting from private agreements between shareholders), the Commission is modifying Rule 17Ad–20(a) to prohibit transfer agents [70] from transferring [71] any equity security registered under Section 12 or any equity security that subjects an issuer to reporting under Section 15(d) of the Act [72] if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary ''in its capacity as such.'' Restrictions imposed by private placements or in private agreements generally do not permit transfers to anyone but those permitted to purchase or own the securities, as specified under federal law or by private agreements. By modifying Rule 17Ad–20(a), the Commission is making clear that the rule applies only to restrictions or prohibitions imposed by issuers on transfers of their publicly traded securities to or from those securityholders that are securities intermediaries and are not the ultimate beneficial owners.[73] As a result, the rule does not apply to situations such as restrictions imposed by issuers in order to prevent an unregistered distribution or other violation of federal securities laws, or to effectuate private agreements.

Restrictions on transfer or ownership imposed by issuers subsequent to the purchase of securities by investors in the public market raise a number of legal and regulatory concerns. A number of issuers have received but refused to allow transfer and return of securities registered in DTC's nominee name, which in some cases has constituted DTC's entire position.[74] DTC and its participants have expended significant resources in attempting to negotiate resolutions with these issuers and their transfer agents. In many cases, the issuers' refusal to return the shares has resulted in the suspension of clearance and settlement services for the issuers' securities, which in some cases has resulted in problems in clearing and settling trades. The difficulty in obtaining access to securities deposited at DTC but withheld by an issuer or its transfer agent and the difficulty in obtaining timely transfers through the transfer agent have caused some broker-dealers to discontinue buying or selling these issuers' securities on behalf of their customers.

We believe that restrictions on transfer of publicly traded securities to securities intermediaries are inconsistent with Section 17A of the Exchange Act. Transactions settled outside of a registered clearing agency have to be certificated and then processed manually on a transaction-by-transaction basis, which creates inefficiencies, risks, and added costs in clearing and settling securities transactions and in transferring securities ownership. Furthermore, restrictions that force investors to clear and settle their securities outside the national system for clearance and settlement require shareholders to assume these increased costs and risks. Investors and market participants should be permitted to hold securities in street name and avail themselves of the benefits of the national system for clearance and settlement if they so choose.

The use of the national system for clearance and settlement, and more specifically, the use of clearing agencies, does not hamper an investors' ability to register securities in their own name or obtain certificates, provided that the issuer allows for certificated positions.[75] Generally, an investor who wants an individually registered position in certificate form can instruct her broker-dealer to register the securities in her name and issue a certificate.

While we understand that restrictions on transfer to intermediaries reflect issuer attempts to address what they believe to be illegal naked short selling, the Commission does not believe that naked short selling concerns should be addressed by restrictions on transferability of securities that trade in the public markets. Restrictions on transferability to securities intermediaries results in the stock being

[67] Letters from Pacific Corporate Trust Company and Registrar and Transfer Company. The compliance date for the relevant provisions of Regulation SHO designed to address naked short selling problems is scheduled for January 3, 2005. Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7–23–03].

[68] Letter from Registrar and Transfer Company.

[69] Letter from Cleary, Gottlieb, Steen & Hamilton.

[70] *Supra* notes 13 and 15. All transfer agents that are required to register as such pursuant to Section 17A(c) of the Exchange Act, whether they are in fact registered or not, must comply with Rule 17Ad–20 and all other applicable transfer agent rules.

[71] The term ''transfer'' means (1) delivery of the security (*i.e.,* the certificate, or in the case of book-entry, an instruction) (2) a volitional act by the transferor which manifests an intent to change ownership or convey a security interest and, (3) reregistration of ownership. Egon Guttman, *Modern Securities Transfers* section 6:2, at 6–4 (3d ed. 2002).

[72] 15 U.S.C. 78*l* and 15 U.C.C. 78o(d) respectively.

[73] The rule will apply even if a restriction or prohibition does not expressly state that transfer to or ownership by securities intermediaries is restricted or prohibited. For example, the rule would apply to securities where the issuer permits transfer to or ownership by only the ''ultimate beneficial owner.''

[74] When a broker-dealer participant or its customer requests a certificate for a position maintained at DTC, the broker-dealer participant submits a ''Withdrawal by Transfer'' instruction to DTC, which in turn sends the appropriate transfer agent a certificate representing all or a portion of DTC's position. The transfer agent registers the number of shares in the customer's name as instructed by DTC and then reregisters the remainder of the shares in DTC's nominee name. The transfer agent sends the broker-dealer or the customer his or her shares and sends DTC the balance of its shares.

[75] State law determines if an issuer is required to issue certificates and the conditions to such issuance. Some states, such as New York, permit issuers to issue securities in book-entry form only (*i.e.,* in dematerialized form).

less liquid, and in the risks, inefficiencies, and costs described above, and are not compatible with the structure or goals of the national system for clearance and settlement.

We also note that the Commission recently adopted Regulation SHO to address many of the problems associated with naked short selling.[76] As adopted, Rule 203 of Regulation SHO creates a uniform Commission rule requiring broker-dealers, prior to effecting short sales in all equity securities, to ''locate'' securities available for borrowing and imposes additional delivery requirements on broker-dealers for securities in which a substantial amount of failures to deliver have occurred (*i.e.,* threshold securities).[77] The Commission believes that the requirements in Regulation SHO will reduce short selling abuses and will act as a restriction on naked short selling.

We also do not believe that it is either necessary or prudent to delay the adoption of this rule until after Regulation SHO has been in effect for some period of time or until after its effect on naked short selling is determined, as some commenters have suggested.[78] Any delay would continue to expose investors to increased costs and risks that come from exclusion of their securities from the national system for clearance and settlement.[79]

One commenter raised concerns that adoption of the rule would impede issuers' or securityholders' rights under state law.[80] As discussed more fully above, in adopting Section 17A of the Exchange Act, Congress directed the Commission to use its authority to facilitate the establishment of the national system for clearance and settlement, including the regulation of clearing agencies and transfers agents. In using its authority under the Exchange Act to adopt Rule 17Ad–20, the Commission is following this Congressional mandate by facilitating access to the national system for clearance and settlement that is not impeded by restrictions on transfers to or from securities intermediaries. Rule 17Ad–20 does not prevent issuers from restricting or prohibiting transfer to or ownership by securities intermediaries. Rather, the rule addresses transfer agents' ability to effect transfers of equity securities that are required to register or report under Exchange Act and have restrictions or prohibitions on transfer to securities intermediaries. Accordingly, Rule 17Ad–20 is designed to prohibit registered transfer agents from transferring equity securities that are encumbered by restrictions that are inconsistent with the operation of the national system for clearance and settlement and the congressional mandate to end the physical movement of securities certificates.

Finally, one commenter suggested that because of Rule 17Ad–20 some issuers should be permitted to or may decide to use alternative securities transfer, clearance, and settlement mechanisms, including performing these functions internally.[81] Issuers contemplating following this course of action must consider, among other provisions, that Section 17A(b)(1) of the Exchange Act makes it unlawful for any entity, including an issuer, to act as a clearing agency[82] without registering with the Commission as a clearing agency.[83] Similarly, in response to the commenter who raised concerns that some issuers may terminate their transfer agent and instead perform these functions internally,[84] Section 17A(c) of the Exchange Act requires any entity acting as a transfer agent, including an issuer,[85] for a security registered under Section 12 of the Exchange Act to register as a transfer agent.[86] An issuer acting as its own transfer agent would, therefore, have to register as a transfer agent and would become subject to Rule 17Ad–20.

B. Scope and Effective Date

The Commission believes that adoption of Rule 17Ad–20 advances the goals of the national system for clearance and settlement by requiring publicly traded equity securities to be eligible for clearance and settlement through the national system and by allowing investors and securities intermediaries the choice as to how to hold their securities. Therefore, the Commission is applying the rule to all equity securities, except those specifically excluded from Rule 17Ad–20, that either are registered pursuant to Section 12 of the Exchange Act or subject an issuer to reporting under Section 15(d) of the Exchange Act. In order to provide sufficient notice and opportunity for issuers to remove restrictions from securities if they so choose and for transfer agents to make sure they are in compliance with the rule, the Commission is providing for a compliance date of March 7, 2005.

VI. Paperwork Reduction Act

Rule 17Ad–20 does not contain new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[87] Accordingly, the PRA is not applicable to the adoption of the rule because it does not impose any new collection of information requirements that would require approval of the Office of Management and Budget (''OMB'').

VII. Costs and Benefits of Proposed Rule

We are sensitive to the costs and benefits of our rules and we have considered the costs and benefits of Rule 17Ad–20. To assist us in evaluating the costs and benefits, in the proposing release we encouraged commenters to discuss any cost or benefits that the rule might impose. In particular, we requested comment on three major areas. First, we requested comment on the potential costs for any for any modification to computer systems, operations, or procedures the proposed rule may require, as well as any potential benefits resulting from the proposal for investors, securities intermediaries (including, but not limited to, broker-dealers, depositories, and banks), transfer agents, other securities industry professionals, and others. Second, we sought comments, analysis, and empirical data on the extent to which the proposed rule would benefit investors by reducing costs associated with issuer-imposed restrictions on transferring securities to or from securities intermediaries and comment and data on the benefits to investors of the proposed rule to the extent it precludes decreased liquidity, increased risk, and increased transaction costs that may be associated with such issuer-imposed restrictions on securities. And third, we solicited data on the potential benefits that may accrue due to a reduction in production, transfers, and processing of certificates, and the increased use of a depository. Commenters were requested to provide analysis and data to support their views on the costs and benefits associated with proposed Rule 17Ad–20. We

[76] Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7–23–03].

[77] *Id.* Regulation SHO requires broker-dealers to comply with the locate, borrow and delivery requirements by January 3, 2005.

[78] Letters from Pacific Corporate Trust Company and Registrar and Transfer Company.

[79] The compliance date for the relevant provisions of Regulation SHO designed to address naked short selling problems is scheduled for January 3, 2005. Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7–23–03].

[80] Letter from X–Clearing Corporation.

[81] *Id.*

[82] 15 U.S.C. 78c(a)(23).

[83] 15 U.S.C. 78q–1(b)(1).

[84] Letter from Registrar and Transfer Company.

[85] 15 U.S.C. 78c(a)(25).

[86] 15 U.S.C. 78q–1(c)(1).

[87] 44 U.S.C. 3501 *et seq.*

received no comments providing cost or benefit estimates, but received comments on the potential economic impact generally of the proposed rule.

A. Benefits

By prohibiting registered transfer agents from effecting a transfer in any equity security registered under Section 12 or in any equity security that subjects an issuer to reporting under Section 15(d) that restricts or prohibits transfers to or from securities intermediaries, proposed Rule 17Ad–20 would allow investors to clear and settle their securities transactions through the national system for clearance and settlement and thereby take advantage of benefits of that system. We believe that the use of the national system, which can only be accessed through securities intermediaries, provides significant benefits to U.S. investors, brokers, dealers, other securities intermediaries, and issuers, by increasing efficiencies and reducing risks associated with processing, transferring, and settling securities certificates. While some of these benefits may not be readily quantifiable in terms of dollar value, particularly those related to risk reduction, we nonetheless believe that investors and broker-dealers who choose to use the national system for clearance and settlement will lower their transactions costs and realize a reduction in certain risks related to settlement of securities transactions and transfer of securities to registered ownership.

Issuers restricting transfers of their securities to or from securities intermediaries are causing investors to have to certificate their positions, which must be reregistered after every purchase or sale transaction. The Securities Industry Association (''SIA'') estimated that the annual direct and indirect cost of processing and transferring certificates in the U.S. market, including those related to shipping, signature guarantees,[88] transfer fees, custody, and manual processing, exceeds $234,000,000.[89] Costs and risks associated with missing, lost, counterfeit, or stolen certificates are also significant. Between 1996 and 2000, the SIA estimated that an average of 1.7 million certificates were reported lost or stolen.[90] In 2001, that figure increased to 2.5 million certificates.[91] Reporting missing, lost, stolen, or counterfeit securities certificates to SIC, determining negotiability of these certificates, and paying for surety bonds for lost certificates costs the financial industry and investors millions of dollars each year.[92] In recent years, the fraudulent resale and fraudulent collateralization of cancelled certificates (certificates with no resale value) alone have cost investors and financial institutions millions of dollars.[93]

Furthermore, the process of manually transferring securities transactions on an individual trade basis through the transfer agent causes significant delays in settling securities transactions and registering ownership. These delays may prevent investors from effecting timed transactions in the market. All of these costs and risks are ultimately borne by investors. The Commission believes the costs and risks are substantially reduced or even eliminated through the use of book-entry transfers and automated settlement at a securities depository.

DTC and a number of broker-dealers have informed the Commission that they have had to undertake special communications with investors and institute manual processing in order to exit securities positions from DTC (or any other intermediary position) and to accommodate issuers' requests to certificate positions in the name of the ultimate beneficial owner. The Commission believes that by adopting Rule 17 Ad–20, investors and industry participants may realize cost savings and other potential benefits resulting from not having to undertake these communication and manual processing expenses.

B. Costs

The Commission believes that Rule 17Ad–20 will impose minimal, if any, cost to registered transfer agents complying with the rule. To date, we have identified one cost relating to the handling, shipping, or insurance costs associated with the repackaging and returning non-transferable certificates. One transfer agent estimated this cost to be approximately $22.50 per certificate.[94] We are unable to estimate the total cost because transfer agents have no way of knowing how many, if any, of the issuers for whom they currently act as transfer agents would retain the restriction, and thereby incur the costs associated with returning non-transferable securities. Furthermore, we believe that many registered transfer agents would not act as transfer agent for an issuer that imposed restrictions subject to Rule 17Ad–20.

Rule 17Ad–20 will require registered transfer agents to determine whether or not securities subject to the rule could be eligible for transfer prior to effecting a transfer and whether the person or class of persons restricted from ownership by the issuer are securities intermediaries. We understand that transfer agents routinely make the determinations as to restrictions on the securities prior to accepting an agency appointment. Accordingly, we do not believe that any additional operational or procedural changes would be needed to be made to comply with Rule 17Ad–20.

The Commission understands that some issuers might believe that the rule removes a mechanism by which they believe they can counter the negative effects of naked short selling in general, and manipulative naked short selling in particular.[95] As has been contended in comment letters to the Commission, by requiring these securities to participate in the national system for clearance and settlement, it has been alleged that both issuers and investors will suffer losses due to the diminution in the market value of these securities caused by naked short selling or by adverse effects on ownership (*e.g.*, market value and voting rights) stemming from such short

[88] Every endorsement of a securities certificate requires a signature guarantee by an acceptable guarantor. Securities Transfer Association Rule Book, Section 1.02 (1998). The Uniform Commercial Code that states that a signature guarantee is a warranty by the signature guarantor that, among other things, the endorser is an appropriate person to endorse and thus the transfer the security. UCC 8–312.

[89] Letter to Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, from Donald Kittell, Executive Vice President, SIA (August 20, 2003); letter to Annette Nazareth, Director, Division of Market Regulation, Commission, from Donald Kittell, Executive Vice President, SIA (March 24, 2003) (''Nazareth Letter''). These letters advocate the need to dematerialize the U.S. market.

[90] *Id.* The SIA's statistics on securities reported lost and stolen were obtained by the SIA directly from SIC.

[91] *Id.*

[92] Nazareth Letter. Investors who have either lost their certificates or had the certificates stolen generally must obtain a surety bond before the transfer agent will register a transfer of ownership in order to protect the transfer agent from the risk of wrongful transfers in the event that the lost or stolen certificates reappear at a later date. We understand that generally most transfer agent charge investors 2%–4% of the current market value of the securities for such a bond.

[93] *See* Exchange Act Release No. 48931 (December 16, 2003), 68 FR 74390 (December 23, 2003), [File No. S7–18–00] (adopting rule relating to certificate destruction).

[94] Telephone conversation with Charlie Rossi, Division President, Equiserve, on October 1, 2004. The latest data showed an increase from an estimated cost of $5.00 indicated in the proposing release to $22.50 due to the results of a cost analysis performed by Equiserve. Most of the increase was associated with the manual process of scanning the certificate, ensuring appropriateness of the rejection, and communicating with the securityholders to explain the rejection.

[95] Letter from David Patch. *Also see* Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02].

sale transactions.[96] The Commission is addressing these issues through oversight and regulation [97] rather than issuers attempting to control the ownership or transfer of securities that trade in the public market, which conflicts with Congress' goals in enacting Section 17A of the Exchange Act. As stated earlier in this release, we believe issuer-imposed restrictions on securities often make the stock less liquid, causing reduction in the trading volume of the securities. Costs of imposing such restrictions can exceed the market value of the securities being processed. Under all of these circumstances, to the extent that there is any diminution of issuers' abilities to counter the perceived negative effects of naked short selling by restricting or prohibiting ownership or transfer by securities intermediaries, we believe the cost is justified by the benefits of the national system for clearance and settlement.[98]

VIII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) the of the Exchange Act,[99] as amended by the National Securities Markets Improvement Act of 1996,[100] provides that whenever the Commission is engaged in rulemaking and is required to consider or to determine whether an action is necessary or appropriate in the public interest, it must also consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission's view is that Rule 17Ad–20 would promote the objectives of the national system for clearance and settlement as established in Section 17A of the Exchange Act by allowing securities intermediaries and their customers effecting securities transactions in the public market to benefit from the increased efficiencies and risk reduction afforded by the national system for clearance and settlement. By prohibiting restrictions on transfers to and from securities depositories and other intermediaries, Rule 17Ad–20 should promote efficiency by reducing some of the costs and delays associated with the clearance and settlement of securities transactions and promote capital formation by making it easier for the securities to be traded in the marketplace.

Rule 17Ad–20 also should enhance competition. While most companies listed on a national exchange or Nasdaq are already subject to rules that in essence prohibit restrictions on transfers to or from securities intermediaries,[101] those issues trading in the non-national market and not subject to any listing requirements have not been subject to this restriction, such as those securities trading in the Pink Sheets. Rule 17Ad–20 would help to level the playing field by extending these obligations to all companies issuing equity securities that are registered under Section 12 or that subject issuers to reporting under Section 15(d) of the Exchange Act and transferred by a registered transfer agent.[102] In doing so, the rule should also promote liquidity in these securities by removing barriers to ownership of securities and decreasing transaction costs, thereby facilitating increased efficiency and capital formation.

IX. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604. This FRFA relates to the adoption of Rule 17Ad–20 under the Exchange Act of 1934 (''Act''),[103] which prohibits registered transfer agents from transferring any equity security registered pursuant to Section 12 of the Act or any equity security that subjects an issuer to reporting under Section 15(d) of the Act [104] if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary in its capacity as such. Under the rule, the term ''securities intermediary'' is defined as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. The Commission is excluding from Rule 17Ad–20 any equity security issued by a partnership, as defined in Item 901 of Regulation S–K.[105] A Summary of the Initial Regulatory Flexibility Analysis was published in the proposing release.[106] The IRFA, which was prepared in accordance with 5 U.S.C. 603, is available for inspection at the Commission's Public Reference office, 450 5th Street, NW., Washington, DC 20549.

A. Reasons for the Proposed Action

As described more fully in Section I, recently issuers whose securities are registered under Section 12, and therefore trading in the public markets, have restricted or attempted to restrict securities issued by them so as to limit or prohibit transfer to or from securities intermediaries, and in particular a securities depository.[107] In doing so, these issuers have precluded investors from being able to hold securities in street name through a securities intermediary and in turn preclude investors from availing themselves of the decreased risk and costs associated with automated settlement and book-entry transfers available through a securities depository. This consequence of issuer restrictions is not compatible with the congressional objective that trades in the securities of publicly traded companies should be settled through the national system for clearance and settlement and benefit from its efficiencies and risk reductions and is a significant step backwards in our progress to develop the national system.

B. Significant Issues Raised by Public Comment

When the Commission proposed Rule 17Ad–20, it requested comment with respect to the proposal and the accompanying IRFA. We received no

[96] *Id.*

[97] Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7–23–03].

[98] As noted above, most securities trading on an exchange or Nasdaq are already subject to SRO rules that require depository eligibility. *See* supra notes 25 and 26.

[99] 15 U.S.C. 78c.

[100] Pub. L. 104–290, 110 Stat. 3416 (1996).

[101] *See supra* notes 25 and 26.

[102] As noted above, the proposed rule would not apply to equity securities of issuers subject to Section 15(d) that are transferred by transfer agents that are not required to be registered under Section 17A of the Exchange Act.

[103] 15 U.S.C. 78a *et seq.*

[104] *Supra* note 5.

[105] Item 901(b)(1) defines the term partnership to mean any: (i) Finite-life limited partnership or (ii) other finite-life entity. 17 CFR 229.901(b)(1). The Commission has the authority under Section 36 of the Exchange Act to conditionally or unconditionally exempts any security or class of securities from the provisions of the Exchange Act to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm(a)(1).

[106] Securities Exchange Act Release No. 49809 (June 4, 2004), 69 FR 32784 (June 10, 2004), [File No. S7–24–04].

[107] Exchange Act Release Nos. 47365 (February 13, 2003), 68 FR 8535 (February 21, 2003), [File No. SR–DTC–2003–02] (notice of proposed rule change); 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02] (order approving proposed rule change concerning requests for withdrawal of certificates by issuers).

comments on the IRFA, but received comments on the rule generally. Three commenters supported adoption of the rule proposed. Two of these commenters stated that precluding securities intermediaries from having securities registered in their own name will increase the use of securities certificates and thereby will increase the costs and risks associated with processing these certificates. They noted that the use of certificates adversely affects the clearance and settlement system and undermines the industry's long-term efforts to streamline securities processing and achieving straight-through processing in the U.S. The third commenter, DTC, noted that some issuers have refused to process or return shares presented by DTC for transfer or have significantly delayed transfers. DTC asserted that such actions by these issuers have resulted in the suspension of clearance and settlement services and thereby have delayed or prevented the settlement of trades and ultimately disrupted the national system for clearance and settlement.

Five commenters opposed adoption of Rule 17Ad–20 or expressed reservations about the proposed rule until certain preconditions were met. One of these commenters contended that the rule would eliminate an important means by which issuers can protect themselves against the perceived negative effects of naked short selling. Several others believe the Commission should develop an effective program to prevent naked short selling before limiting the efforts of small companies to prevent naked short selling. One other stated that the rule raises state law concerns because the rights of a corporation and its securityholders are a matter of state law.

Three commenters did not express their support for or opposition to adopting Rule 17Ad–20 but instead raised interpretive, operational, or timing issues with the proposal. One of these commenters stated its concern that Rule 17Ad–20 as proposed may unintentionally result in prohibiting certain restrictions on transfers that were never intended to be covered by the rule, such as escrow arrangements, collateral security arrangements, and the issuance of equity securities in private placements.

C. Small Entities Subject to the Rule

Rule 17Ad–20 will affect registered transfer agents and issuers that are small entities. Pursuant to Rule 0–10 under the Exchange Act,[108] a registered transfer agent is a small entity if it: (1) Received fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed a ''small business'' or ''small organizations'' as defined in Rule 0–10 under the Exchange Act; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business if shorter); or (4) is not affiliated with any person other than a natural person that is not a small business or small organization under Rule 0–10. We estimate that 470 transfer agents of approximately 900 registered transfer agents qualify as ''small entities'' for purposes of RFA and would be subject to the requirements of Rule 17Ad–20.

Rule 0–10 under the Exchange Act defines an issuer, other than an investment company, to be a small entity if it has total assets of $5 million or less on the last day of its most recent fiscal year.[109] We estimate that approximately 2500 issuers qualify as ''small entities'' for purposes of RFA and could be affected by the requirements of Rule 17Ad–20. However, we believe that a significant number of these small issuers will not impose restrictions on their securities in a manner prohibited by Rule 17Ad–20 due to the impact of such restrictions on the liquidity of the securities and therefore will not be effected by the rule. To the extent that there is an impact on the minority of small issuers who choose to impose the type of restrictions effected by Rule 17Ad–20, we believe the benefits of this rule on the national system for clearance and settlement justify the costs imposed on them.

D. Reporting, Recordkeeping, and Other Compliance Requirements

While there are no reporting or recordkeeping obligations associated with Rule 17Ad–20, compliance by registered transfer agents will be subject to examination by the transfer agents' appropriate regulatory authority. Rule 17Ad–20 requires registered transfer agents to determine whether or not securities subject to the proposed rule could be eligible for transfer prior to effecting a transfer and whether the person or class of persons restricted from ownership by the issuer are securities intermediaries. Issuers and registered transfer agents might obtain certain representations or indemnifications from each other to remove any current restrictions that would be prohibited by the proposed rule and to assist registered transfer agents in complying with the rule, which might require one-time expenses related to contract revisions or legal fees.

The Commission understands that some issuers might believe that the rule removes a mechanism by which they believe they can counter the negative effects of naked short selling in general, and manipulative naked short selling in particular.[110] As has been previously contended in comment letters to the Commission, by requiring these securities to participate in the national system for clearance and settlement, it has been alleged that both issuers and investors will suffer losses due to the diminution in the market value of these securities caused by naked short selling or by adverse effects on ownership (*e.g.*, market value and voting rights) stemming from such short sale transactions.[111] The Commission believes that these issues are being addressed through oversight and regulation rather than issuers attempting to control the ownership or transfer of securities that trade in the public market. As stated in the release, we believe issuer-imposed restrictions on securities often make the stock less liquid, causing reduction in the trading volume of the securities. Under all of these circumstances, to the extent that there is any diminution of issuers' abilities to counter the perceived negative effects of naked short selling by restricting or prohibiting ownership or transfer by securities intermediaries, we believe the cost is justified by the benefits of the national system for clearance and settlement.[112]

E. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with Rule 17Ad–20, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into

[108] 17 CFR 240.0–10(a).

[109] *Id.*

[110] *See* Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003), [File No. SR–DTC–2003–02].

[111] *Id.*

[112] Most securities trading on a registered exchange or Nasdaq are already subject to SRO rules that require depository eligibility. *Supra* note 25 and 26. Accordingly, the proposed Rule 17Ad–20 would affect only those issuers not trading on a registered exchange or Nasdaq.

account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

Rule 17Ad–20 is designed to promote the integrity and efficiency of the U.S. clearance and settlement system by requiring as many publicly traded securities as practicable be eligible to clear and settle through the national system for clearance and settlement and allow investors and securities intermediaries retain the choice as to how to hold their securities in order to avail themselves of the benefits of the national system for clearance and settlement. The Commission believes that the establishment of different requirements for small entities is neither necessary nor practical because the proposal is designed to provide general standards that would protect the public and members of the financial community from increased inefficiencies, costs, and risks associated with trading, clearing, and settling securities without the protections afforded by the national system for clearance and settlement.

By prohibiting registered transfer agents from transferring any equity security registered pursuant to Section 12 of the Act or any equity security that subjects an issuer to reporting under Section 15(d) of the Act if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary, Rule 17Ad–20 uses performance standards rather than design standards to achieve its purpose. In addition, the Commission is unaware of ways to further clarify, consolidate or simplify the proposed amendment for small entities.

X. Statutory Authority

The Commission is adding § 240.17Ad–20 of Chapter II pursuant to Sections 3(b), 17A, 23(a), and 36 of the Exchange Act [113] in the manner set forth below.

List of Subjects in 17 CFR Part 240

Securities, Securities intermediaries, Transfer agents.

Text of Final Rule

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.17Ad–20 is added to read as follows:

§ 240.17Ad–20 Issuer restrictions or prohibitions on ownership by securities intermediaries.

(a) Except as provided in paragraph (c) of this section, no registered transfer agent shall transfer any equity security registered pursuant to section 12 or any equity security that subjects an issuer to reporting under section 15(d) of the Act (15 U.S.C. 78*l* or 15 U.S.C. 78o(d)) if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary in its capacity as such.

(b) The term *securities intermediary* means a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others in its capacity as such.

(c) The provisions of this section shall not apply to any equity security issued by a partnership as defined in rule 901(b) of Regulation S–K (§ 229.901(b) of this chapter).

Dated: November 30, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–26785 Filed 12–6–04; 8:45 am]

BILLING CODE 8010–01–P

[113] 15 U.S.C. 78q–1(a)(1), 78q–1(a)(2), 78q–1(d), and 78w(a).

Federal Register

Tuesday,
December 7, 2004

Part V

Department of Housing and Urban Development

24 CFR Part 570

Modification of the Community Development Block Grant Definition for Metropolitan City and Other Conforming Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4872–F–02]

RIN 2506–AC15

Modification of the Community Development Block Grant Definition for Metropolitan City and Other Conforming Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the Community Development Block Grant (CDBG) program regulations that replaced the obsolete term ''central city'' with a new term ''principal city'' in the definition of ''metropolitan city'' and other CDBG regulations referencing ''central city.'' The revisions were necessary because of the recent changes to the Office of Management and Budget's (OMB) Standards for Defining Metropolitan and Micropolitan Statistical Areas (MSAs) and the announcement in 2003 of new definitions for those areas using Census 2000 data. The rule also updated the affected CDBG program regulations so that the terminology used by HUD is consistent with OMB standards and the purposes of the Housing and Community Development Act of 1974. This rule follows an interim rule that was published in the **Federal Register** December 12, 2003. One comment was received in response to the interim rule. After careful consideration of the comment received in response to the interim rule, this rule makes final without change the interim rule published on December 12, 2003.

DATES: *Effective Date:* January 6, 2005.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–1577 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number listed in this section through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (the Act) establishes the statutory framework for the CDBG program. HUD's regulations implementing the CDBG program are located at 24 CFR part 570 (entitled ''Community Development Block Grants'').

Section 102(a)(4) of the Act defines the term ''metropolitan city'' as ''(A) a city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more.* * *'' The term ''metropolitan area'' is defined in section 102(a)(3) of the Act as ''a standard metropolitan statistical area as established by the Office of Management and Budget.'' Section 102(b) of the Act provides that the Secretary may, by regulation, change or otherwise modify the meaning of the terms defined in section 102(a) in order to reflect any technical change or modification made by the United States Bureau of the Census or OMB.

II. Regulatory Background

On December 12, 2003, HUD published an interim rule (68 FR 69580) replacing the now-obsolete term ''central city'' with the term ''principal city.'' The interim rule amended the definition of ''metropolitan city'' in 24 CFR 570.3; updates 24 CFR 570.4, which relates to the allocation of funds and the recognition of boundaries of entitlement areas, and 24 CFR 570.307(e), which deals with the ineligibility of included units of general local government (that it, those units of local government that are included as part of an urban county). This change was based on definitions and standards published by OMB. For further information on the background and significance of these changes, please see the preamble to the December 12, 2003 rule (68 FR 69580 *et seq.*).

III. This Final Rule

This rule received one public comment from a small city. This commenter supported this rule.

This rule therefore makes final the December 12, 2003, interim rule without change.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' (but not economically significant) as defined in section 3(f) of the order. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file. The docket file is available for public inspection between 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.

Environmental Impact

This rule simply revises existing HUD regulations by replacing ''central city'' or ''central cities'' with ''principal city'' or ''principal cities,'' where applicable, in order to be consistent with OMB standards. This rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, nor does it establish, revise, or provide for standards for construction, construction materials, manufactured housing, or occupancy. This rule revises an existing document where the existing document as a whole would not fall under a categorical exclusion but the amendment by itself does so. Pursuant to 24 CFR 50.19(c)(1) and (c)(2), these revisions are categorically excluded from the environmental assessment required by the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities.

Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts

state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

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 final rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, Community development block grant, Grant programs—education, Grant programs, housing and community development, Indians, insular areas, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid.

■ Accordingly, for the reasons discussed in the preamble, HUD makes final the December 12, 2003 interim rule (68 FR 69582) without change.

Dated: November 30, 2004.

Nelson R. Bregón,

General Deputy Assistant Secretary.

[FR Doc. 04–26772 Filed 12–6–04; 8:45 am]

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Federal Register

Tuesday,
December 7, 2004

Part VI

Department of Housing and Urban Development

24 CFR Part 2004

Office of Inspector General (OIG) Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2004

[Docket No. FR–4942–P–01; HUD–2004–0018]]

RIN 2508–AA14

Office of Inspector General (OIG) Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Office of Inspector General, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Office of Inspector General's (OIG's) regulations to provide an appellate review procedure regarding the OIG's responses to subpoenas issued to OIG employees requesting documents or testimony in legal proceedings where the OIG is not a party. The establishment of an appellate proceeding is designed to ensure both a thorough review process by the OIG and a complete opportunity for a party or person to take formal exception to the OIG's determination.

DATES: *Comment Due Date:* February 7, 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 *www.regulations.gov;* or
- The HUD electronic Web site at *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 *www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4500; telephone (202) 708–1613 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations regarding requests of HUD's Office of Inspector General (OIG) employees for testimony and production of documents are located at 24 CFR part 2004. Under § 2004.20, no OIG employee may produce official records or provide any testimony relating to official information in response to a demand or request without the prior written approval of the Inspector General (IG) or the Counsel for Inspector General (Counsel). The IG has delegated the authority to respond to requests and demands for production of OIG records and testimony of OIG employees to the Counsel.

Section 2004.21 identifies the factors that the OIG will consider in making determinations in response to requests for OIG documents or testimony, and § 2004.25 provides that the Counsel's decision is the final determination on demands and requests of OIG employees for the production of official records and information or testimony.

After request or demand of documents or testimony, the Counsel will review the demand and determine whether the OIG employee is authorized to release documents or testify. The Counsel will notify the requester of the final determination and the reasons for the grant or denial of the request.

II. This Proposed Rule

As the current regulations are written, no review process exists for unfavorable decisions made by the Counsel. Once the Counsel makes a determination denying a request for documents or testimony, or restricting the release of documents or testimony, the decision is final. This proposed rule addresses the need for a review process by amending 24 CFR part 2004 to provide for an appellate review process regarding the Counsel's responses to subpoenas issued to OIG employees in legal proceedings where the OIG is not a party.

When a party or any person is aggrieved by the Counsel's decision denying a request for documents or testimony, that party or person may seek review of the decision by filing a written Notice of Intention to Petition for Review (Notice). After filing this Notice, the party or person must also file a Petition for Review (Petition) detailing the issues and reasons why a review of the Counsel's decision is appropriate. All filings must be served on the Counsel in accordance with § 2004.23. Either the Counsel or the IG will review the Petition, and the decision on the Petition will become the final decision of the OIG.

If the party or person is not satisfied with the OIG's decision, the party or person may seek judicial review. However, as noted in the current regulations, if the Counsel declines to approve a demand for records or testimony, and a court or other authority rules that the demand must be complied with regardless of OIG instructions not to release the material or information sought, the OIG employee or former OIG employee upon whom the demand has been made shall respectfully decline to comply with the demand.

This rule amendment sets forth a review process where Counsel can thoroughly and timely consider the party's or person's petition prior to issuing a final decision on the release of documents or testimony.

III. Findings and Certifications

Information Collection Requirements

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

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

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 2004.28(c)	8	2	5	80

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4942–P–01) and must be sent to:

Mark Menchik, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947, E-mail: *Mark_D._Menchik@omb.eop.gov;*

and

Reports Liaison Officer, Office of Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8170, Washington, DC 20410–4500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would provide those persons aggrieved by an OIG decision denying a request for production of documents or testimony the opportunity to seek review of the decision. This rule would impose no additional economic or other burdens. Rather, this rule provides small entities with the benefit of a review process for unfavorable OIG decisions. Accordingly, this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described by this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 2004

Administrative practice and procedure, Courts.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 2004 as follows:

PART 2004—SUBPOENAS AND PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES

1. The authority citation for 24 CFR part 2004 continues to read as follows:

Authority: Inspector General Act of 1978, as amended (5 U.S.C. app.) and 42 U.S.C. 3535(d).

2. Revise § 2004.28 to read as follows:

§ 2004.28 Procedure in the event of an adverse ruling.

(a) *Opportunity to review adverse ruling.* Any person aggrieved by a decision made by the Counsel under this part denying a request for documents or testimony, or restricting the release of documents or testimony, may seek review of that decision pursuant to paragraph (c) of this section.

(b) *Procedure in the event of conflicting court order.* If the Inspector General or Counsel declines to approve a demand for records or testimony and a court or other authority rules that the

demand must be complied with irrespective of the instructions from the OIG not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(c) *Procedure.* (1) *Notice of intention to petition for review.* A party or any person aggrieved by the decision made pursuant to this part denying or restricting the release of documents or testimony may seek review of the decision by filing a written Notice of Intention to Petition for Review (Notice) within five business days of the date of this decision. The Notice shall identify the petitioner, the adverse decision, and any dates (such as deposition, hearing, or court dates) that are significant to the party. The Notice shall be served in accordance with § 2004.23.

(2) *Petition for review.* Within five business days of the filing of a Notice, the person or party seeking review shall file a Petition for Review (Petition) containing a clear and concise statement of the issues to be reviewed and the reasons why the review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons and arguments for such exceptions based on appropriate citations to such record or law as may exist. These reasons may be stated in summary form. Decisions on the Petition may be made by either the Inspector General or the Counsel and shall become the final decisions of the OIG. The Petition will be served in accordance with § 2004.23.

(d) *Prerequisite to judicial review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the agency for review of a decision made under the authority of this part is a prerequisite to the seeking of judicial review of the final decision.

Dated: November 3, 2004.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. 04–26769 Filed 12–6–04; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "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. 1113/P.L. 108–417
To authorize an exchange of land at Fort Frederica National Monument, and for other purposes. (Nov. 30, 2004; 118 Stat. 2339)

H.R. 1284/P.L. 108–418
To amend the Reclamation Projects Authorization and Adjustment Act of 1992 to increase the Federal share of the costs of the San Gabriel Basin demonstration project. (Nov. 30, 2004; 118 Stat. 2340)

H.R. 1417/P.L. 108–419
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Department of Energy High-End Computing Revitalization Act of 2004 (Nov. 30, 2004; 118 Stat. 2400)

H.R. 4593/P.L. 108–424
Lincoln County Conservation, Recreation, and Development Act of 2004 (Nov. 30, 2004; 118 Stat. 2403)

H.R. 4794/P.L. 108–425
To amend the Tijuana River Valley Estuary and Beach

Sewage Cleanup Act of 2000 to extend the authorization of appropriations, and for other purposes. (Nov. 30, 2004; 118 Stat. 2420)

H.R. 5163/P.L. 108–426

Norman Y. Mineta Research and Special Programs Improvement Act (Nov. 30, 2004; 118 Stat. 2423)

H.R. 5213/P.L. 108–427

Research Review Act of 2004 (Nov. 30, 2004; 118 Stat. 2430)

H.R. 5245/P.L. 108–428

To extend the liability indemnification regime for the commercial space transportation industry. (Nov. 30, 2004; 118 Stat. 2432)

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